

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

SGS-1, LLC
(as "Seller")

As-Available Product

POWER PURCHASE AGREEMENT

TABLE OF CONTENTS

PREAMBLE

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS 1

ARTICLE TWO: GOVERNING TERMS AND TERM 18

 2.1 Entire Agreement 18

 2.2 Interpretation 18

 2.3 Authorized Representatives 19

 2.4 Recording 19

 2.5 Term 19

 2.6 Binding Nature 20

ARTICLE THREE: OBLIGATIONS AND DELIVERIES 20

 3.1 Seller’s and Buyer’s Obligations 20

 3.2 Green Attributes 25

 3.3 Resource Adequacy 25

 3.4 Transmission and Scheduling 26

 3.5 Standards of Care 30

 3.6 Metering 30

 3.7 Outage Notification 32

 3.8 Operations Logs and Access Rights 34

 3.9 New Generation Facility 35

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS 38

 4.1 Contract Price 38

 4.2 TOD Periods 38

 4.3 TOD Factors and Monthly TOD Payment 39

 4.4 Excess Scheduled Energy 40

 4.5 CAISO Charges and Credits 40

 4.6 Settlement of Scheduled Energy and Delivered Energy 40

 4.7 Additional Compensation 40

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES 40

 5.1 Events of Default 40

 5.2 Declaration of Early Termination Date 42

 5.3 Calculation of Termination Payment 42

 5.4 Notice of Payment of Termination Payment 43

 5.5 Disputes With Respect to Termination Payment 43

 5.6 Rights And Remedies Are Cumulative 43

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

ARTICLE SIX: PAYMENT43

 6.1 Billing and Payment; Remedies.....43

 6.2 Disputes and Adjustments of Invoices.....43

ARTICLE SEVEN: LIMITATIONS 44

 7.1 Limitation of Remedies, Liability and Damages44

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.....45

 8.1 Buyer Financial Information.....45

 8.2 Seller Financial Information45

 8.3 Grant of Security Interest/Remedies.....46

 8.4 Performance Assurance46

 8.5 Letter of Credit49

ARTICLE NINE: GOVERNMENTAL CHARGES50

 9.1 Cooperation.....50

 9.2 Governmental Charges50

ARTICLE TEN: MISCELLANEOUS 51

 10.1 [Reserved.].....51

 10.2 Representations and Warranties51

 10.3 Covenants52

 10.4 Title and Risk of Loss.....52

 10.5 Indemnities53

 10.6 Assignment53

 10.7 Confidentiality54

 10.8 RPS Confidentiality54

 10.9 Audit55

 10.10 Insurance.....55

 10.11 Access to Financial Information.....58

 10.12 Governing Law59

 10.13 General.....59

 10.14 Severability59

 10.15 Counterparts.....59

 10.16 Mobile-Sierra.....60

ARTICLE ELEVEN: CONDITIONS PRECEDENT60

 11.1 Conditions Precedent60

 11.2 Failure to Meet All Conditions Precedent61

ARTICLE TWELVE: DISPUTE RESOLUTION62

 12.1 Intent of the Parties62

 12.2 Management Negotiations62

 12.3 Arbitration.....63

ARTICLE THIRTEEN: NOTICES.....64

SIGNATURES65

APPENDICES

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

- Schedule 3.1(e) Annual Contract Quantity
- Schedule 4.6 Examples of Settlement of Scheduled Energy and Delivered Energy
- Appendix I Form of Letter of Credit
- Appendix II Energy Delivery Date Confirmation Letter
- Appendix III Milestones Schedule
- Appendix IV Project Description Including Description of Site
- Appendix V Commercial Operation Certification Procedure
- Appendix VI Forms of Certification
- Appendix VII Counterparty Notification Requirements for Project Availability and Project Outages
- Appendix VIII Resource Adequacy
- Appendix IX Notices List
- Appendix X Form of Monthly Progress Report
- Appendix XI Form of Actual Availability Report
- Appendix XII Form of Parent Guaranty

POWER PURCHASE AGREEMENT

PREAMBLE

This Power Purchase Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation ("Buyer" or "PG&E"), and SGS-1, LLC, a Delaware limited liability company ("Seller"), as of the Execution Date. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "AAA" means the American Arbitration Association.

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

1.3 "Agreement" means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, "agreement" means "Agreement" as defined herein and for purposes of Section 3.1(k)(v), "contract" means "Agreement as defined herein.

1.4 "Arbitration" has the meaning set forth in Section 12.3.

1.5 "As-Available Product" means a Product for which, subject to the terms of this Agreement, (i) Seller is obligated to sell and deliver and (ii) Buyer is obligated to purchase the Energy component of the Product from the Project.

1.6 "Availability Standard" means the program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder.

1.7 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

1.8 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

1.9 "Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it, which remains unstayed or undismissed for a period of at least sixty (60) days, (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.

1.10 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

1.11 "Buyer" has the meaning set forth in the Preamble.

1.12 "Buyer's CRR Request" has the meaning set forth in Section 3.4(c).

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

1.14 "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.

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

1.16 "CAISO Tariff" means the CAISO FERC Electric Tariff, Fourth Replacement Volume Nos. I and II, as it may be amended, supplemented or replaced (in whole or in part) from time to time..

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

1.18 "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 Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such products.

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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

1.20 "CEC Certification and Verification" means that the CEC has certified (or, solely with respect to periods before the Project achieves Full Commercial Operation, that the CEC has pre-certified with LORS Review) 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.

1.21 "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.

1.22 "Commercial Operation" means the Project, or a portion of the Project, is first operating and able to produce and deliver Delivered Energy to the CAISO pursuant to the terms of this Agreement.

1.23 "Commercial Operation Date" means the date, which shall be no earlier than the Effective 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 VI-B, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix V hereto in respect of Commercial Operation.

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

1.25 "Construction Cure Period" has the meaning set forth in Section 3.9(c)(iv)(A).

1.26 "Construction Start Date" means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Final Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (b) a written Certification substantially in the form attached hereto as Appendix VI-A.

1.27 "Contract Capacity" means 150 MW of installed power capacity of the Project at unity power factor (as determined by the cumulative power rating of the inverters installed at the Project).

1.28 "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.

1.29 "Contract Quantity" means the expected quantity of Delivered Energy to be delivered by Seller as set forth in Section 3.1(e)(i).

1.30 "Contract Year" means a period of twelve (12) consecutive months during the Project Delivery Term. The first Contract Year shall commence on the Full Commercial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Full Commercial Energy Delivery Date.

1.31 "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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.32 "CP Delivery Option" has the meaning set forth in Section 11.2(b)(ii)(A).

1.33 "CP Delivery Option Exercise Period" has the meaning set forth in Section 11.2(b)(ii)(A).

1.34 "CP Delivery Option Term" has the meaning set forth in Section 11.2(b)(ii)(A).

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

1.36 "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.

1.37 "CPUC Approval Deadline Date" has the meaning set forth in Section 11.2(b)(i).

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

1.39 "CRR Allocation Amount" has the meaning set forth in Section 3.4(c).

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

1.41 "Daily Delay Damages" means, with respect to a Guaranteed Project Milestone, \$62,500 (equal to \$7,500,000 divided by 120).

1.42 "Day Ahead Market" has the definition set forth in the CAISO Tariff.

1.43 "Day-Ahead Schedule" is a Schedule provided by Seller to the CAISO and the Buyer with respect to Product from the Project.

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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

1.45 "Delivered Energy" means all Energy produced from the Project and delivered by Seller to the CAISO at the Delivery Point, 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 and delivered by Seller to the CAISO at the Delivery Point.

1.46 "Delivery Point" means the point set forth in Section 3.1(d).

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

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

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

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

1.51 "Dispatch Down Period" means the period of time during the Delivery Term which there is any of the following: (a) a curtailment ordered from the security coordinator, Transmission Provider, or Balancing Authority for reasons of any system emergency ("System Emergency"); (b) a curtailment ordered by a Transmission Provider or the Participating Transmission Owner, as applicable, based on any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the Transmission Provider's or Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Transmission Provider or Participating Transmission Owner is connected, as determined by the Transmission Provider or Participating Transmission Owner in its sole discretion; (c) a curtailment ordered by CAISO due to over-generation as defined in the CAISO Tariff; (d) a curtailment ordered by CAISO based upon the CAISO's forecast of over-generation, including, but not limited to, a request by the CAISO to manage over-generation conditions pursuant to CAISO Operating Procedure G 202, as it may be amended, supplemented or replaced (in whole or in part) from time to time; (e) a curtailment ordered by the Participating Transmission Owner; or (f) scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) the CAISO from receiving or (ii) Seller from delivering Delivered Energy to and at the Delivery Point.

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

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

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

1.55 "EIRP" means the Eligible Intermittent Resources Protocol, which is part of the CAISO Tariff.

1.56 "Electrical Losses" means all electrical losses associated with the transmission of Product to the Delivery Point, including, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

1.57 "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.

1.58 "Energy" means electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified) and for purposes of the definition of Green Attributes "energy" means "Energy" as defined herein.

1.59 "Energy Shortfall Liquidated Damages" has the meaning set forth in Section 3.1(e).

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

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

1.62 "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.

1.63 "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.

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

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

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

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

1.68 "Exercise Period" has the meaning set forth in Section 3.7(e)(iii)(B).

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

1.70 "Final 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, by which Seller authorizes such EPC Contractor to complete all work under the EPC Contract.

1.71 "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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

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) acts of God, flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcano, tide, tidal wave, hail storms, ice storms, 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), acts of emergency, sabotage, blockade, insurrection, revolution, expropriation, nationalization or confiscation;

(iii) except as set forth in subsection (b)(vii) below, strikes, work stoppage, boycotts, walkouts, 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, except if Seller's inability to obtain such permits is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

(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, disruption, boycott, walkout or labor dispute or shortage limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project, except if caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(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;

(ix) a Dispatch Down Period; or

(x) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

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

1.73 "Forced Outage" means any unplanned reduction or suspension of the production of Product from the Project or unavailability of the Project in whole or in part that is not a Planned Outage.

1.74 "Full Commercial Energy Delivery Date" has the meaning set forth in Section 3.1(c).

1.75 "Full Commercial Operation" means the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement with not less than ninety-seven percent (97%) of the Contract Capacity.

1.76 "Full Commercial Operation Date" means the date on which Seller has (a) notified Buyer that Full Commercial Operation has occurred, and (b) provided to Buyer a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix VI-C, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix V hereto in respect of Full Commercial Operation.

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

transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term and include the value of Green Attributes to determine the economic benefit.

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

1.79 "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.

1.80 "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.

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

1.82 "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

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.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

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.

1.83 "Green Value" means, at the time of calculation, (i) the time weighted average of the daily prices of Green Attributes (as published in an index for a liquid traded market for Green Attributes which includes California) which shall in no event exceed \$50/MWh; or (ii) if a liquid traded market for Green Attributes does not exist at the time of the calculation, then the price of Green Value shall be fixed at \$30/MWh for purposes of such calculation.

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

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

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

1.87 "Guaranteed Energy Shortfall" has the meaning set forth in Section 3.1(e).

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

1.89 "Guaranteed Project Milestone" has the meaning set forth in Section 3.9(c)(iii).

1.90 "ICE" means the Intercontinental Exchange or any successor entity thereto.

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

1.92 "Initial Energy Delivery Security" is the collateral required of Seller, as specified and referred to in Section 8.4(a)(iii).

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

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

1.95 "Interconnection Provider" means the entity that owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities to which Seller shall be able to interconnect and deliver Energy from the Project to and at the Interconnection Point.

1.96 "Interconnection Point" means the Hassayampa 500 kV switchyard, which is part of the Palo Verde Common Bus.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

1.97 "Inter-SC Trade" has the meaning set forth in the CAISO Tariff.

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

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

1.100 "Interest Period" means the monthly period beginning on the first day of each month and ending on the last day of each month, or such shorter period during which Performance Assurance in the form of cash is held by Buyer.

1.101 "Interest Rate" means the rate per annum equal to the 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.

1.102 "Late Payment Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable Law.

1.103 "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 1.36, 1.82, 10.2(b) and 10.12, "law" means "Law" as defined herein.

1.104 "Letter(s) of Credit" means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank 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.

1.105 "Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in Arizona, (b) has training and experience in the power industry specific to the technology of the Project, and (c) is licensed in an appropriate engineering discipline for the required certification being made.

1.106 "LMP" has the meaning set forth in the CAISO Tariff.

1.107 "Load Aggregation Point" has the meaning set forth in the CAISO Full Network Model (as such is defined in the CAISO Tariff).

1.108 "LORS Review" means the assessment by the CEC as to whether the Project's development or operation will cause or contribute to a violation of any California environmental

quality laws, ordinances, regulations, and standards in the region of California most likely to be affected by the Project’s development or operation.

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

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

1.111 “Market Price Index” means the Day-Ahead Market LMP (as defined by the CAISO Tariff) at the Project’s PNode subsequent to the Project becoming a Participating Generator, as published on the CAISO’s OASIS website.

1.112 “Maximum Delay Damages Amount” has the meaning set forth in Section 3.9(c)(iv)(B).

1.113 “Metering Equipment” means the CAISO-approved revenue meters and all associated equipment, including software and telemetry equipment, necessary to measure, record, report and transmit to Buyer, in accordance with requirements reasonably established by Buyer (and the extent required, the Transmission Provider) the amount of Product generated by the Project.

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

1.115 “Monthly Progress Report” means the report specified in Section 3.9(a)(vi) and in the form as attached hereto as Appendix X, as applicable.

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

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

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

1.119 “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.

1.120 “MWh” means megawatt-hour.

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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

- 1.122 "NERC Holiday" has the meaning set forth in Section 4.2.
- 1.123 "Non-Defaulting Party" has the meaning set forth in Section 5.2.
- 1.124 "Notice" means, unless otherwise specified in the Agreement, written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Appendix IX contains the names and addresses to be used for Notices.
- 1.125 "Notice of Project Redelivery" has the meaning set forth in Section 3.7(e)(iii)(B).
- 1.126 "Notice of CP Delivery" has the meaning set forth in Section 11.2(b)(ii).
- 1.127 "Obligor" means the Party breaching the terms of this Agreement.
- 1.128 "Offer" has the meaning set forth in Section 3.7(e)(iii)(C).
- 1.129 "Palo Verde Common Bus" means the Arizona Nuclear Power Project switchyard at the Palo Verde Nuclear Station, the Hassayampa switchyard, and the string bus facilities connecting them.
- 1.130 "Parent Guaranty" means a guaranty of payment issued by an entity that (a) is Seller's Parent or is an Affiliate of Seller or other third party that is acceptable to Buyer, (b) has an S&P Credit Rating of BBB or better or a Moody's Credit Rating of Baa2 or better, and (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction. The guaranty shall be substantially in the form as contained in Appendix XII to this Agreement. In determining whether Seller's Parent, an Affiliate of Seller or other third party is acceptable to Buyer, Buyer may base its determination, without limitation, on its evaluation of (x) the cost, convenience and likely success of enforcing the Parent Guaranty against Seller's Parent, Affiliate or other third party or (y) Buyer's overall potential credit exposure to Seller's Parent and Affiliates of Seller's Parent or other third party.
- 1.131 "Partial Commercial Energy Delivery Date" has the meaning set forth in Section 3.1(c)(iii).
- 1.132 "Partial Commercial Operation" means the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement with not less than 50% of the Contract Capacity.
- 1.133 "Partial Commercial Operation Date" means the date on which Seller has (a) notified Buyer that Partial Commercial Operation has occurred, and (b) provided to Buyer a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Appendix VI-B, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix V hereto in respect of Partial Commercial Operation.
- 1.134 "Partial Project Cure Period" has the meaning set forth in Section 3.9(c)(iv)(A).
- 1.135 "Participating Generator Agreement" means an agreement between the CAISO and Seller which will establish the ability of the Project to deliver Delivered Energy during the

Delivery Term within the CAISO Balancing Authority Area as an intermittent resource, which agreement may include a Pseudo Participating Generator Agreement.

1.136 "Participating Intermittent Resource" or "PIRP" has the meaning set forth in the CAISO Tariff.

1.137 "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.

1.138 "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" has the meaning set forth in this definition.

1.139 "Performance Assurance" means collateral provided by Seller to Buyer to secure Seller's obligations hereunder and includes Project Development Security, Post Effective Date Project Development Security, Initial Energy Delivery Security and Delivery Term Security.

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

1.141 "Permitted Extensions" means extensions to any of the Guaranteed Project Milestones due to Force Majeure Construction Extension, as applicable to each Guaranteed Project Milestone pursuant to Section 3.9(c)(iii).

1.142 "Planned Outage" means any planned reduction or suspension of the electrical output of the Project or unavailability of the Project in whole or in part during the Delivery Term as a result of the inspection, maintenance or repair of equipment that is conducted during the period Scheduled in accordance with Section 3.7(b).

1.143 "PNode" has the meaning set forth in the CAISO Tariff.

1.144 "Post Effective Date Project Development Security" is the collateral required of Seller as specified and referred to in Section 8.4(a)(ii).

1.145 "Preamble" means the paragraph that precedes Article One: General Definitions to this Agreement.

1.146 "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, the Delivered Energy, renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.147 "Production Tax Credit" or "PTC" means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.148 "Project" means the Unit(s) for the Contract Capacity, the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
“Renewable Resource Contracts Under RPS Program”

generation facility, as more particularly described on Appendix IV. For purposes of the definition of Green Attributes “project” means “Project” as defined herein.

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

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

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

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

1.153 “Pseudo Participating Generator Agreement” means a Participating Generator Agreement with the CAISO for the creation of a Pseudo-Tie.

1.154 “Pseudo-Tie” means an arrangement pursuant to which the Project is interconnected externally to the CAISO such that it may receive applicable Balancing Authority services from the CAISO and operate under the jurisdiction of the CAISO in accordance with the CAISO Tariff as a “Participating Generator” thereunder.

1.155 “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.

1.156 “Real-Time” has the meaning set forth in the CAISO Tariff.

1.157 “Recalculation Settlement Statement T+76BD” has the meaning set forth in the CAISO Tariff.

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

1.159 “Redelivery Option” has the meaning set forth in Section 3.7(e)(iii)(B).

1.160 “Redelivery Product” has the meaning set forth in Section 3.7(e)(iii)(B).

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

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

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

1.164 “Replacement Capacity Rules” means the program set forth in the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain requirements to replace Resource Adequacy Capacity (as defined in the CAISO Tariff) on planned outages.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

1.165 "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.

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

1.167 "RFP" means Buyer's Renewables Portfolio Standard Solicitation issued in 2008 from which this Agreement is the result.

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

1.169 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinator, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to the CAISO, pursuant to the requirements of the CAISO Tariff, the quantity and type of Product to be delivered on any given day or days during the Delivery Term at the Delivery Point or beyond.

1.170 "Scheduling Coordinator" or "SC" means an entity qualified by the CAISO to undertake all functions necessary to Schedule delivery and transmission of the Product.

1.171 "Scheduled Energy" means the quantity of Energy Scheduled by Seller at the Delivery Point.

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

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

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

1.175 "Seller's Parent" means Sempra Energy.

1.176 "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.

1.177 "Shortfall Price" means the lesser of (a) any positive difference between (i) the time weighted average (based on the on-peak hours and the off-peak hours during the day) of the day-ahead prices of electricity at the Market Price Index for the prior Contract Year plus the Green Value (to reflect the agreed-upon per MWh value of Green Attributes), and (ii) the Contract Price, or (b) \$50/MWh.

1.178 "SIBR" means the CAISO Scheduling Infrastructure and Business Rules system.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

1.179 "Site" means the location of the Project as described in the as-built drawing provided by Seller to Buyer and as preliminarily set forth in Appendix IV; provided that, within thirty (30) days after the Partial Commercial Operation Date and within thirty (30) days after the Full Commercial Operation Date, Seller will revise the Site description to reflect the actual location of the Project as of each such date by providing Notice to Buyer, including a revised Appendix IV and officer's certificate of Seller dated as of the date of the revised Site description and revised Appendix IV signed by a duly authorized officer certifying that Appendix IV reflects the Site as required to support Partial Commercial Operation or Full Commercial Operation, as applicable. The Parties acknowledge and agree that the map of the Site attached in Appendix IV as of the Execution Date only represents Seller's preliminary estimate of the Project's location as of the Execution Date and shall not be binding upon Seller in respect of Seller's obligations under this Agreement nor relied upon by Buyer.

1.180 "SP15 Existing Zone Generation Trading Hub" or "SP15 EZ Gen Hub" means the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) related to the region formerly referred to as SP15.

1.181 "SRP" means Salt River Project or any successor entity performing similar functions.

1.182 "SRP Grid" means the system of transmission lines and associated facilities that are under SRP's operational control.

1.183 "Substitute Delivery Term Security" has the meaning set forth in Section 8.4(a)(ii).

1.184 "Term" has the meaning provided in Section 2.5 of this Agreement.

1.185 "Terminated Transaction" means the termination of the Transaction in accordance with Section 5.2 of this Agreement.

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

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

1.188 "TOD" means the time of delivery of Delivered Energy from Seller to the CAISO at the Delivery Point.

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

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

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

1.192 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

1.193 "Unit" means the arrays of photovoltaic cells used to produce the Product, which shall be identified in Appendix IV for the Transaction entered into under this Agreement according to Section 3.9(a)(v).

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

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

1.196 "WREGIS Certificates" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

1.197 "WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.198 "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 August 12, 2009, entered into between the Parties, which Confidentiality Agreement shall apply only to those materials furnished, and the Parties' performance and shall not apply to this Agreement or the Parties' performance hereunder.

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

(a) The term "month" means 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, has the meaning set forth in Article One, unless otherwise specified.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

(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 during the Delivery Term with respect to Scheduling only, 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 3.7(e)(ii), 3.9(c)(iv)(B), 5.2 or 11.2(b) 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, the Post Effective Date Project Development Security, the Initial Energy Delivery Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months and Sections 3.7(e)(iii) and 11.2(b)(ii) shall survive the termination of this Agreement for such period as provided for in Sections 3.7(e)(iii)(A) and 11.2(b)(ii), respectively.

2.6 Binding Nature. This Agreement shall be effective and binding in all respects as of the Effective Date. From the Execution Date until the Effective Date, this Agreement shall be effective and binding only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

- (a) Sections 3.1(h)(ii), 3.3(a), 3.4(f), 3.9(a)(v) and (vi), 5.1(a)(iv)-(v), and 5.1(b)(iv);
- (b) 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;
- (c) Sections 5.2 through 5.8;
- (d) Sections 8.3, 8.4(a)(i), 8.4(b)(i), and 8.5;
- (e) Sections 10.2, 10.6 through 10.8, Sections 10.12 through 10.15; and
- (f) Articles One, Two, Seven, Eleven, Twelve and Thirteen.

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 purchased by Buyer under this Agreement is an As-Available Product.

(b) Transaction. Unless specifically excused by the terms of this Agreement, during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase, any and all available Product delivered to the CAISO at the Delivery Point, and Buyer shall pay Seller the Contract Price for Delivered Energy to the CAISO at the Delivery Point, in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer as Delivered Energy under this Agreement. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

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

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

(i) As used herein, "Delivery Term" means the period beginning on the Initial Energy Delivery Date, and continuing until the expiration of the Project Delivery Term, unless terminated as provided by the terms of this Agreement. As used herein, "Project Delivery

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

Term" means the period of Contract Years specified above beginning on the Full Commercial Energy Delivery Date and continuing until the end of the twentieth Contract Year unless terminated as provided by the terms of this Agreement.

(ii) The "Initial Energy Delivery Date" shall occur once all of the following have been satisfied: (A) the Commercial Operation Date has occurred; (B) Seller shall have received pre-certification for, and reasonably expects to receive in no more than thirty (30) days from the Full Commercial Energy Delivery Date, the requisite CEC Certification and Verification for the Project; (C) Buyer shall have received and accepted the Initial Energy Delivery Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable (provided that Buyer shall not reject any such Initial Energy Delivery Security to the extent it conforms to the requirements of Article Eight of the Agreement); and (D) all of the Conditions Precedent in Section 11.1 have been satisfied or waived in writing. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Energy Delivery Date Confirmation Letter" attached hereto as Appendix II on the Initial Energy Delivery Date.

(iii) The "Partial Commercial Energy Delivery Date" shall occur once all of the following have been satisfied: (A) the Partial Commercial Operation Date has occurred; (B) Seller shall reasonably expect to receive in no more than thirty (30) days from the Full Commercial Energy Delivery Date, the requisite CEC Certification and Verification for the Project; and (C) Buyer shall have received and accepted the Initial Energy Delivery Security in accordance with the relevant provisions of Article Eight of this Agreement, as applicable (provided that Buyer shall not reject any such Initial Energy Delivery Security to the extent it conforms to the requirements of Article Eight of the Agreement). As evidence of the Partial Commercial Energy Delivery Date, the Parties shall execute and exchange the "Energy Delivery Date Confirmation Letter" attached hereto as Appendix II on the Partial Commercial Energy Delivery Date.

(iv) The "Full Commercial Energy Delivery Date" shall occur once all of the following have been satisfied: (A) the Full Commercial Operation Date has occurred; (B) Seller shall reasonably expect to receive in no more than thirty (30) days from the Full Commercial Energy Delivery Date, the requisite CEC Certification and Verification for the Project; and (C) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable (provided that Buyer shall not reject any such Delivery Term Security to the extent it conforms to the requirements of Article Eight of the Agreement). As evidence of the Full Commercial Energy Delivery Date, the Parties shall execute and exchange the "Energy Delivery Date Confirmation Letter" attached hereto as Appendix II on the Full Commercial Energy Delivery Date.

(d) Delivery Point. The Delivery Point shall be the PNode at the Project's first point of interface with the CAISO Grid, which as of the Execution Date, is expected to be the Interconnection Point.

(e) Contract Quantity and Guaranteed Energy Production.

(i) The Contract Quantity during each Contract Year of the Project Delivery Term is set forth in Schedule 3.1(e) hereto which Seller shall amend as of the Partial Commercial Operation Date to reflect the then current Contract Quantity to the extent the then current Contract Quantity differs from the Contract Quantity set forth in Schedule 3.1(e) solely due to a change in construction schedule for the Project as set forth in Appendix III, and Seller

shall provide Buyer with Notice of such amended Schedule 3.1(e) as part of the Commercial Operation Certification Procedure as provided in Appendix V for the Partial Commercial Operation Date. Throughout the Project Delivery Term, Delivered Energy shall be no less than the Guaranteed Energy Production in any period of twenty-four (24) consecutive months during the Project Delivery Term (“Performance Measurement Period”), whereby each Performance Measurement Period shall commence on each monthly anniversary of the Full Commercial Energy Delivery Date. “Guaranteed Energy Production” in a Performance Measurement Period means an amount of Delivered Energy, as measured in MWh, equal to the amount calculated by the following formula:

$$\text{Guaranteed Energy Production} = 70\% \times \text{CQPMP} \times \frac{\text{PMH} - \text{SEH}}{\text{PMH}}$$

where:

CQPMP = the aggregate sum of Contract Quantities during such Performance Measurement Period as set forth in Schedule 3.1(e) hereto (provided that the Contract Quantity for any partial calendar month shall be pro-rated for that month);

PMH = the total number of hours in the applicable Performance Measurement Period; and

SEH = the total number of Seller Excuse Hours in the applicable Performance Measurement Period.

(ii) If the Delivered Energy during a Performance Measurement Period is less than the Guaranteed Energy Production for such Performance Measurement Period, then:

(A) within one hundred twenty (120) days after the last day of the last month of such Performance Measurement Period, Buyer shall give Seller a Notice setting forth the quantity in MWhs of the difference between such Guaranteed Energy Production and such Delivered Energy for such Performance Measurement Period (“Guaranteed Energy Shortfall”).

(B) Seller may elect to pay, within ten (10) Business Days after Seller receives Notice of such Guaranteed Energy Shortfall under clause (A) above, liquidated damages in an amount equal to the product of (I) the Shortfall Price, multiplied by (II) the relevant Guaranteed Energy Shortfall (“Energy Shortfall Liquidated Damages”); provided, however, that Seller shall not be entitled to pay Energy Shortfall Liquidated Damages after Seller has paid to Buyer, in the aggregate during the Project Delivery Term, Energy Shortfall Liquidated Damages for 331.4 GWh in Guaranteed Energy Shortfalls. Seller’s cure by payment of liquidated damages with respect to a Performance Measurement Period shall be deemed achievement of the Guaranteed Energy Production.

(C) if Seller does not pay Energy Shortfall Liquidated Damages within the ten (10) Business Day time period specified in Section 3.1(e)(ii)(B) or if Seller is not entitled to pay Energy Shortfall Liquidated Damages as set forth in Section 3.1(e)(ii)(B), Buyer may, at its option, declare an Event of Default within sixty (60) days after (I) the expiration of Seller’s ten (10) Business Day time period to cure, or (II) delivery of the Notice

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

of a Guaranteed Energy Shortfall as provided in Section 3.1(e)(ii)(A), respectively. If Buyer opts not to declare an Event of Default with respect to a Guaranteed Energy Shortfall in respect to a particular Performance Measurement Period, or if Buyer does not declare an Event of Default within such 60-day period, then Buyer shall be deemed to have waived its right to declare an Event of Default with respect to such Guaranteed Energy Shortfall, but Buyer shall not be deemed to have waived its right to declare an Event of Default with respect to any Guaranteed Energy Shortfall that might occur thereafter.

(D) each Party agrees and acknowledges that the damages that Buyer would incur due to the Project's failure to deliver the Guaranteed Energy Production amount would be difficult or impossible to predict with certainty, and that the Energy Shortfall Liquidated Damages contemplated by this Section 3.1(e)(ii) are an appropriate approximation of such damages. Buyer acknowledges and agrees that the Project's failure to deliver Energy during a Performance Measurement Period in an amount equal or greater than the Guaranteed Energy Production shall not be an Event of Default pursuant to Section 5.1(a)(iii) or 5.1(b)(iii), except as set forth in this Section 3.1(e).

(f) Dedication. Throughout the Delivery Term, Seller shall sell and deliver all Product produced by the Project solely to the CAISO at the Delivery Point (which obligation shall also apply in the same manner to Seller's representations, warranties, and covenants in this Agreement with respect to the delivery of the Project's output), except in the event of a Dispatch Down Period during which Seller may, in accordance with the applicable order establishing the Dispatch Down Period, sell Energy to the Transmission Provider with which the Project is interconnected. In no event shall Buyer be obligated to pay for, in any hour, any Delivered Energy to the CAISO that exceeds one hundred three percent (103%) of the Contract Capacity during the months of July, August or September during any Contract Year of the Project Delivery Term or following the Initial Energy Delivery Date, or one hundred ten percent (110%) of the Contract Capacity during the remainder of the Contract Year of the Project Delivery Term or of the calendar year following the Initial Energy Delivery Date.

(g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any material alteration or modification to the Project which results in a change to the Contract Capacity or Contract Quantity without Buyer's prior written consent, unless such alteration or modification is required as a result of any change, enactment, or adoption in any Law after the Execution Date and Seller has provided Buyer with prior Notice describing the nature of the alteration or modification, its affect on Contract Capacity or Contract Quantity, as applicable, and the reason for such change. The Project is further described in Appendix IV.

(h) Interconnection Facilities.

(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any interconnection agreement with the Interconnection Provider at the Interconnection Point; (B) maintain, or cause to be maintained, the Interconnection Facilities, including metering facilities; and (C) perform all necessary upgrades as required by the Interconnection Provider.

(ii) Coordination with Buyer. Seller shall provide to Buyer copies of all material correspondence and written reports related to the status of the execution of a Participating Generator Agreement on a monthly basis.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

(i) Performance Excuses.

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

(ii) Buyer Excuses. Without limiting Buyer's rights and obligations in Section 3.7(e) for a Force Majeure affecting Buyer, the obligation of Buyer to accept or pay for the Product shall be excused only (A) by Seller's failure to deliver the Product to the CAISO at the Delivery Point for any reason; or (B) during Dispatch Down Periods.

(iii) Dispatch Down. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce delivery amounts as directed by a Transmission Provider, CAISO, or the Participating Transmission Owner during any Dispatch Down Period.

(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 Buyer's ability to obtain from Seller the information set forth in this Section 3.1(j), Seller shall be responsible for any emission compliance obligations pursuant to applicable Laws for the Project or the Product prior to and at the Delivery Point.

(k) WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy from the Project as measured at the CAISO revenue meter of the Project during the Delivery Term 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) Prior to the Commercial Operation Date, Seller shall register the Project with WREGIS. During the Delivery Term, Seller shall establish and maintain an account with WREGIS ("Seller's WREGIS Account"). Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

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 Delivered Energy measured at the CAISO revenue meter of the Project in that calendar month. For example, for Delivered Energy 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 Delivered Energy, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

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

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

(vi) Seller shall be deemed to have satisfied the warranty in Section 3.1(k)(v) so long as Seller fulfills its obligations under Section 3.1(k)(i) through (iv) above.

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

(m) Obtaining and Maintaining CEC Certification and Verification. Seller shall take all commercially reasonable steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

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

3.3 Resource Adequacy.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

(a) As of the Execution Date and during the Delivery Term, Seller shall use commercially reasonable efforts to qualify the Project for Resource Adequacy and certify such Resource Adequacy with the CAISO or other applicable regional entity and Seller shall execute any and all documents or instruments reasonably necessary to enable Buyer to use any RA Capacity from the Project to count toward Buyer's Resource Adequacy Requirements. To assist Seller in its efforts to qualify the Project for Resource Adequacy and certify such Resource Adequacy in accordance with this Section 3.3(a), Buyer shall (i) cooperate with and encourage the CAISO; and (ii) cooperate and coordinate with Seller, in Seller's efforts. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, 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 agrees that during the Delivery Term, Seller shall comply with the terms set forth in Appendix VIII to enable Buyer to use all of the capacity, including Capacity Attributes, committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements. Except as expressly set forth herein, Seller makes no representations or warranties as to the legal existence, transferability or effectiveness of any Capacity Attributes or as to Buyer's ability to meet any Resource Adequacy Requirements through the purchase, conveyance, grant, pledge, assignment or commitment of Contract Capacity hereunder.

(b) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable.

(c) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules at least ninety (90) days before the first day of the month for which the outage will occur. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(d) To the extent Seller has an exemption from the Availability Standards or the Replacement Capacity Rules under the CAISO Tariff, Sections 3.3(b) and 3.3(c) above shall not apply.

3.4 Transmission and Scheduling.

(a) Obligations.

(i) Seller Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service, and shall Schedule or arrange for Scheduling Coordinator services with the CAISO, for delivery of the Product to and at the Delivery Point to the CAISO and bear all risks and costs associated with such transmission service to and at the Delivery Point, except as otherwise provided in this Agreement in respect of Dispatch Down Periods. Seller shall be responsible for (A) all costs and charges to and at the Delivery Point, including electric transmission losses and congestion, Scheduling Coordinator charges, and any and all SRP costs and charges, and (B) congestion costs reflected in the difference in the LMP between the Delivery Point and the SP15 Existing Zone Generation Trading Hub. Seller shall not be responsible for costs and charges imposed by the CAISO from the Delivery Point (other than

as set forth in clause (B) of this Section 3.4(a)(i) above), for which Buyer accepts responsibility pursuant to Section 3.4(a)(ii). Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in applicable tariffs, so as to be able to provide Delivered Energy to and at the Delivery Point to the CAISO.

(ii) Buyer Obligations. During the Delivery Term, Buyer shall be responsible for any and all CAISO costs and charges, electric transmission losses and congestion from the Delivery Point (except as provided in Section 3.4(a)(i), Section 3.4(b), Section 3.1(i)(ii), and Section 4.6).

(iii) Seller and Buyer shall cooperate to minimize the charges and imbalances described in this Section 3.4(a) to the extent possible.

(b) Inter-SC Trades.

(i) With respect to each hour in which Seller submits Scheduled Energy to the CAISO, Seller shall enter into SIBR a Day-Ahead or Real-Time Inter-SC Trade to sell Energy to Buyer at the SP15 EZ Gen Hub and Buyer shall enter into SIBR a corresponding Day-Ahead or Real-Time Inter-SC Trade to purchase Energy from Seller at the SP15 EZ Gen Hub, in both cases in an amount equal to, and in the same market (Day-Ahead or Real-Time) as, the Scheduled Energy in such hour. Seller shall use commercially reasonable efforts to ensure that the Day-Ahead Schedule or Real Time Schedule, as applicable, submitted by Seller reflect the amount of Delivered Energy most recently forecasted to be available from the Project in each such hour. In the event that the Parties cannot enter into such Inter-SC Trades despite using commercially reasonable efforts for any such hour, Seller shall pay Buyer an amount equal to the applicable Day-Ahead or Real Time LMP at the SP15 EZ Gen Hub for such hour multiplied by the amount of Energy in the Inter-SC Trade Schedule provided pursuant to Sections 3.4(b)(ii) or (iii) below for such hour, pursuant to the process set forth in Section 6.1 of this Agreement and any such payments pursuant to this Section 3.4(b) shall be in accordance with the methodology set forth in Schedule 4.6.

(ii) Daily Inter-SC Trade Schedules. During the Delivery Term, to the extent Seller elects to participate in the Day-Ahead Market, Seller or Seller's SC shall provide the Day-Ahead Inter-SC Trade Schedule to Buyer via the method provided in Appendix VII, for each day no later than 6:00 a.m. Pacific Prevailing Time ("PPT") on the "Preschedule Day" (as defined by the WECC) for such day. Contact details for Buyer's Day-Ahead Trading Desk are as follows:

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

(iii) Hourly Inter-SC Trade Schedules. During the Delivery Term, to the extent Seller elects to participate in the Hour-Ahead Scheduling Process (HASP) or Real-Time Market (RTM), each as defined in the CAISO Tariff, by submitting a Real-Time Schedule, Seller shall provide, or cause its SC to provide, a corresponding Real-Time Inter-SC Trade Schedule to Buyer via the method provided in Appendix VII, for each hour no later than two (2) hours before HASP or Real-Time Inter-SC Trade Period (as defined in the CAISO Tariff) for such hour. In addition, Seller shall provide a forecast of the Real-Time Inter-SC Trade Schedule for each of the six (6) hours following such hour. These notices and changes to the Inter-SC

Schedule shall be communicated via the method provided in Appendix VII. Contact details for Buyer's Real Time Trading Desk are as follows:

Real Time Trading Desk
Primary Telephone: (415) 973-4500

(iv) In any hour in which the Parties enter into corresponding Day-Ahead Inter-SC Trades pursuant to Section 3.4(b)(i), Buyer will pay Seller an amount equal to the Day-Ahead Marginal Cost of Losses (as defined in the CAISO Tariff and calculated by the CAISO) at the SP15 EZ Gen Hub for that hour less the Day-Ahead Marginal Cost of Losses at the Delivery Point for that hour, such difference multiplied by the amount of Energy in the Day-Ahead Inter-SC Trade Schedule; provided that if such calculation results in a negative dollar amount, Seller shall credit Buyer an amount equal to the absolute value of such difference pursuant to the process set forth in Section 6.1 of this Agreement. Likewise, in any hour in which the Parties enter into corresponding Real-Time Inter-SC Trades or Seller makes a payment pursuant to Section 3.4(b)(i), Buyer will pay Seller an amount equal to the Real-Time Marginal Cost of Losses (as defined in the CAISO Tariff and calculated by the CAISO) at the SP15 EZ Gen Hub for that hour less the Real-Time Marginal Cost of Losses at the Delivery Point for that hour, such difference multiplied by the amount of Energy in the Real-Time Inter-SC Trade Schedule; provided that if such calculation results in a negative dollar amount, Seller shall credit Buyer an amount equal to the absolute value of such difference pursuant to the process set forth in Section 6.1 of this Agreement. Any payments pursuant to this Section 3.4(b) shall be in accordance with the methodology set forth in Schedule 4.6.

(c) Congestion Revenue Rights. Prior to and once every year during the Delivery Term, Buyer shall request Congestion Revenue Rights (as defined in the CAISO Tariff), including but not limited to Long-Term CRRs, Annual CRRs and Seasonal CRRs, through the CRR Allocation (as defined in the CAISO Tariff) that would be applicable to the path from the Delivery Point to Buyer's Load Aggregation Point for the on-peak periods only in an amount equal to the unallocated maximum expected on-peak quarterly deliveries from the Project ("CRR Allocation Amount") which shall be reflected in Buyer's nomination submitted to the CAISO for the CRR Allocation Amount ("Buyer's CRR Request"). The CRR Allocation Amount shall be determined by Buyer based on the most recent annual forecast of Delivered Energy provided by Seller pursuant to Section 3.4(e)(i) below for which Buyer has not received a previous CRR Allocation. Buyer's CRR Request may include Congestion Revenue Rights in excess of the CRR Allocation Amount in its sole discretion, but will not request Congestion Revenue Rights for the purposes of this Agreement in excess of the lesser of the maximum expected on-peak quarterly Delivered Energy from the Project or the Contract Capacity. To the extent the CAISO allocates to Buyer all of the nominated Congestion Revenue Rights in Buyer's CRR Request through the CRR Allocation at no cost to Buyer, during any on-peak hours in which Seller provides Delivered Energy, Buyer shall pay Seller an amount equal to the Day-Ahead Marginal Cost of Congestion (as defined in the CAISO Tariff and calculated by CAISO) at the SP-15 Existing Zone Generation Trading Hub for such hour minus the Day-Ahead Marginal Cost of Congestion at the Delivery Point for such hour, such difference multiplied by the lesser of the Delivered Energy in that hour or the CRR Allocation Amount. Any such payments pursuant to this Section 3.4(c) shall be in accordance with the methodology set forth in Schedule 4.6. For the sake of certainty, the Buyer shall retain the value of such Congestion Revenue Rights that are associated with: (i) MWs in excess of the CRR Allocation Amount in any hour; and (ii) all Congestion Revenue Right value from the SP-15 Existing Zone Generation Trading Hub to Buyer's Load Aggregation Point. If the CRR Allocation Amount in Buyer's CRR Request is not allocated by the CAISO, or

not allocated in its entirety, the CRR Allocation Amount shall be equal to the CRR Allocation multiplied by the ratio of the CRR Allocation Amount divided by the Buyer's CRR Request. To the extent this Transaction is terminated prior to the expiration of any Congestion Revenue Rights acquired pursuant to this provision or otherwise, the Parties may seek to recover any Congestion Revenue Rights costs to which they believe they are entitled in accordance with Section 5.3.

(d) EIRP Requirements. Seller may, but shall not be required to, apply to have the Project certified as a Participating Intermittent Resource, and Buyer shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to assist Seller's participation in and compliance with EIRP and such additional protocols. Notwithstanding the preceding sentence and following Buyer's written request for Seller to apply to have the Project certified as a Participating Intermittent Resource, Seller shall use commercially reasonable efforts to obtain such certification and participate in and comply with EIRP, to the extent that such certification, participation and compliance is a benefit to Buyer and does not negatively impact Seller or the Project. Seller and Buyer shall cooperate to determine the benefits and disadvantages of the Parties to certification of the Project as a Participating Intermittent Resource and participation in and compliance with EIRP.

(e) Scheduling Coordinator. Each of Buyer and Seller shall be its own Scheduling Coordinator with respect to this Transaction or designate a qualified third-party to fulfill such role. Seller or its Third-Party SC shall submit either a Day-Ahead Schedule or Real Time Schedule with respect to every hour in which Seller provides Delivered Energy to Buyer. Seller shall use commercially reasonable efforts to ensure that such Day-Ahead Schedule or Real Time Schedule, as applicable, shall reflect the amount of Delivered Energy most recently forecasted to be available from the Project in each such hour. During the Delivery Term, Seller shall provide Buyer the following forecasts and Schedules pursuant to the instructions in this Section 3.4(e) and Appendix VII:

(i) Annual Forecast of Delivered Energy. No later than (A) the earlier of September 1 of the first Contract Year or forty-five (45) days before the first day of the first Contract Year of the Delivery Term, if applicable, and (B) September 1 of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's average-day Delivered Energy, by hour, for the following calendar year via the method provided in Appendix VII.

(ii) Monthly Forecast of Delivered Energy. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each day's average Delivered Energy, by hour, for the following month via the method provided in Appendix VII.

(iii) Daily Forecast of Scheduled Energy. During the Delivery Term, Seller or Seller's SC shall provide to Buyer a non-binding forecast of Scheduled Energy via the method provided in Appendix VII, for each day no later than 6:00 a.m. Pacific Prevailing Time ("PPT") on the "Preschedule Day" (as defined by the WECC) for such day. Each daily forecast shall clearly identify, for each hour, Seller's best estimate of all amounts of Delivered Energy to be delivered at the Delivery Point. Contact details for Buyer's Day-Ahead Trading Desk are as follows:

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

(f) Integration into the CAISO Grid.

(i) Integration. Seller shall take all steps necessary and appropriate to cause the Project to be electrically within the metered boundaries of the CAISO Grid, for example, by means of a Pseudo-Tie. Buyer and Seller shall work cooperatively and in good faith to implement such arrangements as promptly as possible and thereafter to maintain and operate any facilities as required by the CAISO.

(ii) Participating Generator. Seller shall take all commercially reasonable measures, at its sole cost, to execute a Participating Generator Agreement (with the meaning set forth in the CAISO Tariff and as further described in this Agreement) as of the earliest time that such option becomes available to Seller.

3.5 Standards of Care.

(a) General Operation. Each Party shall comply with all applicable requirements of Law, the CAISO (and, with respect to Seller, the applicable Transmission Provider providing transmission services to and at the Delivery Point), NERC and WECC in performing under this Agreement (including, with respect to Seller, those related to construction, ownership and/or operation of the Project).

(b) Transmission Provider and WECC Standards. Each Party shall perform all generation, Scheduling and transmission services (as applicable) 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. In the event that the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified, replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the Parties as of the Execution Date. In addition to the foregoing, Seller shall perform all generation and transmission services to and at the Delivery Point in compliance with all applicable operating policies, criteria, rules, guidelines, tariffs and protocols of each applicable Transmission Provider.

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and Transmission Provider reliability requirements, including Resource Adequacy Requirements and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities", and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider. To the extent applicable, 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.

(a) Metered Energy. All output from the Project per the terms of this Agreement must be delivered through and measured by the Metering Equipment, which 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. Such measurements of the Product (including Delivered Energy) shall be used by Buyer (in addition to other relevant information) to validate and audit the Seller's invoices. In the event of Metering Equipment failure, Seller shall provide other available metering data to account for output from the Project and resolve the Energy that was not metered as provided in Section 3.6(e) below.

(b) Ownership, Installation and Maintenance. Seller shall purchase, own, install, test, maintain, repair and replace (as necessary) all Metering Equipment and shall bear all expenses for such obligations. Seller shall also provide all installation, repair, replacement, testing and maintenance services or programs for the Metering Equipment, consistent with the standards provided herein, at its sole expense. Seller's performance of its obligations pursuant to this Section 3.6(b) shall be in accordance with Good Utility Practice and Direct Access Standards for Metering and Meter Data established by the CPUC. Seller shall insure all Metering Equipment meets minimum accuracy standards throughout the Delivery Term consistent with Direct Access Standards for Metering and Meter Data established by the CPUC.

(c) Collection of Data and Meter Communications. Seller and Buyer, and to the extent required, any Third-Party SC, shall have unrestricted access to all data collected and recorded by the Metering Equipment, which it shall use, inter alia, for the purpose of invoicing pursuant to Section 6.1, reviewing such invoices and performing its duties as Scheduling Coordinator (as applicable). Seller hereby agrees to make available all meter data, inspection, testing and calibration data and reports to Buyer in a form reasonably acceptable to Buyer. Seller shall provide to Buyer the ability to retrieve the meter data directly (via phone line) from the meter at the Project. In the event that phone line is not available, Seller shall transmit data to Buyer through other means of communication as requested by Buyer (i.e. cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the phone line is reestablished.

(d) Maintenance of Reliability of Data Collected. Seller shall maintain the reliability of all data collected from the meters and equipment at the Project. Seller shall maintain a record of all data collected for the most recent five (5) year period during the Delivery Term.

(e) Meter Inaccuracy. If any tested or retested Metering Equipment is found to be not accurate within the tolerance limits set forth in the Direct Access Standards for Metering and Meter Data established by the CPUC, Seller shall promptly arrange for the correction or replacement of the affected portion of the Metering Equipment, at its expense, and Seller 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. If any tested or retested Metering Equipment is found to be not accurate within the tolerance limits and the Parties cannot otherwise agree as to the duration of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (i) one-half of the period from such discovery to the date of the last testing or retesting of the Metering Equipment (or relevant part thereof), as applicable, or (ii) if no prior testing or retesting is available, one hundred eighty (180) days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by the Party owed such amount on the next date on which such Party is to render an invoice in accordance with Section 6.1 following discovery of such inaccuracy.

3.7 Outage Notification.

(a) **Transmission Provider Approval of Outage(s).** During the Delivery Term, if required by the Transmission Provider, Seller is responsible for securing Transmission Provider approvals for Project outages, including securing changes in its outage schedules when a Transmission Provider disapproves Seller's Schedules or cancels previously approved outages. Seller shall communicate any Transmission Provider-required changes to Buyer in a timely manner, in accordance with the provisions set forth in Appendix VII or as otherwise mutually agreed by the Parties.

(b) **Planned Outages.** Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a completed Outage Notification Form in accordance with the provisions set forth in Appendix VII or as otherwise mutually agreed by the Parties, no later than August 1st of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Notwithstanding the submission of the Outage Notification Form described in the previous sentence, Seller shall also submit a completed Outage Notification Form in accordance with the provisions set forth in Appendix VII or as otherwise mutually agreed by the Parties, no later than fourteen (14) days prior to each Planned Outage. Seller shall not conduct 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.** During the Delivery Term, Seller shall notify Buyer of a Prolonged Outage as soon as practicable under the circumstances by submitting a completed Actual Availability Report as set forth in Appendix XI, 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.**

(i) To the extent either Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations under this Agreement, and such Party gives Notice and details of the Force Majeure to the other Party as set forth below, the non-performing Party shall be excused from the performance of its obligations to the extent impacted by Force

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

Majeure. Within seventy-two (72) hours after the date on which (A) the non-performing Party knows or reasonably should have known of the commencement of Force Majeure (during periods before the Full Commercial Operation Date), or (B) the Force Majeure commences (during periods after the Full Commercial Operation Date), the non-performing Party shall give the other Party oral notice of the event of Force Majeure. Within two (2) weeks after (A) the non-performing Party knows or should have known of the commencement of Force Majeure (during periods before the Full Commercial Operation Date), or (B) the Force Majeure commences (during periods after the Full Commercial Operation Date), the non-performing Party shall provide the other Party with Notice describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Seller shall not substitute Product 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.

(ii) Subject to Section 3.7(e)(iii), either Party may terminate this Agreement by giving thirty (30) days' Notice of such termination to the other Party if a Force Majeure event prevents more than fifty percent (50%) of the Contract Capacity of the Project from operating for eighteen (18) consecutive months; *provided, however*, that such eighteen (18) consecutive month period may be extended by Buyer by an additional six (6) months if such failure to operate can be corrected through repair, restoration or other action or effort by the Seller, and Seller shall have furnished to Buyer an acceptable proposal or plan for such repair, restoration or other action or effort reasonably acceptable to Buyer before the expiration of such eighteen (18) consecutive month period and is diligently pursuing such proposal or plan. If such six (6) month extension is granted, then the termination right described in this Section 3.7(e)(ii) shall not be exercisable until the end of such six (6) month period. Termination under this Section 3.7(e)(ii) shall be without liability to either Party, except for any obligations for amounts due and payable in the ordinary course before such termination (specifically excluding any Termination Payment), and except as provided in Section 3.7(e)(iii).

(iii) Buyer's Rights.

(A) The provisions set forth in this Section 3.7(e)(iii) shall survive any termination of this Agreement under Section 3.7(e)(ii) and shall remain in effect until the earlier of (I) reinstatement of the Agreement under subsection (B) below or execution of a contract for the sale of any or all Redelivery Product under subsection (C) below, (II) if Seller terminates this Agreement under Section 3.7(e)(ii) above, Buyer's Option expires under subsection (B) below, or (III) if Buyer terminates this Agreement under Section 3.7(e)(ii) above, Seller's submits its Offer as provided in subsection (C) below.

(B) During the five (5) year period following any termination of this Agreement by Seller under Section 3.7(e)(ii), Seller shall, prior to engaging in any communications with any third party for the purpose of negotiating a term sheet or contract for the sale of any or all of the Product generated by the Project (the "Redelivery Product"), give Notice to Buyer of Seller's intent to sell such Redelivery Product from the Project (the "Notice of Project Redelivery"). Buyer, in its sole discretion, shall have the right, but not the obligation to purchase the Redelivery Product on the same terms and conditions as this Agreement (the "Redelivery Option"). Buyer shall have forty-five (45) days from its receipt of the Notice of Project Redelivery (the "Exercise Period") to exercise the Redelivery Option by giving Notice to

Seller of Buyer's exercise of the Redelivery Option. If Buyer timely exercises the Redelivery Option, then, effective on the Redelivery Option exercise date, this Agreement shall be reinstated (except that (I) the delivery term for the sale and purchase of the Redelivery Product shall end on the date that would have been the end of the Delivery Term had the Agreement not been terminated by Seller under Section 3.7(e)(ii), and (II) the contract price for the Redelivery Product shall be the Contract Price that would have been effective at such time had the Agreement not been terminated by Seller under Section 3.7(e)(ii)). If Buyer rejects the Redelivery Option or fails to exercise the Redelivery Option within the Exercise Period, then the Redelivery Option shall expire, and Seller may thereafter freely sell or otherwise transfer, and enter into agreements to sell or otherwise transfer, the Redelivery Product to any third party without any obligation to provide Buyer with a further right to purchase, or offer to purchase, Redelivery Product.

(C) Following the termination of this Agreement by Buyer under Section 3.7(e)(ii), in the event that Seller is able to produce Energy from the Project within five (5) years following the effective date of such termination, Seller shall, concurrently with engaging in any communications with any third party for the purpose of negotiating a term sheet or contract for the sale of any or all Redelivery Product, offer to sell the Redelivery Product on terms and conditions as determined by Seller in Seller's sole discretion (the "Offer"). Buyer acknowledges and agrees that Seller's Offer shall not be exclusive, and Seller may freely offer to sell or otherwise transfer, or enter into agreements to sell or otherwise transfer, the Redelivery Product to any third party concurrently with Seller's Offer to Buyer. In no event and under no circumstances shall this subsection (C) be construed to require or obligate Seller to enter into a contract with Buyer for the sale of any or all Redelivery Product.

(f) Outage Procedures. The agreement of the Parties with respect to the procedures for (i) providing notice of an outage, (ii) communicating during an outage, and (iii) testing of the Project during an outage, in each case during the Delivery Term shall be set forth in Appendix VII or as otherwise mutually agreed upon by the Parties.

(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 VII, 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 due to requirements of a Governmental Authority, CAISO or the applicable Transmission Provider.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. During the Delivery Term, 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, 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 abide by the safety and security policies and procedures of the Project operator at all times. Seller shall keep Buyer advised of the Project operator's current safety and security policies and procedures.

3.9 New Generation Facility.

✓ Add Section 3.9.

If not checked, this Section 3.9 is inapplicable.

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

(i) Design and construct the Project.

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

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

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

(v) At Buyer's request, provide to Buyer Seller's general electrical specifications and design drawings pertaining to the Project for Buyer's review (but not approval) prior to finalizing design of the Project and before beginning construction work based on such specifications and drawings; provided that once Seller finalizes the design of the Project Seller shall revise Appendix IV to reflect the total number of Units at the Project and the description of the Unit(s) utilized as generation assets as part of the Project and provide such revised Appendix IV to Buyer. Seller shall provide to Buyer reasonable advance Notice of any changes in the Project that could have a material effect on Seller's ability to perform under this Agreement and provide to Buyer specifications and design drawings of any such changes.

(vi) Within fifteen (15) days after the close of each month from the first month following the Effective Date until the Full Commercial Energy Delivery Date occurs provide to Buyer a Monthly Progress Report in the form attached hereto as Appendix X and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Prior to the Effective Date, the Monthly Progress Report shall consist of an e-mail to the contract manager listed in Appendix IX identifying the Milestones and indicating 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, provided, however, that Seller shall have no obligation to make any changes or modifications to the Project based on such Notice.

(ii) Inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable notice, provided that Buyer shall abide by the safety and security policies and procedures of the Project operator at all times.

(c) Milestones.

(i) The Parties agree time is of the essence in regards to the Transaction. Within ten (10) Business Days of receipt by Seller of a request therefore from Buyer, Seller shall provide Buyer with any requested documentation to support the achievement of certain milestones for the construction of the Project as set forth in Appendix III hereto ("Milestones").

(ii) If Seller misses three (3) or more Milestones, other than a Guaranteed Project Milestone, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"), which shall provide a detailed description of Seller's course of action and plan to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Full Commercial Operation Date, as may be extended pursuant to Section 3.9(c)(iv); provided, that delivery of any Remedial Action Plan shall be Buyer's sole remedy for Seller's failure to achieve a Milestone except if such Milestone is a Guaranteed Project Milestone in which case this paragraph shall not limit Buyer's rights and remedies arising from Seller's failure to meet such Guaranteed Project Milestone as provided below.

(iii) The "Guaranteed Project Milestones" are that:

(A) The Construction Start Date shall occur no later than thirty (30) days following the Effective Date (the "Guaranteed Construction Start Date"), provided that the Guaranteed Construction Start Date may be extended on a day for day basis for the following reasons:

(I) [Reserved.]

(II) in the event of Force Majeure ("Force Majeure Construction 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;

provided that, if Seller claims a Force Majeure Construction Extension in the achievement of the Construction Start Date, any such extension shall not exceed a cumulative three hundred sixty (360) days;

(B) Seller shall have demonstrated Partial Commercial Operation per the terms of Appendix V no later than eighteen (18) months following the Effective Date ("Guaranteed Partial Commercial Operation Date"), provided that the Guaranteed Partial Commercial Operation Date may be extended on a day for day basis in the event of Force Majeure occurring after the Construction Start Date, provided that Seller works diligently to

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request; and

(C) Seller shall have demonstrated Full Commercial Operation per the terms of Appendix V no later than thirty-six (36) months following the Effective Date ("Guaranteed Full Commercial Operation Date"), provided that the Guaranteed Full Commercial Operation Date shall be extended on a day for day basis in the event of Force Majeure, 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.

Notwithstanding the foregoing, the total number of extension days under Section 3.9(c)(iii)(B) and/or (C) in connection with a delay in Partial Commercial Operation and/or Full Commercial Operation, shall not exceed a cumulative three hundred sixty (360) days.

(iv) Cure Period and Delay Damages.

(A) Seller shall cause the Project to achieve the Construction Start Date by the Guaranteed Construction Start Date, the Partial Commercial Energy Delivery Date by the Guaranteed Partial Commercial Operation Date, and the Full Commercial Energy Delivery Date by the Guaranteed Full Commercial Operation Date. If the Partial Commercial Energy Delivery Date occurs after the Guaranteed Partial Commercial Operation Date, the Full Commercial Energy Delivery Date occurs after the Guaranteed Full Commercial Operation Date or the Construction Start Date occurs after the Guaranteed Construction Start Date, then, subject to Section 3.9(c)(iv)(D) below, Buyer shall be entitled to draw upon the Post Effective Date Project Development Security or Initial Energy Delivery Security, as applicable, for liquidated damages equal to Daily Delay Damages for each day or portion of a day that (I) the Partial Commercial Energy Delivery Date occurs after the Guaranteed Partial Commercial Operation Date for up to a total of one hundred twenty (120) days ("Partial Project Cure Period"); (II) the Full Commercial Energy Delivery Date occurs after the Guaranteed Full Commercial Operation Date for up to a total of one hundred twenty (120) days ("Project Cure Period"); or (III) the Construction Start Date occurs after the Guaranteed Construction Start Date for up to a total of one hundred twenty (120) days ("Construction Cure Period"); provided that the total amount of days taken in the aggregate for Partial Project Cure Period, Project Cure Period or Construction Cure Period shall not exceed a total of one hundred twenty (120) days.

(B) The Parties agree that (I) Seller's failure to achieve a Guaranteed Project Milestone in and of itself shall not be an Event of Default so long as Seller pays the Daily Delay Damages that Seller is required to pay as provided in Section 3.9(c)(iv)(A) above, (II) Buyer may terminate this Agreement upon thirty (30) days' Notice of termination following Buyer's draw down of the Post Effective Date Project Development Security or Initial Energy Delivery Security, as applicable, in the full amount of the Post Effective Date Project Development Security set forth in Section 8.4(a)(ii) or Seven Million Five Hundred Thousand dollars (\$7,500,000) of the Initial Energy Delivery Security set forth in Section 8.4(a)(iii), as applicable, ("Maximum Delay Damages Amount"), and (III) Buyer shall not be entitled to any Termination Payment if Buyer terminates this Agreement pursuant to subsection 3.9(c)(iv)(B)(II) above, provided, however, that, for the avoidance of doubt, the foregoing shall not limit Buyer's rights and remedies available to Buyer for any Event of Default of Seller, including without limitation for (x) failure to maintain the Post Effective Date Project Development Security or Initial Energy Delivery Security as required under Article 8 of this Agreement, or (y) willful or intentional breach of this Agreement by Seller which arises from the sale by Seller of Energy to

any third party during the Delivery Term that Seller has agreed to sell to Buyer under this Agreement.

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

(D) If Seller is delayed in achieving the Guaranteed Construction Start Date and thereby incurs Daily Delay Damages, but is not delayed in achieving Partial Commercial Operation by the Guaranteed Partial Commercial Operation Date and Full Commercial Operation by the Guaranteed Full Commercial Operation Date, then Buyer shall refund the amount of Daily Delay Damages collected by Buyer as a result of Seller’s delay in achieving the Guaranteed Construction Start Date, and any such refunded amount shall *not* be counted towards the determination of whether the Maximum Delay Damages has been reached for purposes of Buyer’s termination right in Section 3.9(c)(iv)(B) above.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Contract Price.

(a) Subject to Sections 4.1(b) and 4.4 and the following sentence in this Section 4.1(a), the Contract Price for each MWh of Delivered Energy to and at the Delivery Point to the CAISO during the Delivery Term shall be \$133.40/MWh. In the event Seller has provided a Letter of Credit pursuant to the applicable provisions of Article Eight of this Agreement, a Letter of Credit premium of \$2.23/MWh shall apply for a total Contract Price for each MWh of Delivered Energy to and at the Delivery Point to the CAISO during the Delivery Term of \$135.63/MWh.

(b) In the event that Seller has not received an assessment from the CAISO of Full Capacity Deliverability Status (as defined in the CAISO Tariff) by the Full Commercial Operation Date, the Contract Price will be reduced by \$20/MWh, multiplied by the fractional portion of the Contract Capacity that is Energy only and is not deliverable, until such time as Seller receives an assessment from the CAISO that the entire Contract Capacity of the Project is fully deliverable.

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:

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
“Renewable Resource Contracts Under RPS Program”

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

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

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

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

4.3 TOD Factors and Monthly TOD Payment.

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

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Super-Peak	2. Shoulder	3. Night
A. June – September	2.20490	1.12237	0.68988
B. Oct. – Dec.; Jan. & Feb.	1.05783	0.93477	0.76384
C. Mar. – May	1.14588	0.84634	0.64235

(b) Monthly TOD Payment. For each month during the Delivery Term, Buyer shall pay Seller for Delivered Energy to and at the Delivery Point to the CAISO during such month (“Monthly TOD Payment”) an amount resulting from summing for each TOD Period during such month the product of the Contract Price times the TOD Factor for such TOD Period,

times the aggregate amount of Delivered Energy to and at the Delivery Point to the CAISO during such month for such TOD Period.

4.4 Excess Delivered Energy. In any Contract Year, if Delivered Energy to and at the Delivery Point to the CAISO exceeds 397,719 MWh, the Contract Price for such Delivered Energy in excess of 397,719 MWh shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.

4.5 CAISO Charges and Credits. Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties, as defined below, incurred by Buyer as a result of Seller's actions. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties, as defined below, incurred by Seller as a result of Buyer's actions. As used herein, "CAISO Penalties" means any fees, liabilities, assessments, or similar charges assessed by the CAISO for violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or as a result of a Party's failure to follow Good Utility Practices, but shall not include costs and charges set forth in Section 3.4(a).

4.6 Settlement of Scheduled Energy and Delivered Energy. On or about the tenth (10th) day of each calendar month, beginning with the second calendar month of the first Contract Year and continuing every calendar month thereafter, including the first calendar month following the end of the Delivery Term, Seller shall provide to Buyer, complete records and data, reasonably acceptable to Buyer, for each applicable settlement interval of Delivered Energy at the Delivery Point to the CAISO and Seller's Inter-SC Trades at the SP15 EZ Gen Hub for the preceding month, including, pursuant to Section 6.1 of this Agreement, an invoice for all Delivered Energy delivered to Buyer. If the amount of Energy in the Inter-SC Trade is greater than the amount of Delivered Energy or the amount of Energy in the Inter-SC Trade is less than the amount of Delivered Energy, during the applicable settlement interval, the Parties shall calculate the differences according to the methodology set forth in Schedule 4.6. If the amount of Energy in the Inter-SC Trade and the amount of Delivered Energy during the applicable settlement interval are equal, then Buyer shall pay the invoice for the Delivered Energy pursuant to Section 6.1.

4.7 Additional Compensation. To the extent not otherwise provided for in this Agreement, and except as provided in Section 3.1(f), in the event that Seller is compensated by a third party, including the CAISO, for any Product produced by the Project during the Delivery Term, including, but not limited to, compensation for Energy, Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer via invoice netting; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to interconnection facility upgrades, as applicable.

**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:

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

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

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term, and such default is not remedied within thirty (30) days after Notice thereof (or such longer period if such failure is not reasonably capable of being cured within such thirty (30) days with the exercise of reasonable diligence and so long as such Party has commenced and is diligently pursuing a cure during such initial thirty-day period); provided that, (A) 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, and (B) to the extent the CEC has not made a determination following the Commercial Operation Date as to whether the Project qualifies as an ERR, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default if Seller has taken commercially reasonable steps (including, but not limited to, making and supporting timely filings with the CEC) to obtain and maintain CEC Certification and Verification throughout the Term;

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

(iv) such Party becomes Bankrupt; or

(v) except as permitted under Section 10.6 below, 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 CAISO at the Delivery Point for sale under this Agreement Energy that was not generated by the Project, other than imbalance energy as reasonably necessary to compensate for differences between Scheduled Energy and Delivered Energy as contemplated pursuant to Section 3.4(a)(i);

(ii) the willful or intentional breach of this Agreement by Seller which arises from the sale by Seller of Energy to any third party during the Delivery Term that Seller has agreed to sell to Buyer under this Agreement;

(iii) declaration by Buyer of an Event of Default as permitted under Section 3.1(e)(ii)(C) of this Agreement; or

(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.

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

5.3 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: for a like amount, of the same Product, at the same Delivery Point, and for the remaining Delivery Term, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant, as provided above, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction; provided, however, that the limitations set forth in Sections 5.3(b) and (c) shall not apply to a Termination Payment arising out of a willful or intentional breach of this Agreement by Seller, which arises from the sale by Seller of Energy to any third party during the Delivery Term that Seller has agreed to sell to Buyer under this Agreement. The Termination Payment shall not otherwise act to limit any of

the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

5.6 Rights And Remedies Are Cumulative. Subject to Section 5.3, the rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each calendar month beginning with the second calendar month of the Delivery Term and every calendar month thereafter, and continuing through and including the first calendar month following the end of the Delivery Term, Seller shall provide to Buyer (a) access to any records, including invoices from the CAISO, necessary to verify the accuracy or amount of any reductions or adjustments to the invoice, including the data required in Article 3 and Article 4; and (b) an invoice covering the Monthly TOD Payment and payments pursuant to Section 3.4 incurred for the preceding month determined in accordance with Article 3 and Article 4, provided, that if necessary, Seller may provide a preliminary invoice on or about the tenth (10th) day of each calendar month using the best available settlement data and will provide a final invoice no later than the fifteenth (15th) day of each calendar month. Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25th) day of each such calendar month and fifteen (15) days after receipt of the final 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. Seller will adjust invoices, if necessary, in accordance with the settlement cycle referenced in the CAISO Tariff with the first prior period adjustment occurring after the issuance of the CAISO's "Recalculation Settlement Statement T+76BD." Any adjustments due to such CAISO settlement recalculations will be made after all recalculation statements have been issued for the given trade month and will appear on the next calendar month's invoice. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Late Payment 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 Late Payment Rate from and including the original 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 Late Payment 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. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO

DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

- Option A
- Option B

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

Option B: If requested by Buyer, Seller shall deliver to Buyer (i) within one hundred twenty (120) days following the end of each fiscal year, a copy of the Seller's Parent annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's Parent quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles. Seller shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on Seller's Parent website (www.sempra.com) or on the SEC EDGAR information retrieval system; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller 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, Post Effective Date Project Development Security, Initial Energy Delivery Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security, Post Effective Date Project Development Security, Initial Energy Delivery Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security, Post Effective Date Project Development Security, Initial Energy Delivery Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer to the extent of amounts owed to Buyer by Seller, 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; Post Effective Date Project Development Security, Initial Energy Delivery Security and Delivery Term Security. Seller agrees to deliver to Buyer security to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the applicable period posted with Buyer, as follows:

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of Two Million Two Hundred Twenty-Five Thousand dollars (\$2,225,000.00) and in the form of cash or Letter of Credit within five (5) Business Days from the Execution Date of this Agreement until Buyer is required to return the Project Development Security under Section 8.4(b) below;

(ii) Post Effective Date Project Development Security pursuant to this Section 8.4(a)(ii) in the amount of Seven Million Five Hundred Thousand dollars (\$7,500,000.00) and in the form of cash or Letter of Credit from a date not later than thirty (30) days following the Effective Date until Buyer is required to return the Post Effective Date Project Development Security under Section 8.4(b) below; provided that if Buyer collects or is entitled to collect Daily Delay Damages from Seller for failure to achieve the Guaranteed Construction Start Date, Seller agrees that within ten (10) Business Days following the Construction Start Date it shall replenish the Post Effective Date Project Development Security by an amount equal to the encumbered Post Effective Date Project Development Security and thereafter maintain it in effect for the remainder of the term in which Post Effective Date Project Development Security is

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

required to be posted. If Buyer collects or is entitled to collect Daily Delay Damages from Seller during the Construction Cure Period for failure to achieve the Guaranteed Construction Start Date, Buyer shall be entitled to continue to hold the Daily Delay Damages collected until such time as they are required to be forfeited or returned pursuant to this Agreement notwithstanding, and with no modification to, Seller's obligation to post and maintain the Initial Energy Delivery Security pursuant to Section 8.4(a)(iii) or the Delivery Term Security pursuant to Section 8.4(a)(iv).

(iii) Initial Energy Delivery Security pursuant to this Section 8.4(a)(iii) in the amount of Eighteen Million Five Hundred Thousand dollars (\$18,500,000.00) and in the form of cash or Letter of Credit or a Parent Guaranty effective from the Initial Energy Delivery Date until Buyer is required to return the Initial Energy Delivery Security under Section 8.4(d) below; provided that upon the Partial Commercial Energy Delivery Date, the Initial Energy Delivery Security amount shall increase to Twenty Four Million Six Hundred Thousand dollars (\$24,600,000.00); and provided further that if Seller posts a Parent Guaranty for the Initial Energy Delivery Security, then the Contract Price shall not include the letter of credit premium of \$2.23/MWh as set forth in Section 4.1 and the Contract Price shall be reduced in accordance with Section 4.1 as of the effective date of the Parent Guaranty and shall remain in effect while Seller maintains such Parent Guaranty and until Seller posts a Letter of Credit to replace a Parent Guaranty; and

(iv) Delivery Term Security pursuant to this Section 8.4(a)(iv) in the amount of Thirty-Seven Million dollars (\$37,000,000.00) and in the form of a Letter of Credit or a Parent Guaranty or cash effective from the Full Commercial Energy Delivery Date until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 8.4(f) below; provided that if Seller posts a Parent Guaranty for the Delivery Term Security, then the Contract Price shall not include the letter of credit premium of \$2.23/MWh as set forth in Section 4.1 and the Contract Price shall be reduced in accordance with Section 4.1 as of the effective date of the Parent Guaranty and shall remain in effect while Seller maintains such Parent Guaranty and until Seller posts a Letter of Credit to replace a Parent Guaranty. Seller shall be permitted to substitute the form of Delivery Term Security as cash, a Parent Guaranty, or Letter of Credit from time to time provided the form of security provided is otherwise in compliance with this Article Eight ("Substitute Delivery Term Security").

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) Return of Project Development Security and Post Effective Date Project Development Security.

(i) If on the Effective Date or as of an Early Termination Date, no damages are due and owing to Buyer under this Agreement, or if this Agreement terminates prior to the occurrence of the Effective Date pursuant to Section 11.2 due to failure to satisfy or waive the Conditions Precedent in Section 11.1(a) through (d), then Buyer shall return to Seller the Project Development Security (or portion thereof due to Seller) within five (5) Business Days of (A) Seller's provision of the Post Effective Date Project Development Security unless, with Buyer's consent, Seller elects to apply the Project Development Security toward the Post Effective Date Project Development Security, (B) the effective date of termination under Section 11.2 due to failure to satisfy or waive the Conditions Precedent in Section 11.1(a) through (d), or (C) an Early Termination Date when damages are no longer due and owing to Buyer, as

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

applicable. If this Agreement terminates prior to the occurrence of the Effective Date pursuant to Section 11.2 solely due to Seller's failure to satisfy or waive the Condition Precedent in Section 11.1(e) by the CPUC Approval Deadline, then either of the following shall apply: (x) if Seller has not provided Notice of waiver of the return of the Project Development Security pursuant to Section 11.2(b)(ii)(B), then Buyer shall return to Seller the Project Development Security (or portion thereof due to Seller) within five (5) Business Days of the expiration of the CP Delivery Option Term, or (y) if Seller provides Notice of waiver of the return of the Project Development Security pursuant to Section 11.2(b)(ii)(B), then Buyer is entitled to draw upon, retain and liquidate the Project Development Security and shall not return the Project Development Security to Seller.

(ii) If on the Initial Energy Delivery Date no damages are due and owing to Buyer under this Agreement, or if this Agreement terminates prior to the occurrence of the Initial Energy Delivery Date pursuant to Section 11.2, then Buyer shall return to Seller the Post Effective Date Project Development Security (or portion thereof due to Seller) (A) within five (5) Business Days of Seller's provision of the Initial Energy Delivery Security unless, with Buyer's consent, Seller elects to apply the Post Effective Date Project Development Security toward the Initial Energy Delivery Security, (B) following the effective date of termination under Section 11.2, or (C) following an Early Termination Date when damages are no longer due and owing to Buyer.

(c) Use of Project Development Security, Post Effective Date Project Development Security and the Initial Energy Delivery Security. Buyer shall be entitled to draw upon the Post Effective Date Project Development Security and the Initial Energy Delivery Security posted by Seller for Daily Delay Damages related to the Guaranteed Construction Start Date, the Guaranteed Partial Commercial Operation Date, and the Guaranteed Full Commercial Operation Date, as applicable, up to the Maximum Delay Damages Amount. Buyer shall also be entitled to draw upon the Post Effective Date Project Development Security or the Initial Energy Delivery Security for any damages arising upon Buyer's declaration of an Early Termination Date that occurs before the date that Buyer is required to return such security under Section 8.4(d). Buyer shall be entitled to draw upon, retain and liquidate the Project Development Security if this Agreement terminates prior to the occurrence of the Effective Date pursuant to Section 11.2 due to Seller's failure to satisfy or waive the Condition Precedent in Section 11.1(e) and Seller provides Notice of waiver of the return of the Project Development Security pursuant to Section 11.2(b)(ii)(B).

(d) Return of Initial Energy Delivery Security. If on the Full Commercial Energy Delivery Date no damages are due and owing to Buyer under this Agreement, then Buyer shall return to Seller the Initial Energy Delivery Security, less the amounts drawn in accordance with Section 8.4(c): (i) within five (5) Business Days of Seller's provision of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Initial Energy Delivery Security posted pursuant to Section 8.4(a)(iii) toward the Delivery Term Security posted pursuant to Section 8.4(a)(iv), or (ii) following an Early Termination Date when damages are no longer due and owing to Buyer.

(e) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security, Post Effective Date Project Development Security, Initial Energy Delivery Security or Delivery Term Security, as applicable, at the Interest Rate; provided that, (i) the Interest Amount in respect of the Project Development Security, Post Effective Date Project Development Security and the Initial Energy Delivery Security shall be retained by Buyer

until the date that Buyer is required to return such security under Section 8.4(b) or Section 8.4(d), as applicable, (ii) the Interest Amount in respect of the Delivery Term Security shall be transferred on or before each Interest Payment Date during the Project Delivery Term and on the date that Buyer is required to return the Delivery Term Security under Section 8.4(f), and (iii) Buyer's obligation to pay interest hereunder shall be limited to amounts of such Performance Assurance that have not been drawn down for Daily Delay Damages pursuant to Section 3.9(c). All such Interest Amounts shall be transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix IX, Notices List.

(f) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(e) 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; (b) all payment obligations of the Seller arising under this Agreement, including compensation for Termination Payments, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting); or (c) Seller has provided Substitute Delivery Term Security.

8.5 Letter of Credit.

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

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

(c) If Seller has provided a Parent Guaranty pursuant to any of the applicable provisions in this Article Eight, then Seller shall (i) provide a Letter of Credit that is issued by a qualified bank acceptable to Buyer, or (ii) post cash, or (iii) provide a substitute Parent Guaranty from another qualified Affiliate with a Credit Rating of at least either S&P BBB or Moody's Baa2, in each case in an amount equal to the outstanding Parent Guaranty, within three (3) Business Days after the occurrence of any one of the following events:

(A) the Credit Rating of the issuer of the Parent Guaranty falls below S&P BBB- or Moody's Baa3;

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

- (B) issuer of the Parent Guaranty is no longer an Affiliate of Seller and was an Affiliate at the time of the issuance of the Parent Guaranty;
- (C) the issuer of the Parent Guaranty is no longer incorporated or organized in a jurisdiction of the United States and in good standing in such jurisdiction;
- (D) the issuer of a Parent Guaranty fails to pay Buyer's properly documented claim made pursuant to the Parent Guaranty in accordance with the terms set forth in the Guaranty;
- (E) any representation or warranty made by a Guarantor in connection with this Agreement or its Parent Guaranty is false or misleading in any material respect when made or when deemed made or repeated;
- (F) a Guarantor becomes Bankrupt;
- (G) the failure of the Guarantor's Parent Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such Parent Guaranty shall relate without the written consent of the other Party; or
- (H) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its Parent Guaranty.

If Seller fails to make such replacement when required pursuant to this subsection 8.5(c), then Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

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 Reserved.

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 construct, 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.

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

10.3 Covenants.

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

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

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

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

(iv) it shall not dispute its status as a "forward contract merchant" within the meaning of the United States Bankruptcy Code (for so long as such term has the same definition as in effect as of the date of this Agreement).

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to use RA Capacity of 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. During the Delivery Term, title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will

deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person arising prior to or at the Delivery Point.

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to and at the Delivery Point, or (ii) Seller's ownership, operation and/or maintenance of the Project, including, without limitation, any loss, Claim, action or suit, arising out 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 by the willful misconduct or sole negligence of Buyer, its agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered by Seller under this Agreement after the Delivery Point, including, without limitation, any loss, Claim, action or suit, arising out 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 by the willful misconduct or sole 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, (a) either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party, provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request, and (b) Seller may, without the consent of Buyer, transfer or assign this Agreement to any of its Affiliates that is wholly owned (directly or indirectly) by Seller's Parent in connection with a transfer of the Project to such Affiliate, provided that (i) Seller provides Buyer with at least thirty (30) days' prior notice of any such transfer or assignment, (ii) one of the following in (A) through (C) apply, (A) the Credit Rating of such Affiliate is equal to or superior to the Credit Rating of Seller as of the Execution Date, (B) the obligations of the transferee Affiliate to Buyer are supported by the same Performance Assurance as supports Seller at the time of assignment, or (C) the obligations of the transferee Affiliate to Buyer are supported by substantially similar Performance Assurance as supports Seller at the time of assignment which

such substantially similar Performance Assurance shall be subject to such conforming amendments or reissuance as necessary and reasonably acceptable to Buyer to recognize the change in Seller (and which amendments or reissuance shall not materially modify the rights and obligations of the Parties under this Agreement, and which amendments or reissuance shall be deemed reasonably acceptable to Buyer if such Performance Assurance as amended or reissued otherwise complies with the requirements of Article 8), (iii) such Affiliate shall assume all of the payment and performance obligations of the Seller under this Agreement including any amounts due from Seller and the obligation to cure any defaults hereunder by Seller that occurred prior to the date of assignment, and (iv) Seller provides to Buyer a copy of the agreement(s) documenting the assignment of this Agreement by Seller to its Affiliate and the Affiliate's assumption thereof in accordance with the requirements of this Section 10.6. Buyer agrees that any assignment or transfer of this Agreement under Section 10.6 (b) above shall relieve Seller of any further obligation or liability under this Agreement.

10.7 Confidentiality.

Confidentiality Applicable

If not checked, this Section 10.7 is inapplicable.

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

Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (a) the Party's Affiliates, and the Party's and its Affiliate's officers, directors, employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (b) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (c) to the CPUC under seal for purposes of review, (d) disclosure of terms specified in and pursuant to Section 10.8 of this Agreement; (e) 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 (f); or (f) 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 clauses (e) or (f) of this Section 10.7 ("Disclosure Order") each Party shall: (i) notify the other Party prior to disclosing the confidential information and (ii) use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (x) prohibited from complying with a Disclosure Order or (y) 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 and actual Initial Energy Delivery Date, anticipated and actual Partial Commercial Energy Delivery Date, anticipated and actual Full Commercial Energy

Delivery Date, Guaranteed Full Commercial Operation Date, Guaranteed Partial 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 Late Payment 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 require its subcontractors, including Seller's EPC Contractors, to maintain sufficient limits of the appropriate insurance coverage, provided that Seller may self-insure any or all of the insurance coverages set forth in this Section 10.10.

(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 similar to or broad as the Insurance Services Office Commercial General Liability Coverage.

(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 may be 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.

(iii) Coverage shall:

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

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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

(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 to include MCS 90 endorsement.

(d) Aircraft Liability.

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

(ii) The limit shall not be less than Five Million dollars (\$5,000,000.00) single limit for bodily injury and property damage including passenger liability.

(iii) Coverage shall:

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

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

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

(e) Watercraft Liability.

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

(ii) The limit shall not be less than One Million dollars (\$1,000,000.00) for each occurrence for bodily injury and property damage including passenger legal liability.

(iii) Coverage shall:

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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

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

(f) Seller's Pollution Liability.

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

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

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

(g) Builders Risk Property Insurance.

(i) Builders Risk Property insurance policy including earthquake and flood shall be maintained during the course of Work being performed and include start-up and testing period coverage for installed equipment. Such policy shall provide coverage for supplies, materials and equipment being permanently incorporated into the Project while under the care, custody and control of the Seller or its contractors 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 supplies, materials and equipment being permanently incorporated into the Project.

(iii) The requirement for Builders Risk Property Insurance shall terminate upon the earlier of substantial completion or Commercial Operation of the Project, whichever comes first and is customary for the Builders All Risk insurers providing such coverage.

(h) Professional Liability Insurance.

(i) If applicable to the scope of work under the EPC Contract between Seller and its EPC Contractor, 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 Ten Million dollars (\$10,000,000.00) per claim.

(i) Additional Insurance Provisions.

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

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to PG&E, except ten (10) days prior written Notice for non-payment of premium.

(iii) PG&E uses a third party vendor, Exigis, to confirm and collect insurance documents. Vendor and broker will be required to register as "service provider." Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to bind coverage on its behalf, and submitted through the Exigis website at: <https://prod1.exigis.com/pge>, Helpline: 1 (888) 280-0178, Certificate Holder: Pacific Gas and Electric Company, c/o Exigis, <https://prod1.exigis.com/pge>. The Parties acknowledge that the format of the certificates and other documentation furnished to PG&E in this Section 10.10 from time to time may not conform to the required format of such vendor, and the Parties shall work together in good faith to address such differences in format as they arise.

(iv) PG&E may inspect the original policies at the location where Seller maintains such policies during normal business hours.

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

(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.

(k) Mutual Insurance Carrier. Seller advises, and Buyer acknowledges, that certain Seller's insurance policies are provided by AEGIS, a utility and energy mutual insurer, of whom Seller and Buyer are both mutual members. Buyer agrees to accept all AEGIS policies maintained by Seller as being sufficient and acceptable in meeting any and all of the insurance requirements contained in this Agreement.

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

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

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

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties. Seller shall be deemed to have satisfied the obligation in subsection (a) above if the applicable report is publicly available on its website (www.sempira.com) or on the SEC EDGAR information retrieval system; provided, that (i) 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 Seller diligently pursues the preparation, certification and delivery of the statements and (ii) if Seller does make the information referenced in subsection (b) publicly available as provided in this paragraph then Seller shall be deemed to have satisfied its obligations in subsection (b).

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 commercially reasonable 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.

(a) Absent agreement of all Parties to a proposed modification of this Agreement, the standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC's own motion or on behalf of a signatory or a non-signatory, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 128 S.Ct. 2733 (2008), or, if such standard is not available as a matter of Law, the most stringent standard of review permissible under applicable Law

(b) In addition, and notwithstanding the foregoing subsection (a), neither Party shall seek, and hereby expressly and irrevocably waives any rights it can or may have to seek, under any standard of review, to revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to Sections 205 or 206 of the Federal Power Act, for any reason. In the event it were to be determined that applicable Law precludes the Parties from waiving all or any of their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) as provided in this subsection (b), then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing subsection (a).

(c) The Parties acknowledge and agree that changes in market conditions or economic hardship to any Party will not render the rates, terms or conditions in this Agreement "unjust, unreasonable, unduly discriminatory or preferential" within the meaning of Section 206 of the Federal Power Act. The Parties further acknowledge and agree that for purposes of this Agreement changes in market conditions or economic hardship include, without limitation, (i) Seller's current or future ability to sell any products from the Project at a price greater than the price provided for the Product in this Agreement, (ii) Buyer's current or future ability to purchase similar products at a price less than the price provided for the Product in this Agreement, (iii) loss of Buyer's markets, or (iv) Buyer's current or future inability economically to use or resell (at any particular price) the Product provided pursuant to this Agreement.

ARTICLE ELEVEN: CONDITIONS PRECEDENT

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

(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;

(d) Seller and the CAISO shall have executed a Participating Generator Agreement; and

(e) Seller shall have received an assessment from the CAISO that the Contract Capacity of the Project can, by the Full Commercial Operation Date, be fully deliverable for purposes of a Full Capacity Deliverability Status (as defined in the CAISO Tariff) (the "RA Assessment").

11.2 Failure to Meet All Conditions Precedent.

(a) Beneficiary Party. Both of the Parties are the beneficiaries of the Conditions Precedent set forth in Sections 11.1(a) through (d), and in order for a waiver of non-satisfaction of any (or all) of the Conditions Precedent in Sections 11.1(a) through (d) to be effective, both of the Parties must have waived in writing (in their sole discretion) such non-satisfaction. Seller is the beneficiary of the Condition Precedent set forth in Section 11.1(e), and in order for a waiver of non-satisfaction of such Condition Precedent to be effective, Seller must have waived in writing (in its sole discretion) such non-satisfaction.

(b) Termination.

(i) If each Condition Precedent is not satisfied or waived in writing by both Parties in the case of the Conditions Precedent set forth in Sections 11.1(a) through (d), and by Seller in the case of the Condition Precedent set forth in Section 11.1(e), on or before three hundred sixty (360) days from the date on which Buyer files this Agreement for CPUC Approval, then this Agreement shall automatically terminate effective upon the first Business Day after the three hundred and sixtieth (360th) day from the date on which Buyer files this Agreement for CPUC Approval ("CPUC Approval Deadline Date"). Neither Party shall have any obligation or liability to the other, including for a Termination Payment, by reason of such termination, except as set forth in Section 11.2(b)(ii) below.

(ii) In the event of a termination pursuant to Section 11.2(b)(i) solely due to the Condition Precedent set forth in Section 11.1(e) not being satisfied or waived in writing by Seller by the CPUC Approval Deadline Date, then, Buyer shall automatically have the following rights:

(A) During the two (2) year period following the termination of this Agreement due to the Condition Precedent set forth in Section 11.1(e) not being satisfied or waived in writing by Seller by the CPUC Approval Deadline Date ("CP Delivery Option Term"), Seller shall, prior to engaging in any communications with any third party for the purpose of negotiating a term sheet or contract for the sale of any or all Product and provided Seller has received the RA Assessment from the CAISO, give a Notice to Buyer of Seller's intent to sell any or all of the Product and Seller's receipt of RA Assessment from the CAISO ("Notice of CP Delivery"). Buyer, in its sole discretion, shall have the right, but not the obligation to purchase the Product on the same terms and conditions as this Agreement (the "CP Delivery Option"). Buyer shall have forty-five (45) days from its receipt of the Notice of CP Delivery (the "CP Delivery Option Exercise Period") to exercise the CP Delivery Option by giving Notice to Seller of Buyer's exercise of the CP Delivery Option. If Buyer timely exercises the CP Delivery Option, then, effective on the CP Delivery Option exercise date, this Agreement shall be reinstated (except that (I) the delivery term for the sale and purchase of the Product shall end on

the date that would have been the end of the Delivery Term had the Agreement not been terminated under Section 11.2(b)(i), and (II) the contract price for the Product shall be the Contract Price that would have been effective at such time had the Agreement not been terminated under Section 11.2(b)(i)). If Buyer rejects the CP Delivery Option or fails to exercise the CP Delivery Option within the CP Delivery Option Exercise Period, then the CP Delivery Option shall expire (and Seller shall be entitled to the return of its Project Development Security according to Section 8.4(b)(i)), and Seller may thereafter freely sell or otherwise transfer, and enter into agreements to sell or otherwise transfer, the Product to any third party without any obligation to provide Buyer with a further right to purchase, or offer to purchase, Product.

(B) Notwithstanding Section 11.2(b)(ii)(A), if within five (5) Business Days following the CPUC Approval Deadline Date and termination of this Agreement pursuant to Section 11.2(b)(i) solely due to the Condition Precedent set forth in Section 11.1(e) not being satisfied or waived in writing by Seller, Seller waives in writing its right to the return of the Project Development Security by Notice to Buyer, Buyer shall not be entitled to the CP Delivery Option described in Section 11.2(b)(ii)(A) and Buyer may retain and liquidate the Project Development Security according to Section 8.4(c). If Seller fails to provide Buyer with Notice pursuant to this Section 11.2(b)(ii)(B) within five (5) Business Days following the CPUC Approval Deadline Date and termination of this Agreement pursuant to Section 11.2(b)(i) solely due to the Condition Precedent set forth in Section 11.1(e) not being satisfied or waived in writing by Seller, then Seller's right under this Section 11.2(b)(ii)(B) shall automatically expire. Each Party agrees and acknowledges that the damages that Buyer would incur due to Seller's failure to receive the RA Assessment and to forfeit the CP Delivery Option would be difficult or impossible to predict with certainty, and that the retention and liquidation of the Project Development Security contemplated by this Section 11.2(b)(ii)(B) are an appropriate approximation of such damages.

(C) The provisions set forth in this Section 11.2(b)(ii) shall survive any termination of this Agreement under Section 11.2(b)(i) and shall remain in effect until the earlier of (I) reinstatement of the Agreement under subsection (A) above or (II) the expiration of the CP Delivery Option Term.

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 Arbitration of the controversy or claim according to the terms of the following Section 12.3.

12.3 Arbitration. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved by arbitration ("Arbitration") at the request of either Party by filing with the AAA an notice of intent to arbitrate. Arbitration under this Section 12.3 shall be conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California and administered by and in accordance with AAA's Commercial Arbitration Rules. Any arbitrator shall have no affiliation with, financial or other interest in (other than as a ratepaying customer), or prior employment with either Party and shall be knowledgeable in the field of the dispute. 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 the damages and 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 or as otherwise mutually agreed by the Parties, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices and 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.

EXECUTION COPY

Confidentiality Protected Under D.06-06-066 App 1, Item VII
"Renewable Resource Contracts Under RPS Program"

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:

SGS-1, LLC, a Delaware limited liability company

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

Signature: _____

Signature: _____

Name: Jeffrey W. Martin

Name: Roy Kuga

Title: President and CEO

VP, Energy Supply

Title: Management

Date: _____

Date: _____