STATE OF CALIFORNIA

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

Edmund G. Brown Jr., *Governor*

February 9, 2012

Advice Letter 3970-E

Brian K. Cherry
Vice President, Regulation and Rates
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

Subject: PG&E Company's Standard and Simplified Contracts and Tariffs for the Purchase of Excess Electricity from Eligible Combined Heat and Power Systems in Compliance with Resolution E-4424 and D.10-12-055

Dear Mr. Cherry:

Advice Letter 3970-E is effective December 15, 2011.

Sincerely,

Edward Randolph

Edward F. Randolph, Director
Energy Division

Brian K. Cherry
Vice President
Regulation and Rates

Pacific Gas and Electric Company
P.O. Box 770000
Mail Code B10C
San Francisco, CA 94177

Fax: 415.973.6520

December 15, 2011

Advice 3970-E
(Pacific Gas and Electric Company ID U39E)

Public Utilities Commission of the State of California

Subject: **Pacific Gas and Electric Company's Standard and Simplified Contracts and Tariffs for the Purchase of Excess Electricity From Eligible Combined Heat and Power Systems in Compliance With Resolution E-4424 and Decision 10-12-055**

In accordance with General Order ("GO") 96-B § 7.5.1 and pursuant to Decision ("D.") 11-04-033,[1] Pacific Gas and Electric Company ("PG&E") hereby submits its proposed Assembly Bill ("AB") 1613 Combined Heat and Power ("CHP") tariffs and power purchase agreements ("PPAs"), as revised to comply with Resolution ("Res.") E-4424[2] and Decision ("D.") 10-12-055 ("Implementation Decision").

This submission replaces Electric Preliminary Statement Part CP, "Energy Resource Recovery Account," Sheet 4, Electric Schedule E-CHP, and Electric Schedule E-CHPS, which were filed by Advice 3696-E-C on May 16, 2011, and all previous versions of Advice 3696-E. The affected tariff sheets are listed on the enclosed Attachment 1.

PG&E is authorized by Res. E-4424 Ordering Paragraph 1 to submit this as a Tier 1 compliance advice letter.

Purpose

This submission is made in compliance with Res. E-4424, adopted on December 1, 2011, by which the Commission conditionally approved the AB 1613 tariffs that PG&E had submitted under Advice 3696-E-C. PG&E and the other investor-owned utilities ("IOUs") were directed to file conformed versions of their AB 1613 Tariff sheets, Standard Contract and Simplified Contract within seven days of approval. The filing deadline has been extended to December 15, 2011.[3]

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1 D.11-04-033 Ordering Paragraph ("OP") 5

2 Res. E-4424 was adopted on December 1, 2011.

3 Letter of Executive Director Paul Clanon dated December 8, 2011.

The PPA price terms in the attached PPAs have been updated to reflect the 2011 Market Price Referent ("MPR") in compliance with the Implementation Decision.[4] This decision requires each IOU to update its AB 1613 PPA price with inputs from the most recently adopted MPR by an advice filing within five days of the issuance of the resolution adopting the MPR.[5] The 2011 MPR was adopted by Res. E-4442 on December 1, 2011.

To provide for a more efficient regulatory process, staff of the Energy Division advised the IOUs to conform their AB 1613 implementation tariffs and PPAs to the requirements of both Res. E-4424 and the Implementation Decision and to submit them in a single filing for the purpose of compliance with both requirements. This advice letter thus serves two purposes: compliance with Res E-4424 and D.10-12-055.

The revisions to the previously submitted PPAs that are required for compliance with Res. E-4424 are listed in the attached matrix (Appendix 1).

The following tariff sheets and PPAs are provided:.

- PG&E's Electric Schedule E-CHP – CHP PPA, which promulgates the Standard Contract for Eligible CHP systems with net output of up to 20 megawatts (MW), and

- PG&E's Electric Schedule E-CHPS – CHP Simplified PPA, which promulgates the Simplified Contract for eligible CHP systems with net output of up to 5 MW.

The PPAs have been reviewed and corrected as necessary to provide internally consistent executable documents. Some of the errors were typographical; others consisted of omitted or misplaced words for which the corrections were obvious. All of these changes, along with the substantive revisions described in the matrix, are shown in the redline comparisons of the final 20 MW PPA and the 5 MW PPA to the versions submitted by Advice 3696-E. The red-lined PPAs are provided as Attachment A and Attachment B, respectively.

Background

On June 21, 2010, PG&E filed Advice 3696-E in compliance with D.09-12-042.

On January 31, 2011, PG&E filed Advice 3696-E-A to update its AB 1613 Tariffs in compliance with the Implementation Decision.

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4 D.10-12-055, OP 3.

5 D.10-12-055, OP 2, "Inputs from the most recently adopted MPR must be used in the pricing formula for the Assembly Bill 1613 standard and simplified contracts,..." OP 4 requires the IOUs to file a Tier 1 advice letter to update its AB 1613 tariffs and standard contracts with the new MPR inputs.

On February 22, 2011, PG&E submitted Advice 3696-E-B to update its CHP contract tariff schedule and requested the Commission to approve additional, non-substantive changes to the contract language that was mutually acceptable to parties active in R.08-06-024.

On May 16, 2011, PG&E filed Advice 3696-E-C in compliance with D.11-04-055.

On September 2, 2011, Energy Division released a draft resolution regarding Advice 3696-E-C.

On December 1, 2011, the Commission issued Res. E-4424, which directs PG&E to make the following changes to the PPAs submitted by Advice 3696-E-C and approves the PPAs as revised:

(1) Strike the amended provisions regarding "full capacity deliverability status" and modify Section 3.02 of the standard and simplified contracts [OP 1.a.(i) and (ii)];

(2) Update the AB 1613 tariff sheets to allow a CHP generator to execute an AB 1613 contract pending fulfillment of applicable CPUC and CAISO resource adequacy requirements while, simultaneously, receiving payment pursuant to the "Standard Contract for Qualifying Facilities with a Power Rating that is Less than or Equal to 20MW" as provided in the QF/CHP Settlement, Attachment A, Exhibit 6 (also known as the "PURPA PPA"), [OP 1.b.];

(3) Strike the provisions regarding modifications to avoided cost payments from each PPA, [OP 1.c.];

(4) Modify Special Condition 5 of the AB 1613 Tariff Sheet to clarify that the condition applies unless the Seller is a public agency exempt from FERC jurisdiction under United States Code Section 824(f), [OP 1.f.]; and

(6) Correct an erroneous reference to the MPR heat rate, [OP 1.g].

Most of these tasks have been accomplished through revisions to the text. However, Res E-4424 provides that Sellers may be paid the AB 1613 Monthly Contract Payment or the PURPA PPA Monthly Contract Payment, depending on their interconnection status and whether they have met applicable CPUC and CAISO requirements to provide Resource Availability benefits. To carry out Item (2), the energy and as-available capacity prices of Exhibit D of the PURPA PPA "Monthly Contract Payment Calculation" have been inserted as "Exhibit C(1)" to the 20 MW PPA and "Exhibit B(1)" to the 5 MW PPA and changes to the term "Power Product Prices" have been made. PG&E believes that the inclusion of the actual monthly contract payment formulas as new exhibits to the AB 1613 PPAs will provide all parties with a clear understanding of the prices that will be paid during the entire Term.

"Power Product Prices" (§1.05 in the 20 MW PPA and §1.07 in the 5 MW PPA) previously stated that the Monthly Contract Payment for the Power Product would be calculated in accordance with a certain exhibit which provides the AB 1613 price (Exhibit

C for the 20 MW PPA and Exhibit B for the 5 MW PPA.) This term has been expanded to provide that if the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff but is not yet able to provide Resource Adequacy Benefits, pending seller's provision of Resource Adequacy Benefits the Power Product Price will be calculated in accordance with the energy and as-available capacity prices of the PURPA PPA (Exhibit C(1) for the 20 MW PPA and Exhibit B(1) for the 5 MW PPA.) The revised Power Product Price term also provides that when the Generating Facility notifies PG&E that it is able to provide Resource Adequacy, it will then be paid the AB 1613 price for its Power Product (Exhibit C or Exhibit B.) Additional ministerial changes to the PPA have been made to support this change; e.g., definitions for defined terms that appear in Exhibits C(1) and B(1) such as "SRAC" have been added.

Request

This advice letter is being submitted as a Tier 1 compliance filing. Commission General Order 96-B Appendix B, Industry Rule 5.1 provides that matters submitted under Tier 1 are effective pending disposition. There is a possibility that interested sellers may seek to execute an AB 1613 PPA as soon as it has been filed. Accordingly, PG&E requests prompt approval of this advice filing by the Energy Division pursuant to G.O. 96-B Rule 7.6.1.

Materials Tendered for Approval

The following materials are being submitted for approval:

Attachment 1: Tariff Sheets, consisting of:

- Electric Preliminary Statement Part CP
- Electric Schedules E-CHP and E-CHPS
- Form 79-1120 - Standard Contract for Eligible CHP Facilities
- Form 79-1121 - Simplified Contract for Eligible CHP Facilities

Attachment A: Standard Contract for Eligible CHP Facilities (redline)

Attachment B: Simplified Contract for Eligible CHP Facilities (redline)

Effective Date

PG&E requests that this Tier 1 advice filing be approved effective **December 15, 2011.**

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail, by facsimile or electronically, any of which must be received no later than 20 days after the date of this filing, which is **January 4, 2012.** Protests should be mailed to:

CPUC Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Avenue
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: jnj@cpuc.ca.gov, mas@cpuc.ca.gov and
jmk@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission:

Brian K. Cherry
Vice President, Regulation and Rates
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-6520
E-mail: PGETariffs@pge.com

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and the service list for R.08-06-024. Supporting procurement rate workpapers are available upon request to e-mail PGETariffs@pge.com. Address changes to the General Order 96-B service list and electronic approvals should be sent to PGETariffs@pge.com. For changes to any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Advice letter filings can also be accessed electronically at: http://www.pge.com/tariffs.

Brian Cherry

Vice President – Regulation and Rates

cc: Service List R.08-06-024
Jennifer Kalafut, Energy Division

Attachments

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY
ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 E)**

Utility type:	Contact Person: Linda Tom-Martinez
☑ ELC ☐ GAS	Phone #: (415) 973-4612
☐ PLC ☐ HEAT ☐ WATER	E-mail: lmt1@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **3970-E** **Tier: 1**

Subject of AL: **Pacific Gas and Electric Company's Standard and Simplified Contracts and Tariffs for the Purchase of Excess Electricity from Eligible Combined Heat and Power Systems in Compliance With Resolution E-4424 and Decision 10-12-055**

Keywords (choose from CPUC listing): Compliance, Forms, Contracts

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☑One-Time ☐ Other ____________________________

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: D.10-12-055, Resolution E-4424

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL[1]: ____________________

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for:

Confidential information will be made available to those who have executed a nondisclosure agreement: ☐ Yes ☐ No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: ____

Resolution Required? ☐Yes ☑No

Requested effective date: **December 15, 2011** No. of tariff sheets: 16

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: New Electric Sample Forms 79-1120 and 79-1121, Electric Preliminary Statement Part CP, New Electric Schedules E-CHP and E-CHPS

Service affected and changes proposed[1]: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Ave.,
San Francisco, CA 94102
jnj@cpuc.ca.gov and mas@cpuc.ca.gov

Pacific Gas and Electric Company
Attn: Brian Cherry
Vice President, Regulation and Rates
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177
E-mail: PGETariffs@pge.com

ADVICE 3970-E

Appendix 1

PPA Section	Subject	Revision to May 11, 2011 Filing (added text underlined, removed text in strike-out)
20 MW §1.05 Power Product Prices; 5 MW §1.07 Power Product Prices.	Provide payment under PURPA PPA to sellers under conditions specified in Res. E-4424 ordering paragraph 1.b).	Renumber existing §1.05 / §1.07 text as subsection (a) and add: (a) The Monthly Contract Payment for the Power Product ~~is~~ shall be calculated in accordance with Exhibit C. (b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit C (1). (c) A Generating Facility subject to paragraph 1.05(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof. (d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.05(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit C. *[Note: Cross references are to 1.05(c) and Exhibit C (1) for the 20 MW PPA; in the 5 MW PPA, cross references are to 1.07(c and Exhibit B (1)]*
20 MW §1.08 GHG Emissions Allowances;	Makes Buyer compensation of Seller for cost of GHG Emissions Allowances inapplicable while	1.08 GHG Emissions Allowances. Seller elects one of the following, provided, however, that this Section 1.08 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit C

PPA Section	Subject	Revision to May 11, 2011 Filing (added text underlined, removed text in strike-out)
5 MW §1.09 GHG Emissions Allowances	Seller is being paid pursuant to the PURPA PPA because responsibility for GHG Emissions Allowances is a factor in the SRAC payments under the PURPA PPA.	(1): *[Note: in 5 MW PPA, the cross reference is to 1.09 & Exhibit B(1).]* Subsections (a) and (b) are unchanged.
20 MW and 5 MW §3.01 and *passim*	Res E-4424 Ordering Paragraph 1.a. confirms that Seller is subject to Resource Adequacy obligations under certain circumstances.	"resource adequacy" has been capitalized to designate it as a defined term.
20 MW §3.02 5 MW §3.02 Resource Adequancy Rulings	20 MW PPA: Subparagraph (c) and (d) – compliance with Res E-4424 ordering paragraph 1.a. Subparagraph (e) – notification of CPUC's reservation of rights pursuant to Res E-4424 page 17 and Finding and Conclusions 5.	From 20 MW PPA: (c) Shall take all reasonable action, including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings, and execute all documents that are reasonable and necessary to ~~enable~~effect the use of the generating capacity of the Generating Facility associated with the Related Products ~~as a Resource Adequacy Resource~~ for Buyer's sole benefit throughout the Term. (d) ~~Comply with any demonstration required for~~Shall comply with CPUC and CAISO requirements to count towards Resource Adequacy ~~Rulings~~; *provided, however*, ~~if~~ (i) If such ~~demonstrations~~requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge. (ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's

PPA Section	Subject	Revision to May 11, 2011 Filing (added text underlined, removed text in strike-out)
	------------------------------------ 5 MW PPA: Paragraph 3.02 – language stricken in compliance with Res. E-4424 Ordering Paragraph 1.a. Subparagraphs (i) and (ii) – compliance with Res E-4424 ordering paragraph 1.a. Subparagraph (iii) – notification of CPUC's reservation of rights pursuant to Res E-4424 page 17 and Finding and Conclusions 5.	total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study. (e) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement. --- From 5 MW PPA: 3.02 Resource Adequacy. In accordance with Public Utilities Code section 2841(f), Seller grants, pledges, assigns and otherwise commits to Buyer the generating capacity of the Generating Facility to the extent necessary in order for Buyer to count such generating capacity ~~as a~~to meet its Resource Adequacy ~~Resource~~obligations. Seller shall comply with ~~any demonstration required under Applicable Law in order for Buyer to exercise its rights under this Section 3.02.~~CPUC and CAISO requirements to count towards Resource Adequacy; provided however, (i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's

PPA Section	Subject	Revision to May 11, 2011 Filing (added text underlined, removed text in strike-out)
		<u>compliance shall be required pending resolution of the challenge.</u> <u>(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.</u> <u>(iii) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.</u>
20 MW §3.03 5 MW §3.03 GHG Compliance Costs	§3.03 suspended while Buyer is being paid pursuant to the PURPA PPA, see §1.08/ §1.09.	Added a new subsection (e): <u>(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is set forth in Exhibit C (1)</u>. *[Note: reference to Exhibit C (1) is for 20 MW PPA; in 5 MW PPA, the Exhibit is B (1)]*
20 MW §4.01 Obligation to Pay 5 MW §4.01(a) Obligation to Pay	Adds a new cross reference that payment is made either in accordance with the AB 1613 formula or the PURPA PPA formula.	For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "monthly contract Payment") calculated in accordance with <u>Exhibit C</u> <u>or Exhibit C (1), as determined pursuant to Section 1.05</u>.

PPA Section	Subject	Revision to May 11, 2011 Filing (added text underlined, removed text in strike-out)
		[Note: in the 5 MW PPA, cross references are to 1.07(c and Exhibit B (1)]
20 MW §4.03 Payment Statement and Payment 5 MW No change needed	Specify that monthly payment will be calculated pursuant to either Exhibit C or Exhibit C(1), based on whether seller has met the conditions specified in Res. E-4424 ordering paragraph 1.b).	Modification of subsection (a)(ii)(2): 2) A calculation of the Monthly Contract Payment, as set forth in Exhibit C or Exhibit C (1), as determined by Section 1.05.
5 MW §7.08(b) 20 MW No change needed	Added a new subparagraph (b) to match section 9.08(o) in 20 MW PPA; remaining subsections in 7.08 renumbered accordingly.	(b) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.
Definitions 20 MW and 5 MW Exhibit A	Added definitions for Resource Adequacy Purposes Insert reference to Exhibit C (1) or B(1) into existing definition. Add modified "TOD Period" definition to 5 MW PPA.	"AB 1613 Decisions" means the decisions issued in R.08-06-024. "CARB" means the California Air Resources Board. "Decision" means CPUC Decision ("D") 07-09-040. "Holidays" means "NERC Holidays" as defined in Exhibit C, Section 5. "Time of Delivery Periods and Allocation Factors." "IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff. "Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable. "Physical Trade" has the meaning set forth in the CAISO Tariff. "Resource Adequacy" means the procurement obligation of load serving entities,

PPA Section	Subject	Revision to May 11, 2011 Filing (added text underlined, removed text in strike-out)
		including Buyer, as such obligations are described in Resource Adequacy Rulings, 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. "Resource Adequacy ~~Resource" has the meaning set forth in CAISO Tariff.~~Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other Resource Adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be Amended or modified from time to time during the Term. *[Note: added to 5 MW PPA; already in 20 MW PPA]* "Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM. "Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035. "Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective. "SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

PPA Section	Subject	Revision to May 11, 2011 Filing (added text underlined, removed text in strike-out)
		"<u>Non-Peak Hours</u>" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in <u>Exhibit C</u>, "5. <u>Time of Delivery Periods and Allocations Factors</u>" or <u>Exhibit C (1), "4. Time of Delivery Periods" as determined by Section 1.05.</u> "<u>TOD Period</u>" means the time of delivery period used to calculate the Monthly Contract Payment set forth in <u>Exhibit C</u> <u>or Exhibit C (1), as determined by Section 1.05</u>. *[Note: cross reference to 1.05 and Exhibit C (1) is for 20 MW PPA; in 5 MW PPA, the cross reference is to 1.07 and Exhibit B (1)]*
20 MW Exhibit C 5 MW Exhibit B	Pricing updates to reflect the 2011 Market Price Referent	Pricing for Fixed Price and Variable Price O&M Components have been revised. TOD Factors have been revised.
20 MW Exhibit C (1) 5 MW Exhibit B (1)	Exhibit C (1) and B (1) sets forth the payment terms applicable to certain generators pending fulfillment of applicable resource adequacy requirements pursuant to Resolution E-4424, December 1, 2011.	Incorporate Exhibit D "Monthly Contract Payment Calculation" from the "Standard Contract for Qualifying Facilities with a Power Rating that is Less than or Equal to 20 MW", except for §3(g), "Firm Capacity Payment" and all other references to firm capacity payment that appear in said Exhibit D.

ADVICE 3970-E

Attachment A

Red-Lined Version of Form 79-1120

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Standard Contract for Eligible CHP Facilities

TERMS THAT ARE BOXED AND SHADED IN LIGHT YELLOW AND/OR BRACKETED AND IN BLUE FONT ARE EITHER BUYER COMMENTS OR GENERATING FACILITY-TYPE SPECIFIC COMMENTS THAT SHOULD BE REMOVED, ACCEPTED OR COMPLETED, AS APPLICABLE.

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LIST OF EXHIBITS

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

This Power Purchase and Sale Agreement by and between **[Buyer's name]**, a California corporation ("Buyer"), and **[Seller's name]**, a [Seller's form of business entity and state of registration] ("Seller"), together with the exhibits, attachments, and any applicable referenced collateral agreement between the Parties (collectively, this "Agreement"), is made, effective and binding as of [Date of execution] (the "Effective Date").

Buyer and Seller are sometimes referred to in this Agreement individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in <u>Exhibit A</u>.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement the provisions of Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill Buyer's obligations under the Act and CPUC Decisions issued in R. 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. SPECIAL CONDITIONS

{Buyer Comment: If the Term is greater than or equal to five years, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in CPUC D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends [Number of months] months after the Term Start Date (the "Term End Date").

(a) The Term Start Date must be on the first day of a calendar month.

(b) Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least one year before such Term Start Date; provided, however, that notwithstanding any change to the Term Start Date, the Term may not exceed [Number of months in the Term] months; ***provided further***, that if the Generating Facility is (i) a New Eligible CHP Facility, the Term Start Date must occur within 60 months of the Effective Date, or (ii) an Existing Eligible CHP Facility, the Term Start Date must occur within 24 months of the Effective Date, in each case subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit D.

(c) The Term shall be no less than one (1) year and no more than ten (10) years. Seller designates the Term Start Date and the Term End Date.

1.02 Generating Facility.

(a) Name. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility]. To be eligible for this Agreement, the Generating Facility must be an Eligible CHP Facility during the entire Term, (1) satisfies the provisions of AB 1613, as implemented by the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA, unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

(b) Location. The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B. To be eligible for this Agreement, the Generating Facility must be located in Buyer's electric service territory.

(c) Contract Capacity. The As-Available Contract Capacity is [__] kW. The Power Rating of the Generating Facility must be less than or equal to 20 MW. If the Generating Facility has more than one Generating Unit, the Power Rating of all such Generating Units must be less than or equal to 20MW.

(d) Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The Expected Term Year Energy Production may be revised based on changes in the Site Host Load or the Site Host thermal requirements; provided, however, that such change must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on changes in the Site Host Load or the Site Host thermal requirements. Such certification must include all data relied on to support the revised Expected Term Year Energy Production.

{Buyer Comment: Expected Term Year Energy Production cannot exceed As-Available Contract Capacity at 100% capacity factor applied over the Term Year.}

(e) Site Host Load. The Site Host Load is expected to equal, on average, [___] kW annually. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year.

1.03 Delivery Point. The point of delivery of the Power Product is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO-Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point are determined as part of the interconnection process.

1.04 Planned Outages. All Planned Outages must be scheduled by Seller in accordance with the procedures set forth in Exhibit N. Seller shall make reasonable efforts not to schedule a Planned Outage during the Peak Months. Should it become necessary for Seller to schedule a Planned Outage during the Peak Months, Seller shall only schedule such Planned Outage during the non-peak hours of the Peak Months. In no event may Seller schedule or utilize a Planned Outage that is more than 12 non-peak hours per Peak Month.

1.05 Power Product Prices.

(a) The Monthly Contract Payment for the Power Product ~~is~~shall be calculated in accordance with Exhibit C.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit C (1).

(c) A Generating Facility subject to paragraph 1.05(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.05(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit C.

1.06 Credit and Collateral Requirements.

(a) Seller shall post and thereafter maintain the Development Security in accordance with Section 4(b) of Exhibit D.

(b) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 2(a) of Exhibit D, in an amount equal to 5% of expected revenue of the Generating Facility under this Agreement (the "Performance Assurance Amount"). The initial amount of Performance Assurance equals $[___]. The Performance Assurance Amount will be revised upon any change to the Expected Term Year Energy Production.

(c) Seller shall comply with all of the provisions of Exhibit D.

(d) Seller's Guarantor, if any, is [Name of Guarantor].

(e) Guarantor shall guarantee $[Performance Assurance Amount x 1.25].

(f) The Cross Default Amount, if any, equals $[___].

1.07 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement.

1.08 GHG Emissions Allowances. Seller elects one of the following, provided, however, that this Section 1.08 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit C (1): [____][1]

(a) Seller shall manage its own GHG Emissions Allowances and request payment from Buyer in accordance with Section 3.03.

(b) PG&E shall purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's adoption of the necessary procedure. Until such time, Buyer will reimburse Seller per section (a), above.

1.09 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(c)(xvi), due to CEC ~~certification~~decertification under Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA.

[1] See D.10-12-055 ordering paragraph 5.

Seller shall be paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

**** End of Article One ****

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Seller shall satisfy each of the following obligations before the Term Start Date:

(a) The Generating Facility is or becomes an Eligible CHP Facility;

(b~~) The Generating Facility has obtained Full Capacity Deliverability Status.(c~~) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:

(i) Operate the Generating Facility;

(ii) Deliver electric energy from the Generating Facility to the Delivery Point; and

(iii) Have Buyer Schedule the electric energy produced by the Generating Facility with the CAISO;

(~~d~~c) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in Section 3.09(a);

(~~e~~d) Seller furnishes to Buyer the insurance documents required under Section 9.10;

(~~f~~e) Seller enters into all agreements required by the CAISO Tariff;

(~~g~~f) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;

(~~h~~g) Seller furnishes to Buyer the documents required under Section 3.06;

(~~i~~h) Seller has posted with Buyer the Performance Assurance Amount;

(~~j~~i) If the Term is equal to or greater than five years, the Generating Facility meets the GHG EPS and, at any time upon Buyer's request, Seller provides to the CPUC documentation evidencing its compliance with the GHG EPS; ~~and~~

(~~k~~j) Seller shall have taken all steps to ensure that Buyer is authorized as Scheduling Coordinator by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO~~.~~; and

(~~l~~k) Seller shall provide instructions to the CAISO granting authorizations or other documents sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR as required to implement the Agreement.

2.02 Termination Rights of the Parties.

(a) Termination Right of Seller. Seller has the right to terminate this Agreement if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation.

(b) Event of Default. Except as provided in Section 1.09, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(b), "control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.

(c) End of Term. This Agreement automatically terminates at midnight of the Term End Date.

2.03 Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement, including:

(a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;

(b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;

(c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within thirty (30) days of Seller's receipt of such invoice;

(d) The obligation to make a Termination Payment, as set forth in Section 6.03;

(e) The indemnity obligations, as set forth in Section 9.03;

(f) The obligation of confidentiality, as set forth in Section 9.09;

(g) The right to pursue remedies under Section 6.02(c);

(h) The limitation of damages under Article Seven; and

(i) The obligation of Seller to post Performance Assurance in accordance with Exhibit D.

*** *End of Article Two* ***

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Power Product and Related Products; Retained Benefits.

(a) Power Product. During the Term, Seller shall provide and convey the Power Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Power Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Power Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Power Product.

(b) Green Attributes. Seller hereby agrees to provide and convey all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, 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.

(c) Related Products. Seller hereby agrees to provide and convey to Buyer all Related Products during the Term. Seller represents and warrants that Seller holds the rights to all Related Products and Seller agrees to convey and hereby conveys all such Related Products to the Buyer. Buyer shall have the exclusive right to the Related Products and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Related Products purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Related Products.

(d) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:

(i) Cooperating with the Governmental Authority responsible for ~~resource adequacy~~Resource Adequacy administration to certify the Generating Facility for ~~resource adequacy~~Resource Adequacy purposes;

(ii) Testing the Generating Facility as may be required to certify the Generating Facility for ~~resource adequacy~~Resource Adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties; and

(iii) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in the Western Renewable Energy Generation Information System or other process recognized under Applicable Laws.

(e) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products.

Nothing in this Agreement restricts Seller's ability to use, provide and convey any energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term.

{Buyer Comment: Insert this sentence only if Seller has a FERC jurisdictional interconnection agreement.}

Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Power Product and the Related Products to any Person other than Buyer (unless the FERC determines that a party holding a state jurisdictional interconnection agreement may sell Related Products to a Person other than Buyer).

{Buyer Comment: Insert this sentence if Seller does not have a FERC jurisdictional interconnection agreement.}

3.02 Resource Adequacy Rulings. During the Term, Seller shall grant, pledge, assign and otherwise commit to Buyer the generating capacity of the Generating Facility associated with the Related Products in order for Buyer to use in meeting its ~~resource adequacy~~Resource Adequacy obligations under any Resource Adequacy Ruling. Seller:

(a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;

(b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and

(c) Shall take all reasonable action, including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings, and execute all documents that are reasonable and necessary to ~~enable~~effect the use of the generating capacity of the Generating Facility associated with the Related Products ~~as a Resource Adequacy Resource~~ for Buyer's sole benefit throughout the Term.

(d) ~~Comply with any demonstration required for~~Shall comply with CPUC and CAISO requirements to count towards Resource Adequacy ~~Rulings~~; *provided, however*, ~~if~~

(i) If such ~~demonstrations~~requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(e) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Compliance Costs.

(a) Direct GHG Compliance Costs. During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of reasonable documentation, in form and substance acceptable to Buyer, establishing that:

(i) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product;

(ii) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(iii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap based on the actual delivered Power Product.

(iv) The Generating Facility's GHG emissions has been allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Emissions Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG emissions allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances;

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions ~~Capbased~~Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.08, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.08, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit C (1).

3.04 Site Control.

(a) Within sixty (60) days of the Effective Date and at all times during the Term, Seller shall have Site Control and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.

(b) If the Generating Facility is a New Eligible CHP Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

3.05 Permits. Seller shall obtain and maintain any and all Permits necessary for the Operation of the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.06 Transmission.

(a) Interconnection Studies. ~~Seller shall request Full Capacity Deliverability Status when making any applicable interconnection request.~~ Upon Buyer's request, Seller shall provide to Buyer true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is twenty-four (24) months before the Effective Date.

(b) Seller's Responsibility. Seller shall, at its sole cost, obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

Except as otherwise provided in its interconnection agreement, the CAISO Tariff, or the Transmission Provider's tariff, rules or regulations, Seller shall pay all Transmission Provider charges or other charges directly caused by, associated with, or allocated to the following:

(i) All required Interconnection Studies, facilities upgrades, and agreements;

(ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;

(iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and

(iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.

(c) Acknowledgement. The Parties acknowledge and agree that any other agreement between Seller and Buyer, including any interconnection agreement, is separate and apart from this Agreement and does not modify or add to the Parties' obligations under this Agreement, and that any Party's breach under such other agreement does not excuse such Party's nonperformance under this Agreement, except to the extent that such breach constitutes a Force Majeure under this Agreement.

3.07 CAISO Relationship. Seller shall comply with the applicable requirements of the CAISO Tariff, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

(a) If the Generating Facility is PIRP -eligible, then the Generating Facility ~~is~~shall be certified as a PIRP resource by the CAISO~~;~~.

3.08 Generating Facility Modifications.

(a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.

(b) Seller shall provide thirty (30) days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:

(i) Energy output by five percent (5%) of Expected Term Year Energy Production; or,

(ii) The type of Primary Fuel consumed by the Generating Facility.

(c) Seller acknowledges that nothing in this Section 3.08 excuses Seller from any requirements of the CAISO's interconnection process, or any other applicable interconnection process.

3.09 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one or more Check Meters, as applicable, on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. More than one Check Meter may be necessary if there is more than one CAISO-Approved Meter. The Check Meter shall be interconnected with Buyer's communication network to permit:

(i) Periodic, remote collection of revenue quality meter data; and

(ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.10.

Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal shall be broken only by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every thirty-six (36) months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes.

(i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.

(ii) If the deviation between the CAISO-Approved Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.

(iii) Each Party shall bear its own costs for any meter check or recertification.

(iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.

(v) For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

(d) Multiple Points of Metering at a Single Customer Site. Notwithstanding any other provision of this Agreement, Seller, at its sole expense and with the consent of Buyer and in compliance with the tariffs, rules and regulations of Buyer and the CAISO (including the CAISO Tariff), may establish for the Generating Facility more than a single point of metering at the number of locations, at a single customer site, that the Generating Facility interconnects with the CAISO Controlled Grid or Buyer's electrical system. The metered delivery of the Power Product pursuant to this Agreement will be determined as the meter readings for all such metering netted on an individual settlement interval basis.

3.10 Telemetry System. Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff.

3.11 Provision of Information.

(a) Upon Buyer's reasonable request by written Notice, Seller shall provide to Buyer (to the extent not already in Buyer's possession) within a commercially reasonable amount of time and subject to Section 9.09:

(i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;

(ii) Any Permits concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;

(iii) Each of the following engineering documents for the Generating Facility:

1) Site plan drawings;

2) Electrical one-line diagrams;

3) Control and data acquisition details and configuration documents;

4) Major electrical equipment specifications;

5) Process flow diagrams;

6) Piping and instrumentation diagrams;

7) General arrangement drawings; and

8) Aerial photographs of the Site, if any;

(iv) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer; and

(v) Any currently operative filings, rulings, orders or other pleadings or papers concerning the qualification of the Generating Facility as an Eligible CHP Facility.

(b) If applicable and subject to Section 9.09, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.

(c) Subject to Section 9.09 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Progress Reporting. If the Generating Facility is a New Eligible CHP Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule. No later than the 10th day of each month until the Term Start Date, Seller shall, in accordance with Exhibit F, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule. Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (and the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Operation and Record Keeping. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the Forecasting requirements, as set forth in Exhibit G;

(c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit G;

(d) Pay all CAISO Charges, as set forth in Exhibit H;

(e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit I;

(f) Comply with the Planned Outage scheduling procedures, as set forth in Section 1.04;

(g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit N;

(h) Use reasonable efforts to comply with CAISO orders for delivery of the Power Product during an Emergency;

(i) Use reasonable efforts to reschedule any Planned Outage that occurs during an Emergency;

(j) Keep all Operating records required of a CHP Eligible Facility by any applicable CPUC order, as well as any additional information that may be required of a CHP Eligible Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;

(k) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within twenty (20) days of a request by Notice from Buyer, including:

(i) Real and reactive power production;

(ii) Changes in Operating status;

(iii) Protective apparatus operations; and

(iv) Any unusual conditions found during inspections.

(l) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;

(m) Pay all Scheduling Fees, as set forth in Exhibit E;

(n) Not participate in the CAISO Station Power Protocol;

(o) If applicable, register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register pursuant to the NERC Registration Criteria;

(p) If applicable, maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with the NERC Reliability Standards applicable to protection systems for electric generators if Generator Owner or Generator Operator is required to maintain such documentation under the NERC Reliability Standards; and

(q) Maintain data to demonstrate compliance with the ~~qualifying facility~~Qualifying Facility efficiency monitoring program adopted by Decision ("D.")10-12-035;~~ and~~

(r) At least thirty (30) days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator.

3.15 Power Product Curtailments at Transmission Provider's or CAISO's Request.

(a) Seller shall promptly curtail the production of the Power Product upon receipt of a curtailment notice or instruction from the Transmission Provider or the CAISO (which may be communicated by Buyer), which notice shall only be provided when it reasonably believes that curtailment of the Power Product is required to comply with (i) the

Transmission Provider's maintenance requirements and operating orders, (ii) a CAISO Declared Over-Generation Condition, or (iii) an Emergency.

(b) Notwithstanding Section 3.14(a), except as may be required in order to respond to any Emergency, Buyer shall (i) use reasonable efforts to coordinate the Transmission Provider's curtailment needs with Seller to the extent Buyer can influence such needs, or (ii) request that the Transmission Provider and the CAISO limit the curtailment duration.

{Buyer Comment: This Section is applicable if Seller does not execute a FERC jurisdictional interconnection agreement. If this Section is deleted, replace with "[Intentionally omitted]".}

3.16 Report of Lost Output. To the extent the conditions set forth in Sections ~~3.15~~3.16(a) through (d) occur, Seller shall prepare and provide to Buyer, by the fifth (5th) Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Forecast due to:

(a) Planned Outages;

(b) CAISO or Transmission Provider-ordered curtailments;

(c) Force Majeure; or

(d) Forced Outages.

3.17 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer:

(i) Subject to Section 9.09, a completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit O, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and,

(ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.18 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one (1) Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to:

(a) Interconnect with the Transmission Provider's electric system;

(b) Transmit and deliver electric energy to the Delivery Point; or

(c) Own and operate any CAISO-Approved Meter.

3.19 Buyer's Access Rights. Upon providing at least five (5) Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to escorted access to the Generating Facility during regular business hours for:

(a) Any purpose reasonably connected with this Agreement;

(b) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or

(c) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.

Seller hereby grants Buyer reasonable access to all CAISO-Approved Meters and Check meters for meter readings and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request, as necessary to effectuate this Agreement. Seller shall inform buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO.

Notwithstanding anything to the contrary set forth in this Section 3.19, in the case of an Emergency which, in Buyer's reasonable discretion, requires Buyer to examine the Site or the Generating Facility, the Notice requirements of this Section 3.19 do not apply.

3.20 Seller Financial Information.

(a) The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Financial Accounting Standard Boards Interpretation No. 46(R), "Consolidation of Variable Interest Entities" or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement. If, as a result of this review (or subsequent reviews as required), the Parties determine that such consolidation is required for a given period, or in the event the Parties cannot agree on whether consolidation is required, then the Parties agree to the following provisions for such period.

(i) Within thirty (30) days following the end of each year, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (1) unaudited financial statements together with related footnotes as necessary to comply with GAAP, and (2) a completed annual disclosure checklist with supporting financial schedules necessary for Buyer to prepare its annual filing with the SEC. Buyer will provide to Seller such checklist before the end of each year and include only items considered material to Buyer. If audited financial statements are prepared for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

(ii) Within twenty (20) days following the end of each calendar quarter, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (1) an unaudited condensed statement of income for the calendar quarter and year-to-date, (2) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (3) an unaudited condensed balance sheet at the end of such calendar quarter, and (4) a completed quarterly disclosure checklist with supporting financial schedules necessary for Buyer to prepare its quarterly filing with the United States Securities and Exchange Commission. Buyer will provide to Seller such checklist before the end of each quarter and include only items considered material to Buyer.

(iii) Seller shall prepare its financial statements to be delivered in accordance with this Section 3.20 in accordance with GAAP.

(iv) Promptly upon Notice from Buyer, Seller shall allow Buyer's internal auditors and independent registered public accounting firm reasonable access to Seller's records and personnel, so that Buyer's internal auditors and independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with

Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. Buyer shall take reasonable steps to ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20(a)(iv), (~~22~~2) such information is used solely for purposes of conducting the audits described in this Section 3.20(a)(iv), (3) disclose any information received only to personnel responsible for conducting the audits. Within 30 days of Seller's receipt of Notice from Buyer, Seller shall remediate any material deficiency in Seller's internal controls of financial reporting identified by Buyer or Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(a)(iv), provided that Seller has the right to challenge the appropriateness of any determination of deficiency. All reasonable expenses for the foregoing shall be borne by Buyer.

(v) Within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing. Such items may include the following:

1) Acquisition or disposition of a material amount of assets outside of the ordinary course of Seller's business;

2) Creation of a material "direct financial obligation" or "off-balance sheet financing arrangement", as such terms are defined in Item 2.03 of the Form 8-K, as amended from time to time;

3) Existence of "material legal proceedings", as defined in Item 103 of Regulation S-K, as amended from time to time; and

4) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent and outside of the ordinary course of Seller's business.

(b) Buyer shall treat Seller's financial statements or other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:

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

(ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(vi) and 9.09(a)(vii).

3.21 NERC Electric System Reliability Standards.

(a) During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by Buyer in its reasonable discretion) must be registered with the NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that Buyer, in its capacity as Scheduling Coordinator is required to perform under this Agreement or under the CAISO Tariff.

(b) Notwithstanding anything to the contrary set forth in this Section 3.21 and subject to the indemnity obligations set forth in Section 9.03(g), each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by the NERC, the WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards.

(c) Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC Reliability Standards referenced above. Buyer's cooperation will include providing to Seller, or such other Person as Seller designates in writing, information in Buyer's possession that Buyer as Scheduling Coordinator has provided to the CAISO related to the Generating Facility or actions that Buyer has taken as Scheduling Coordinator related to Seller's compliance with the NERC Reliability Standards referenced above (e.g., Seller's notices and updates provided by Buyer to the CAISO via SLIC). Buyer may, in its reasonable discretion (depending upon the quantity of information requested by Seller and the timeframe established by Seller for compliance), comply with the requirement to provide information set forth in the previous sentence, by making such information available for inspection by Seller or by providing responsive summaries or excerpts of same, so long as the foregoing enables Seller to comply with the NERC Reliability Standards. In addition, Buyer may redact any information or data that is confidential to Buyer from materials or information to be supplied to Seller.

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, or Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

**** End of Article Three ****

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit C~~.~~ or Exhibit C (1), as determined pursuant to Section 1.05.

4.02 Payment Adjustments.

(a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:

(i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit E;

(ii) Any SDD Energy Adjustment or SDD Administrative Charge, as set forth in Exhibit I;

(iii) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit H;

(iv) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;

(v) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02; and

(vi) The agreement of the Parties that Buyer shall have no liability to make any payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed one hundred and twenty percent (120%) of Expected Term Year Energy Production.

(b) During the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate the payment adjustment.

(c) After the Term End Date, Buyer shall invoice Seller for any payment adjustments within sixty (60) days of Buyer's receipt of all of the information required in order to calculate the payment adjustment.

4.03 Payment Statement and Payment.

(a) No later than thirty (30) days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:

(i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:

1) Seller's Energy Forecast;

2) Seller's Day-Ahead Forecast;

3) Metered Energy;

4) The final Buyer Energy Schedule; and

5) The final Buyer Parent Energy Schedule.

(ii) A statement showing:

1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);

2) A calculation of the Monthly Contract Payment, as set forth in Exhibit C or Exhibit C (1), as determined pursuant to Section 1.05;

3) A calculation of any payment adjustments pursuant to Section 4.02; and

4) A calculation of the net dollar amount due for the month.

(iii) Buyer's payment to Seller, in accordance with Section 9.15, in the net dollar amount owed to Seller for the month; provided, however, in the event the statement shows a net amount owed to Buyer, Seller shall pay such amount within twenty (20) days of the statement date.

(b) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO in the CAISO's meter-data acquisition and processing system, Buyer shall promptly recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading in accordance with the CAISO Tariff.

Buyer shall then promptly recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to the next monthly statement that is calculated after Buyer's recomputation using corrected measurements.

If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's monthly statement until such amount is fully collected by Buyer.

At Buyer's sole discretion, Buyer may offset any remaining amount owed to Buyer in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within twenty (20) days of receipt of such invoice.

(c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:

(i) Under this Agreement; or

(ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within ninety (90) days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 90-day period, Seller shall have an additional ninety (90) days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to the next monthly statement that is calculated.

If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to the next monthly statement that is calculated.

If the recomputation results in a net amount still owing to Buyer after applying the overpayment, the next monthly statement shall show a net amount owing to Buyer.

At Buyer's sole discretion, Buyer may apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within twenty (20) days of receipt of such invoice.

The Parties shall negotiate to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

(e) Nothing in this Section 4.03 limits a Party's rights under applicable tariffs, other agreements or Applicable Law.

4.04 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:

(a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;

(b) The Generating Facility complies with any Applicable Laws; or

(c) The Generating Facility will be able to meet the terms of this Agreement.

Seller shall in no way represent to any third party that any such review by Buyer constitutes any such representation.

4.05 Buyer's Responsibility. Buyer shall, at its sole cost, obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point. Buyer shall pay, in accordance with Applicable Laws and Buyer's tariffs, any costs associated with maintaining its electric system in order to allow delivery of the Power Product from the Delivery Point to the CAISO-Controlled Grid.

4.06 Buyer As Scheduling Coordinator. Buyer shall take all steps necessary to become the Scheduling Coordinator for the Generating Facility during the Term.

**** End of Article Four ****

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must timely provide evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure.

In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform.

This Article Five will not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on Notice, which Notice will be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which materially interferes with the Claiming Party's ability to perform its obligations under this Agreement and which extends for more than three hundred and sixty-five (365) consecutive days, or for more than a total of three hundred and sixty-five (365) days in any consecutive 540-day period.

**** End of Article Five ****

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement that is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not:

1) Remedied within ten (10) Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or

2) Capable of a cure, but the Non-Defaulting Party's damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement to which such Party 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's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):

(i) Any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice;

(ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure is not remedied within three (3) Business Days after Notice is provided by the Non-Defaulting Party to the Guarantor;

(iii) A Guarantor becomes Bankrupt and replacement credit support is not provided within three (3) Business Days after Notice;

(iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within three (3) Business Days after Notice;

(v) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and replacement credit support is not provided within three (3) Business Day after Notice; or

(vi) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer and replacement credit support is not provided within three (3) Business Days after Notice.

(c) With respect to Seller:

(i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.04, and Seller has not cured a failure with respect to Section 3.04(a) within thirty (30) days after providing Notice to Buyer in accordance with Section 3.04(a);

(ii) The total quantity of Metered Energy in any Term Year is less than 10% percent the Expected Term Year Energy Production, and Seller fails to demonstrate a legitimate reason for such failure within ten (10) Business Days after Notice from Buyer;

(iii) Except as provided for in Section 3.01(e), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

(iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;

(v) Seller removes from the Site equipment upon which the As-Available Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five (5) Business Days after Notice from Buyer to Seller;

(vi) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;

(vii) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Section 3.20, and such failure is not remedied within ten (10) days after Notice from Buyer to Seller;

(viii) Seller fails to remediate any material deficiency in internal controls over financial reporting in accordance with Section 3.20;

(ix) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within ten (10) days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;

(x) The occurrence and continuation of a default, event of default or other similar condition or event under any loan agreement with any Lender, or under any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness under those agreements or instruments becoming immediately due and payable; provided, however, if Seller, Buyer and a Lender have entered into a Collateral Assignment Agreement with substantially the provisions set forth in Section 9.05, and the terms of such Collateral Assignment Agreement conflict or are inconsistent with this Section 6.01(c)(x), the provisions of the Collateral Assignment Agreement control;

(xi) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within thirty (30) days after Notice from Buyer to Seller;

(xii) If Seller materially modifies the Generating Facility without Buyer's prior written consent;

(xiii) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit D and such failure is not cured within five (5) Business Days after Notice is provided by Buyer to Seller of such failure;

(xiv) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender;

(xv) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit D and such failure is not cured within five Business Days after Notice of such failure;

(xvi) Seller fails to maintain ~~Full Capacity Deliverability Status during the Term;(xvii) Seller fails to maintain~~ its status as an Eligible CHP Facility during the Term; or

(~~xviii~~xvii) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller.

6.02 Early Termination. There shall be no opportunity to cure a default other than as specifically provided in Section 6.01. If this Agreement is terminated pursuant to Section 2.02(b), then Buyer or the Non-Defaulting Party, as applicable, will have the right to:

(a) Designate by Notice to the Defaulting Party a date, no later than twenty (20) days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");

(b) Immediately suspend performance under this Agreement; and

(c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement, including Forward Settlement Amounts, less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement (the "Termination Payment"). The Notice shall include a written statement, setting forth, in reasonable detail, the calculation of such Termination Payment together with appropriate supporting documentation. If the Generating Facility is a New Eligible CHP Facility, no Forward Settlement Amount is assessed for any Termination Payment due to Buyer as the Non-Defaulting Party by Seller as the Defaulting Party if this Agreement is terminated before the Term Start Date.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within 10 Business Days after the Notice is provided.

The Parties shall negotiate to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

**** End of Article Six ****

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY 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 IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS 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 FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE VALUE OF ANY PRODUCTION TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

THE VALUE OF ANY INVESTMENT TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, 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.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN 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 UNDER THIS AGREEMENT 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 UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE SEVEN PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTEREST IN COLLATERAL.

**** End of Article Seven ****

ARTICLE EIGHT. GOVERNMENTAL CHARGES

8.01 Cooperation to Minimize Tax Liabilities. Each Party shall use diligent 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.

8.02 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility ("Governmental Charges").

Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Power Product at and after the Delivery Point.

If Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Governmental Charges.

If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller's responsibility under this Agreement, Buyer may deduct such amounts from payments to Seller made pursuant to Article Four.

If Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon Notice from Buyer of the amount to be reimbursed.

Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

8.03 Providing Information to Taxing Governmental Authorities. To the extent required by Applicable Law and subject to Section 9.09(b), each Party shall provide information concerning the Generating Facility to any requesting taxing Governmental Authority.

**** End of Article Eight ****

ARTICLE NINE. MISCELLANEOUS

9.01 Representations and Warranties. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

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

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) There is not pending, or to its knowledge threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

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

(g) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;

(h) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and

(i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.

9.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It will have Site Control as of the earlier of (i) the Term Start Date or (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;

(b) During the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;

(c) It will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person throughout the Term;

(d) It will hold throughout the Term the rights to all of the Product, subject to the terms of this Agreement;

(e) During the Term, it does not, and will not (1) convey, transfer, allocate, designate, award, report or otherwise provides any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (2) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

(f) During the Term, the Generating Facility qualifies as an Eligible CHP Facility; and,

(g) The Generating Facility meets all applicable greenhouse gas emissions standards, as such standards may change from time to time during the Term.

9.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.

(c) The provisions of this Section 9.03 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.

(d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Sections 3.20(a)(v) or 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Sections 3.20(a)(v) and 9.10.

The inclusion of this Section 9.03(d) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 9.10.

(e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.

(f) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.

(g) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.

(h) All indemnity rights will survive the termination of this Agreement for twelve (12) months.

9.04 Assignment. Neither Party may assign this Agreement or its rights under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of either Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding anything to the contrary in this Section 9.04, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder):

(a) Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with Section 9.05; and

(b) Transfer or assign this Agreement to an Affiliate of Seller which Affiliate's creditworthiness is equal to or higher than that of Seller.

9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller has the right to assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance reasonably agreed to by Buyer, Seller and Lender, and shall include, among others, the following provisions (together with such other commercially reasonable provisions required by any Lender that are reasonably acceptable to Buyer):

(a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable cure period specified in Article Six, constitute an Event of Default (an "Incipient Event of Default");

(b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;

(c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.05(g)) provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;

(d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.05(a). In addition, such cure period may, in Buyer's reasonable discretion, be extended by no more than an additional one hundred and eighty (180) days. If possession of the Generating Facility is necessary to cure such Incipient

Event of Default or Event of Default, Lender has commenced foreclosure proceedings within sixty (60) days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed one hundred and eighty (180) days after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;

(f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;

(g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;

(h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided, however*, that Lender (or such Person) shall have no liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date (but this provision may not be interpreted to limit Buyer's rights to proceed against Seller as a result of an Event of Default) and Lender's (or such Person's) liability to Buyer after such assumption shall be limited to its interest in the Generating Facility; *provided further*, that before such assumption, if Buyer advises Lender (or such Person) that Buyer will require that Lender (or such Person) cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such Person takes title in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Event(s) of Default, then Lender (or such Person) at its option and in its sole discretion may elect to either (i) cause such Incipient Event(s) of Default or Event of Default to be cured, or (ii) not assume this Agreement;

(i) If Lender has assumed this Agreement as provided in Section 9.05(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Affiliate of Lender or an Affiliate of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is

Lender, Seller, an Affiliate of Lender or an Affiliate of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer; and

(j) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either Buyer or Lender, Buyer and Lender (or its designee or representative) shall promptly enter into a new agreement, wherein Buyer shall have substantially the same contractual rights as found in this Agreement. for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's) liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor Buyer shall have any personal liability to the other for any amounts owing and neither Buyer nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

9.06 <u>Governing Law and Jury Trial Waiver</u>. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

9.07 <u>Notices</u>. All notices, requests, statements or payments shall be made as specified in <u>Exhibit J</u>. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 9.07 are deemed given as follows:

(a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;

(b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;

(c) Notice by first class United States mail is deemed given two (2) Business Days after the postmarked date;

(d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;

(e) A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith; and

(f) All notices, requests, statements or payments for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

(a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

(c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Articles", "Sections" and "Exhibits" refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Articles" or "Sections" in Exhibits A through Exhibit O refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

(i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.

(k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties covering transmission, distribution, metering, scheduling or interconnection of electric energy. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

(l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

(n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

(o) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

9.09 Confidentiality.

(a) Neither Party shall disclose any Confidential Information to a third party, other than:

(i) To such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;

(ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however*, that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further*, that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;

(iii) To Buyer's Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer's Procurement Review Group;

(iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;

(v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);

(vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC; and

(vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement.

(b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.09(a)(vi) (all to be considered a "Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may 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 any terms or conditions of this Agreement which are the subject of such Disclosure Order.

(c) Except as provided in clause (y) of Section 9.09(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

(d) This Section 9.09 shall remain in effect for three (3) years following the termination of this Agreement.

9.10 Insurance.

(a) Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better:

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion.

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles.

(v) Excess liability insurance, written on an "occurrence" (not claims-made) basis and providing coverage excess of the underlying employer's liability, commercial general liability and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 9.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 9.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or ownership of the Generating Facility. The insurance required in this Section 9.10 may be provided by any combination of Seller's primary and excess liability policies.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 9.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 9.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

(e) If Seller fails to comply with any of the provisions of this Section 9.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section. Nothing in this Section 9.10(e) affects or diminishes Seller's obligation to indemnify SCE under any other section of this Agreement.

9.11 <u>Nondedication</u>. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.

9.12 <u>Mobile Sierra</u>. Notwithstanding any provision of this Agreement, neither Party will seek, nor will they support any third party in seeking, to prospectively or retroactively revise the rates, terms, or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 US 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 US 348 (1956).

9.13 <u>Seller Ownership and Control of Generating Facility</u>. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

9.14 <u>Simple Interest Payments</u>. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

9.15 <u>Payments</u>. Payments to be made under this Agreement shall be made, at Seller's option, by check or electronic wire funds transfer.

9.16 <u>Provisional Relief</u>. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.04, 9.09 and Section 4(e) of Exhibit D in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 10.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or if this Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

*** *End of Article Nine* ***

ARTICLE TEN. DISPUTE RESOLUTION

10.01 Dispute Resolution. Other than requests for provisional relief under Section 9.16, any and all disputes, Claims or controversies arising out of, relating to, concerning, or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Disputes"), which Disputes the Parties have been unable to resolve by informal methods, will first be submitted to mediation in accordance with the procedures described in Section 10.02, and if the Dispute is not resolved through mediation, then for final and binding arbitration in accordance with the procedures described in Section 10.03.

10.02 Mediation. Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred and twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however*, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.03 Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with Section 10.02 by providing Notice of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for in Section 10.02.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred and eighty (180) days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for in this Section 10.03, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California, and discovery will be limited as follows:

(a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);

(b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;

(c) Discovery may commence at any time after the Parties' initial disclosure;

(d) The Parties will not be permitted to propound any interrogatories or requests for admissions;

(e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);

(f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;

(g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

(h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;

(i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and

(j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.04, 9.09 or Section 4(e) of Exhibit D.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

**** End of Article Ten ****

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],	**[BUYER'S NAME],**
a [Seller's business registration]	a California corporation
By:______________________________	By:______________________________
Name:_________________________	Name:_________________________
Title:__________________________	Title:__________________________

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in Recital A.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this Agreement, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Ambient Conditions" means reductions in capacity due to that status of, or variations in, Site Host Load or ambient weather conditions.

"Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.

"Arbitrator" has the meaning set forth in Article Ten.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(c).

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to ~~6,294~~6,924 Btu/kWh, or ~~6.294~~6.924 mmbtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 petition is not dismissed within ninety (90) 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

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

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"Buyer Energy Schedule" means the schedule of electric energy that Buyer submits to the CAISO for electric energy produced by the Generating Facility.

"Buyer Parent Energy Schedule" means the schedule of electric energy that Buyer submits to the CAISO for electric energy delivered to the CAISO for the CAISO Global Resource ID associated with the Generating Facility.

"Buyer Projected Energy Forecast" has the meaning set forth in Section 2(a) of Exhibit E.

"CAISO" means the California Independent System Operator Corporation or successor entity that dispatches certain generating units, supplies certain loads and controls the transmission facilities of entities that (a) own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities, and (b) have transferred to the CAISO or its successor entity operational control of such facilities or entitlements.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter furnished by Seller, that (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) includes all of the associated metering transformers and related appurtenances that are required in order to measure the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy that Buyer Schedules with the CAISO and the CAISO approves in its final schedule, which is published in accordance with the CAISO Tariff.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Charges Invoice" has the meaning set forth in Section 5 of Exhibit E.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Forced Outage Report" means a complete copy of a forced outage report in a form reasonably acceptable to Buyer which includes detailed information regarding the event, including the affected Generating Unit, outage start date and time, estimation of outage duration, MW unavailable and summary of work to be performed.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Station Power Protocol" means the CAISO protocol that the CAISO filed with the FERC in Docket ER05-849, including all revisions, amendments and successor protocols that would allow a generating facility to self-supply its Station Power (as defined in the CAISO Tariff) by any means other than permitted netting, when permitted netting allows netting of generator output with Station Power load that is electrically connected to the generator at the same time when the generator is on-line.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"CARB" means the California Air Resources Board.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CEC" means the California Energy Commission, or any successor entity.

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.09(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"CHP" means combined heat and power.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Collateral Assignment Agreement" has the meaning set forth in Section 9.05.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control Area" means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.

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

"Credit Rating" means with respect to any Person, on the relevant date of determination, the respective ratings then assigned to such Person's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody's. If no rating is assigned to such Person's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned to the Person by S&P or Moody's, as the case may be.

"Cross Default Amount" is the amount set forth in Section 1.06(f).

"Daily Delay Liquidated Damages" has the meaning set forth in Section 4(c)(ii) of Exhibit D.

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

"Decision" means CPUC Decision D. 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.03.

"Development Security" has the meaning set forth in Section 4(b)(i) of Exhibit D.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Disclosure Order" has the meaning set forth in Section 9.09(b).

"<u>Dispute</u>" has the meaning set forth in Section 10.01.

"<u>Early Termination Date</u>" has the meaning set forth in Section 6.02(a).

"<u>Effective Date</u>" has the meaning set forth in the Preamble.

"<u>Eligible CHP Facility</u>" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code § 2843 and, (2) meets the requirements of 18 Code of Federal Regulations § 292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"<u>Emergency</u>" means an actual or imminent condition or situation which:

(a) Is defined and declared by the CAISO or Transmission Provider;

(b) Jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system;

(c) Requires automatic or immediate manual action to prevent or limit loss of load or generation supply; or

(d) Poses a threat to public safety.

"<u>Equitable Defense</u>" means any Bankruptcy or other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"<u>Equity Investment</u>" means an acquisition by a Lender of an ownership interest, in the form of stock, membership or partnership interest, in Seller or the immediate parent of Seller under which Seller retains the right to act in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender's rights to enforce its ownership interest in Seller or the immediate parent of Seller, as applicable, in the event of a default by Seller or the immediate parent of Seller under Lender's equity acquisition agreement or the partnership agreement, operating agreement, or other agreement governing the relationship between the equity owners of the Generating Facility.

"<u>Event of Default</u>" has the meaning set forth in Section 6.01.

"<u>Existing Eligible CHP Facility</u>" means an Eligible CHP Facility that first commenced Operation on or after January 1, 2008 but before the Effective Date.

"<u>Expected Term Year Energy Production</u>" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(d).

"<u>Federal Funds Effective Rate</u>" means the rate for that day opposite the caption "Federal Funds (effective)" as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

"<u>FERC</u>" means the Federal Energy Regulatory Commission, or any successor entity.

"Financial Incentives" means any and all financial incentives, benefits or credits associated with the Generating Facility, or the ownership or Operation thereof, or the electrical or thermal output of the Generating Facility, including any production or investment tax credits, real or personal property tax credits or sales or use tax credits, but not including any Green Attributes, Capacity Attributes or Resource Adequacy Benefits.

"Firm Operation Date" means the date that is six months after the Term Start Date.

"Force Majeure" means any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome.
Force Majeure does not include:

(a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;

(b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;

(c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or

(d) A lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Forecast" means the hourly forecast of (a) the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible net of the Site Host Load and Station Use.

"Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Defaulting Party. The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

~~"Full Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff or the Buyer Tariffs, as applicable.~~

"GAAP" means generally accepted accounting principles for financial reporting in the United States, consistently applied.

"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), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner.

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant, as more particularly described in Section 1.02 and Exhibit B, including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"Generator Operator" means the Person that Operates the Generating Facility and performs the functions of supplying energy and interconnected operations services within the meaning of the NERC Registration Criteria.

"Generator Operator Obligations" means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards.

"Generator Owner" means the Person that owns the Generating Facility and has registered with the NERC as the Person responsible for complying with all NERC Reliability Standards applicable to the owner of the Generating Facility.

"Generator Owner Obligations" means the obligations of a Generator Owner as set forth in all applicable NERC Reliability Standards.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO2), nitrous oxide (N2O) and methane (CH4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO2-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related Entity of Seller, which respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"<u>GHG Emissions Cap</u>" means the product of (a) the rate for tonnes of CO_2 per MMBtu of natural gas, 0.0531 tonnes/mmbtu, times (b) the Average Higher Heating Value MPR Heat Rate in mmbtu/MWh.

"<u>GHG EPS</u>" means the Greenhouse Gas Emissions Performance Standard set forth in CPUC D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, as well as revisions to these standards set forth in any subsequent CPUC-established precondition to the execution of this Agreement.

"<u>Governmental Authority</u>" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"<u>Governmental Charges</u>" has the meaning as set forth in Section 8.02.

"<u>Green Attributes</u>" 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 (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;

(2) Any avoided emissions of carbon dioxide (CO_2), methane (CH_4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;

(3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

(i) Any energy, capacity, reliability or other power attributes from the Project,

(ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,

(iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

(iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Guarantor" means that certain guarantor of Seller set forth in Section 1.06(d).

"Guaranty Agreement" means a guaranty agreement substantially in the form of Exhibit K.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit C, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit C, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Incipient Event of Default" has the meaning set forth in Section 9.05(a).

"Interconnection Study or Interconnection Studies" means a study or studies prepared by or on behalf of the Transmission Provider or the CAISO to evaluate the impact of the interconnection of the Generating Facility to the Transmission Provider's electric system or the applicable Control Area operator's electric grid.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"JAMS" means the Judicial Arbitration and Mediation Services, Inc. or any successor entity.

"kW" means a kilowatt (1,000 watts) of electric capacity or power output.

"kWh" means a kilowatt-hour (1,000 watt-hours) of electric energy.

"Lease" means one or more agreements whereby Seller leases the Site(s) described in Section 1.02 and Exhibit B from a third party, the term of which lease begins on or before the Term Start Date and extends at least through the Term End Date.

"Lender" means any third-party institution or entity or successor in interest or assignee that either (i) purchases the Generating Facility and then leases it to Seller under a Sale-Leaseback Transaction, or (ii) provides development, bridge, construction, or permanent debt or tax equity financing or refinancing (including an Equity Investment) for the Generating Facility to Seller or credit support in connection with this Agreement.

"Letter of Credit" means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, substantially in the form of Exhibit L. All costs to establish and maintain the Letter of Credit shall be borne by Seller.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:

(a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's;

(b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;

(c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(d) Such Letter of Credit fails or ceases to be in full force and effect at any time;

(e) Seller fails to provide an extended or replacement Letter of Credit within 20 Business Days before such Letter of Credit expires or terminates; or

(f) The issuer of such Letter of Credit becomes Bankrupt;

provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

"Location Bonus" is described in Section 6 of Exhibit C.

"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), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner.

"Market Price" means the real-time price for Uninstructed Imbalance Energy (as defined in the CAISO Tariff) or any successor price for short-term imbalance energy, as such price or successor price is defined in the CAISO Tariff, that would apply to the Generating Facility, which values are, as of the Effective Date, posted by the CAISO on its website. The values used in this Agreement will be those appearing on the CAISO website on the third Business Day of the calendar month following the month for which such prices are being applied.

"Mediator" has the meaning set forth in Section 10.02.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy, expressed in kWh, measured by any or all of the CAISO-Approved Meters or Check Meters, as applicable, at the Generating Facility for the specified Metering Interval, after adjusting for any compensation factors introduced by the CAISO into the CAISO-approved meter.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters.

"Milestone Schedule" means Seller's milestone schedule, the form of which is attached to this Agreement as Exhibit M.

"Monthly Contract Payment" has the meaning set forth in Section 4.01.

"Monthly Scheduling Fee" is described in Section 4(b) of Exhibit E.

"Moody's" means Moody's Investor Services, Inc.

"MW" means a megawatt (1,000,000 watts) of electric capacity or power output.

"MWh" means a megawatt-hour (1,000,000 watt-hours) of electric energy or power output.

"NERC" means the North American Electric Reliability Corporation, or any successor entity.

"NERC Registration Criteria" means the most recent NERC Statement of Compliance Registry Criteria, which is available on NERC's website.

"NERC Reliability Standards" means those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available on NERC's website.

"NERC Standards Non-Compliance Penalties" means any and all monetary fines, penalties, damages, interest or assessments by the NERC, the CAISO, the WECC, a Governmental Authority or any Person acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Defaulting Party" has the meaning set forth in Section 6.02.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit C, "5. Time of Delivery Periods and Allocations Factors~~.~~" or Exhibit C (1), "4. Time of Delivery Periods," as determined pursuant to Section 1.05.

"Notice" means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit J.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating", and "Operation" mean to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage" has the meaning set forth in the CAISO Tariff.

"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit N.

"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer 24 months in advance, as set forth in Exhibit N.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party or Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Performance Assurance" means collateral (in the amount of the Performance Assurance Amount) for Seller's performance under this Agreement in the form of cash, Letter(s) of Credit, or other security acceptable to Buyer.

"Performance Assurance Amount" has the meaning set forth in Section 1.06(b).

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person or Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"<u>Planned Outage</u>" means a disconnection, separation or reduction in the capacity of the Generating Facility which is not the result of a Forced Outage.

"<u>PNode</u>" has the meaning set forth in the CAISO Tariff.

"<u>Power Product</u>" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"<u>Power Rating</u>" means the electrical power output value indicated on the generating equipment nameplate.

"<u>Primary Fuel</u>" means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

"<u>Product</u>" means the Power Product and the Related Products.

"<u>Project</u>" means the Generating Facility.

"<u>Prudent Electrical Practices</u>" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that:

(a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;

(c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Prevailing Pacific Time, which is the Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Related Products" means (i) with respect to Resource Adequacy Benefits that portion of the Resource Adequacy Benefits that are in excess of those Resource Adequacy Benefits used by Seller or by a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the Resource Adequacy Benefits are to be used, ~~resource adequacy~~Resource Adequacy obligation under any Resource Adequacy Ruling, and (ii) any Green Attributes, Capacity Attributes and all other attributes associated with the electric energy or capacity of the Generating Facility (but not including any Financial Incentives) that are in excess of those Green Attributes, Capacity Attributes or other attributes used, or retained for future use, by Seller or a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the relevant attribute(s) are to be used or retained, obligation under Applicable Law.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(~~g~~e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the Generating Facility that satisfy any Person's ~~resource adequacy~~Resource Adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Generating Facility.

~~"Resource Adequacy Resource" has the meaning set forth in CAISO Tariff.~~

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other ~~resource adequacy~~Resource Adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

"Responsible Officer" means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing officers.

"S&P" means the Standard & Poor's Rating Group.

"Sale-Leaseback Transaction" means a transaction in which Seller (i) sells the Generating Facility to a Lender providing tax equity financing to Seller and then (ii) leases the Generating Facility back from the Lender under an agreement authorizing Seller to act on behalf of the Lender in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender's right to terminate the lease in the event of a default by Seller as set forth in the agreement between Seller and Lender.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means the Buyer as certified by the CAISO for the purposes of undertaking the functions specified in Exhibit E.

"Scheduling Fee" means the Monthly Scheduling Fee and the SC Set-Up Fee.

"SC Set-Up Fee" is described in Section 4(a) of Exhibit E.

"SC Replacement Date" has the meaning set forth in Section 7 of Exhibit E.

"SEC" means the United States Securities and Exchange Commission, or any successor entity.

"Security Interest" has the meaning set forth in Section 3 of Exhibit D.

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

"Seller's Day-Ahead Forecast" means the most recently update Forecast submitted by 5:00 p.m. PPT on the day before the Trading Day.

"Seller's Energy Forecast" means Seller's most recently updated Forecast submitted in accordance with Exhibit G.

"Seller's Final Energy Forecast" means Seller's energy Forecast as may be updated for Forced Outages that occur after the Hour Ahead Scheduling Deadline, but not for Ambient Conditions.

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Settlement Interval" has meaning set forth in the CAISO Tariff.

"Simple Interest Payment" means a dollar amount calculated by multiplying the:

(a) Dollar amount on which the Simple Interest Payment is based; by

(b) Federal Funds Effective Rate or Interest Rate as applicable; by

(c) The result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02(b) and Exhibit B.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a Lease, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means the Person or Persons purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code Section 218(b).

"SLIC" means Scheduling and Logging system for the CAISO.

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means electric energy produced by the Generating Facility that is:

(a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation; and

(b) Consumed as losses within the low voltage, electrical distribution system of the Generating Facility including:

i. The Generating Facility's, or, if applicable, each Generating Unit's [____]kV electric voltage step-up transformer; and

ii. The portion of the electric bus work that:

1. Connects the high voltage side of the Generating Facility's, or, if applicable, each Generating Unit's electric voltage step-up transformer to the [Substation name]; and

2. Is located on the Generating Facility side of the measurement points for the CAISO-Approved Meters.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO's applicable requirements as set forth in Section 3.10.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Termination Payment" has the meaning set forth in Section 6.03.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit C~~.~~ or Exhibit C (1), as determined by Section 1.05.

"Trading Day" means the day in which Day-Ahead trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-controlled grid.

"Uninstructed Deviation GMC Rate" means the administrative grid management charge applied by the CAISO to Uninstructed Deviations (as defined in the CAISO Tariff) using the absolute value for the Uninstructed Deviations by Settlement Interval.

"Uninstructed Deviation Penalty" means the penalty set forth in the CAISO Tariff.

"Web Client" has the meaning set forth in Section 2(a) of Exhibit N.

"<u>WECC</u>" means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

**** End of Exhibit A ****

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit B ****

EXHIBIT C

Monthly Contract Payment Calculation
These Price Inputs are based upon the ~~2009~~2011 Market Price Referent (MPR)

This Exhibit C establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033)~~, and such avoided cost price may be modified or updated from time to time by the CPUC, which modification(s) or update(s) shall modify Buyer's payment obligations to Seller under this Agreement, including this Exhibit C~~.

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period ~~payments~~Payments shall be calculated as set forth in Section 2 of this Exhibit C.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit C.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit C.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars using the terms defined below as follows:

(Fixed price component + Variable price component) * TOD Factor *
metered kWh exported during the TOD ~~period~~Period during the month

Once 120% of the Expected Term Year Net Energy Production is achieved, no further payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component ~~(FPC)~~ of the Monthly Contract Payment for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
~~2011~~	~~0.02077~~
2012	~~0.02113~~0.0 2000
2013	~~0.02153~~0.0

Year	$/kwh
	2033
2014	~~0.02194~~0.02068
2015	~~0.02199~~0.02104
2016	~~0.02204~~0.02140
2017	~~0.02210~~0.02142
2018	~~0.02215~~0.02145
2019	~~0.02220~~0.02147
2020	~~0.02224~~0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

The Variable Price Component is calculated in dollars as follows:

[(Monthly bidweek gas price + Intrastate gas transportation rate)/1,000,000* Heat Rate] + Variable O&M

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to D. 09-12-042, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after ~~2020,~~2023, Variable O&M shall be the ~~2020~~2023 payment multiplied by 1.02, compounded for each year beyond ~~2020.~~2023.

Variable O&M	
Year	$/kwh
~~2011~~	~~0.00482~~
2012	~~0.00488~~ 0.00311

2013	~~0.00497~~ 0.00316
2014	~~0.00507~~ 0.00322
2015	~~0.00519~~ 0.00329
2016	~~0.00530~~ 0.00335
2017	~~0.00543~~ 0.00342
2018	~~0.00555~~ 0.00349
2019	~~0.00569~~ 0.00356
2020	~~0.00583~~ 0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

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

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

A. June – September;

B. October, November, December, January and February; and

C. March - May.

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

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

2. **Shoulder** = hours ending 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and hours ending 7 – 22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.

3. **Night** (7x8) = hours ending 1 - 6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

"NERC Holidays" mean the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4^{th}) 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 paragraph, NERC Holidays shall be calculated as "Shoulder" hours for all non-"Night" hours and any remaining hours shall be calculated as "Night" hours.

TOD Factors. In accordance with all other terms of this Exhibit C, the ~~Contract Price for energy the shall be adjusted by the~~ following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	~~2.20~~2.38	1.12	~~0.69~~0.59
B. Oct. – Dec.; Jan. & Feb.	~~1.06~~1.10	~~0.93~~0.94	~~0.76~~0.66
C. Mar. – May	~~1.15~~1.22	~~0.85~~0.90	~~0.64~~0.61

6. **Location Bonus.**

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit C****

Exhibit C (1)

Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit C (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit C (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit C (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(EP-LA) \times APE + LA \times MA]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit C (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit C (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit C (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit C (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit C (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit C (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit C (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit C (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit C (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit C (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit C (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit C (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{Hour}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit C (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit C (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The Contract Capacity, as set forth in Section 1.02(c), in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

*** End of Exhibit C (1) ***

EXHIBIT D
Credit and Collateral Requirements

1. Financial Information.

(a) If requested by Buyer, Seller shall deliver to Buyer the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:

(i) Within one hundred and twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous 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 quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous fiscal year;

provided, however, that if Seller is not an SEC reporting company or if the financial statements required under Sections 1(a)(i) or (ii) of this Exhibit D are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year-end audit adjustments for the quarterly financial statements); *provided further*, that such information must be provided only to those employees of Buyer that need to know such information for financial risk management purposes and may not be disclosed to third parties except as permitted under Section 9.09.

(b) For purposes of the requirement set forth in Section 1(a) of this Exhibit D:

(i) If Seller's or its Guarantor's financial statements are publicly available electronically on the website of Seller, its Guarantor or the SEC, then Seller is deemed to have met this requirement; and

(ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay is not an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

2. Performance Assurance.

(a) Posting Performance Assurance. On or before the Term Start Date, Seller shall post Performance Assurance with Buyer and shall maintain the Performance Assurance Amount at all times on and after the Term Start Date until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed three hundred and sixty-five (365) days following the Term End Date.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that if, as of the Term Start Date, Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit D, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 4(c) or (e) of this Exhibit D, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 2(c) of this Exhibit D, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:

(i) Each Letter of Credit must be maintained for the benefit of Buyer;

(ii) Seller shall:

(1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;

(2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least thirty (30) days before the expiration of the outstanding Letter of Credit or within five (5) Business Days of such indication by the bank, whichever is later; and

(3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within three Business Day after such refusal;

(iii) Upon, or at any time after, the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the third Business Day after the occurrence thereof (or the fifth Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies); and

(iv) Upon the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit by submitting to the bank issuing such Letter of Credit one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 3 of this Exhibit D with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

(c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit K executed by the Guarantor identified in Section 1.06(d) or other party, in each case acceptable to Buyer and meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:

(i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or

(ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, Seller shall provide to Buyer Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to Buyer, within five Business Days of such failure by the Guarantor.

3. First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 2 and 4 of this Exhibit D and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

(a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit; and

(c) Liquidate all Development Security and Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller shall remain liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

4. Development Security.

(a) Introduction. Development Security shall be held by Buyer as security for Seller's meeting the Term Start Date. Before the Term Start Date, Seller must deliver to Buyer certificates from a California-licensed professional engineer qualified to make a representation that that Seller has installed the equipment sufficient to provide the As-Available Contract Capacity designated by Seller.

(b) Development Security. Seller shall post such Development Security in accordance with the following terms and conditions:

(i) Seller shall post a development fee (the "Development Security") in the amount of $20 per kW of the As-Available Contract Capacity on or before the 30th day following the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and

(ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit L.

(c) Forfeiture of Development Security for Failure to Commence Term by the Term Start Date; Extension of the Term Start Date.

(i) Failure to Meet the Term Start Date. Subject to Seller's right to extend the Term Start Date as provided in Section 4(c)(ii) of this Exhibit D or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), if the Term does not commence on or before the Term Start Date, Buyer may retain the entire Development Security (if applicable) and, if not already terminated, terminate this Agreement, and neither Party shall have liability for damages for failure to deliver or purchase the Product after the effective date of such termination.

(ii) Daily Delay Liquidated Damages to Extend Term Start Date. Subject to limitations set forth in Section 1.01(b), Seller may elect to delay the Term Start Date by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the original Term Start Date to and excluding the actual Term Start Date ("Daily Delay Liquidated Damages").

To extend the Term Start Date, Seller must, at the earliest possible time, but no later than 6:00 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Term Start Date along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Term Start Date extension period.

Seller may further extend the Term Start Date beyond the original Term Start Date extension period subject to the same terms applicable to the original Term Start Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Term Start Date extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Term Start Date was actually extended.

In no event may Seller extend the Term Start Date for more than a total of 180 days by the payment of Daily Delay Liquidated Damages.

(d) Full Return of Development Security. The Development Security shall be returned to Seller in accordance with the following procedure:

(i) Subject to Seller commencing the Term by the Term Start Date, as the Term Start Date may have been extended in accordance with Section 4(c)(ii) of this Exhibit D or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), Seller demonstrates the As-Available Contract Capacity on or before the Firm Operation Date by delivering to Buyer certificates from a California-licensed professional engineer qualified to make a representation that Seller has installed the equipment sufficient to provide the entire As-Available Contract Capacity designated by Seller.

(e) Deficient Installation of As-Available Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller does not demonstrate any portion of the As-Available Contract Capacity or only demonstrates a portion of the As-Available Contract Capacity by delivering to Buyer certificates from a California-licensed professional engineer qualified to make a representation setting forth the As-Available Contract Capacity, then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of $20 per kW times the kilowatts of As-Available Contract Capacity which Seller has demonstrated, if any.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 2 of this Exhibit D shall be calculated using the adjusted As-Available Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted As-Available Contract Capacity shall be returned to Seller.

(f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

(a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.

(b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof on or before the third Business Day of the first month after the last month to which the invoice relates, so long as such date is after the day on which such invoice is received; ***provided, however***, that:

(i) No Event of Default has occurred and is continuing with respect to Seller; and

(ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.

(c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:

(i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or

(ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

**** End of Exhibit D ****

<u>EXHIBIT E</u>
Scheduling Coordinator Services

1. <u>Designation of Buyer as Scheduling Coordinator</u>.

   (a) At least thirty (30) days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.

   (b) During the Term, Seller may not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator.

   (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and the Eligible CHP Facility's Participating Generator Agreement.

   (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.

   (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *<u>provided, however</u>*, that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.

2. <u>Buyer's Scheduling Responsibilities</u>. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:

   (a) Using the Forecast submitted by Seller to Buyer pursuant to <u>Exhibit G</u>, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;

   (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;

   (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and

   (d) Receiving notification of the final Schedules from the CAISO.

3. <u>Notices</u>. As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, or CAISO Forced Outage Reports.

4. <u>Scheduling Fees</u>. In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:

(a) SC Set-Up Fee. The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal $[___].

(b) Monthly Scheduling Fee. The Monthly Scheduling Fee will be as forth in the following table.

As-Available Contract Capacity (kW)	**Monthly Scheduling Fee**
Less than 10,000	$2,500
10,000 – 20,000	$5,000

5. CAISO Settlements. As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

Buyer shall render a separate invoice to Seller for all CAISO Charges ("CAISO Charges Invoice") for which Seller is responsible under this Agreement as described in Exhibit H, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental and/or supporting documentation provided by the CAISO to Buyer in the settlement process.

Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this

Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit E with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of three hundred and sixty-five (365) days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.

7. Termination of Buyer as Scheduling Coordinator. At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. on the final date of the Term ("SC Replacement Date"). Such actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.

**** End of Exhibit E ****

EXHIBIT F
Milestone Progress Reporting Form

1. Introduction. This Exhibit F is only applicable if the Generating Facility is a New Eligible CHP Facility. Seller shall prepare a written milestone progress report as set forth in Section 3.12 on its progress relative to the:

   (a) Installation of the CAISO-Approved Meters and Telemetry System;

   (b) Installation of the Telemetry System as required by the CAISO Tariff; and

   (c) Work on other agreements with the CAISO and the Transmission Provider.

2. Format. The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit J, on the fifth Business Day of each month. Each such milestone progress report must include the following items:

   (a) Cover page;

   (b) Brief Generating Facility description;

   (c) Site plan of the Generation Facility;

   (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;

   (e) Bar chart schedule showing progress on achieving the Milestone Schedule;

   (f) PERT or GANT chart showing critical path schedule of major items and activities;

   (g) Summary of activities during the previous month;

   (h) Forecast of activities scheduled for the current month;

   (i) Written description about the progress relative to the Milestone Schedule;

   (j) List of issues that could potentially impact the Milestone Schedule;

   (k) Enumeration and schedule of any support or actions requested of Buyer;

   (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and

   (m) List of items required under Section 3.11.

**** End of Exhibit F ****

EXHIBIT G
Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements for all Generating Facilities.

   (a) 30-Day Forecast.

   In the case of a New Eligible CHP Facility, no later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), if Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit J.

   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit G, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit J.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit G must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change, with notification also by phone to Seller's Real Time Scheduling Desk.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

**** End of Exhibit G ****

EXHIBIT H

CAISO Charges

Buyer, as Scheduling Coordinator for the Generating Facility, shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to: (a) curtail output, or (b) reschedule a Planned Outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

4. If the Generating Facility is PIRP eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the energy generated and delivered from the Generating Facility.

5. Buyer as Seller~~'~~’s Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the ~~resource adequacy~~Resource Adequacy compliance year, as defined by CAISO Tariff, then any such charges or payments shall be offset and the net value shall be entered into Seller~~'~~’s Account for the applicable month pursuant to Section 3.22.

If any of Sections 1 through 4 of this Exhibit H apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

**** End of Exhibit H ****

EXHIBIT I
Scheduling and Delivery Deviation Adjustments

Seller or Buyer, as the case may be, shall be responsible for the following Scheduling and Delivery Deviation ("SDD") Adjustments with respect to the Generating Facility:

1. SDD Energy Adjustment. An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

   If A < D, then SDD Energy Adjustment= (D – A) x (EP – P)

   or

   If A > E, then SDD Energy Adjustment = (A – E) x (P – EP)

   Otherwise, the SDD Energy Adjustment = 0

   where:

   A = Metered Energy for the Settlement Interval;

   B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to Exhibit G corresponding to the Settlement Interval;

   C = Performance Tolerance Band =

   Three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour;

   D = Performance Tolerance Band Lower Limit = (B – C);

   E = Performance Tolerance Band Upper Limit = (B + C);

   EP = TOD Period Payment divided by Metered Energy applicable to the Settlement Interval specified in Exhibit C or TOD Period Energy Price applicable to the Settlement Interval specified in Section 2 (b) of Exhibit C (1); and

   P = Market Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. SDD Administrative Charge. Seller shall make a payment to Buyer (the "SDD Administrative Charge") for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

   If A > (B + C) or A < (B – C), then:

   SDD Administrative Charge = (Absolute Value (B – A) – C) x Uninstructed Deviation GMC Rate.

   Otherwise, the SDD Administrative Charge = 0.

**** End of Exhibit I ****

EXHIBIT J
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	

CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit J ****

EXHIBIT K

Form of Guaranty Agreement

1. Guaranty. For valuable consideration, __*[Guarantor's legal name]*_____, _____*[legal status]*___ ("Guarantor") guarantees payment to ___*[Buyer's legal name]*__, a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by _______*[Seller's legal name]*___, ______*[legal status]*__ ("Principal") under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated __*[date]*__, as amended from time to time ("Agreement") (said amounts are hereinafter referred to as the "Obligations").

   Initially capitalized words that are used but not otherwise defined in this agreement ("Guaranty") shall have the meanings given them in the Agreement.

   Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

   Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, that all cure periods have expired, and with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

   Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

   The obligations of Guarantor hereunder are not subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

   A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. Guaranty Limit. Subject to Paragraph 13, the liability of Guarantor hereunder may not exceed $________ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

   (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectability, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

   (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;

   (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;

(d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and

(e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:

(i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;

(ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;

(iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;

(iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;

(v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;

(vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;

(vii) Beneficiary's exercise of any other rights available to it under the Agreement;

(viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;

(ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;

(x) [Intentionally omitted;] and

(xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

(f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds, statute of limitations and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

4. Termination; Reinstatement.

(a) The term of this Guaranty is continuous until the date on which the Obligations have been performed or paid in full.

(b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy; Post-Petition Interest.

(a) So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal.

The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations.

Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

6. <u>Subrogation</u>. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones the exercise of such rights until all Obligations have been irrevocably paid in full to the Beneficiary.

   If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

7. [Intentionally omitted.]

8. <u>Waivers of Guarantor</u>.

   (a) [Intentionally omitted.]

   (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.

   (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:

      (i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property.

         This means, among other things:

         a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

         b. If the creditor forecloses on any real property collateral pledged by the debtor:

            (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

            (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.

(e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;

(f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;

(g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;

(i) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and

(j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.

9. <u>No Waiver of Rights by Beneficiary</u>. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

10. <u>Assignment, Successors and Assigns</u>. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary

and its successors, assigns and creditors. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided*, *however*, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor. Guarantor represents and warrants that:

(a) It is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty;

(b) It has taken all necessary actions to execute, deliver and perform this Guaranty;

(c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;

(d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and

(e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

12. Financial Statements. If requested by Beneficiary, Guarantor shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:

(a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and

(b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.

(c) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.

13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 is not subject to, and does not count toward, the guaranty limit set forth in Paragraph 2 above.

14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

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

16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, is not in any way be affected or impaired thereby.

17. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary: *[Buyer]*
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

with a copy to:	*[Name]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:
Guarantor:	*[Guarantor]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:
Principal:	*[Principal]* *[Street]* *[City, State Zip]* Attn: Phone: Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of ________, ____.

_______*[legal name]*___

By: ________________

Name: ________________

Title: ________________

**** End of Exhibit K ****

EXHIBIT L
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

____
____
____
____

Ladies and Gentlemen:

_____________________________________ (the "Bank") establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of ______________________________, a California corporation (the "Beneficiary"), for the account of _______________________, a ____________ corporation, also known as ID# ___ (the "Applicant"), for the amount of XXX AND XX/100 Dollars ($___________) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on __________ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on ______________ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at ______________ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations may not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference may not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

Name:_________________________

Title:__________________________

ATTACHMENT A
Drawing Certificate

TO *[ISSUING BANK NAME]*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. __________________

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____________________, an authorized representative of ___________________________ (the "Beneficiary"), certifies to *[Issuing Bank Name]* (the "Bank"), and _____________________ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_______________}, dated _______________, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to $___________________, for the following reason(s) [check applicable provision]:

[ ]A. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of *[Date of Execution]* (the "Agreement"), with respect to the Applicant has occurred and is continuing.

[ ]B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

[ ]C. The Letter of Credit will expire in fewer than 30 days from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

[ ]D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.

[ ]E. The Beneficiary is entitled to retain the entire Development Security (i) as a result of Applicant's failure to commence the Term by the Term Start Date, or (ii) the Agreement has terminated due to an Event of Default by Applicant before the Term Start Date.

[ ]F. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of $20 per kW of As-Available Contract Capacity that Seller failed to demonstrate times the kilowatts of As-Available Contract Capacity which Seller failed to demonstrate.

2. Based upon the foregoing, the Beneficiary makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.$________________), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of ________________, _____.

Beneficiary: [BENEFICIARY NAME]

By: ______________________________

Name:_________________________

Title:__________________________

**** End of Exhibit L ****

EXHIBIT M
Seller's Milestone Schedule

No.	*Target Date*	*Milestones*

**** End of Exhibit M ****

EXHIBIT N

Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

(a) Comply with the CAISO Tariff;

(b) Accommodate changes to their respective generation technology and organizational structure; and

(c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and Planned Outage schedules in accordance with the following schedule:

(a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed Planned Outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client") only if web-based system is not available.

(b) Seller shall provide the following information for each proposed Planned Outage:

(i) Start date and time;

(ii) End date and time; and

(iii) Capacity online, in MW, during the Planned Outage in addition to the information required by the CAISO, as indicated by the Buyer-provided web-based system.

(c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any Planned Outage.

(d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

(e) In the event a condition occurs at the Generating Facility which causes Seller to revise its Planned Outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such Planned Outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

(f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

*** *End of Exhibit N* **

EXHIBIT O

QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name:
Street:
City: ______________________________ State: ____________________ Zip Code: _____________

ID No.: ________ Generation Nameplate (KW): __________________

II. In Operation: Yes ☐ No ☐

III. Can your facility dump your thermal output directly to the environment? ☐Yes ☐No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1				Y N
2				Y N
3				Y N
4				Y N
5				Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
  BTUs ________ Therms ________ mmBTUs ________
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

**** End of Exhibit O ***

ADVICE 3970-E

Attachment B

Red-Lined Version of Form 79-1121

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

Simplified Contract for Eligible CHP

PREAMBLE

This Power Purchase and Sale Agreement (this "Agreement") by and between [Buyer's name], a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is dated as of [Date of execution] (the "Effective Date"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A. Exhibits A through G inclusive are hereby incorporated into and made a part of this Agreement.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill its obligations under the Act and the Decisions issued in Rulemaking ("R.") 08-06-~~024,~~024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

{Buyer Comment: If the Term is greater than or equal to five years and if the Generating Facility provides baseload generation, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends on [Date] (the "Term End Date"). The Term Start Date must be on the first day of a calendar month. If the Generating Facility is (a) a New Eligible CHP Facility, the Term Start Date must occur within 18 months of the Effective Date, or (b) an Existing Eligible CHP Facility, the Term Start Date must occur within 6 months of the Effective Date. Subject to the limitation set forth in the immediately preceding sentence, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least three months before such Term Start Date. The Term must be no less than one year and no more than 10 years.

1.02 Generating Facility. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility], and which is further described in Exhibit G. The Generating Facility is located at [Generating Facility address], which must be located within Buyer's electric service territory. To be eligible for this Agreement, the Generating Facility must be an Eligible CHP Facility that, during the entire Term, (1) satisfies the provisions of AB 1613, as implemented by the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA. However, public agency sellers exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f) are not subject to the requirements of 18 CFR §292.201.

1.03 As-Available Contract Capacity; Power Rating. The As-Available Contract Capacity equals [___] kW. (The As-Available Contract Capacity must be no greater than 5 MW.) The Power Rating of the Generating Facility must be no more than 20 MW. Seller has no obligation under this Agreement to produce or deliver firm energy or capacity.

1.04 Site Host Load. The Site Host Load is expected to equal, on average, [___] kW. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year, which amount may change from time to time; *provided, however*, that Seller shall provide Notice to Buyer at least 30 days, or as soon as otherwise is practicable, before any such change that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis; and *provided further*, that the As-Available Contract Capacity shall never exceed 5 MW.

1.05 Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The actual energy production of the Generating Facility may change from time to time; *provided, however*, that (a) Seller shall provide Buyer with 30 days advance Notice of any change to the actual energy production that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis, and (b) the Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.

1.06 Delivery Point. The point of delivery of the Power Product is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO- Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point are determined as part of the interconnection process.

1.07 Power Product Prices. ~~The~~

(a) Monthly Contract Payment for the Power Product ~~is~~shall be calculated in accordance with Exhibit B.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit B(1).

(c) A Generating Facility subject to paragraph 1.07(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.07(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit B.

1.08 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement. Buyer shall take all steps necessary to be authorized as the Scheduling Coordinator during the Term. Seller shall cooperate with Buyer in good faith to assure that Buyer is authorized as the Scheduling Coordinator during the Term. In accordance with Section 4.01, Buyer shall invoice to Seller and set off against future payments to Seller:

(a) $1,500.00 per month in consideration for Buyer rendering its services to Seller as the Scheduling Coordinator; *provided, however*, that if the As-Available Contract Capacity is less than 1 MW, Seller shall not be required to pay this fee; and

(b) A fee (the "SC Set-Up Fee") equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee. The actual cost will be a simple pass-through to Seller of Buyer's actual costs. Buyer estimates that the SC Set-up Fee for this Agreement will equal $2,000.00 or less.

1.09 GHG Emissions Allowances. Seller elects one of the following: ___(a) __(b), provided however, that this Section 1.09 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

(a) Seller shall manage its own GHG Emissions Allowances and request payment from Buyer in accordance with Section 3.03.

(b) PG&E shall purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's adoption of the necessary procedure. Until such time, Buyer will reimburse Seller per section 1.09(a), above.

1.10 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(b)(vi) due to CEC ~~Decertification~~decertification under the Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Before the Term Start Date, Seller must demonstrate to Buyer that Seller has satisfied all of the requirements necessary for Seller to Operate the Generating Facility in accordance with the terms of this Agreement (including Section 7.10), Applicable Law, the CAISO Tariff (to the extent applicable), and any other applicable tariff, legal, and regulatory requirements.~~ The Generating Facility has obtained Full Capacity Deliverability Status.~~

2.02 Termination Rights of the Parties.

(a) Termination Rights of Seller. Seller has the right to terminate this Agreement on Notice:

(i) If Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation; or

(ii) If Seller's Site Host relocates its business outside the State of California or terminates its business operations in California; provided, however, that if Seller terminates this agreement in accordance with this Section 2.02(a)(ii), Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year from the effective date of such termination. The termination of this Agreement becomes effective five Business Days after Seller delivers such Notice.

(b) Event of Default. Except as provided in Section 1.10, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.03 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year following the date of such termination.

(c) End of Term. This Agreement terminates at midnight of (i) the Term End Date, or (ii) a termination date agreed to in writing by the Parties.

(d) Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement.

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for Buyer's benefit throughout the Term.

3.02 Resource Adequacy. In accordance with Public Utilities Code section 2841(f), Seller grants, pledges, assigns and otherwise commits to Buyer the generating capacity of the Generating Facility to the extent necessary in order for Buyer to count such generating capacity ~~as a~~to meet its Resource Adequacy ~~Resource~~obligations. Seller shall comply with ~~any demonstration required under Applicable Law in order for Buyer to exercise its rights under this Section 3.02.~~CPUC and CAISO requirements to count towards Resource Adequacy; provided however,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(iii) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Compliance Costs.

(a) Direct GHG Compliance Costs. During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of reasonable documentation, in form and substance acceptable to Buyer, establishing that:

(i) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product;

(ii) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(iii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap and based on the actual delivered Power Product.

(iv) The Generating Facility's GHG emissions has been allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG emissions allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances;

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section ~~1.08,~~1.09, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section ~~1.08,~~1.09, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

3.04 Exclusive Rights. Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Product to any Person other than Buyer.

3.05 Site Control. Within 60 days of the Effective Date and until the Term End Date, Seller shall have Site Control.

3.06 Permits. Seller shall obtain and maintain all Permits necessary for the Seller to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.07 Interconnection. Seller shall, at its own cost, obtain and maintain all interconnection rights and an interconnection agreement and any related Governmental Authority approval(s) required to enable interconnection with Buyer's electric system and Parallel Operation of the Generating Facility. ~~Seller shall request Full Capacity Deliverability Status when making any applicable Interconnection Request.~~

3.08 CAISO Relationship. Seller shall comply with all applicable provisions of the CAISO Tariff, including securing and maintaining in full force all CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

3.09 Generating Facility Modifications. Seller shall provide at least 30 days advance Notice to Buyer before making any material modification to the Generating Facility, which Notice will include a description of any change in actual energy production of the Generating Facility and in the Site Host Load anticipated as a result of the modification. Notwithstanding the foregoing, Seller shall make no modification to the Generating Facility that would prevent Seller from complying with the terms of this Agreement.

3.10 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test the CAISO-Approved Meter pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. The Check Meter shall be interconnected with Buyer's communication network to permit (i) periodic, remote collection of revenue quality meter data, and (ii) back-up real time transmission of operating-quality meter data through the Telemetry System. Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal may only be broken by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes. Buyer may compare the Check Meter data to the CAISO-Approved Meter data. If the deviation between the CAISO-Approved Meter data and the Check Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests. For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

3.11 Provision of Information. Seller shall promptly provide to Buyer all documents reasonably requested by Buyer relating to the Generating Facility (including site plan drawings and single-line diagrams), the administration of this Agreement, or in order for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Operation. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the requirements set forth in Exhibit C and Exhibit D;

(c) Use its commercially reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit C;

(d) Pay the CAISO Charges for which it is responsible under Exhibit E;

(e) Use reasonable efforts to respond to any instruction issued by the CAISO or the Transmission Provider or delivered to Seller by Buyer in response to an Emergency;

(f) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within 20 days of a request by Notice from Buyer, including records showing (i) real and reactive power production, (ii) changes in Operating status, (iii) protective apparatus operations, and (iv) any unusual conditions found during inspections;

(g) Keep all Operating records to the extent required of an Eligible CHP Facility by any applicable CPUC or CEC order;

(h) At least 75 days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and

(i) Comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility, if any.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Power Product Curtailments at Request of Scheduling Coordinator, Transmission Provider, or CAISO. Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from Seller's Scheduling Coordinator, the Transmission Provider, or the CAISO; *provided, however*, that Buyer, in its role as Scheduling Coordinator, shall issue such an instruction only when Buyer is expressly directed to curtail production of the Power Product by the CAISO or where Buyer reasonably believes that curtailment of the Power Product is required to comply with (a) its maintenance requirements and operating orders, (b) a CAISO Declared Over-Generation Condition, or (c) an Emergency. Whenever practicable, Buyer will use commercially reasonable efforts to provide Seller reasonable advance notice of the possibility that a reduction or interruption of deliveries may be required.

3.15 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer a copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.16 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to (a) interconnect with the Transmission Provider's electric system, (b) transmit and deliver electric energy to the Delivery Point, or (c) own and operate any CAISO-Approved Meter.

3.17 Buyer's Access Rights. Buyer has the right to examine the Site, the Generating Facility and the Operating records for any purpose connected with this Agreement upon providing Seller with reasonable advance Notice under the circumstances. Seller hereby grants Buyer reasonable access to all CAISO-Approved Meters and Check meters for meter readings and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request, as necessary to effectuate this Agreement. Seller shall inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.18 Planned Outages. Seller shall schedule and utilize all planned outages in accordance with the procedures and subject to the limitations set forth in Exhibit D.

3.19 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

3.20 Regulation of Net Output of the Generating Facility. In its sole discretion, Buyer may require that Seller install, at Seller's sole cost, a device or equipment that will disable the Generating Facility from delivering electric energy at a rate greater than 5,000 kWh per hour of Metered Energy. At Buyer's request, Seller shall install such device before the Term Start Date or within 60 days if Buyer's request is made any time after the Term Start Date. Unless otherwise agreed to by the Parties, Buyer shall own, operate, and maintain such device at Seller's sole cost. Any such device shall be agreed upon by Seller and Buyer and must, in accordance with Prudent Electrical Practices, be suitable to the purpose for which it is installed and meet the Transmission Provider's interconnection requirements.

3.21 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, or Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

ARTICLE FOUR. BUYER'S OBLIGATION TO PAY

4.01 Obligation to Pay.

(a) For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit B~~;~~ or Exhibit B (1), as determined pursuant to Section 1.07 *provided, however*, Buyer is not obligated to issue a payment to Seller until the amount due to Seller pursuant to this Agreement exceeds $5,000.00 after set-offs and adjustments in accordance with this Agreement. Buyer shall adjust each Monthly Contract Payment in accordance with the terms of this Agreement, including making adjustment for the fees set forth in Section 1.08 and any CAISO Charges.

(b) Subject to Section 4.01(a), Buyer shall provide a payment statement within 30 days after the last Business Day of each calendar month, which statement shall include Buyer's payment to Seller and a calculation thereof.

(c) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO, Buyer shall recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading. Buyer shall then recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to a subsequent monthly statement that is calculated after Buyer's recomputation using corrected measurements. If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on a subsequent monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's statement until such amount is fully collected by Buyer.

(d) Buyer may deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(e) Except as otherwise provided for in this Agreement, if, within 90 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete. If Seller timely identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to a subsequent monthly statement that is calculated. If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to a subsequent statement that is calculated. If the recomputation results in a net amount still owing to Buyer after applying the overpayment, a subsequent statement shall show a net amount owing to Buyer.

(f) Notwithstanding anything to the contrary in this Agreement, if any payment statement shows amounts owed by Seller to Buyer, Buyer may, at its option, apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

(g) Notwithstanding anything to the contrary in this Agreement, for the entire period during which Seller fails to materially comply with any provision set forth in Exhibit C, Seller shall be responsible for all CAISO Charges; *provided, however*, that if Seller complies fully with Exhibit C, Buyer shall pay all CAISO Charges (except those CAISO Charges for which Seller is responsible under Exhibit E) for up to 1 MW of deviation of Seller's Forecast from the Metered Energy, and

Seller shall be responsible only for CAISO Charges attributable to such deviations in excess of 1 MW.

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or

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

(b) With respect to Seller:

(i) The total quantity of Metered Energy in any Term Year is less than 10% of the Expected Term Year Energy Production;

(ii) Seller delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement, electric energy that was not generated by the Generating Facility;

(iii) The Term Start Date does not occur within 18 months of the Effective Date, if Seller is a New Eligible CHP Facility, or within 6 months of the Effective Date, if Seller is an Existing Eligible CHP Facility; *provided, however*, that this 18-month or 6-month period shall be extended on a day-for-day basis for any delay caused solely by Buyer's failure to perform its obligation(s) under this Agreement or excused solely as a result of Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), as to which, in either case, Seller has notified Buyer of the new expected Term Start Date;

(iv) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

(v) Seller materially fails to comply with any provision of Exhibit C and such failure is not cured within 30 days after Notice is provided by Buyer to Seller; or

(vi) Seller fails to maintain its status as an Eligible CHP Facility during the Term~~; or(vii) Seller fails to maintain Full Capacity Deliverability Status during the Term~~.

6.02 Site Host Changes. Notwithstanding Section 6.01 above, with respect to Seller, an Event of Default shall not include (a) cessation of operation by the Site Host, or (b) the inability of Site Host to use the waste heat from the Generating Facility in a manner that is consistent with the requirements of the Act. If the Site Host ceases operation or is unable to use the waste heat from the Generating Facility in a manner that is consistent with the Act for a period of 365 days or more, either Party may terminate this Agreement. If Seller terminates this Agreement pursuant to this Section 6.02, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one following the effective date of such termination.

6.03 Early Termination. There shall be no opportunity to cure a default other than as expressly provided in Section 6.01. If this Agreement is terminated pursuant to Section 2.02(b), then Buyer or the Non-Defaulting Party will have the right to (a) designate by no more than twenty (20) days' Notice to the Defaulting Party a date for the early termination of this Agreement (an "Early Termination Date"), (b) immediately suspend performance under this Agreement, and (c) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), subject to the terms of this Agreement.

ARTICLE SEVEN. MISCELLANEOUS

7.01 Representations, Warranties and Covenants. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

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

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;

(e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

(f) It is acting for its own account, and its decision to enter into this Agreement is based on its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

(g) (g) It has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement.

7.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It does not, and will not (i) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (ii) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except in order to satisfy the Site Host Load, or as required by other Applicable Laws.

(b) Throughout the Term: (i) it or its subcontractors will own or lease and Operate the Generating Facility; (ii) it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person; (iii) it will hold the rights to all of the Product; (iv) the Generating Facility will maintain its qualification as an Eligible CHP Facility; and (v) the Generating Facility will meet all applicable greenhouse gas emissions standards, as such standards may change from time to time.

7.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, Claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, Claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, Claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 7.01 and Section 7.02. Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 7.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, Claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any Person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 7.10. The inclusion of this Section 7.03(b) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 7.10.

(c) Each Party shall defend, save harmless and indemnify the other Party against any taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility for which such indemnifying Party is responsible.

(d) All indemnity rights survive the termination of this Agreement for 12 months.

7.04 Assignment. Seller may not assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld; *provided, however*, that Seller may, without the consent of Buyer (and without relieving Seller from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender(s) in connection with any financing if (a) such Lender(s) assumes the payment and performance obligations provided under this Agreement with respect to Seller, (b) such Lender(s) agree in writing to be bound by the terms and conditions of this Agreement, and (c) Seller delivers such tax and enforceability assurance as Buyer may reasonably request.

7.05 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

7.06 Arbitration. Except for matters relating to specific performance, injunctive relief or other equitable remedies, the Parties agree to submit to arbitration any and all matters in dispute or controversy among them concerning the terms of this Agreement. Unless the Parties agree to alternative arrangements, the selection of arbitrators and the procedure shall be in accordance with the commercial arbitration rules then in effect of the Judicial Arbitration and Mediation Services, Inc. Any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the Parties; *provided, however*, that each Party shall pay for and bear the costs of its own experts, evidence and counsel's fees. Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, ~~,~~ California.

7.07 Notices. All Notices shall be made in accordance with this Section 7.07 and Exhibit F. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 7.07 are deemed given as follows: (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day; (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out; and (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date. Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

7.08 General.

(a) Except as may otherwise be provided in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. 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. Unless expressly provided for in this Agreement, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages. This Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof. Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(b) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

(c) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(~~c~~d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(~~d~~e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(~~e~~f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(~~f~~g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(~~g~~h) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(~~h~~i) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

(~~i~~j) Whenever this Agreement refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(~~j~~k) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

(~~k~~l) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Sections" and "Exhibits" refer to the corresponding Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Sections" in Exhibits A through G refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

7.09 Confidentiality. Neither Party may disclose any Confidential Information to a third party, other than: (a) to such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) to potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; (c) to Buyer's Procurement Review Group, as defined in D.02-08-071, subject to any applicable limitations and subject to a protective order applicable to Buyer's Procurement Review Group; (d) with respect to Confidential Information, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information; (e) in order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party; and (f) in order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC. In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Section 7.09(f), each Party shall use reasonable efforts to (i) notify the other Party before disclosing the Confidential Information, and (ii) prevent or limit such disclosure.

7.10 Insurance.

(a) General Liability Coverage. Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better, and in each case specifying Buyer as an insured on the policy. The insurance required in this Section 7.10 may be provided by any combination of Seller's primary and excess liability policies.

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion;

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles; and

(v) Excess liability insurance written on an "occurrence" (not "claims made") basis and providing coverage excess of the underlying employer's liability, commercial general liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 7.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 7.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or ownership of the Generating Facility.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 7.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 7.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, Claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. Governmental entities that have an established record of self-insurance may provide the required coverage through self insurance.

(e) If Seller fails to comply with any of the provisions of this Section 7.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, Claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section.

7.11 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],	**[BUYER'S NAME],**
a [Seller's business registration]	a California corporation
By:______________________________	By:______________________________
Name:_________________________	Name:_________________________
Title:__________________________	Title:__________________________

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in the Recitals.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this definition, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Law" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, the Generating Facility or the terms of this Agreement.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.03, as may be adjusted from time to time.

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to ~~6,294~~6,924 Btu/kWh, or ~~6.294~~6.924 mmbtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 petition is not dismissed within 90 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

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

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"CAISO" means the California Independent System Operator Corporation.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter system(s), including all associated metering transformers and related appurtenances, as required by the CAISO (or, to the extent that the CAISO's metering requirement does not apply, Prudent Electrical Practices) and furnished by Seller, and which (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) is a time-of-use meter capable of measuring the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy the Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO-declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CARB" means the California Air Resources Board

"CEC" means the California Energy Commission.

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.10(b), and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power

"CPUC" means the California Public Utilities Commission.

"Decision" means CPUC Decision ("D") 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.06.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental Authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Early Termination Date" has the meaning set forth in Section 6.03(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code § 2843 and, (2) meets the requirements of 18 Code of Federal Regulations § 292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which (a) is defined and declared by the CAISO or Transmission Provider, (b) jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system, (c) requires automatic or immediate manual action to prevent or limit loss of load or generation supply, or (d) poses a threat to public safety.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that, during the entire Term, (1) satisfies the provisions of ~~AB 1613~~the Act as implemented by the CEC pursuant to Public Utilities Code Section 2843 in the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA, unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.05.

"FERC" means the Federal Energy Regulatory Commission.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Force Majeure" means any event or circumstance (that is not anticipated as of the Effective Date) to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Force Majeure does not include: (a) a failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure; (b) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility (provided, however, that failure or delay in the granting of permits, to the extent such failure or delay is not caused by action or inaction of Seller, qualifies as a Force Majeure for purposes of this Agreement); (c) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or (d) a lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forecast" means the hourly forecast of the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, net of the Site Host Load and Station Use.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

~~"Full Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff or the Buyer Tariffs, as applicable.~~

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant (as more particularly described in Section 1.02 and Exhibit G), including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO_2), nitrous oxide (N_2O) and methane (CH_4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF_6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO_2-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related

Entity of Seller, which respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO2 per MMBtu of natural gas, 0.0531 tonnes/mmbtu, times (b) the Average Higher Heating Value MPR Heat Rate in mmbtu/MWh.

"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"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 (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;

(2) Any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;

(3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

(i) Any energy, capacity, reliability or other power attributes from the Project,

(ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,

(iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

(iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit B, Section ~~6..~~6.

"Holidays" means "NERC Holidays" as defined in Exhibit B, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"Lender" means any financial institutions or successors in interest or assignees that provides development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

"Location Bonus" is described in Section 6 of Exhibit B.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy expressed in kWh, in excess of Station Use and Site Host Load and measured by the CAISO-Approved Meter(s) or Check Meter(s), (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter), as applicable, at the Generating Facility for the specified Metering Interval.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters, as applicable.

"Monthly Contract Payment" has the meaning set forth in Section 4.01(a).

"NERC" means the North American Electric Reliability Corporation.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Defaulting Party" has the meaning set forth in Section 6.03.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit B, "5. Time of Delivery Periods and Allocations Factors~~.~~" or Exhibit B(1), "4. Time of Delivery Periods" as determined pursuant to Section 1.07.

"Notice" means notices, requests, statements or payments provided in accordance with Section 7.07 and Exhibit F.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating" and "Operation" mean to provide all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit D.

"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer in accordance with Exhibit D.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person" or "Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.

"Product" means the Power Product, Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

"Project" means the Generating Facility.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that: (a) equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs; (b) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (c) preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(~~g~~e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the generating capacity of the Generating Facility that, in accordance with Public Utilities Code Section 2841(f), count toward satisfying Buyer's ~~resource adequacy~~Resource Adequacy obligations.

"Resource Adequacy ~~Resource" has the meaning set forth in CAISO Tariff.~~Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other Resource Adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be Amended or modified from time to time during the Term.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of preparing a schedule based on Seller's forecast and notifying, requesting, and confirming the CAISO-Approved Quantity with the CAISO, the electric energy delivered from the Generating Facility.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.

"SC Set-Up Fee" has the meaning set forth in Section 1.08.

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

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Simple Interest Payment" means a dollar amount calculated by multiplying the: (a) dollar amount on which the Simple Interest Payment is based; by (b) the Interest Rate; by (c) the result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02 and Exhibit G.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a lease, the term of which begins on or before the Term Start Date and extends at least through the Term End Date, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means any Person purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties pursuant to California Public Utilities Code Section 218(b).

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, including transformation losses to power such equipment and other necessary loads.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility, all in accordance with the CAISO Tariff.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit B or Exhibit B(1), as determined by Section 1.07.

"Trading Day" means the day in which Day-Ahead (as defined in the CAISO Tariff) trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-Controlled Grid.

"Web Client" has the meaning set forth in Section 2(a) of Exhibit D.

"WECC" means the Western Electricity Coordinating Council.

**** End of Exhibit A ****

EXHIBIT B

This Exhibit B establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033)~~, and such avoided cost price may be modified or updated from time to time by the CPUC, which modification(s) or update(s) shall modify Buyer's payment obligations to Seller under this Agreement, including this Exhibit B~~.

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit B.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit B.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit B.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars, using the terms defined below, as follows:

(Fixed price component + Variable price component) * (TOD Factor) * metered kWh exported during the TOD ~~period~~Period during the month

The Metered Energy per hour used for payments shall be limited to 5,000 kW times 1 hour. Additionally, once the Metered Energy delivered during any Term Year equals the As-Available Contract Capacity at 100% capacity factor applied over 8,760 hours, no further payments will be calculated or paid for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component~~ ("FPC")~~ for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
~~2011~~	~~0.02077~~
2012	~~0.02113~~0.02000
2013	~~0.02153~~0.02033
2014	~~0.02194~~0.0

Year	$/kwh
	2068
2015	~~0.02199~~0.02104
2016	~~0.02204~~0.02140
2017	~~0.02210~~0.02142
2018	~~0.02215~~0.02145
2019	~~0.02220~~0.02147
2020	~~0.02224~~0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to D. 09-12-042, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after ~~2020,~~2023, Variable O&M shall be the ~~2020~~2023 payment multiplied by 1.02, compounded for each year beyond ~~2020.~~2023.

Variable O&M	
Year	**$/kwh**
~~**2011**~~	~~0.00482~~
2012	~~0.00488~~0.00311
2013	~~0.00497~~0.00316
2014	~~0.00507~~0.00322
2015	~~0.00519~~0.00329
2016	~~0.00530~~0.00335

2017	~~0.00543~~0.00342
2018	~~0.00555~~0.00349
2019	~~0.00569~~0.00356
2020	~~0.00583~~0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

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

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

A. June – September;

B. October, November, December, January and February; and

C. March - May.

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

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

2. **Shoulder** = hours ending 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and hours ending 7 – 22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.

3. **Night** (7x8) = hours ending 1 - 6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

"NERC Holidays" mean the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year's Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the

"NERC Holiday" is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the "NERC Holiday" remains on that Saturday. Notwithstanding anything to the contrary in this paragraph, NERC Holidays shall be calculated as "Shoulder" hours for all non-"Night" hours and any remaining hours shall be calculated as "Night" hours.

TOD Factors. In accordance with all other terms of this Exhibit B, ~~the Contract Price for energy the shall be adjusted by~~ the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	~~2.20~~2.38	1.12	~~0.69~~0.59
B. Oct. – Dec.; Jan. & Feb.	~~1.06~~1.10	~~0.93~~0.94	~~0.76~~0.66
C. Mar. – May	~~1.15~~1.22	~~0.85~~0.90	~~0.64~~0.61

6. Location Bonus.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit B****

Exhibit B (1)

Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit B (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit B (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit B (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(EP-LA) \times APE + LA \times MA]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit B (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit B (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit B (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit B (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit B (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit B (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit B (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit B (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit B (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit B (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit B (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit B (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{Hour}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit B (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit B (1). The Allowed Hourly Energy is calculated as follows:

ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The As-Available Contract Capacity, as set forth in Section 1.03, in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

*** End of Exhibit B (1) ***

EXHIBIT C

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff, as applicable;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements.

   (a) 30-Day Forecast.

   No later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility, no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the Term Start Date (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center at the e-mail address or telephone number(s) listed in Exhibit F.

   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the Delivery Point and the CAISO-Controlled Grid; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit C, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit F.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit C must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change, with notification also by phone to Seller's Real Time Scheduling Desk.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

**** End of Exhibit C ****

EXHIBIT D
Outage Schedule Submittal Requirements

1. General Requirements. The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to (a) comply with the CAISO Tariff, (b) accommodate changes to their respective generation technology and organizational structure, and (c) address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements. Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

   (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client") only if web-based system is not available.

   (b) Seller shall provide the following information for each proposed planned outage: (i) Start date and time; (ii) End date and time; and (iii) Capacity online, in MW, during the planned outage in addition to the information required by the CAISO, as indicated by the Buyer-provided web-based system.

   (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.

   (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

   (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

   (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

3. Restriction on Planned Outages. During the Peak Months, Seller may schedule and utilize no more than 12 hours of outages per Peak Month, and only during the non-peak hours of the Peak Months.

**** End of Exhibit D ***

EXHIBIT E
CAISO Charges

Subject to Section 4.01(g), Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if, on or after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller in violation of this Agreement, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site Host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to curtail output, or reschedule a planned outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

~~4.~~5. Buyer as Seller~~'~~’s Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the ~~resource adequacy~~Resource Adequacy compliance year, as defined by CAISO Tariff, then any such charges or payments shall be offset and the net value shall be entered into Seller~~'~~’s Account for the applicable month pursuant to Section 3.21.

**** End of Exhibit E ****

EXHIBIT F

Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	

Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit F ****

<u>EXHIBIT G</u>

Generating Facility and Site Description

1. <u>Generating Facility Description</u>.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. <u>Site Description</u>.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

*** *End of Exhibit G* ***

(End of Simplified Contract for Eligible CHP)

ATTACHMENT 1
Advice 3970-E

Cal P.U.C. Sheet No.	Title of Sheet	Cancelling Cal P.U.C. Sheet No.
30808-E	ELECTRIC PRELIMINARY STATEMENT PART CP ENERGY RESOURCE RECOVERY ACCOUNT Sheet 4	30257-E
30809-E	ELECTRIC SCHEDULE E-CHP COMBINED HEAT AND POWER PPA Sheet 1	
30810-E	ELECTRIC SCHEDULE E-CHP COMBINED HEAT AND POWER PPA Sheet 2	
30811-E	ELECTRIC SCHEDULE E-CHP COMBINED HEAT AND POWER PPA Sheet 3	
30812-E	ELECTRIC SCHEDULE E-CHP COMBINED HEAT AND POWER PPA Sheet 4	
30813-E	ELECTRIC SCHEDULE E-CHP COMBINED HEAT AND POWER PPA Sheet 5	
30814-E	ELECTRIC SCHEDULE E-CHPS COMBINED HEAT AND POWER SIMPLIFIED PPA Sheet 1	
30815-E	ELECTRIC SCHEDULE E-CHPS COMBINED HEAT AND POWER SIMPLIFIED PPA Sheet 2	
30816-E	ELECTRIC SCHEDULE E-CHPS COMBINED HEAT AND POWER SIMPLIFIED PPA Sheet 3	
30817-E	ELECTRIC SCHEDULE E-CHPS COMBINED HEAT AND POWER SIMPLIFIED PPA Sheet 4	

ATTACHMENT 1
Advice 3970-E

Cal P.U.C. Sheet No.	Title of Sheet	Cancelling Cal P.U.C. Sheet No.
30818-E	ELECTRIC SAMPLE FORM 79-1120 STANDARD CONTRACT FOR ELIGIBLE CHP FACILITIES Sheet 1	
30819-E	ELECTRIC SAMPLE FORM 79-1121 STANDARD CONTRACT FOR ELIGIBLE CHP FACILITIES WITH NET OUTPUT NOT GREATER THAN 5 MW Sheet 1	
30820-E	ELECTRIC TABLE OF CONTENTS Sheet 1	30768-E
30821-E	ELECTRIC TABLE OF CONTENTS RATE SCHEDULES Sheet 6	30700-E
30822-E	ELECTRIC TABLE OF CONTENTS PRELIMINARY STATEMENT Sheet 14	30644-E
30823-E	ELECTRIC TABLE OF CONTENTS SAMPLE FORMS Sheet 30	30748-E

ELECTRIC PRELIMINARY STATEMENT PART CP
ENERGY RESOURCE RECOVERY ACCOUNT

Sheet 4

CP. ENERGY RESOURCE RECOVERY ACCOUNT (ERRA) (Cont'd.)

5. ACCOUNTING PROCEDURES: (Cont'd.)

x) A debit entry equal to incentive payments related to authorized bilateral demand response agreements;

y) A monthly entry equal to the interest on the monthly nuclear fuel inventory at the beginning of the month and one-half the balance of the current month's activity, multiplied at a rate equal to one-twelfth of the rate on three-month Commercial Paper for the previous month, as reported in the Federal Reserve Statistical Release, H.15 or its successor;

z) A credit or debit entry equal to the revenues or costs related to CRRs;

aa) A debit entry equal to the incremental IE costs through 2010 related to RFOs seeking terms of less than five years. After 2010, a debit entry equal to all IE costs related to all RFOs;

ab) A debit entry equal to actual wave energy project (WaveConnect) expenditures;

ac) A credit or debit entry equal to the revenues or costs related to convergence bidding;

ad) A debit or credit entry equal to the cost or revenue associated with combined heat and power (T)
systems authorized in D.09-12-042, D.10-12-055 and D.11-04-033, and defined in PG&E's I
tariffs E-CHP and E-CHPS; and (T)

ae) A monthly entry equal to interest on the average balance in the account at the beginning of the month and the balance after the above entries, at a rate equal to one-twelfth of the rate on three-month Commercial Paper for the previous month, as reported in the Federal Reserve Statistical Release, H.15 or its successor; and (T)

af) A debit entry equal to the year-end balance transferred from the Long-Term Procurement Plan Technical Assistance Memorandum Account (LTAMA). (T)

ELECTRIC SCHEDULE E-CHP
COMBINED HEAT AND POWER PPA

Sheet 1 (N) (N)

APPLICABILITY: This Schedule provides a power purchase agreement (PPA) for combined heat and power systems with a nameplate electrical capacity rating of less than or equal to twenty (20) megawatts (MW). This Schedule is optional for customers having a combined heat and power system that produces both electricity and thermal energy for heating or cooling from a single fuel input if the customer meets the criteria for Eligible Customer-Generators and the requirements contained in this Schedule. Pursuant to Public Utilities Code (PUC) Section 2840.2(b) and other applicable laws, an Eligible Customer-Generator means a customer that meets all of the following requirements: (N)

(1) Uses a combined heat and power system with a nameplate electrical capacity rating of less than or equal to twenty (20) MW, that first commences operation on or after January 1, 2008.

(2) Is a Qualifying Facility pursuant to the Public Utility Regulatory Policies Act (PURPA) set forth at 16 USC §824 a-3, unless the customer is a public agency described in 16 USC §824(f).

(3) Uses a time-of-use meter capable of registering the flow of electricity in two directions.

TERRITORY: The entire territory served.

RATES: The customer's otherwise applicable tariff schedules (OAS) shall apply to electric service to the customer.

PG&E shall purchase the net power output of the Eligible Customer-Generator in accordance with the terms set forth in the Standard Contract for Eligible CHP Facilities Power Purchase and Sale Agreement (Form No. 79-1120).

Participating Eligible Customer-Generators will receive an all-in price in $/kWh, based on a proxy market price for a new combined cycle gas turbine (CCGT) with adjustments for time of delivery (TOD):

(1) The TOD factors and periods shall be based on the TOD factors from the most recent MPR. The TOD factors in place at the time of contract execution shall apply for the entire contract duration.

(2) The Fixed Component for all TOD periods shall be the amount applicable to the year of the term start date.

(N)

(Continued)

ELECTRIC SCHEDULE E-CHP Sheet 2 (N)
COMBINED HEAT AND POWER PPA (N)

RATES: (Cont'd.)	Fixed Component ($/kWh)	= Fixed Component of the most current MPR in $/kWh based on 10-year contract. (N)
	Variable Component ($/kWh)	= [(Monthly bidweek + Intrastate gas transportation rate)* Heat Rate]/1,000,000 + Variable Overhead and Maintenance (O&M)

Monthly bidweek ($/MMBtu) = monthly bidweek gas price at PG&E Citygate (monthly bidweek gas prices shall be calculated as the average of three bidweek gas indices as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly)

Intrastate gas transportation rate ($/MMBtu) = the sum of (a) the Gas Transportation Service to Electric Generation rate as it applies to "All Other Customers", as published in PG&E's Gas Rate Schedule G-EG, and (b) the Customer-Procured Gas Franchise Fee Surcharge rate, as published in PG&E's Gas Rate Schedule G-SUR

Heat Rate = 6,924 Btu/kWh (based on average Heat Rate from 2011 MPR)

Variable O&M ($/kWh) = based on variable O&M adder from the most current MPR

	Final Price ($/kWh)	= [(Fixed Component + Variable Component) * TOD factor] * 1.1 Location Bonus (if applicable)[1]

[1] The Location Bonus shall apply to Eligible Customer-Generators interconnected in areas with local Resource Adequacy (RA) requirements during the year of contract execution. (N)

(Continued)

ELECTRIC SCHEDULE E-CHP
COMBINED HEAT AND POWER PPA

(N)
(N)

SPECIAL CONDITIONS:

1. CONTRACT: Eligible Customer-Generators wishing to participate in this Schedule must execute and comply with the requirements of the Standard Contract for Eligible CHP Facilities Power Purchase and Sale Agreement (Standard Contract) (Form 79-1120). (N)

2. CHP CAPACITY: A nameplate electrical capacity rating for the CHP generating equipment of less than or equal to twenty (20) megawatts is required for participation in this Schedule.

3. TERM: Participating Eligible Customer-Generators must specify the contract term in the Standard Contract. The term shall be no less than one (1) year and no more than ten (10) years.

4. CEC CERTIFICATION: Eligible Customer-Generators wishing to participate in this Schedule must obtain and maintain certification as a Qualifying Combined Heat and Power (CHP) System pursuant to the California Energy Commission (CEC) Guidelines For Certification of Combined Heat and Power Systems Pursuant to the Waste Heat and Carbon Emissions Reduction Act, Public Utilities Code Section 2840 et seq.

5. QUALIFYING FACILITY: Eligible Customer-Generators wishing to participate in this Schedule must comply during the entire contract term with the provisions of 18 CFR §292.201, et seq., which sets forth the criteria for and manner of becoming a qualifying facility under the Public Utilities Regulatory Policies Act of 1978, 16 USC §824a-3 et seq unless the Eligible Customer Generators is a public agency exempt from FERC jurisdiction under 16 U.S.C. §824(f).

6. RESOURCE ADEQUACY: Participating Eligible Customer-Generators are required to meet CPUC and California Independent System Operator (CAISO) resource adequacy requirements. If such requirements could interfere with the Participating Eligible Customer-Generator's operations, they may be challenged but shall remain in effect unless stayed by the relevant governmental agency pending resolution of the challenge. A Participating Eligible Customer-Generator may execute a Standard Contract pending fulfillment of resource adequacy requirements. If the generating facility is interconnected through PG&E's Wholesale Distribution Access Tariff (WDAT) or the CAISO tariff and is able to begin energy deliveries before meeting resource adequacy requirements, the Participating Eligible Customer-Generator will receive payment for energy and as-available capacity deliveries pursuant to the "Standard Contract for Qualifying Facilities with a Power Rating that is Less than or Equal to 20 MW" as provided in the QF/CHP Settlement, Attachment A, Exhibit 6" (PURPA PPA). Following the outcome of the Interconnection and Resource Adequacy rulemaking proceedings before the CPUC (R.11-09-001 and R.09-10-032), a deliverability study may or may not be required for all AB 1613 resources. The CPUC may require appropriate amendments to the Standard Contract to address this issue. The Participating Eligible Customer-Generator must agree to comply with any such CPUC requirement. (N)

.

(Continued)

ELECTRIC SCHEDULE E-CHP
COMBINED HEAT AND POWER PPA

Sheet 4 (N)
(N)

SPECIAL CONDITIONS: (Cont'd.)

7. INTERCONNECTION: Participating Eligible Customer-Generators shall be responsible at their sole cost to obtain and maintain all distribution, transmission, and interconnection rights and agreements (including all Governmental Authority approvals) in accordance with the Standard Contract. (N)

8. METERING: Participating Eligible Customer-Generators shall be responsible at their sole cost to install, maintain and test all California Independent System Operator (CAISO) approved meters in accordance with the Standard Contract. PG&E may at its sole cost furnish and install one check meter in accordance with the Standard Contract.

9. PAYMENT LIMITATION: Once 120% of the Expected Term year Net Energy Production is achieved, no further payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

10. ELECTRIC ENERGY, CAPACITY, AND GREEN ATTRIBUTES: Participating Eligible Customer-Generators shall, in accordance with the terms and limitations of the Standard Contract, provide and convey to PG&E electric energy produced by the eligible CHP facilities net of all station use and any and all site host load. Such conveyance shall include all related capacity benefits and Green Attributes.

11. CREDIT AND COLLATERAL REQUIREMENTS: Participating Eligible Customer-Generators must comply with the Credit and Collateral Requirements contained in the Standard Contract and Exhibit D thereof, including requirements for development security and performance assurance.

12. GREENHOUSE GAS COMPLIANCE COSTS: PG&E shall be responsible for direct greenhouse gas (GHG) compliance costs attributable to the Eligible Customer-Generator CHP system for GHG emissions associated with the power purchased by PG&E pursuant to the Standard Contract up to a cap based on the average heat rate in the most recent MPR. For GHG Allowances in Cap and Trade, Participating Eligible Customer-Generators will choose upon contract execution whether PG&E will provide Allowances or provide a payment for Allowances up to a pre-determined index. This provision shall not apply in any period during which the Participating Eligible Customer-Generator is receiving payments based on the PURPA PPA pursuant to Special Condition 6, "Resource Adequacy." (N)

(Continued)

ELECTRIC SCHEDULE E-CHP Sheet 5 (N)
COMBINED HEAT AND POWER PPA (N)

SPECIAL CONDITIONS: (Cont'd.)

13. TARIFFS: All applicable rates, rules and tariffs shall remain in full effect for participating Eligible Customer-Generators. In the event of a conflict, the terms and conditions provided in this Schedule and the Standard Contract shall supersede those set forth in the standard CPUC-approved tariffs. In the event of a conflict between this Schedule and the more-detailed provisions of the Standard Contract, the provisions of the Standard Contract shall prevail. (N)

14. LIMITATION ON PARTICIPATION: There is no cap on participation in this Schedule. However, in accordance with California Public Utilities Commission (CPUC) D.09-12-042, PG&E may file an application seeking CPUC authorization to establish a maximum kilowatt-hour limitation on the amount of excess electricity PG&E must purchase under this Schedule. (N)

ELECTRIC SCHEDULE E-CHPS

Sheet 1 (N)

COMBINED HEAT AND POWER SIMPLIFIED PPA (N)

APPLICABILITY: This Schedule provides a power purchase agreement for combined heat and power systems with an as-available contract capacity rating of less than or equal to five (5) megawatts (MW) and a nameplate electrical capacity rating of less than or equal to twenty (20) MW. This Schedule is optional for customers having a combined heat and power system that produces both electricity and thermal energy for heating or cooling from a single fuel input if the customer meets the criteria for Eligible Customer-Generator and the requirements contained in this Schedule. Pursuant to Public Utilities Code (PUC) Section 2840.2(b) and other applicable laws, an Eligible Customer-Generator means a customer that meets all of the following requirements: (N)

(1) Uses a combined heat and power system with a nameplate electrical capacity rating of less than or equal to twenty (20) MW, that first commences operation on or after January 1, 2008.

(2) The combined heat and power system exports no more than 5 MW.

(3) Is a Qualifying Facility pursuant to the Public Utility Regulatory Policies Act (PURPA) set forth at 16 USC §824 a-3, unless the customer is a public agency described in 16 USC §824(f).

(4) Uses a time-of-use meter capable of registering the flow of electricity in two directions.

TERRITORY: The entire territory served.

RATES: The customer's otherwise applicable tariff schedules (OAS) shall apply to electric service to the customer.

PG&E shall purchase the net power output of the Eligible Customer-Generator in accordance with the terms set forth in the Standard Contract for Eligible CHP Facilities with Net Output Not Greater Than 5 MW Power Purchase and Sale Agreement (Form No. 79-1121).

Participating Eligible Customer-Generators will receive an all-in price in $/kWh, based on a proxy market price for a new combined cycle gas turbine (CCGT) with adjustments for time of delivery (TOD):

(1) The TOD factors and periods shall be the TOD factors from the most recent MPR. The TOD factors in place at the time of contract execution shall apply for the entire contract duration.

(2) The Fixed Component for all TOD periods shall be the amount applicable to the year of the term start date.

(N)

(Continued)

ELECTRIC SCHEDULE E-CHPS Sheet 2 (N)
COMBINED HEAT AND POWER SIMPLIFIED PPA (N)

RATES: (Cont'd.)	Fixed Component ($/kWh)	= Fixed Component of the most current MPR in $/kWh based on 10-year contract. (N)
	Variable Component ($/kWh)	= [(Monthly bidweek + Intrastate gas transportation rate)* Heat Rate]/1,000,000 + Variable Overhead and Maintenance (O&M)
		Monthly bidweek ($/MMBtu) = monthly bidweek gas price at PG&E Citygate (monthly bidweek gas prices shall be calculated as the average of three bidweek gas indices as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly)
		Intrastate gas transportation rate ($/MMBtu) = the sum of (a) the Gas Transportation Service to Electric Generation rate as it applies to "All Other Customers", as published in PG&E's Gas Rate Schedule G-EG, and (b) the Customer-Procured Gas Franchise Fee Surcharge rate, as published in PG&E's Gas Rate Schedule G-SUR
		Heat Rate = 6,924 Btu/kWh (based on average Heat Rate from 2011 MPR)
		Variable O&M ($/kWh) = based on variable O&M adder from the most current MPR
	Final Price ($/kWh)	= [(Fixed Component + Variable Component) * TOD factor] * 1.1 Location Bonus (if applicable)[1]

[1] The Location Bonus shall apply to Eligible Customer-Generators interconnected in areas with local Resource Adequacy (RA) requirements during the year of contract execution. (N)

(Continued)

ELECTRIC SCHEDULE E-CHPS
COMBINED HEAT AND POWER SIMPLIFIED PPA

Sheet 3 (N)
(N)

SPECIAL CONDITIONS:

1. CONTRACT: Eligible Customer-Generators wishing to participate in this Schedule must execute and comply with the requirements of the Standard Contract for Eligible CHP Facilities with Net Output Not Greater Than 5 MW Power Purchase and Sale Agreement (Standard Contract) (Form 79-1121). (N)

2. CHP CAPACITY: An as-available contract capacity rating of less than or equal to five (5) megawatts and a nameplate electrical capacity rating for the CHP generating equipment of less than or equal to twenty (20) megawatts is required for participation in this Schedule.

3. TERM: Participating Eligible Customer-Generators must specify the contract term in the Standard Contract. The term shall be no less than one (1) year and no more than ten (10) years.

4. CEC CERTIFICATION: Eligible Customer-Generators wishing to participate in this Schedule must obtain and maintain certification as a Qualifying Combined Heat and Power (CHP) System pursuant to the California Energy Commission (CEC) Guidelines For Certification of Combined Heat and Power Systems Pursuant to the Waste Heat and Carbon Emissions Reduction Act, Public Utilities Code Section 2840 et seq.

5. QUALIFYING FACILITY: Eligible Customer Generators wishing to participate in this Schedule must during the entire contract term comply with the provisions of 18 CFR §292.201, et seq., which applies the criteria for and manner of becoming a qualifying facility under PURPA, unless the Eligible Customer Generator is a public agency exempt from FERC jurisdiction under 16 U.S.C. §824(f).

6. RESOURCE ADEQUACY: Participating Eligible Customer-Generators are required to meet CPUC and California Independent System Operator (CAISO) resource adequacy requirements. If such requirements could interfere with the Participating Eligible Customer-Generator's operations, they may be challenged but shall remain in effect unless stayed by the relevant governmental agency pending resolution of the challenge. A Participating Eligible Customer-Generator may execute a Standard Contract pending fulfillment of resource adequacy requirements. If the generating facility is interconnected through PG&E's Wholesale Distribution Access Tariff (WDAT) or the CAISO tariff and is able to begin energy deliveries before meeting resource adequacy requirements, the Participating Eligible Customer-Generator will receive payment for energy and as-available capacity deliveries pursuant to the "Standard Contract for Qualifying Facilities with a Power Rating that is Less than or Equal to 20 MW" as provided in the QF/CHP Settlement, Attachment A, Exhibit 6" (PURPA PPA). Following the outcome of the Interconnection and Resource Adequacy rulemaking proceedings before the CPUC (R.11-09-001 and R.09-10-032), a deliverability study may or may not be required for all AB 1613 resources. The CPUC may require appropriate amendments to the Standard Contract to address this issue. The Participating Eligible Customer-Generator must agree to comply with any such CPUC requirement. (N)

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(Continued)

ELECTRIC SCHEDULE E-CHPS
COMBINED HEAT AND POWER SIMPLIFIED PPA

Sheet 4 (N)
(N)

SPECIAL CONDITIONS: (Cont'd.)

7. INTERCONNECTION: Participating Eligible Customer-Generators shall be responsible at their sole cost to obtain and maintain all distribution, transmission, and interconnection rights and agreements (including all Governmental Authority approvals) in accordance with the Standard Contract. (N)

8. METERING: Participating Eligible Customer-Generators shall be responsible at their sole cost to install, maintain and test all California Independent System Operator (CAISO) approved meters in accordance with the Standard Contract. PG&E may at its sole cost furnish and install one check meter in accordance with the Standard Contract.

9. PAYMENT LIMITERS: Hourly payment shall not exceed compensation for more than 5,000 kW and payment for Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.

10. ELECTRIC ENERGY, CAPACITY, AND GREEN ATTRIBUTES: Participating Eligible Customer-Generators shall, in accordance with the terms and limitations of the Standard Contract, provide and convey to PG&E electric energy produced by the eligible CHP facilities net of all station use and any and all site host load. Such conveyance shall include all related capacity benefits and Green Attributes.

11. GREENHOUSE GAS COMPLIANCE COSTS: PG&E shall be responsible for direct greenhouse gas (GHG) compliance costs attributable to the Eligible Customer-Generator CHP system for GHG emissions associated with the power purchased by PG&E pursuant to the Standard Contract. PG&E shall reimburse the Eligible Customer-Generator for actual direct GHG compliance costs in accordance with the terms and limitations contained in the Standard Contract. This provision shall not apply in any period during which the Participating Eligible Customer-Generator is receiving payments based on the PURPA PPA pursuant to Special Condition 6, "Resource Adequacy."

12. TARIFFS: All applicable rates, rules and tariffs shall remain in full effect for participating Eligible Customer-Generators. In the event of a conflict, the terms and conditions provided in this Schedule and the Standard Contract shall supersede those set forth in the standard CPUC-approved tariffs. In the event of a conflict between this Schedule and the more-detailed provisions of the Standard Contract, the provisions of the Standard Contract shall prevail.

13. LIMITATION ON PARTICIPATION: There is no cap on participation in this Schedule. However, in accordance with California Public Utilities Commission (CPUC) D.09-12-042, PG&E may file an application seeking CPUC authorization to establish a maximum kilowatt-hour limitation on the amount of excess electricity PG&E must purchase under this Schedule. (N)

ELECTRIC SAMPLE FORM 79-1120 Sheet 1 (N)
STANDARD CONTRACT FOR ELIGIBLE CHP FACILITIES (N)

PLEASE REFER TO ATTACHED
SAMPLE FORM

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Standard Contract for Eligible CHP Facilities

TERMS THAT ARE BOXED AND SHADED IN LIGHT YELLOW AND/OR BRACKETED AND IN BLUE FONT ARE EITHER BUYER COMMENTS OR GENERATING FACILITY-TYPE SPECIFIC COMMENTS THAT SHOULD BE REMOVED, ACCEPTED OR COMPLETED, AS APPLICABLE.

TABLE OF CONTENTS

LIST OF EXHIBITS

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

This Power Purchase and Sale Agreement by and between **[Buyer's name]**, a California corporation ("Buyer"), and **[Seller's name]**, a [Seller's form of business entity and state of registration] ("Seller"), together with the exhibits, attachments, and any applicable referenced collateral agreement between the Parties (collectively, this "Agreement"), is made, effective and binding as of [Date of execution] (the "Effective Date").

Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement the provisions of Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill Buyer's obligations under the Act and CPUC Decisions issued in R. 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. SPECIAL CONDITIONS

{Buyer Comment: If the Term is greater than or equal to five years, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in CPUC D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends [Number of months] months after the Term Start Date (the "Term End Date").

(a) The Term Start Date must be on the first day of a calendar month.

(b) Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least one year before such Term Start Date; provided, however, that notwithstanding any change to the Term Start Date, the Term may not exceed [Number of months in the Term] months; ***provided further***, that if the Generating Facility is (i) a New Eligible CHP Facility, the Term Start Date must occur within 60 months of the Effective Date, or (ii) an Existing Eligible CHP Facility, the Term Start Date must occur within 24 months of the Effective Date, in each case subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit D.

(c) The Term shall be no less than one (1) year and no more than ten (10) years. Seller designates the Term Start Date and the Term End Date.

1.02 Generating Facility.

(a) Name. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility]. To be eligible for this Agreement, the Generating Facility must be an Eligible CHP Facility during the entire Term, (1) satisfies the provisions of AB 1613, as implemented by the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA, unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

(b) Location. The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B. To be eligible for this Agreement, the Generating Facility must be located in Buyer's electric service territory.

(c) Contract Capacity. The As-Available Contract Capacity is [__] kW. The Power Rating of the Generating Facility must be less than or equal to 20 MW. If the Generating Facility has more than one Generating Unit, the Power Rating of all such Generating Units must be less than or equal to 20MW.

(d) Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The Expected Term Year Energy Production may be revised based on changes in the Site Host Load or the Site Host thermal requirements; provided, however, that such change must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on changes in the Site Host Load or the Site Host thermal requirements. Such certification must include all data relied on to support the revised Expected Term Year Energy Production.

{Buyer Comment: Expected Term Year Energy Production cannot exceed As-Available Contract Capacity at 100% capacity factor applied over the Term Year.}

(e) Site Host Load. The Site Host Load is expected to equal, on average, [___] kW annually. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year.

1.03 Delivery Point. The point of delivery of the Power Product is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO-Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point are determined as part of the interconnection process.

1.04 Planned Outages. All Planned Outages must be scheduled by Seller in accordance with the procedures set forth in Exhibit N. Seller shall make reasonable efforts not to schedule a Planned Outage during the Peak Months. Should it become necessary for Seller to schedule a Planned Outage during the Peak Months, Seller shall only schedule such Planned Outage during the non-peak hours of the Peak Months. In no event may Seller schedule or utilize a Planned Outage that is more than 12 non-peak hours per Peak Month.

1.05 Power Product Prices.

(a) The Monthly Contract Payment for the Power Product shall be calculated in accordance with Exhibit C.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit C (1).

(c) A Generating Facility subject to paragraph 1.05(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.05(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit C.

1.06 Credit and Collateral Requirements.

(a) Seller shall post and thereafter maintain the Development Security in accordance with Section 4(b) of Exhibit D.

(b) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 2(a) of Exhibit D, in an amount equal to 5% of expected revenue of the Generating Facility under this Agreement (the "Performance Assurance Amount"). The initial amount of Performance Assurance equals $[___]. The Performance Assurance Amount will be revised upon any change to the Expected Term Year Energy Production.

(c) Seller shall comply with all of the provisions of Exhibit D.

(d) Seller's Guarantor, if any, is [Name of Guarantor].

(e) Guarantor shall guarantee $[Performance Assurance Amount x 1.25].

(f) The Cross Default Amount, if any, equals $[___].

1.07 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement.

1.08 GHG Emissions Allowances. Seller elects one of the following, provided, however, that this Section 1.08 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit C (1): [____][1]

(a) Seller shall manage its own GHG Emissions Allowances and request payment from Buyer in accordance with Section 3.03.

(b) PG&E shall purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's adoption of the necessary procedure. Until such time, Buyer will reimburse Seller per section (a), above.

1.09 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(c)(xvi), due to CEC decertification under Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be

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[1] See D.10-12-055 ordering paragraph 5.

paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

**** End of Article One ****

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS BEFORE THE TERM START DATE; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Seller shall satisfy each of the following obligations before the Term Start Date:

(a) The Generating Facility is or becomes an Eligible CHP Facility;

(b) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:

(i) Operate the Generating Facility;

(ii) Deliver electric energy from the Generating Facility to the Delivery Point; and

(iii) Have Buyer Schedule the electric energy produced by the Generating Facility with the CAISO;

(c) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in Section 3.09(a);

(d) Seller furnishes to Buyer the insurance documents required under Section 9.10;

(e) Seller enters into all agreements required by the CAISO Tariff;

(f) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;

(g) Seller furnishes to Buyer the documents required under Section 3.06;

(h) Seller has posted with Buyer the Performance Assurance Amount;

(i) If the Term is equal to or greater than five years, the Generating Facility meets the GHG EPS and, at any time upon Buyer's request, Seller provides to the CPUC documentation evidencing its compliance with the GHG EPS;

(j) Seller shall have taken all steps to ensure that Buyer is authorized as Scheduling Coordinator by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO; and

(k) Seller shall provide instructions to the CAISO granting authorizations or other documents sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR as required to implement the Agreement.

2.02 Termination Rights of the Parties.

(a) Termination Right of Seller. Seller has the right to terminate this Agreement if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation.

(b) Event of Default. Except as provided in Section 1.09, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(b), "control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.

(c) End of Term. This Agreement automatically terminates at midnight of the Term End Date.

2.03 Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement, including:

(a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;

(b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;

(c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within thirty (30) days of Seller's receipt of such invoice;

(d) The obligation to make a Termination Payment, as set forth in Section 6.03;

(e) The indemnity obligations, as set forth in Section 9.03;

(f) The obligation of confidentiality, as set forth in Section 9.09;

(g) The right to pursue remedies under Section 6.02(c);

(h) The limitation of damages under Article Seven; and

(i) The obligation of Seller to post Performance Assurance in accordance with Exhibit D.

**** End of Article Two ****

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Power Product and Related Products; Retained Benefits.

(a) Power Product. During the Term, Seller shall provide and convey the Power Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Power Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Power Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Power Product.

(b) Green Attributes. Seller hereby agrees to provide and convey all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, 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.

(c) Related Products. Seller hereby agrees to provide and convey to Buyer all Related Products during the Term. Seller represents and warrants that Seller holds the rights to all Related Products and Seller agrees to convey and hereby conveys all such Related Products to the Buyer. Buyer shall have the exclusive right to the Related Products and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Related Products purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of such Related Products.

(d) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:

(i) Cooperating with the Governmental Authority responsible for Resource Adequacy administration to certify the Generating Facility for Resource Adequacy purposes;

(ii) Testing the Generating Facility as may be required to certify the Generating Facility for Resource Adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties; and

(iii) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in the Western Renewable Energy Generation Information System or other process recognized under Applicable Laws.

(e) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products.

Nothing in this Agreement restricts Seller's ability to use, provide and convey any energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term.

{Buyer Comment: Insert this sentence only if Seller has a FERC jurisdictional interconnection agreement.}

Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Power Product and the Related Products to any Person other than Buyer (unless the FERC determines that a party holding a state jurisdictional interconnection agreement may sell Related Products to a Person other than Buyer).

{Buyer Comment: Insert this sentence if Seller does not have a FERC jurisdictional interconnection agreement.}

3.02 Resource Adequacy Rulings. During the Term, Seller shall grant, pledge, assign and otherwise commit to Buyer the generating capacity of the Generating Facility associated with the Related Products in order for Buyer to use in meeting its Resource Adequacy obligations under any Resource Adequacy Ruling. Seller:

(a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;

(b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and

(c) Shall take all reasonable action, including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings, and execute all documents that are reasonable and necessary to effect the use of the generating capacity of the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

(d) Shall comply with CPUC and CAISO requirements to count towards Resource Adequacy; *provided, however*,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(e) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 <u>GHG Compliance Costs</u>.

(a) <u>Direct GHG Compliance Costs</u>. During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of reasonable documentation, in form and substance acceptable to Buyer, establishing that:

(i) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product;

(ii) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(iii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap based on the actual delivered Power Product.

(iv) The Generating Facility's GHG emissions has been allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Emissions Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG emissions allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances;

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.08, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.08, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit C (1).

3.04 Site Control.

(a) Within sixty (60) days of the Effective Date and at all times during the Term, Seller shall have Site Control and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.

(b) If the Generating Facility is a New Eligible CHP Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

3.05 Permits. Seller shall obtain and maintain any and all Permits necessary for the Operation of the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.06 Transmission.

(a) Interconnection Studies. Upon Buyer's request, Seller shall provide to Buyer true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is twenty-four (24) months before the Effective Date.

(b) Seller's Responsibility. Seller shall, at its sole cost, obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

Except as otherwise provided in its interconnection agreement, the CAISO Tariff, or the Transmission Provider's tariff, rules or regulations, Seller shall pay all Transmission Provider charges or other charges directly caused by, associated with, or allocated to the following:

(i) All required Interconnection Studies, facilities upgrades, and agreements;

(ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;

(iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and

(iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.

(c) Acknowledgement. The Parties acknowledge and agree that any other agreement between Seller and Buyer, including any interconnection agreement, is separate and apart from this Agreement and does not modify or add to the Parties' obligations under this Agreement, and that any Party's breach under such other agreement does not excuse such Party's nonperformance under this Agreement, except to the extent that such breach constitutes a Force Majeure under this Agreement.

3.07 CAISO Relationship. Seller shall comply with the applicable requirements of the CAISO Tariff, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

(a) If the Generating Facility is PIRP-eligible, then the Generating Facility shall be certified as a PIRP resource by the CAISO.

3.08 Generating Facility Modifications.

(a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.

(b) Seller shall provide thirty (30) days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:

(i) Energy output by five percent (5%) of Expected Term Year Energy Production; or,

(ii) The type of Primary Fuel consumed by the Generating Facility.

(c) Seller acknowledges that nothing in this Section 3.08 excuses Seller from any requirements of the CAISO's interconnection process, or any other applicable interconnection process.

3.09 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one or more Check Meters, as applicable, on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. More than one Check Meter may be necessary if there is more than one CAISO-Approved Meter. The Check Meter shall be interconnected with Buyer's communication network to permit:

(i) Periodic, remote collection of revenue quality meter data; and

(ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.10.

Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal shall be broken only by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every thirty-six (36) months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes.

(i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.

(ii) If the deviation between the CAISO-Approved Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.

(iii) Each Party shall bear its own costs for any meter check or recertification.

(iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.

(v) For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

(d) Multiple Points of Metering at a Single Customer Site. Notwithstanding any other provision of this Agreement, Seller, at its sole expense and with the consent of Buyer and in compliance with the tariffs, rules and regulations of Buyer and the CAISO (including the CAISO Tariff), may establish for the Generating Facility more than a single point of metering at the number of locations, at a single customer site, that the Generating Facility interconnects with the CAISO Controlled Grid or Buyer's electrical system. The metered delivery of the Power Product pursuant to this Agreement will be determined as the meter readings for all such metering netted on an individual settlement interval basis.

3.10 Telemetry System. Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff.

3.11 Provision of Information.

(a) Upon Buyer's reasonable request by written Notice, Seller shall provide to Buyer (to the extent not already in Buyer's possession) within a commercially reasonable amount of time and subject to Section 9.09:

(i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;

(ii) Any Permits concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;

(iii) Each of the following engineering documents for the Generating Facility:

1) Site plan drawings;

2) Electrical one-line diagrams;

3) Control and data acquisition details and configuration documents;

4) Major electrical equipment specifications;

5) Process flow diagrams;

6) Piping and instrumentation diagrams;

7) General arrangement drawings; and

8) Aerial photographs of the Site, if any;

(iv) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer; and

(v) Any currently operative filings, rulings, orders or other pleadings or papers concerning the qualification of the Generating Facility as an Eligible CHP Facility.

(b) If applicable and subject to Section 9.09, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.

(c) Subject to Section 9.09 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Progress Reporting. If the Generating Facility is a New Eligible CHP Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule. No later than the 10th day of each month until the Term Start Date, Seller shall, in accordance with Exhibit F, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule. Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (and the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Operation and Record Keeping. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the Forecasting requirements, as set forth in Exhibit G;

(c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit G;

(d) Pay all CAISO Charges, as set forth in Exhibit H;

(e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit I;

(f) Comply with the Planned Outage scheduling procedures, as set forth in Section 1.04;

(g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit N;

(h) Use reasonable efforts to comply with CAISO orders for delivery of the Power Product during an Emergency;

(i) Use reasonable efforts to reschedule any Planned Outage that occurs during an Emergency;

(j) Keep all Operating records required of a CHP Eligible Facility by any applicable CPUC order, as well as any additional information that may be required of a CHP Eligible Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;

(k) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within twenty (20) days of a request by Notice from Buyer, including:

(i) Real and reactive power production;

(ii) Changes in Operating status;

(iii) Protective apparatus operations; and

(iv) Any unusual conditions found during inspections.

(l) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;

(m) Pay all Scheduling Fees, as set forth in Exhibit E;

(n) Not participate in the CAISO Station Power Protocol;

(o) If applicable, register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register pursuant to the NERC Registration Criteria;

(p) If applicable, maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with the NERC Reliability Standards applicable to protection systems for electric generators if Generator Owner or Generator Operator is required to maintain such documentation under the NERC Reliability Standards; and

(q) Maintain data to demonstrate compliance with the Qualifying Facility efficiency monitoring program adopted by Decision ("D.")10-12-035;

(r) At least thirty (30) days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator.

3.15 Power Product Curtailments at Transmission Provider's or CAISO's Request.

(a) Seller shall promptly curtail the production of the Power Product upon receipt of a curtailment notice or instruction from the Transmission Provider or the CAISO (which may be communicated by Buyer), which notice shall only be provided when it reasonably believes that curtailment of the Power Product is required to comply with (i) the

Transmission Provider's maintenance requirements and operating orders, (ii) a CAISO Declared Over-Generation Condition, or (iii) an Emergency.

(b) Notwithstanding Section 3.14(a), except as may be required in order to respond to any Emergency, Buyer shall (i) use reasonable efforts to coordinate the Transmission Provider's curtailment needs with Seller to the extent Buyer can influence such needs, or (ii) request that the Transmission Provider and the CAISO limit the curtailment duration.

{Buyer Comment: This Section is applicable if Seller does not execute a FERC jurisdictional interconnection agreement. If this Section is deleted, replace with "[Intentionally omitted]".}

3.16 Report of Lost Output. To the extent the conditions set forth in Sections 3.16(a) through (d) occur, Seller shall prepare and provide to Buyer, by the fifth (5th) Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Forecast due to:

(a) Planned Outages;

(b) CAISO or Transmission Provider-ordered curtailments;

(c) Force Majeure; or

(d) Forced Outages.

3.17 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer:

(i) Subject to Section 9.09, a completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit O, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and,

(ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.18 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one (1) Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to:

(a) Interconnect with the Transmission Provider's electric system;

(b) Transmit and deliver electric energy to the Delivery Point; or

(c) Own and operate any CAISO-Approved Meter.

3.19 Buyer's Access Rights. Upon providing at least five (5) Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to escorted access to the Generating Facility during regular business hours for:

(a) Any purpose reasonably connected with this Agreement;

(b) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or

(c) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.

Seller hereby grants Buyer reasonable access to all CAISO-Approved Meters and Check meters for meter readings and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request, as necessary to effectuate this Agreement. Seller shall inform buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO.

Notwithstanding anything to the contrary set forth in this Section 3.19, in the case of an Emergency which, in Buyer's reasonable discretion, requires Buyer to examine the Site or the Generating Facility, the Notice requirements of this Section 3.19 do not apply.

3.20 Seller Financial Information.

(a) The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Financial Accounting Standard Boards Interpretation No. 46(R), "Consolidation of Variable Interest Entities" or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement. If, as a result of this review (or subsequent reviews as required), the Parties determine that such consolidation is required for a given period, or in the event the Parties cannot agree on whether consolidation is required, then the Parties agree to the following provisions for such period.

(i) Within thirty (30) days following the end of each year, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (1) unaudited financial statements together with related footnotes as necessary to comply with GAAP, and (2) a completed annual disclosure checklist with supporting financial schedules necessary for Buyer to prepare its annual filing with the SEC. Buyer will provide to Seller such checklist before the end of each year and include only items considered material to Buyer. If audited financial statements are prepared for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

(ii) Within twenty (20) days following the end of each calendar quarter, Seller shall deliver to Buyer in a format mutually agreeable to the Parties: (1) an unaudited condensed statement of income for the calendar quarter and year-to-date, (2) an unaudited condensed statement of cash flows for the calendar quarter and year-to-date, (3) an unaudited condensed balance sheet at the end of such calendar quarter, and (4) a completed quarterly disclosure checklist with supporting financial schedules necessary for Buyer to prepare its quarterly filing with the United States Securities and Exchange Commission. Buyer will provide to Seller such checklist before the end of each quarter and include only items considered material to Buyer.

(iii) Seller shall prepare its financial statements to be delivered in accordance with this Section 3.20 in accordance with GAAP.

(iv) Promptly upon Notice from Buyer, Seller shall allow Buyer's internal auditors and independent registered public accounting firm reasonable access to Seller's records and personnel, so that Buyer's internal auditors and independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with

Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. Buyer shall take reasonable steps to ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20(a)(iv), (2) such information is used solely for purposes of conducting the audits described in this Section 3.20(a)(iv), (3) disclose any information received only to personnel responsible for conducting the audits. Within 30 days of Seller's receipt of Notice from Buyer, Seller shall remediate any material deficiency in Seller's internal controls of financial reporting identified by Buyer or Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(a)(iv), provided that Seller has the right to challenge the appropriateness of any determination of deficiency. All reasonable expenses for the foregoing shall be borne by Buyer.

(v) Within two (2) Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing. Such items may include the following:

1) Acquisition or disposition of a material amount of assets outside of the ordinary course of Seller's business;

2) Creation of a material "direct financial obligation" or "off-balance sheet financing arrangement", as such terms are defined in Item 2.03 of the Form 8-K, as amended from time to time;

3) Existence of "material legal proceedings", as defined in Item 103 of Regulation S-K, as amended from time to time; and

4) Entry into, or termination of, a material contract upon which Seller's business is substantially dependent and outside of the ordinary course of Seller's business.

(b) Buyer shall treat Seller's financial statements or other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:

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

(ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(vi) and 9.09(a)(vii).

3.21 NERC Electric System Reliability Standards.

(a) During the Term, for purposes of complying with any NERC Reliability Standards applicable to the Generating Facility, Seller (or an agent of Seller as agreed to by Buyer in its reasonable discretion) must be registered with the NERC as the Generator Operator and the Generator Owner for the Generating Facility and must perform all Generator Operator Obligations and Generator Owner Obligations except those Generator Operator Obligations that Buyer, in its capacity as Scheduling Coordinator is required to perform under this Agreement or under the CAISO Tariff.

(b) Notwithstanding anything to the contrary set forth in this Section 3.21 and subject to the indemnity obligations set forth in Section 9.03(g), each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by the NERC, the WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards.

(c) Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC Reliability Standards referenced above. Buyer's cooperation will include providing to Seller, or such other Person as Seller designates in writing, information in Buyer's possession that Buyer as Scheduling Coordinator has provided to the CAISO related to the Generating Facility or actions that Buyer has taken as Scheduling Coordinator related to Seller's compliance with the NERC Reliability Standards referenced above (e.g., Seller's notices and updates provided by Buyer to the CAISO via SLIC). Buyer may, in its reasonable discretion (depending upon the quantity of information requested by Seller and the timeframe established by Seller for compliance), comply with the requirement to provide information set forth in the previous sentence, by making such information available for inspection by Seller or by providing responsive summaries or excerpts of same, so long as the foregoing enables Seller to comply with the NERC Reliability Standards. In addition, Buyer may redact any information or data that is confidential to Buyer from materials or information to be supplied to Seller.

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, or Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

**** End of Article Three ****

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit C or Exhibit C (1), as determined pursuant to Section 1.05.

4.02 Payment Adjustments.

(a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:

(i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit E;

(ii) Any SDD Energy Adjustment or SDD Administrative Charge, as set forth in Exhibit I;

(iii) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit H;

(iv) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;

(v) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02; and

(vi) The agreement of the Parties that Buyer shall have no liability to make any payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed one hundred and twenty percent (120%) of Expected Term Year Energy Production.

(b) During the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate the payment adjustment.

(c) After the Term End Date, Buyer shall invoice Seller for any payment adjustments within sixty (60) days of Buyer's receipt of all of the information required in order to calculate the payment adjustment.

4.03 Payment Statement and Payment.

(a) No later than thirty (30) days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:

(i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:

1) Seller's Energy Forecast;

2) Seller's Day-Ahead Forecast;

3) Metered Energy;

4) The final Buyer Energy Schedule; and

5) The final Buyer Parent Energy Schedule.

(ii) A statement showing:

1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);

2) A calculation of the Monthly Contract Payment, as set forth in <u>Exhibit C or Exhibit C (1), as determined pursuant to Section 1.05</u>;

3) A calculation of any payment adjustments pursuant to Section 4.02; and

4) A calculation of the net dollar amount due for the month.

(iii) Buyer's payment to Seller, in accordance with Section 9.15, in the net dollar amount owed to Seller for the month; provided, however, in the event the statement shows a net amount owed to Buyer, Seller shall pay such amount within twenty (20) days of the statement date.

(b) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO in the CAISO's meter-data acquisition and processing system, Buyer shall promptly recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading in accordance with the CAISO Tariff.

Buyer shall then promptly recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to the next monthly statement that is calculated after Buyer's recomputation using corrected measurements.

If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on the next monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's monthly statement until such amount is fully collected by Buyer.

At Buyer's sole discretion, Buyer may offset any remaining amount owed to Buyer in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within twenty (20) days of receipt of such invoice.

(c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:

(i) Under this Agreement; or

(ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within ninety (90) days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 90-day period, Seller shall have an additional ninety (90) days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to the next monthly statement that is calculated.

If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to the next monthly statement that is calculated.

If the recomputation results in a net amount still owing to Buyer after applying the overpayment, the next monthly statement shall show a net amount owing to Buyer.

At Buyer's sole discretion, Buyer may apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within twenty (20) days of receipt of such invoice.

The Parties shall negotiate to resolve any disputes regarding claimed errors in a statement. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

(e) Nothing in this Section 4.03 limits a Party's rights under applicable tariffs, other agreements or Applicable Law.

4.04 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:

(a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;

(b) The Generating Facility complies with any Applicable Laws; or

(c) The Generating Facility will be able to meet the terms of this Agreement.

Seller shall in no way represent to any third party that any such review by Buyer constitutes any such representation.

4.05 Buyer's Responsibility. Buyer shall, at its sole cost, obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point. Buyer shall pay, in accordance with Applicable Laws and Buyer's tariffs, any costs associated with maintaining its electric system in order to allow delivery of the Power Product from the Delivery Point to the CAISO-Controlled Grid.

4.06 Buyer As Scheduling Coordinator. Buyer shall take all steps necessary to become the Scheduling Coordinator for the Generating Facility during the Term.

**** End of Article Four ****

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within fourteen (14) days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must timely provide evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure.

In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform.

This Article Five will not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party.

When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on Notice, which Notice will be effective five (5) Business Days after such Notice is provided, in the event of Force Majeure which materially interferes with the Claiming Party's ability to perform its obligations under this Agreement and which extends for more than three hundred and sixty-five (365) consecutive days, or for more than a total of three hundred and sixty-five (365) days in any consecutive 540-day period.

**** End of Article Five ****

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement that is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not:

1) Remedied within ten (10) Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or

2) Capable of a cure, but the Non-Defaulting Party's damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within ten (10) Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within thirty (30) days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement to which such Party 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's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):

(i) Any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within ten (10) Business Days after Notice;

(ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure is not remedied within three (3) Business Days after Notice is provided by the Non-Defaulting Party to the Guarantor;

(iii) A Guarantor becomes Bankrupt and replacement credit support is not provided within three (3) Business Days after Notice;

(iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Cross Default Amount, which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within three (3) Business Days after Notice;

(v) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and replacement credit support is not provided within three (3) Business Day after Notice; or

(vi) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer and replacement credit support is not provided within three (3) Business Days after Notice.

(c) With respect to Seller:

(i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.04, and Seller has not cured a failure with respect to Section 3.04(a) within thirty (30) days after providing Notice to Buyer in accordance with Section 3.04(a);

(ii) The total quantity of Metered Energy in any Term Year is less than 10% percent the Expected Term Year Energy Production, and Seller fails to demonstrate a legitimate reason for such failure within ten (10) Business Days after Notice from Buyer;

(iii) Except as provided for in Section 3.01(e), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

(iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;

(v) Seller removes from the Site equipment upon which the As-Available Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five (5) Business Days after Notice from Buyer to Seller;

(vi) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within one hundred and twenty (120) days after such termination or cessation;

(vii) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Section 3.20, and such failure is not remedied within ten (10) days after Notice from Buyer to Seller;

(viii) Seller fails to remediate any material deficiency in internal controls over financial reporting in accordance with Section 3.20;

(ix) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within ten (10) days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;

(x) The occurrence and continuation of a default, event of default or other similar condition or event under any loan agreement with any Lender, or under any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness under those agreements or instruments becoming immediately due and payable; provided, however, if Seller, Buyer and a Lender have entered into a Collateral Assignment Agreement with substantially the provisions set forth in Section 9.05, and the terms of such Collateral Assignment Agreement conflict or are inconsistent with this Section 6.01(c)(x), the provisions of the Collateral Assignment Agreement control;

(xi) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within thirty (30) days after Notice from Buyer to Seller;

(xii) If Seller materially modifies the Generating Facility without Buyer's prior written consent;

(xiii) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit D and such failure is not cured within five (5) Business Days after Notice is provided by Buyer to Seller of such failure;

(xiv) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender;

(xv) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit D and such failure is not cured within five Business Days after Notice of such failure;

(xvi) Seller fails to maintain its status as an Eligible CHP Facility during the Term; or

(xvii) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller.

6.02 Early Termination. There shall be no opportunity to cure a default other than as specifically provided in Section 6.01. If this Agreement is terminated pursuant to Section 2.02(b), then Buyer or the Non-Defaulting Party, as applicable, will have the right to:

(a) Designate by Notice to the Defaulting Party a date, no later than twenty (20) days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");

(b) Immediately suspend performance under this Agreement; and

(c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement, including Forward Settlement Amounts, less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement (the "Termination Payment"). The Notice shall include a written statement, setting forth, in reasonable detail, the calculation of such Termination Payment together with appropriate supporting documentation. If the Generating Facility is a New Eligible CHP Facility, no Forward Settlement Amount is assessed for any Termination Payment due to Buyer as the Non-Defaulting Party by Seller as the Defaulting Party if this Agreement is terminated before the Term Start Date.

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within ten (10) Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within 10 Business Days after the Notice is provided.

The Parties shall negotiate to resolve any disputes regarding the calculation of the Termination Payment. Any disputes which the Parties are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

**** End of Article Six ****

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY 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 IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS 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 FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

THE VALUE OF ANY PRODUCTION TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

THE VALUE OF ANY INVESTMENT TAX CREDITS DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) IF ANY, SHALL BE DEEMED DIRECT DAMAGES.

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, 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.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN 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 UNDER THIS AGREEMENT 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 UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTHING IN THIS ARTICLE SEVEN PREVENTS, OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS WITH RESPECT TO ANY SECURED INTEREST IN COLLATERAL.

**** End of Article Seven ****

ARTICLE EIGHT. GOVERNMENTAL CHARGES

8.01 Cooperation to Minimize Tax Liabilities. Each Party shall use diligent 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.

8.02 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility ("Governmental Charges").

Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Power Product at and after the Delivery Point.

If Seller is required by Applicable Laws to remit or pay Governmental Charges which are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Governmental Charges.

If Buyer is required by Applicable Law or regulation to remit or pay Governmental Charges which are Seller's responsibility under this Agreement, Buyer may deduct such amounts from payments to Seller made pursuant to Article Four.

If Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon Notice from Buyer of the amount to be reimbursed.

Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

8.03 Providing Information to Taxing Governmental Authorities. To the extent required by Applicable Law and subject to Section 9.09(b), each Party shall provide information concerning the Generating Facility to any requesting taxing Governmental Authority.

**** End of Article Eight ****

ARTICLE NINE. MISCELLANEOUS

9.01 Representations and Warranties. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

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

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(e) There is not pending, or to its knowledge threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

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

(g) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;

(h) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and

(i) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.

9.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It will have Site Control as of the earlier of (i) the Term Start Date or (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;

(b) During the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;

(c) It will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person throughout the Term;

(d) It will hold throughout the Term the rights to all of the Product, subject to the terms of this Agreement;

(e) During the Term, it does not, and will not (1) convey, transfer, allocate, designate, award, report or otherwise provides any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (2) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

(f) During the Term, the Generating Facility qualifies as an Eligible CHP Facility; and,

(g) The Generating Facility meets all applicable greenhouse gas emissions standards, as such standards may change from time to time during the Term.

9.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, claim, cost, charge, demand or expense to the extent resulting from its negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.

(c) The provisions of this Section 9.03 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.

(d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Sections 3.20(a)(v) or 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Sections 3.20(a)(v) and 9.10.

The inclusion of this Section 9.03(d) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 9.10.

(e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.

(f) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02.

(g) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.

(h) All indemnity rights will survive the termination of this Agreement for twelve (12) months.

9.04 Assignment. Neither Party may assign this Agreement or its rights under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of either Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent will not be unreasonably withheld. Notwithstanding anything to the contrary in this Section 9.04, Seller may, without the consent of Buyer (and without relieving itself from liability hereunder):

(a) Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with Section 9.05; and

(b) Transfer or assign this Agreement to an Affiliate of Seller which Affiliate's creditworthiness is equal to or higher than that of Seller.

9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller has the right to assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

The Collateral Assignment Agreement shall be in form and substance reasonably agreed to by Buyer, Seller and Lender, and shall include, among others, the following provisions (together with such other commercially reasonable provisions required by any Lender that are reasonably acceptable to Buyer):

(a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable cure period specified in Article Six, constitute an Event of Default (an "Incipient Event of Default");

(b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;

(c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.05(g)) provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;

(d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.05(a). In addition, such cure period may, in Buyer's reasonable discretion, be extended by no more than an additional one hundred and eighty (180) days. If possession of the Generating Facility is necessary to cure such Incipient

Event of Default or Event of Default, Lender has commenced foreclosure proceedings within sixty (60) days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed one hundred and eighty (180) days after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;

(f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;

(g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;

(h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided, however*, that Lender (or such Person) shall have no liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date (but this provision may not be interpreted to limit Buyer's rights to proceed against Seller as a result of an Event of Default) and Lender's (or such Person's) liability to Buyer after such assumption shall be limited to its interest in the Generating Facility; *provided further*, that before such assumption, if Buyer advises Lender (or such Person) that Buyer will require that Lender (or such Person) cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such Person takes title in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Event(s) of Default, then Lender (or such Person) at its option and in its sole discretion may elect to either (i) cause such Incipient Event(s) of Default or Event of Default to be cured, or (ii) not assume this Agreement;

(i) If Lender has assumed this Agreement as provided in Section 9.05(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Affiliate of Lender or an Affiliate of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is

Lender, Seller, an Affiliate of Lender or an Affiliate of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer; and

(j) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either Buyer or Lender, Buyer and Lender (or its designee or representative) shall promptly enter into a new agreement, wherein Buyer shall have substantially the same contractual rights as found in this Agreement. for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's) liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor Buyer shall have any personal liability to the other for any amounts owing and neither Buyer nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

9.06 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

9.07 Notices. All notices, requests, statements or payments shall be made as specified in Exhibit J. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 9.07 are deemed given as follows:

(a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;

(b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;

(c) Notice by first class United States mail is deemed given two (2) Business Days after the postmarked date;

(d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;

(e) A Party may change its designated representatives, addresses and other contact information by providing notice of same in accordance herewith; and

(f) All notices, requests, statements or payments for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

(a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

(c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Articles", "Sections" and "Exhibits" refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Articles" or "Sections" in Exhibits A through Exhibit O refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

(i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.

(k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties covering transmission, distribution, metering, scheduling or interconnection of electric energy. In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

(l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

(n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

(o) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

9.09 Confidentiality.

(a) Neither Party shall disclose any Confidential Information to a third party, other than:

(i) To such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;

(ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however*, that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further*, that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;

(iii) To Buyer's Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer's Procurement Review Group;

(iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;

(v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);

(vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC; and

(vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement.

(b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.09(a)(vi) (all to be considered a "Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may 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 any terms or conditions of this Agreement which are the subject of such Disclosure Order.

(c) Except as provided in clause (y) of Section 9.09(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

(d) This Section 9.09 shall remain in effect for three (3) years following the termination of this Agreement.

9.10 Insurance.

(a) Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better:

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion.

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles.

(v) Excess liability insurance, written on an "occurrence" (not claims-made) basis and providing coverage excess of the underlying employer's liability, commercial general liability and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 9.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 9.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or ownership of the Generating Facility. The insurance required in this Section 9.10 may be provided by any combination of Seller's primary and excess liability policies.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 9.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 9.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

(e) If Seller fails to comply with any of the provisions of this Section 9.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section. Nothing in this Section 9.10(e) affects or diminishes Seller's obligation to indemnify SCE under any other section of this Agreement.

9.11 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.

9.12 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party will seek, nor will they support any third party in seeking, to prospectively or retroactively revise the rates, terms, or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 US 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 US 348 (1956).

9.13 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

9.14 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

9.15 Payments. Payments to be made under this Agreement shall be made, at Seller's option, by check or electronic wire funds transfer.

9.16 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.04, 9.09 and Section 4(e) of Exhibit D in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in accordance with Section 10.01, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for such breach of the provision, or if this Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

**** End of Article Nine ****

ARTICLE TEN. DISPUTE RESOLUTION

10.01 Dispute Resolution. Other than requests for provisional relief under Section 9.16, any and all disputes, Claims or controversies arising out of, relating to, concerning, or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Disputes"), which Disputes the Parties have been unable to resolve by informal methods, will first be submitted to mediation in accordance with the procedures described in Section 10.02, and if the Dispute is not resolved through mediation, then for final and binding arbitration in accordance with the procedures described in Section 10.03.

10.02 Mediation. Either Party may initiate mediation by providing Notice to the other Party of a written request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("Mediator") from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred and twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however*, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

10.03 Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with Section 10.02 by providing Notice of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for in Section 10.02.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred and eighty (180) days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for in this Section 10.03, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California, and discovery will be limited as follows:

(a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);

(b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;

(c) Discovery may commence at any time after the Parties' initial disclosure;

(d) The Parties will not be permitted to propound any interrogatories or requests for admissions;

(e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);

(f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;

(g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

(h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;

(i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and

(j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.04, 9.09 or Section 4(e) of Exhibit D.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

**** End of Article Ten ****

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],	**[BUYER'S NAME],**
a [Seller's business registration]	a California corporation
By:______________________________	By:______________________________
Name:_________________________	Name:_________________________
Title:__________________________	Title:__________________________

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in Recital A.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this Agreement, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Ambient Conditions" means reductions in capacity due to that status of, or variations in, Site Host Load or ambient weather conditions.

"Applicable Laws" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Generating Facility or the terms of this Agreement.

"Arbitrator" has the meaning set forth in Article Ten.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(c).

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to 6,924 Btu/kWh, or 6.924 mmbtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 petition is not dismissed within ninety (90) 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

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

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"Buyer Energy Schedule" means the schedule of electric energy that Buyer submits to the CAISO for electric energy produced by the Generating Facility.

"Buyer Parent Energy Schedule" means the schedule of electric energy that Buyer submits to the CAISO for electric energy delivered to the CAISO for the CAISO Global Resource ID associated with the Generating Facility.

"Buyer Projected Energy Forecast" has the meaning set forth in Section 2(a) of Exhibit E.

"CAISO" means the California Independent System Operator Corporation or successor entity that dispatches certain generating units, supplies certain loads and controls the transmission facilities of entities that (a) own, operate and maintain transmission lines and associated facilities or have entitlements to use certain transmission lines and associated facilities, and (b) have transferred to the CAISO or its successor entity operational control of such facilities or entitlements.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter furnished by Seller, that (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) includes all of the associated metering transformers and related appurtenances that are required in order to measure the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy that Buyer Schedules with the CAISO and the CAISO approves in its final schedule, which is published in accordance with the CAISO Tariff.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Charges Invoice" has the meaning set forth in Section 5 of Exhibit E.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Forced Outage Report" means a complete copy of a forced outage report in a form reasonably acceptable to Buyer which includes detailed information regarding the event, including the affected Generating Unit, outage start date and time, estimation of outage duration, MW unavailable and summary of work to be performed.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Station Power Protocol" means the CAISO protocol that the CAISO filed with the FERC in Docket ER05-849, including all revisions, amendments and successor protocols that would allow a generating facility to self-supply its Station Power (as defined in the CAISO Tariff) by any means other than permitted netting, when permitted netting allows netting of generator output with Station Power load that is electrically connected to the generator at the same time when the generator is on-line.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"CARB" means the California Air Resources Board.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CEC" means the California Energy Commission, or any successor entity.

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.09(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"CHP" means combined heat and power.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Collateral Assignment Agreement" has the meaning set forth in Section 9.05.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control Area" means the electric power system (or combination of electric power systems) under the operational control of the CAISO or any other electric power system under the operational control of another organization vested with authority comparable to that of the CAISO.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into any new arrangement which replaces this Agreement.

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

"Credit Rating" means with respect to any Person, on the relevant date of determination, the respective ratings then assigned to such Person's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody's. If no rating is assigned to such Person's unsecured, senior long-term debt or deposit obligation by either S&P or Moody's, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned to the Person by S&P or Moody's, as the case may be.

"Cross Default Amount" is the amount set forth in Section 1.06(f).

"Daily Delay Liquidated Damages" has the meaning set forth in Section 4(c)(ii) of Exhibit D.

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

"Decision" means CPUC Decision D. 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.03.

"Development Security" has the meaning set forth in Section 4(b)(i) of Exhibit D.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Disclosure Order" has the meaning set forth in Section 9.09(b).

"Dispute" has the meaning set forth in Section 10.01.

"Early Termination Date" has the meaning set forth in Section 6.02(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code §2843 and, (2) meets the requirements of 18 Code of Federal Regulations §292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which:

(a) Is defined and declared by the CAISO or Transmission Provider;

(b) Jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system;

(c) Requires automatic or immediate manual action to prevent or limit loss of load or generation supply; or

(d) Poses a threat to public safety.

"Equitable Defense" means any Bankruptcy or other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"Equity Investment" means an acquisition by a Lender of an ownership interest, in the form of stock, membership or partnership interest, in Seller or the immediate parent of Seller under which Seller retains the right to act in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender's rights to enforce its ownership interest in Seller or the immediate parent of Seller, as applicable, in the event of a default by Seller or the immediate parent of Seller under Lender's equity acquisition agreement or the partnership agreement, operating agreement, or other agreement governing the relationship between the equity owners of the Generating Facility.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that first commenced Operation on or after January 1, 2008 but before the Effective Date.

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(d).

"Federal Funds Effective Rate" means the rate for that day opposite the caption "Federal Funds (effective)" as set forth in the weekly statistical release as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

"FERC" means the Federal Energy Regulatory Commission, or any successor entity.

"Financial Incentives" means any and all financial incentives, benefits or credits associated with the Generating Facility, or the ownership or Operation thereof, or the electrical or thermal output of the Generating Facility, including any production or investment tax credits, real or personal property tax credits or sales or use tax credits, but not including any Green Attributes, Capacity Attributes or Resource Adequacy Benefits.

"Firm Operation Date" means the date that is six months after the Term Start Date.

"Force Majeure" means any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome.
Force Majeure does not include:

(a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;

(b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;

(c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or

(d) A lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Forecast" means the hourly forecast of (a) the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible net of the Site Host Load and Station Use.

"Forward Settlement Amount" means the Non-Defaulting Party's Costs and Losses on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Forward Settlement Amount shall be zero dollars. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Forward Settlement Amount shall be an amount owing to the Defaulting Party. The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

"GAAP" means generally accepted accounting principles for financial reporting in the United States, consistently applied.

"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), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner.

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant, as more particularly described in Section 1.02 and Exhibit B, including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"Generator Operator" means the Person that Operates the Generating Facility and performs the functions of supplying energy and interconnected operations services within the meaning of the NERC Registration Criteria.

"Generator Operator Obligations" means the obligations of a Generator Operator as set forth in all applicable NERC Reliability Standards.

"Generator Owner" means the Person that owns the Generating Facility and has registered with the NERC as the Person responsible for complying with all NERC Reliability Standards applicable to the owner of the Generating Facility.

"Generator Owner Obligations" means the obligations of a Generator Owner as set forth in all applicable NERC Reliability Standards.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO_2), nitrous oxide (N_2O) and methane (CH_4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF_6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO_2-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related Entity of Seller, which respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO_2 per MMBtu of natural gas, 0.0531 tonnes/mmbtu, times (b) the Average Higher Heating Value MPR Heat Rate in mmbtu/MWh.

"<u>GHG EPS</u>" means the Greenhouse Gas Emissions Performance Standard set forth in CPUC D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, as well as revisions to these standards set forth in any subsequent CPUC-established precondition to the execution of this Agreement.

"<u>Governmental Authority</u>" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"<u>Governmental Charges</u>" has the meaning as set forth in Section 8.02.

"<u>Green Attributes</u>" 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 (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;

(2) Any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;

(3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

(i) Any energy, capacity, reliability or other power attributes from the Project,

(ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,

(iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

(iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Guarantor" means that certain guarantor of Seller set forth in Section 1.06(d).

"Guaranty Agreement" means a guaranty agreement substantially in the form of Exhibit K.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit C, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit C, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Incipient Event of Default" has the meaning set forth in Section 9.05(a).

"Interconnection Study or Interconnection Studies" means a study or studies prepared by or on behalf of the Transmission Provider or the CAISO to evaluate the impact of the interconnection of the Generating Facility to the Transmission Provider's electric system or the applicable Control Area operator's electric grid.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"JAMS" means the Judicial Arbitration and Mediation Services, Inc. or any successor entity.

"kW" means a kilowatt (1,000 watts) of electric capacity or power output.

"kWh" means a kilowatt-hour (1,000 watt-hours) of electric energy.

"Lease" means one or more agreements whereby Seller leases the Site(s) described in Section 1.02 and Exhibit B from a third party, the term of which lease begins on or before the Term Start Date and extends at least through the Term End Date.

"Lender" means any third-party institution or entity or successor in interest or assignee that either (i) purchases the Generating Facility and then leases it to Seller under a Sale-Leaseback Transaction, or (ii) provides development, bridge, construction, or permanent debt or tax equity financing or refinancing (including an Equity Investment) for the Generating Facility to Seller or credit support in connection with this Agreement.

"Letter of Credit" means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least "A-" from S&P and "A3" from Moody's, substantially in the form of Exhibit L. All costs to establish and maintain the Letter of Credit shall be borne by Seller.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events:

(a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's;

(b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;

(c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;

(d) Such Letter of Credit fails or ceases to be in full force and effect at any time;

(e) Seller fails to provide an extended or replacement Letter of Credit within 20 Business Days before such Letter of Credit expires or terminates; or

(f) The issuer of such Letter of Credit becomes Bankrupt;

provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

"Location Bonus" is described in Section 6 of Exhibit C.

"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), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner.

"Market Price" means the real-time price for Uninstructed Imbalance Energy (as defined in the CAISO Tariff) or any successor price for short-term imbalance energy, as such price or successor price is defined in the CAISO Tariff, that would apply to the Generating Facility, which values are, as of the Effective Date, posted by the CAISO on its website. The values used in this Agreement will be those appearing on the CAISO website on the third Business Day of the calendar month following the month for which such prices are being applied.

"Mediator" has the meaning set forth in Section 10.02.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy, expressed in kWh, measured by any or all of the CAISO-Approved Meters or Check Meters, as applicable, at the Generating Facility for the specified Metering Interval, after adjusting for any compensation factors introduced by the CAISO into the CAISO-approved meter.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters.

"Milestone Schedule" means Seller's milestone schedule, the form of which is attached to this Agreement as Exhibit M.

"Monthly Contract Payment" has the meaning set forth in Section 4.01.

"Monthly Scheduling Fee" is described in Section 4(b) of Exhibit E.

"Moody's" means Moody's Investor Services, Inc.

"MW" means a megawatt (1,000,000 watts) of electric capacity or power output.

"MWh" means a megawatt-hour (1,000,000 watt-hours) of electric energy or power output.

"NERC" means the North American Electric Reliability Corporation, or any successor entity.

"NERC Registration Criteria" means the most recent NERC Statement of Compliance Registry Criteria, which is available on NERC's website.

"NERC Reliability Standards" means those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available on NERC's website.

"NERC Standards Non-Compliance Penalties" means any and all monetary fines, penalties, damages, interest or assessments by the NERC, the CAISO, the WECC, a Governmental Authority or any Person acting at the direction of a Governmental Authority arising from or relating to a failure to perform the obligations of Generator Operator or Generator Owner as set forth in the NERC Reliability Standards.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Defaulting Party" has the meaning set forth in Section 6.02.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit C, "5. Time of Delivery Periods and Allocations Factors" or Exhibit C (1), "4. Time of Delivery Periods," as determined pursuant to Section 1.05.

"Notice" means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit J.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating", and "Operation" mean to provide (or the provision of) all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage" has the meaning set forth in the CAISO Tariff.

"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit N.

"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer 24 months in advance, as set forth in Exhibit N.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party or Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Performance Assurance" means collateral (in the amount of the Performance Assurance Amount) for Seller's performance under this Agreement in the form of cash, Letter(s) of Credit, or other security acceptable to Buyer.

"Performance Assurance Amount" has the meaning set forth in Section 1.06(b).

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person or Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Planned Outage" means a disconnection, separation or reduction in the capacity of the Generating Facility which is not the result of a Forced Outage.

"<u>PNode</u>" has the meaning set forth in the CAISO Tariff.

"<u>Power Product</u>" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"<u>Power Rating</u>" means the electrical power output value indicated on the generating equipment nameplate.

"<u>Primary Fuel</u>" means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

"<u>Product</u>" means the Power Product and the Related Products.

"<u>Project</u>" means the Generating Facility.

"<u>Prudent Electrical Practices</u>" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that:

(a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;

(c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Prevailing Pacific Time, which is the Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Related Products" means (i) with respect to Resource Adequacy Benefits that portion of the Resource Adequacy Benefits that are in excess of those Resource Adequacy Benefits used by Seller or by a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the Resource Adequacy Benefits are to be used, Resource Adequacy obligation under any Resource Adequacy Ruling, and (ii) any Green Attributes, Capacity Attributes and all other attributes associated with the electric energy or capacity of the Generating Facility (but not including any Financial Incentives) that are in excess of those Green Attributes, Capacity Attributes or other attributes used, or retained for future use, by Seller or a Site Host, both in connection with the Host Site, to meet a known and established, at the point in time when the relevant attribute(s) are to be used or retained, obligation under Applicable Law.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the Generating Facility that satisfy any Person's Resource Adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Generating Facility.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other Resource Adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term.

"Responsible Officer" means the chief financial officer, treasurer or any assistant treasurer of a Party or its Guarantor or any employee of a Party or its Guarantor designated by any of the foregoing officers.

"S&P" means the Standard & Poor's Rating Group.

"Sale-Leaseback Transaction" means a transaction in which Seller (i) sells the Generating Facility to a Lender providing tax equity financing to Seller and then (ii) leases the Generating Facility back from the Lender under an agreement authorizing Seller to act on behalf of the Lender in all matters relating to the control and Operation of the Site and the Generating Facility for the Term, subject to Lender's right to terminate the lease in the event of a default by Seller as set forth in the agreement between Seller and Lender.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means the Buyer as certified by the CAISO for the purposes of undertaking the functions specified in Exhibit E.

"Scheduling Fee" means the Monthly Scheduling Fee and the SC Set-Up Fee.

"SC Set-Up Fee" is described in Section 4(a) of Exhibit E.

"SC Replacement Date" has the meaning set forth in Section 7 of Exhibit E.

"SEC" means the United States Securities and Exchange Commission, or any successor entity.

"Security Interest" has the meaning set forth in Section 3 of Exhibit D.

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

"Seller's Day-Ahead Forecast" means the most recently update Forecast submitted by 5:00 p.m. PPT on the day before the Trading Day.

"Seller's Energy Forecast" means Seller's most recently updated Forecast submitted in accordance with Exhibit G.

"Seller's Final Energy Forecast" means Seller's energy Forecast as may be updated for Forced Outages that occur after the Hour Ahead Scheduling Deadline, but not for Ambient Conditions.

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Settlement Interval" has meaning set forth in the CAISO Tariff.

"Simple Interest Payment" means a dollar amount calculated by multiplying the:

(a) Dollar amount on which the Simple Interest Payment is based; by

(b) Federal Funds Effective Rate or Interest Rate as applicable; by

(c) The result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02(b) and Exhibit B.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a Lease, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means the Person or Persons purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code Section 218(b).

"SLIC" means Scheduling and Logging system for the CAISO.

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means electric energy produced by the Generating Facility that is:

(a) Used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation; and

(b) Consumed as losses within the low voltage, electrical distribution system of the Generating Facility including:

i. The Generating Facility's, or, if applicable, each Generating Unit's [____]kV electric voltage step-up transformer; and

ii. The portion of the electric bus work that:

1. Connects the high voltage side of the Generating Facility's, or, if applicable, each Generating Unit's electric voltage step-up transformer to the [Substation name]; and

2. Is located on the Generating Facility side of the measurement points for the CAISO-Approved Meters.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO's applicable requirements as set forth in Section 3.10.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Termination Payment" has the meaning set forth in Section 6.03.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit C or Exhibit C (1), as determined by Section 1.05.

"Trading Day" means the day in which Day-Ahead trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-controlled grid.

"Uninstructed Deviation GMC Rate" means the administrative grid management charge applied by the CAISO to Uninstructed Deviations (as defined in the CAISO Tariff) using the absolute value for the Uninstructed Deviations by Settlement Interval.

"Uninstructed Deviation Penalty" means the penalty set forth in the CAISO Tariff.

"Web Client" has the meaning set forth in Section 2(a) of Exhibit N.

"WECC" means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

**** End of Exhibit A ****

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit B ****

EXHIBIT C

Monthly Contract Payment Calculation
These Price Inputs are based upon the 2011 Market Price Referent (MPR)

This Exhibit C establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033).

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit C.

The "1st TOD Period," "2nd TOD Period," and "3rd TOD Period" subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit C.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit C.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars using the terms defined below as follows:

(Fixed price component + Variable price component) * TOD Factor *
metered kWh exported during the TOD Period during the month

Once 120% of the Expected Term Year Net Energy Production is achieved, no further payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component of the Monthly Contract Payment for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
2012	0.02000
2013	0.02033
2014	0.02068
2015	0.02104
2016	0.02140
2017	0.02142
2018	0.02145

Year	$/kwh
2019	0.02147
2020	0.02149
2021	0.02151
2022	0.02153
2023	0.02155

4. Variable Price Component Calculation

The Variable Price Component is calculated in dollars as follows:

[(Monthly bidweek gas price + Intrastate gas transportation rate)/1,000,000* Heat Rate] + Variable O&M

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to D. 09-12-042, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after 2023, Variable O&M shall be the 2023 payment multiplied by 1.02, compounded for each year beyond 2023.

Variable O&M	
Year	$/kwh
2012	0.00311
2013	0.00316
2014	0.00322
2015	0.00329
2016	0.00335
2017	0.00342
2018	0.00349
2019	0.00356
2020	0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. Time of Delivery Periods and Allocation Factors.

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

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

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

A. June – September;

B. October, November, December, January and February; and

C. March - May.

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

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

2. **Shoulder** = hours ending 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and hours ending 7 – 22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.

3. **Night** (7x8) = hours ending 1 - 6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

"NERC Holidays" mean the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4^{th}) 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 paragraph, NERC Holidays shall be calculated as "Shoulder" hours for all non-"Night" hours and any remaining hours shall be calculated as "Night" hours.

TOD Factors. In accordance with all other terms of this Exhibit C, the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.38	1.12	0.59
B. Oct. – Dec.; Jan. & Feb.	1.10	0.94	0.66
C. Mar. – May	1.22	0.90	0.61

6. Location Bonus.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

**** End of Exhibit C****

Exhibit C (1)

Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit C (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit C (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit C (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{FirstHour}^{LastHour} [(\text{EP-LA}) \times \text{APE} + \text{LA} \times \text{MA}]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit C (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit C (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit C (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit C (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit C (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit C (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit C (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit C (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit C (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit C (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit C (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit C (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit C (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit C (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The Contract Capacity, as set forth in Section 1.02(c), in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

*** End of Exhibit C (1) ***

EXHIBIT D
Credit and Collateral Requirements

1. Financial Information.

(a) If requested by Buyer, Seller shall deliver to Buyer the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:

(i) Within one hundred and twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous 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 quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous fiscal year;

provided, however, that if Seller is not an SEC reporting company or if the financial statements required under Sections 1(a)(i) or (ii) of this Exhibit D are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year-end audit adjustments for the quarterly financial statements); *provided further*, that such information must be provided only to those employees of Buyer that need to know such information for financial risk management purposes and may not be disclosed to third parties except as permitted under Section 9.09.

(b) For purposes of the requirement set forth in Section 1(a) of this Exhibit D:

(i) If Seller's or its Guarantor's financial statements are publicly available electronically on the website of Seller, its Guarantor or the SEC, then Seller is deemed to have met this requirement; and

(ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay is not an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

2. Performance Assurance.

(a) Posting Performance Assurance. On or before the Term Start Date, Seller shall post Performance Assurance with Buyer and shall maintain the Performance Assurance Amount at all times on and after the Term Start Date until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed three hundred and sixty-five (365) days following the Term End Date.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that if, as of the Term Start Date, Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit D, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 4(c) or (e) of this Exhibit D, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 2(c) of this Exhibit D, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:

(i) Each Letter of Credit must be maintained for the benefit of Buyer;

(ii) Seller shall:

(1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;

(2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least thirty (30) days before the expiration of the outstanding Letter of Credit or within five (5) Business Days of such indication by the bank, whichever is later; and

(3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within three Business Day after such refusal;

(iii) Upon, or at any time after, the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the third Business Day after the occurrence thereof (or the fifth Business Day after the occurrence thereof if only Section a) in the definition of "Letter of Credit Default" in Exhibit A applies); and

(iv) Upon the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit by submitting to the bank issuing such Letter of Credit one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 3 of this Exhibit D with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.

(c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit K executed by the Guarantor identified in Section 1.06(d) or other party, in each case acceptable to Buyer and meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:

(i) "BBB-" from S&P and "Baa3" from Moody's, if it is rated by both S&P and Moody's; or

(ii) "BBB-" from S&P or "Baa3" from Moody's if it is rated by either S&P or Moody's but not by both.

If at any time the Guarantor fails to maintain such Credit Ratings, Seller shall provide to Buyer Performance Assurance in the form of cash or a Letter of Credit, or a replacement Guaranty Agreement from a party acceptable to Buyer, within five Business Days of such failure by the Guarantor.

3. First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 2 and 4 of this Exhibit D and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

(a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit; and

(c) Liquidate all Development Security and Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller shall remain liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

4. Development Security.

(a) Introduction. Development Security shall be held by Buyer as security for Seller's meeting the Term Start Date. Before the Term Start Date, Seller must deliver to Buyer certificates from a California-licensed professional engineer qualified to make a representation that that Seller has installed the equipment sufficient to provide the As-Available Contract Capacity designated by Seller.

(b) Development Security. Seller shall post such Development Security in accordance with the following terms and conditions:

(i) Seller shall post a development fee (the "Development Security") in the amount of $20 per kW of the As-Available Contract Capacity on or before the 30th day following the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and

(ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit L.

(c) Forfeiture of Development Security for Failure to Commence Term by the Term Start Date; Extension of the Term Start Date.

(i) Failure to Meet the Term Start Date. Subject to Seller's right to extend the Term Start Date as provided in Section 4(c)(ii) of this Exhibit D or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), if the Term does not commence on or before the Term Start Date, Buyer may retain the entire Development Security (if applicable) and, if not already terminated, terminate this Agreement, and neither Party shall have liability for damages for failure to deliver or purchase the Product after the effective date of such termination.

(ii) Daily Delay Liquidated Damages to Extend Term Start Date. Subject to limitations set forth in Section 1.01(b), Seller may elect to delay the Term Start Date by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the original Term Start Date to and excluding the actual Term Start Date ("Daily Delay Liquidated Damages").

To extend the Term Start Date, Seller must, at the earliest possible time, but no later than 6:00 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Term Start Date along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Term Start Date extension period.

Seller may further extend the Term Start Date beyond the original Term Start Date extension period subject to the same terms applicable to the original Term Start Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Term Start Date extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Term Start Date was actually extended.

In no event may Seller extend the Term Start Date for more than a total of 180 days by the payment of Daily Delay Liquidated Damages.

(d) Full Return of Development Security. The Development Security shall be returned to Seller in accordance with the following procedure:

(i) Subject to Seller commencing the Term by the Term Start Date, as the Term Start Date may have been extended in accordance with Section 4(c)(ii) of this Exhibit D or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), Seller demonstrates the As-Available Contract Capacity on or before the Firm Operation Date by delivering to Buyer certificates from a California-licensed professional engineer qualified to make a representation that Seller has installed the equipment sufficient to provide the entire As-Available Contract Capacity designated by Seller.

(e) Deficient Installation of As-Available Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller does not demonstrate any portion of the As-Available Contract Capacity or only demonstrates a portion of the As-Available Contract Capacity by delivering to Buyer certificates from a California-licensed professional engineer qualified to make a representation setting forth the As-Available Contract Capacity, then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of $20 per kW times the kilowatts of As-Available Contract Capacity which Seller has demonstrated, if any.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 2 of this Exhibit D shall be calculated using the adjusted As-Available Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted As-Available Contract Capacity shall be returned to Seller.

(f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

(a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.

(b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof on or before the third Business Day of the first month after the last month to which the invoice relates, so long as such date is after the day on which such invoice is received; ***provided, however***, that:

(i) No Event of Default has occurred and is continuing with respect to Seller; and

(ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.

(c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:

(i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or

(ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

**** End of Exhibit D ****

EXHIBIT E
Scheduling Coordinator Services

1. Designation of Buyer as Scheduling Coordinator.

   (a) At least thirty (30) days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.

   (b) During the Term, Seller may not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator.

   (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and the Eligible CHP Facility's Participating Generator Agreement.

   (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.

   (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *provided, however*, that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.

2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:

   (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit G, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;

   (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;

   (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and

   (d) Receiving notification of the final Schedules from the CAISO.

3. Notices. As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, or CAISO Forced Outage Reports.

4. Scheduling Fees. In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:

(a) SC Set-Up Fee. The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal $[___].

(b) Monthly Scheduling Fee. The Monthly Scheduling Fee will be as forth in the following table.

As-Available Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	$2,500
10,000 – 20,000	$5,000

5. CAISO Settlements. As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

Buyer shall render a separate invoice to Seller for all CAISO Charges ("CAISO Charges Invoice") for which Seller is responsible under this Agreement as described in Exhibit H, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental and/or supporting documentation provided by the CAISO to Buyer in the settlement process.

Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this

Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit E with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of three hundred and sixty-five (365) days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.

7. Termination of Buyer as Scheduling Coordinator. At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. on the final date of the Term ("SC Replacement Date"). Such actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.

**** End of Exhibit E ****

EXHIBIT F
Milestone Progress Reporting Form

1. Introduction. This Exhibit F is only applicable if the Generating Facility is a New Eligible CHP Facility. Seller shall prepare a written milestone progress report as set forth in Section 3.12 on its progress relative to the:

   (a) Installation of the CAISO-Approved Meters and Telemetry System;

   (b) Installation of the Telemetry System as required by the CAISO Tariff; and

   (c) Work on other agreements with the CAISO and the Transmission Provider.

2. Format. The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit J, on the fifth Business Day of each month. Each such milestone progress report must include the following items:

   (a) Cover page;

   (b) Brief Generating Facility description;

   (c) Site plan of the Generation Facility;

   (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;

   (e) Bar chart schedule showing progress on achieving the Milestone Schedule;

   (f) PERT or GANT chart showing critical path schedule of major items and activities;

   (g) Summary of activities during the previous month;

   (h) Forecast of activities scheduled for the current month;

   (i) Written description about the progress relative to the Milestone Schedule;

   (j) List of issues that could potentially impact the Milestone Schedule;

   (k) Enumeration and schedule of any support or actions requested of Buyer;

   (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and

   (m) List of items required under Section 3.11.

**** End of Exhibit F ****

EXHIBIT G

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements for all Generating Facilities.

   (a) 30-Day Forecast.

   In the case of a New Eligible CHP Facility, no later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), if Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit J.

   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit G, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit J.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit G must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change, with notification also by phone to Seller's Real Time Scheduling Desk.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

**** End of Exhibit G ****

EXHIBIT H
CAISO Charges

Buyer, as Scheduling Coordinator for the Generating Facility, shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to: (a) curtail output, or (b) reschedule a Planned Outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

4. If the Generating Facility is PIRP eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the energy generated and delivered from the Generating Facility.

5. Buyer as Seller's Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the Resource Adequacy compliance year, as defined by CAISO Tariff, then any such charges or payments shall be offset and the net value shall be entered into Seller's Account for the applicable month pursuant to Section 3.22.

If any of Sections 1 through 4 of this Exhibit H apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

**** End of Exhibit H ****

<u>EXHIBIT I</u>

Scheduling and Delivery Deviation Adjustments

Seller or Buyer, as the case may be, shall be responsible for the following Scheduling and Delivery Deviation ("SDD") Adjustments with respect to the Generating Facility:

1. SDD Energy Adjustment. An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

   If A < D, then SDD Energy Adjustment= (D – A) x (EP – P)

   or

   If A > E, then SDD Energy Adjustment = (A – E) x (P – EP)

   Otherwise, the SDD Energy Adjustment = 0

   where:

   A = Metered Energy for the Settlement Interval;

   B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to <u>Exhibit G</u> corresponding to the Settlement Interval;

   C = Performance Tolerance Band =

   Three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour;

   D = Performance Tolerance Band Lower Limit = (B – C);

   E = Performance Tolerance Band Upper Limit = (B + C);

   EP = TOD Period Payment divided by Metered Energy applicable to the Settlement Interval specified in <u>Exhibit C</u> or TOD Period Energy Price applicable to the Settlement Interval specified in Section 2 (b) of <u>Exhibit C (1)</u>; and

   P = Market Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. <u>SDD Administrative Charge</u>. Seller shall make a payment to Buyer (the "SDD Administrative Charge") for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

   If A > (B + C) or A < (B – C), then:

   SDD Administrative Charge = (Absolute Value (B – A) – C) x Uninstructed Deviation GMC Rate.

   Otherwise, the SDD Administrative Charge = 0.

**** End of Exhibit I ****

EXHIBIT J
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	

CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit J ****

EXHIBIT K
Form of Guaranty Agreement

1. Guaranty. For valuable consideration, __[Guarantor's legal name]_____, _____[legal status]___ ("Guarantor") guarantees payment to ___[Buyer's legal name]__, a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by _______[Seller's legal name]___, ______[legal status]__ ("Principal") under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated __[date]__, as amended from time to time ("Agreement") (said amounts are hereinafter referred to as the "Obligations").

   Initially capitalized words that are used but not otherwise defined in this agreement ("Guaranty") shall have the meanings given them in the Agreement.

   Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

   Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, that all cure periods have expired, and with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

   Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

   The obligations of Guarantor hereunder are not subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

   A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. Guaranty Limit. Subject to Paragraph 13, the liability of Guarantor hereunder may not exceed $________ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.

3. Guaranty Absolute. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:

   (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectability, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

   (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;

   (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;

(d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and

(e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:

(i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;

(ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;

(iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;

(iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;

(v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;

(vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;

(vii) Beneficiary's exercise of any other rights available to it under the Agreement;

(viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;

(ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;

(x) [Intentionally omitted;] and

(xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.

(f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds, statute of limitations and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

4. Termination; Reinstatement.

(a) The term of this Guaranty is continuous until the date on which the Obligations have been performed or paid in full.

(b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy; Post-Petition Interest.

(a) So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal.

The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations.

Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

6. Subrogation. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones the exercise of such rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

7. [Intentionally omitted.]

8. Waivers of Guarantor.

(a) [Intentionally omitted.]

(b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.

(c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:

(i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property.

This means, among other things:

a. The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.

b. If the creditor forecloses on any real property collateral pledged by the debtor:

(1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(ii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.

(e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;

(f) Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;

(g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(h) Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerate guarantors, provide any legal or equitable discharge of Guarantor's obligations hereunder, or which may conflict with the terms of this Guaranty;

(i) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and

(j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.

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

10. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary

and its successors, assigns and creditors. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided*, *however*, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor. Guarantor represents and warrants that:

(a) It is a corporation duly organized, validly existing and in good standing in all necessary jurisdictions and has full power and authority to execute, deliver and perform this Guaranty;

(b) It has taken all necessary actions to execute, deliver and perform this Guaranty;

(c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;

(d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and

(e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.

12. Financial Statements. If requested by Beneficiary, Guarantor shall deliver the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:

(a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and

(b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.

(c) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.

13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 is not subject to, and does not count toward, the guaranty limit set forth in Paragraph 2 above.

14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

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

16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, is not in any way be affected or impaired thereby.

17. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary: *[Buyer]*
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

with a copy to: *[Name]*
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

Guarantor: *[Guarantor]*
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

Principal: *[Principal]*
[Street]
[City, State Zip]
Attn:
Phone:
Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of ________, ____.

_______*[legal name]*___

By: _________________

Name: _________________

Title: _________________

**** End of Exhibit K ****

EXHIBIT L
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

____
____
____
____

Ladies and Gentlemen:

_____________________________________ (the "Bank") establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of ______________________________, a California corporation (the "Beneficiary"), for the account of _______________________, a ____________ corporation, also known as ID# ___ (the "Applicant"), for the amount of XXX AND XX/100 Dollars ($___________) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on __________ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on ______________ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and

2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at ______________ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations may not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference may not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

Name:_________________________

Title:__________________________

ATTACHMENT A
Drawing Certificate

TO *[ISSUING BANK NAME]*

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. __________________

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____________________, an authorized representative of ___________________________ (the "Beneficiary"), certifies to *[Issuing Bank Name]* (the "Bank"), and _____________________ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. {_______________}, dated _______________, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to $___________________, for the following reason(s) [check applicable provision]:

[ ]A. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of *[Date of Execution]* (the "Agreement"), with respect to the Applicant has occurred and is continuing.

[ ]B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.

[ ]C. The Letter of Credit will expire in fewer than 30 days from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

[ ]D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.

[ ]E. The Beneficiary is entitled to retain the entire Development Security (i) as a result of Applicant's failure to commence the Term by the Term Start Date, or (ii) the Agreement has terminated due to an Event of Default by Applicant before the Term Start Date.

[ ]F. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of $20 per kW of As-Available Contract Capacity that Seller failed to demonstrate times the kilowatts of As-Available Contract Capacity which Seller failed to demonstrate.

2. Based upon the foregoing, the Beneficiary makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.$________________), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of ________________, _____.

Beneficiary: [BENEFICIARY NAME]

By: ______________________________

Name:_________________________

Title:__________________________

**** End of Exhibit L ****

EXHIBIT M
Seller's Milestone Schedule

No.	*Target Date*	*Milestones*

**** End of Exhibit M ****

EXHIBIT N
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

(a) Comply with the CAISO Tariff;

(b) Accommodate changes to their respective generation technology and organizational structure; and

(c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and Planned Outage schedules in accordance with the following schedule:

(a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed Planned Outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client") only if web-based system is not available.

(b) Seller shall provide the following information for each proposed Planned Outage:

(i) Start date and time;

(ii) End date and time; and

(iii) Capacity online, in MW, during the Planned Outage in addition to the information required by the CAISO, as indicated by the Buyer-provided web-based system.

(c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any Planned Outage.

(d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

(e) In the event a condition occurs at the Generating Facility which causes Seller to revise its Planned Outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such Planned Outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

(f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

**** End of Exhibit N ***

EXHIBIT O

QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name:
Street:
City: ______________________________ State: ____________________ Zip Code: _____________

ID No.: ________ Generation Nameplate (KW): __________________

II. In Operation: Yes ☐ No ☐

III. Can your facility dump your thermal output directly to the environment? ☐Yes ☐No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1				Y N
2				Y N
3				Y N
4				Y N
5				Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
  BTUs ________ Therms ________ mmBTUs ________
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

***** *End of Exhibit O* ****

ELECTRIC SAMPLE FORM 79-1121 Sheet 1 (N)
STANDARD CONTRACT FOR ELIGIBLE CHP FACILITIES (N)
WITH NET OUTPUT NOT GREATER THAN 5 MW (N)

PLEASE REFER TO ATTACHED
SAMPLE FORM

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

Simplified Contract for Eligible CHP

PREAMBLE

This Power Purchase and Sale Agreement (this "Agreement") by and between [Buyer's name], a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is dated as of [Date of execution] (the "Effective Date"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A. Exhibits A through G inclusive are hereby incorporated into and made a part of this Agreement.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill its obligations under the Act and the Decisions issued in Rulemaking ("R.") 08-06-024 ("AB 1613 Decisions"), and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

{Buyer Comment: If the Term is greater than or equal to five years and if the Generating Facility provides baseload generation, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends on [Date] (the "Term End Date"). The Term Start Date must be on the first day of a calendar month. If the Generating Facility is (a) a New Eligible CHP Facility, the Term Start Date must occur within 18 months of the Effective Date, or (b) an Existing Eligible CHP Facility, the Term Start Date must occur within 6 months of the Effective Date. Subject to the limitation set forth in the immediately preceding sentence, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least three months before such Term Start Date. The Term must be no less than one year and no more than 10 years.

1.02 Generating Facility. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility], and which is further described in Exhibit G. The Generating Facility is located at [Generating Facility address], which must be located within Buyer's electric service territory. To be eligible for this Agreement, the Generating Facility must be an Eligible CHP Facility that, during the entire Term, (1) satisfies the provisions of AB 1613, as implemented by the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA. However, public agency sellers exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f) are not subject to the requirements of 18 CFR §292.201.

1.03 As-Available Contract Capacity; Power Rating. The As-Available Contract Capacity equals [___] kW. (The As-Available Contract Capacity must be no greater than 5 MW.) The Power Rating of the Generating Facility must be no more than 20 MW. Seller has no obligation under this Agreement to produce or deliver firm energy or capacity.

1.04 Site Host Load. The Site Host Load is expected to equal, on average, [___] kW. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year, which amount may change from time to time; *provided, however*, that Seller shall provide Notice to Buyer at least 30 days, or as soon as otherwise is practicable, before any such change that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis; and *provided further*, that the As-Available Contract Capacity shall never exceed 5 MW.

1.05 Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The actual energy production of the Generating Facility may change from time to time; *provided, however*, that (a) Seller shall provide Buyer with 30 days advance Notice of any change to the actual energy production that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis, and (b) the Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.

1.06 Delivery Point. The point of delivery of the Power Product is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept the Power Product at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs, exclusive of line losses (if any) and interconnection costs, to deliver the power from the Delivery Point to the point of interconnection between the Buyer's distribution or transmission facilities and the CAISO- Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement) and any line losses from the Delivery Point to the Interconnection Point. Any line losses incurred or avoided from the Delivery Point to the Interconnection Point are determined as part of the interconnection process.

1.07 Power Product Prices.

(a) Monthly Contract Payment for the Power Product shall be calculated in accordance with Exhibit B.

(b) If the Generating Facility is interconnected pursuant to a FERC-jurisdictional interconnection tariff and Seller is not yet able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements, pending Seller's provision of such benefits the Monthly Contract Payment for Power Product shall be calculated in accordance with Exhibit B(1).

(c) A Generating Facility subject to paragraph 1.07(b) that becomes able to provide Resource Adequacy Benefits in compliance with applicable CPUC and CAISO Resource Adequacy requirements shall provide Buyer with written notice and reasonable evidence thereof.

(d) Starting on the first day of the calendar month following the date on which notice was given pursuant to subsection 1.07(c), Seller shall be paid the monthly contract price for the Power Product as set forth in Exhibit B.

1.08 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement. Buyer shall take all steps necessary to be authorized as the Scheduling Coordinator during the Term. Seller shall cooperate with Buyer in good faith to assure that Buyer is authorized as the Scheduling Coordinator during the Term. In accordance with Section 4.01, Buyer shall invoice to Seller and set off against future payments to Seller:

(a) $1,500.00 per month in consideration for Buyer rendering its services to Seller as the Scheduling Coordinator; *provided, however*, that if the As-Available Contract Capacity is less than 1 MW, Seller shall not be required to pay this fee; and

(b) A fee (the "SC Set-Up Fee") equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee. The actual cost will be a simple pass-through to Seller of Buyer's actual costs. Buyer estimates that the SC Set-up Fee for this Agreement will equal $2,000.00 or less.

1.09 GHG Emissions Allowances. Seller elects one of the following: ___(a) __(b), provided however, that this Section 1.09 shall not be applicable when the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

(a) Seller shall manage its own GHG Emissions Allowances and request payment from Buyer in accordance with Section 3.03.

(b) PG&E shall purchase GHG Emissions Allowances on behalf of Seller upon the CPUC's adoption of the necessary procedure. Until such time, Buyer will reimburse Seller per section 1.09(a), above.

1.10 Decertification from AB 1613 Program. In the event of Seller's default pursuant to Section 6.01(b)(vi) due to CEC decertification under the Public Utilities Code 2843, so long as at the time of default, Seller demonstrates qualifying facility status under PURPA and notwithstanding Section 2.02(b), upon termination of this Agreement, Seller's continued conveyance of Power Product and acceptance of payment shall constitute Seller's acceptance of any applicable mandatory must-purchase contract available to qualifying facilities under PURPA. Seller shall be paid the short run avoided cost rate for energy and as-available capacity applicable under such contract at the time of decertification.

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Before the Term Start Date, Seller must demonstrate to Buyer that Seller has satisfied all of the requirements necessary for Seller to Operate the Generating Facility in accordance with the terms of this Agreement (including Section 7.10), Applicable Law, the CAISO Tariff (to the extent applicable), and any other applicable tariff, legal, and regulatory requirements.

2.02 Termination Rights of the Parties.

(a) Termination Rights of Seller. Seller has the right to terminate this Agreement on Notice:

(i) If Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation; or

(ii) If Seller's Site Host relocates its business outside the State of California or terminates its business operations in California; provided, however, that if Seller terminates this agreement in accordance with this Section 2.02(a)(ii), Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year from the effective date of such termination. The termination of this Agreement becomes effective five Business Days after Seller delivers such Notice.

(b) Event of Default. Except as provided in Section 1.10, in the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.03 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year following the date of such termination.

(c) End of Term. This Agreement terminates at midnight of (i) the Term End Date, or (ii) a termination date agreed to in writing by the Parties.

(d) Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement.

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Capacity Attributes and Resource Adequacy Benefits for Buyer's benefit throughout the Term.

3.02 Resource Adequacy. In accordance with Public Utilities Code section 2841(f), Seller grants, pledges, assigns and otherwise commits to Buyer the generating capacity of the Generating Facility to the extent necessary in order for Buyer to count such generating capacity to meet its Resource Adequacy obligations. Seller shall comply with CPUC and CAISO requirements to count towards Resource Adequacy; provided however,

(i) If such requirements could interfere with the Operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, Seller's compliance shall be required pending resolution of the challenge.

(ii) If Seller interconnects the Generating Facility pursuant to a non-FERC-jurisdictional interconnection tariff, Seller shall not be required to provide Resource Adequacy Benefits, and Buyer's total obligation to obtain Resource Adequacy Benefits pursuant to the Resource Adequacy Rulings with respect to the service area of Buyer will be decreased by the Generating Facility's generating capacity, provided that, if the outcome of any CPUC proceeding requires Seller to obtain a deliverability study, Seller shall promptly obtain such deliverability study and provide it to Buyer upon the completion of such deliverability study.

(iii) Following the outcome of the distribution interconnection issues proceeding (R.11-09-011), the Resource Adequacy proceedings (R.09-10-032), and any future CAISO stakeholder process addressing deliverability, a deliverability study may be required for all AB 1613 resources. The CPUC has reserved the right to require appropriate amendments to this Agreement as necessary to address full capacity deliverability issues. The Parties agree to comply with any such CPUC requirement.

3.03 GHG Compliance Costs.

(a) Direct GHG Compliance Costs. During the Term, Buyer shall reimburse Seller for any Direct GHG Compliance Costs, other than GHG Emissions Allowances, which are separately addressed in the sections below, attributable to the Generating Facility for GHG emissions associated with the Power Product, within forty-five (45) days of Buyer's receipt from Seller of reasonable documentation, in form and substance acceptable to Buyer, establishing that:

(i) Seller is actually liable for the Direct GHG Compliance Costs for GHG emissions attributed to the Power Product;

(ii) Direct GHG Compliance Costs were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose Direct GHG Compliance Costs where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility.

(iii) Buyer is not liable for reimbursement to Seller for Direct GHG Compliance Costs for GHG emissions associated with the Power Product if the GHG emissions for which Seller seeks reimbursement exceed the GHG Emissions Cap and based on the actual delivered Power Product.

(iv) The Generating Facility's GHG emissions has been allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended.

(b) GHG Allowance Costs. Buyer shall bear the cost of GHG Emissions Allowances for GHG emissions attributable to the Generating Facility and associated with the Power Product through either reimbursement, or direct procurement, as indicated at Section 1.08, provided that:

(i) Seller is actually required to procure such GHG Emissions Allowances for GHG emissions attributed to the Power Product;

(ii) Such GHG Emissions Allowances compliance requirements were imposed upon Seller by an authorized Governmental Authority with jurisdiction to impose GHG emissions allowances requirements where the Generating Facility is located, or which otherwise has jurisdiction over Seller or the Generating Facility;

(iii) The Generating Facility's GHG emissions, less any Free Allowance for which the Generating Facility is eligible, shall be allocated between the useful thermal output, the electricity consumed on-site, and the exported Power Product based on the relative BTU content of the end product consistent with Form CEC-2843, as amended;

(iv) Buyer's responsibility for GHG Emissions Allowances is limited to GHG emissions associated with the Power Product for which the Seller or the Generating Facility was not eligible to receive Free Allowances;

(v) Buyer's responsibility for GHG Emissions Allowances will not exceed the GHG Emissions Cap based on the actual delivered Power Product.

(c) Reimbursement of Seller for GHG Emissions Allowances. If Seller has elected to manage its own GHG Emissions Allowances in Section 1.09, then, during the Term, Buyer shall reimburse Seller to the extent of Buyer's responsibility for GHG Emissions Allowances in accordance with Section 3.03(b) ("applicable quantity") within forty-fine (45) days of Buyer's receipt from Seller of documentation, in form and substance acceptable to Buyer, requesting reimbursement. If the CPUC has specified an index for use in determining the price to be paid for GHG Emissions Allowances, in no event shall Buyer's total payment to Seller for the applicable quantity exceed the total payment that would be due to Seller if the applicable quantity were purchased at the index price at the relevant time period.

(d) Buyer's Purchase of GHG Emissions Allowances. If Seller has elected to have Buyer purchase GHG Emissions Allowances for the Generating Facility in Section 1.09, then, during the Term and upon the CPUC's issuance of guidelines on the mechanics of Buyer's obligations to purchase GHG Emissions Allowances pursuant to the AB 1613 Decisions, Buyer shall purchase GHG Emissions Allowances for Seller for the applicable quantity for the remainder of the Term in accordance with and subject to such guidelines, as may be revised from time to time.

(e) This Section 3.03 shall not be applicable during any portion of the Term during which the Monthly Contract Payment is calculated in accordance with Exhibit B (1).

3.04 Exclusive Rights. Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Product to any Person other than Buyer.

3.05 Site Control. Within 60 days of the Effective Date and until the Term End Date, Seller shall have Site Control.

3.06 Permits. Seller shall obtain and maintain all Permits necessary for the Seller to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.07 Interconnection. Seller shall, at its own cost, obtain and maintain all interconnection rights and an interconnection agreement and any related Governmental Authority approval(s) required to enable interconnection with Buyer's electric system and Parallel Operation of the Generating Facility.

3.08 CAISO Relationship. Seller shall comply with all applicable provisions of the CAISO Tariff, including securing and maintaining in full force all CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

3.09 Generating Facility Modifications. Seller shall provide at least 30 days advance Notice to Buyer before making any material modification to the Generating Facility, which Notice will include a description of any change in actual energy production of the Generating Facility and in the Site Host Load anticipated as a result of the modification. Notwithstanding the foregoing, Seller shall make no modification to the Generating Facility that would prevent Seller from complying with the terms of this Agreement.

3.10 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test the CAISO-Approved Meter pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. The Check Meter shall be interconnected with Buyer's communication network to permit (i) periodic, remote collection of revenue quality meter data, and (ii) back-up real time transmission of operating-quality meter data through the Telemetry System. Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal may only be broken by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided, however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes. Buyer may compare the Check Meter data to the CAISO-Approved Meter data. If the deviation between the CAISO-Approved Meter data and the Check Meter data (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter) for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests. For the avoidance of doubt, the Check Meter is intended to be used for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and Check Meter data shall only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is checked or recertified.

3.11 Provision of Information. Seller shall promptly provide to Buyer all documents reasonably requested by Buyer relating to the Generating Facility (including site plan drawings and single-line diagrams), the administration of this Agreement, or in order for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.12 Operation. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the requirements set forth in Exhibit C and Exhibit D;

(c) Use its commercially reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit C;

(d) Pay the CAISO Charges for which it is responsible under Exhibit E;

(e) Use reasonable efforts to respond to any instruction issued by the CAISO or the Transmission Provider or delivered to Seller by Buyer in response to an Emergency;

(f) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within 20 days of a request by Notice from Buyer, including records showing (i) real and reactive power production, (ii) changes in Operating status, (iii) protective apparatus operations, and (iv) any unusual conditions found during inspections;

(g) Keep all Operating records to the extent required of an Eligible CHP Facility by any applicable CPUC or CEC order;

(h) At least 75 days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and

(i) Comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility, if any.

3.13 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.14 Power Product Curtailments at Request of Scheduling Coordinator, Transmission Provider, or CAISO. Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from Seller's Scheduling Coordinator, the Transmission Provider, or the CAISO; *provided, however*, that Buyer, in its role as Scheduling Coordinator, shall issue such an instruction only when Buyer is expressly directed to curtail production of the Power Product by the CAISO or where Buyer reasonably believes that curtailment of the Power Product is required to comply with (a) its maintenance requirements and operating orders, (b) a CAISO Declared Over-Generation Condition, or (c) an Emergency. Whenever practicable, Buyer will use commercially reasonable efforts to provide Seller reasonable advance notice of the possibility that a reduction or interruption of deliveries may be required.

3.15 Eligible CHP Facility Status.

(a) To the extent required by Applicable Law, administration of this Agreement or program eligibility guidelines established by the CEC within thirty (30) Business Days following the Term Start Date or Notice from Buyer, Seller shall provide to Buyer certification from the CEC that the Generating Facility meets the applicable operating and efficiency standards for Eligible CHP Facilities for the applicable year.

(b) Seller shall take all necessary steps, including making or supporting timely filings with the appropriate Governmental Authority in order to maintain certification of the Eligible CHP Facility status of the Generating Facility throughout the Term.

(c) Seller shall provide to Buyer copies of all documentation, including calculations and verifiable supporting data provided to the appropriate Governmental Authority, which demonstrates the compliance of the Generating Facility with the Eligible CHP Facility operating and efficiency standards for the applicable year. Notwithstanding the foregoing, Seller shall provide Buyer with a copy of its Annual Performance Reporting Forms (CEC Form 2843 or its successor) within 5 days of submission to the CEC.

(d) Seller, unless a public agency, shall take all necessary steps, including making or supporting timely filings with FERC in order to maintain the qualifying facility status of the Generating Facility as required by 18 CFR §292.201, et seq., throughout the Term.

(e) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, each QF Seller shall provide to Buyer a copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.

3.16 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to (a) interconnect with the Transmission Provider's electric system, (b) transmit and deliver electric energy to the Delivery Point, or (c) own and operate any CAISO-Approved Meter.

3.17 Buyer's Access Rights. Buyer has the right to examine the Site, the Generating Facility and the Operating records for any purpose connected with this Agreement upon providing Seller with reasonable advance Notice under the circumstances. Seller hereby grants Buyer reasonable access to all CAISO-Approved Meters and Check meters for meter readings and any purpose necessary to effectuate this Agreement. Seller shall provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request, as necessary to effectuate this Agreement. Seller shall inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.18 Planned Outages. Seller shall schedule and utilize all planned outages in accordance with the procedures and subject to the limitations set forth in Exhibit D.

3.19 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

3.20 Regulation of Net Output of the Generating Facility. In its sole discretion, Buyer may require that Seller install, at Seller's sole cost, a device or equipment that will disable the Generating Facility from delivering electric energy at a rate greater than 5,000 kWh per hour of Metered Energy. At Buyer's request, Seller shall install such device before the Term Start Date or within 60 days if Buyer's request is made any time after the Term Start Date. Unless otherwise agreed to by the Parties, Buyer shall own, operate, and maintain such device at Seller's sole cost. Any such device shall be agreed upon by Seller and Buyer and must, in accordance with Prudent Electrical Practices, be suitable to the purpose for which it is installed and meet the Transmission Provider's interconnection requirements.

3.21 Allocation of Availability Incentive Payments and Non-Availability Charges. If the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, or Availability Incentive Payments as defined and provided for by the CAISO Tariff, any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

ARTICLE FOUR. BUYER'S OBLIGATION TO PAY

4.01 Obligation to Pay.

(a) For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit B or Exhibit B (1), as determined pursuant to Section 1.07 *provided, however*, Buyer is not obligated to issue a payment to Seller until the amount due to Seller pursuant to this Agreement exceeds $5,000.00 after set-offs and adjustments in accordance with this Agreement. Buyer shall adjust each Monthly Contract Payment in accordance with the terms of this Agreement, including making adjustment for the fees set forth in Section 1.08 and any CAISO Charges.

(b) Subject to Section 4.01(a), Buyer shall provide a payment statement within 30 days after the last Business Day of each calendar month, which statement shall include Buyer's payment to Seller and a calculation thereof.

(c) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO, Buyer shall recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading. Buyer shall then recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to a subsequent monthly statement that is calculated after Buyer's recomputation using corrected measurements. If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on a subsequent monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's statement until such amount is fully collected by Buyer.

(d) Buyer may deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(e) Except as otherwise provided for in this Agreement, if, within 90 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete. If Seller timely identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to a subsequent monthly statement that is calculated. If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to a subsequent statement that is calculated. If the recomputation results in a net amount still owing to Buyer after applying the overpayment, a subsequent statement shall show a net amount owing to Buyer.

(f) Notwithstanding anything to the contrary in this Agreement, if any payment statement shows amounts owed by Seller to Buyer, Buyer may, at its option, apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

(g) Notwithstanding anything to the contrary in this Agreement, for the entire period during which Seller fails to materially comply with any provision set forth in Exhibit C, Seller shall be responsible for all CAISO Charges; *provided, however*, that if Seller complies fully with Exhibit C, Buyer shall pay all CAISO Charges (except those CAISO Charges for which Seller is responsible under Exhibit E) for up to 1 MW of deviation of Seller's Forecast from the Metered Energy, and

Seller shall be responsible only for CAISO Charges attributable to such deviations in excess of 1 MW.

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or

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

(b) With respect to Seller:

(i) The total quantity of Metered Energy in any Term Year is less than 10% of the Expected Term Year Energy Production;

(ii) Seller delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement, electric energy that was not generated by the Generating Facility;

(iii) The Term Start Date does not occur within 18 months of the Effective Date, if Seller is a New Eligible CHP Facility, or within 6 months of the Effective Date, if Seller is an Existing Eligible CHP Facility; *provided, however*, that this 18-month or 6-month period shall be extended on a day-for-day basis for any delay caused solely by Buyer's failure to perform its obligation(s) under this Agreement or excused solely as a result of Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), as to which, in either case, Seller has notified Buyer of the new expected Term Start Date;

(iv) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

(v) Seller materially fails to comply with any provision of Exhibit C and such failure is not cured within 30 days after Notice is provided by Buyer to Seller; or

(vi) Seller fails to maintain its status as an Eligible CHP Facility during the Term.

6.02 Site Host Changes. Notwithstanding Section 6.01 above, with respect to Seller, an Event of Default shall not include (a) cessation of operation by the Site Host, or (b) the inability of Site Host to use the waste heat from the Generating Facility in a manner that is consistent with the requirements of the Act. If the Site Host ceases operation or is unable to use the waste heat from the Generating Facility in a manner that is consistent with the Act for a period of 365 days or more, either Party may terminate this Agreement. If Seller terminates this Agreement pursuant to this Section 6.02, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one following the effective date of such termination.

6.03 Early Termination. There shall be no opportunity to cure a default other than as expressly provided in Section 6.01. If this Agreement is terminated pursuant to Section 2.02(b), then Buyer or the Non-Defaulting Party will have the right to (a) designate by no more than twenty (20) days' Notice to the Defaulting Party a date for the early termination of this Agreement (an "Early Termination Date"), (b) immediately suspend performance under this Agreement, and (c) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), subject to the terms of this Agreement.

ARTICLE SEVEN. MISCELLANEOUS

7.01 Representations, Warranties and Covenants. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

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

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement are 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;

(e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

(f) It is acting for its own account, and its decision to enter into this Agreement is based on its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

(g) (g) It has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement.

7.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It does not, and will not (i) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (ii) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except in order to satisfy the Site Host Load, or as required by other Applicable Laws.

(b) Throughout the Term: (i) it or its subcontractors will own or lease and Operate the Generating Facility; (ii) it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person; (iii) it will hold the rights to all of the Product; (iv) the Generating Facility will maintain its qualification as an Eligible CHP Facility; and (v) the Generating Facility will meet all applicable greenhouse gas emissions standards, as such standards may change from time to time.

7.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, Claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, Claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, Claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 7.01 and Section 7.02. Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 7.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, Claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any Person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 7.10. The inclusion of this Section 7.03(b) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 7.10.

(c) Each Party shall defend, save harmless and indemnify the other Party against any taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility for which such indemnifying Party is responsible.

(d) All indemnity rights survive the termination of this Agreement for 12 months.

7.04 Assignment. Seller may not assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld; *provided, however*, that Seller may, without the consent of Buyer (and without relieving Seller from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender(s) in connection with any financing if (a) such Lender(s) assumes the payment and performance obligations provided under this Agreement with respect to Seller, (b) such Lender(s) agree in writing to be bound by the terms and conditions of this Agreement, and (c) Seller delivers such tax and enforceability assurance as Buyer may reasonably request.

7.05 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE 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.

7.06 Arbitration. Except for matters relating to specific performance, injunctive relief or other equitable remedies, the Parties agree to submit to arbitration any and all matters in dispute or controversy among them concerning the terms of this Agreement. Unless the Parties agree to alternative arrangements, the selection of arbitrators and the procedure shall be in accordance with the commercial arbitration rules then in effect of the Judicial Arbitration and Mediation Services, Inc. Any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the Parties; *provided, however*, that each Party shall pay for and bear the costs of its own experts, evidence and counsel's fees. Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in San Francisco, California.

7.07 Notices. All Notices shall be made in accordance with this Section 7.07 and Exhibit F. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 7.07 are deemed given as follows: (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day; (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out; and (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date. Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

7.08 General.

(a) Except as may otherwise be provided in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. 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. Unless expressly provided for in this Agreement, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages. This Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof. Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(b) Each Party reserves all rights, claims and defenses with respect to this Agreement, the AB1613 Decisions, and any application for rehearing, petition for modification, petition for declaratory order, or appeal filed with respect to such decisions.

(c) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

(f) The term "including" when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.

(g) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(h) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(i) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

(j) Whenever this Agreement refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(k) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

(l) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Sections" and "Exhibits" refer to the corresponding Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Sections" in Exhibits A through G refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

7.09 Confidentiality. Neither Party may disclose any Confidential Information to a third party, other than: (a) to such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) to potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; (c) to Buyer's Procurement Review Group, as defined in D.02-08-071, subject to any applicable limitations and subject to a protective order applicable to Buyer's Procurement Review Group; (d) with respect to Confidential Information, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information; (e) in order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party; and (f) in order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC. In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Section 7.09(f), each Party shall use reasonable efforts to (i) notify the other Party before disclosing the Confidential Information, and (ii) prevent or limit such disclosure.

7.10 Insurance.

(a) General Liability Coverage. Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better, and in each case specifying Buyer as an insured on the policy. The insurance required in this Section 7.10 may be provided by any combination of Seller's primary and excess liability policies.

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion;

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles; and

(v) Excess liability insurance written on an "occurrence" (not "claims made") basis and providing coverage excess of the underlying employer's liability, commercial general liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 7.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 7.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or ownership of the Generating Facility.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 7.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 7.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, Claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. Governmental entities that have an established record of self-insurance may provide the required coverage through self insurance.

(e) If Seller fails to comply with any of the provisions of this Section 7.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, Claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section.

7.11 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],	**[BUYER'S NAME],**
a [Seller's business registration]	a California corporation
By:______________________________	By:______________________________
Name:_________________________	Name:_________________________
Title:__________________________	Title:__________________________

EXHIBIT A
Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"AB 1613 Decisions" means the decisions issued in R.08-06-024.

"Act" has the meaning set forth in the Recitals.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this definition, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Law" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, the Generating Facility or the terms of this Agreement.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.03, as may be adjusted from time to time.

"Availability Standards" means the standard set forth in the CAISO Tariff setting forth criteria for determining if a Resource Adequacy Resource is subject to Non-Availability Charges or Availability Incentive Payments (each as defined in the CAISO Tariff), under the CAISO Tariff.

"Average Higher Heating Value MPR Heat Rate" means the heat rate equal to 6,924 Btu/kWh, or 6.924 mmbtu/MWh, per CPUC Resolution E-4298, which heat rate will be modified in this Agreement if there is any modification thereto by the CPUC or other authorized Governmental Authority.

"Bankrupt" means with respect to any Person, such Person:

(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 petition is not dismissed within 90 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.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

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

"Buyer Tariffs" means the entire body of effective rates, fees, rentals, charges, and rules collectively of PG&E, including title page, preliminary statement, service area maps, rate schedules, list of contracts and deviations, rules, and sample forms.

"CAISO" means the California Independent System Operator Corporation.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter system(s), including all associated metering transformers and related appurtenances, as required by the CAISO (or, to the extent that the CAISO's metering requirement does not apply, Prudent Electrical Practices) and furnished by Seller, and which (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) is a time-of-use meter capable of measuring the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy the Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO-declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.

"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling, Availability Standards or deliveries from the Generating Facility under this Agreement.

"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.

"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.

"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.

"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.

"CARB" means the California Air Resources Board

"CEC" means the California Energy Commission.

"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may furnish at its discretion, as set forth in Section 3.10(b), and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

"Claiming Party" has the meaning set forth in Section 5.02.

"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 before or after the termination of this Agreement.

"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

"Control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power

"CPUC" means the California Public Utilities Commission.

"Decision" means CPUC Decision ("D") 07-09-040.

"Defaulting Party" has the meaning set forth in Section 6.01(a).

"Delivery Point" has the meaning set forth in Section 1.06.

"Direct GHG Compliance Costs" mean any taxes, charges or fees imposed by an authorized Governmental Authority with jurisdiction over the Seller or the Generating Facility, and levied directly on the Generating Facility for GHG emissions attributable to its Operations.

"Early Termination Date" has the meaning set forth in Section 6.03(a).

"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code Section 2840.2, subdivisions (a) and (b) that, (1) meets the guidelines established by the California Energy Commission pursuant to Public Utilities Code §2843 and, (2) meets the requirements of 18 Code of Federal Regulations §292.201, et seq., unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Emergency" means an actual or imminent condition or situation which (a) is defined and declared by the CAISO or Transmission Provider, (b) jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system, (c) requires automatic or immediate manual action to prevent or limit loss of load or generation supply, or (d) poses a threat to public safety.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing Eligible CHP Facility" means an Eligible CHP Facility that, during the entire Term, (1) satisfies the provisions of the Act as implemented by the CEC pursuant to Public Utilities Code Section 2843 in the CEC's "Final Statement of Reasons" issued in June 2010, and (2) is a Qualifying Facility under PURPA, unless Seller is a public agency exempt from FERC jurisdiction under 16 United States Code ("USC") §824(f).

"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.05.

"FERC" means the Federal Energy Regulatory Commission.

"Forced Outage" has the meaning set forth in the CAISO Tariff.

"Force Majeure" means any event or circumstance (that is not anticipated as of the Effective Date) to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Force Majeure does not include: (a) a failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure; (b) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility (provided, however, that failure or delay in the granting of permits, to the extent such failure or delay is not caused by action or inaction of Seller, qualifies as a Force Majeure for purposes of this Agreement); (c) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or (d) a lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

"Forecast" means the hourly forecast of the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, net of the Site Host Load and Station Use.

"Free Allowance" means any GHG Emissions Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

"Generating Facility" means the Generating Unit(s) comprising Seller's power plant (as more particularly described in Section 1.02 and Exhibit G), including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.

"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.

"Generation Operations Center" means the location of Buyer's real-time operations personnel.

"GHG" is an abbreviation for "greenhouse gas" which means emissions released into the atmosphere of carbon dioxide (CO2), nitrous oxide (N2O) and methane (CH4), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a metric ton of CO2-equivalent, in order to allow comparison between the different effects of gases on the environment; provided, however, that the definition of the term "Greenhouse Gas", as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority

"GHG Emissions Allowance" means a limited tradable authorization (whether in the form of a credit, allowance, or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related Entity of Seller, which respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different

Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility.

"GHG Emissions Cap" means the product of (a) the rate for tonnes of CO2 per MMBtu of natural gas, 0.0531 tonnes/mmbtu, times (b) the Average Higher Heating Value MPR Heat Rate in mmbtu/MWh.

"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

"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 (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;

(2) Any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;

(3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

(i) Any energy, capacity, reliability or other power attributes from the Project,

(ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,

(iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

(iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"High-Value Area" means a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC, as defined in Exhibit B, Section 6.

"Holidays" means "NERC Holidays" as defined in Exhibit B, Section 5. "Time of Delivery Periods and Allocation Factors."

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"IFM" (i.e., the Integrated Forward Market) has the meaning set forth in the CAISO Tariff.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided, however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"Lender" means any financial institutions or successors in interest or assignees that provides development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

"Location Bonus" is described in Section 6 of Exhibit B.

"Metered Amounts" means the quantity of electric energy, expressed in kWh, as recorded by (i) the CAISO-Approved Meter(s), which quantity may include compensation factors introduced by the CAISO into the CAISO-Approved Meter(s), or (ii) Check Meter(s), as applicable.

"Metered Energy" means the total electric energy expressed in kWh, in excess of Station Use and Site Host Load and measured by the CAISO-Approved Meter(s) or Check Meter(s), (after adjusting for any compensation factors introduced by the CAISO into the CAISO Approved Meter), as applicable, at the Generating Facility for the specified Metering Interval.

"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters, as applicable.

"Monthly Contract Payment" has the meaning set forth in Section 4.01(a).

"NERC" means the North American Electric Reliability Corporation.

"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.

"Non-Defaulting Party" has the meaning set forth in Section 6.03.

"Non-Peak Hours" means the hours specified in the definitions of "Shoulder" and "Night" TOD Periods in Exhibit B, "5. Time of Delivery Periods and Allocations Factors" or Exhibit B(1), "4. Time of Delivery Periods" as determined pursuant to Section 1.07.

"Notice" means notices, requests, statements or payments provided in accordance with Section 7.07 and Exhibit F.

"OMAR" means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement-quality meter data or its successor.

"Operate", "Operating" and "Operation" mean to provide all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.

"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit D.

"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer in accordance with Exhibit D.

"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

"Party" or "Parties" has the meaning set forth in the Preamble.

"Peak Months" means June, July, August and September.

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.

"Person" or "Persons" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.

"Physical Trade" has the meaning set forth in the CAISO Tariff.

"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.

"Product" means the Power Product, Green Attributes, Capacity Attributes and Resource Adequacy Benefits.

"Project" means the Generating Facility.

"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that: (a) equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs; (b) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (c) preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, codified at 16 United States Code ("USC") §824a-3, as amended from time to time.

"Qualifying Facility" means an electric energy generating facility that complies with the qualifying facility definition established by PURPA and any FERC decisions, orders, and rules implementing PURPA, as amended from time to time, including 18 Code of Federal Regulations ("CFR") Part 292.201, et seq., unless the Qualifying Facility is a public agency exempt from FERC jurisdiction under 16 USC §824(f).

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(e)(2), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in Resource Adequacy Rulings, 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.

"Resource Adequacy Benefits" means the rights and privileges attached to the generating capacity of the Generating Facility that, in accordance with Public Utilities Code Section 2841(f), count toward satisfying Buyer's Resource Adequacy obligations.

"Resource Adequacy Rulings" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-024, 06-07-031 and any subsequent CPUC ruling or decision, or any other Resource Adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such CPUC decisions, rulings, laws, rules or regulations may be Amended or modified from time to time during the Term.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of preparing a schedule based on Seller's forecast and notifying, requesting, and confirming the CAISO-Approved Quantity with the CAISO, the electric energy delivered from the Generating Facility.

"Scheduled Amount" means the Day-Ahead Schedule comprised of the quantity (in MWh) of electric energy expected to be produced by the Generating Facility that is scheduled from Seller or Seller's Scheduling Coordinator to Buyer in a Physical Trade in the IFM.

"Scheduling Coordinator" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.

"SC Set-Up Fee" has the meaning set forth in Section 1.08.

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

"Settlement Agreement" means that particular agreement dated October 8, 2010 which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003 and 04-04-025 and was approved by CPUC decision D.10-12-035.

"Settlement Effective Date" means November 23, 2011, the date on which the Settlement Agreement became effective.

"Simple Interest Payment" means a dollar amount calculated by multiplying the: (a) dollar amount on which the Simple Interest Payment is based; by (b) the Interest Rate; by (c) the result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02 and Exhibit G.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a lease, the term of which begins on or before the Term Start Date and extends at least through the Term End Date, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.

"Site Host" means any Person purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.

"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties pursuant to California Public Utilities Code Section 218(b).

"SRAC" means the full short run avoided operating costs that are the basis of Buyer's published electric energy prices, as well as the methodology describing, among other things, payment for GHG compliance costs and GHG charges, and certain reporting requirements with respect thereto, as approved by the CPUC in the Settlement Agreement, and as may be revised by the CPUC from time to time. Section 10 of the Settlement Agreement sets forth SRAC as in effect on the Settlement Effective Date.

"Station Use" means the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, including transformation losses to power such equipment and other necessary loads.

"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility, all in accordance with the CAISO Tariff.

"Term" has the meaning set forth in Section 1.01.

"Term End Date" has the meaning set forth in Section 1.01.

"Term Start Date" has the meaning set forth in Section 1.01.

"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.

"TOD Period" means the time of delivery period used to calculate the Monthly Contract Payment set forth in Exhibit B or Exhibit B(1), as determined by Section 1.07.

"Trading Day" means the day in which Day-Ahead (as defined in the CAISO Tariff) trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).

"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Buyer from the Delivery Point to the CAISO-Controlled Grid.

"Web Client" has the meaning set forth in Section 2(a) of Exhibit D.

"WECC" means the Western Electricity Coordinating Council.

**** End of Exhibit A ****

EXHIBIT B

This Exhibit B establishes the avoided cost price adopted and implemented by the CPUC in CPUC Decision 09-12-042 (as modified by CPUC Decisions 10-04-055, 10-12-055, and 11-04-033).

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period payment 1st TOD Period +
TOD Period payment 2nd TOD Period +
TOD Period payment 3rd TOD Period +
Location Bonus

All TOD Period Payments shall be calculated as set forth in Section 2 of this Exhibit B.

The “1st TOD Period,” “2nd TOD Period,” and “3rd TOD Period” subscripts refer to the three TOD Periods that apply for the applicable calculation month, as set forth in Section 5 of this Exhibit B.

The Location Bonus, if applicable, shall be calculated as set forth in Section 6 of this Exhibit B.

2. TOD Period Payment Calculation

Each monthly TOD Period Payment is calculated in dollars, using the terms defined below, as follows:

(Fixed price component + Variable price component) * (TOD Factor) *
metered kWh exported during the TOD Period during the month

The Metered Energy per hour used for payments shall be limited to 5,000 kW times 1 hour. Additionally, once the Metered Energy delivered during any Term Year equals the As-Available Contract Capacity at 100% capacity factor applied over 8,760 hours, no further payments will be calculated or paid for the remaining TOD Periods within any remaining months of the current Term Year.

3. Fixed Price Component

The Fixed Price Component for all TOD Periods shall be the amount in the following table for the year of the Term Start Date. The fixed price component does not escalate during the term of the Agreement.

Year	$/kwh
2012	0.02000
2013	0.02033
2014	0.02068
2015	0.02104
2016	0.02140
2017	0.02142
2018	0.02145
2019	0.02147
2020	0.02149

Year	$/kwh
2021	0.02151
2022	0.02153
2023	0.02155

4. <u>Variable Price Component Calculation</u>

(a) Monthly bidweek gas price shall be calculated as the average of monthly bidweek gas price indices at PG&E Citygate as reported in Gas Daily, Natural Gas Intelligence, and Natural Gas Weekly

(b) Intrastate gas transportation rate shall be the tariffed intrastate gas transportation rate for large electric generators as published in the PG&E Gas Tariffs G-EG and G-SUR.

(c) Heat Rate, pursuant to D. 09-12-042, shall be equal to:

6,924 Btu/kWh

(d) Variable O&M shall be the amount in the following table for the year in which the payment is being calculated. For years after 2023, Variable O&M shall be the 2023 payment multiplied by 1.02, compounded for each year beyond 2023.

Variable O&M	
Year	**$/kwh**
2012	0.00311
2013	0.00316
2014	0.00322
2015	0.00329
2016	0.00335
2017	0.00342
2018	0.00349
2019	0.00356
2020	0.00364
2021	0.00371
2022	0.00377
2023	0.00384

5. <u>Time of Delivery Periods and Allocation Factors</u>.

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

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

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

A. June – September;

B. October, November, December, January and February; and

C. March - May.

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

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

2. **Shoulder** = hours ending 7 – 12, 21 and 22 PPT Monday – Friday (*except* NERC Holidays); and hours ending 7 – 22 PPT Saturday, Sunday and all NERC Holidays in the applicable Monthly Period.

3. **Night** (7x8) = hours ending 1 - 6, 23 and 24 PPT all days (including NERC Holidays) in the applicable Monthly Period.

"NERC Holidays" mean the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4^{th}) 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 paragraph, NERC Holidays shall be calculated as "Shoulder" hours for all non-"Night" hours and any remaining hours shall be calculated as "Night" hours.

TOD Factors. In accordance with all other terms of this Exhibit B, the following Time of Delivery Factors ("TOD Factors") shall be used in the TOD Period Payment Calculation for each of the specified TOD Periods in which Energy is delivered:

TOD FACTORS FOR EACH TOD PERIOD			
Period	**1. Super-Peak**	**2. Shoulder**	**3. Night**
A. June – September	2.38	1.12	0.59
B. Oct. – Dec.; Jan. & Feb.	1.10	0.94	0.66
C. Mar. – May	1.22	0.90	0.61

6. Location Bonus.

If the Generating Facility is located in a "High-Value Area" as set forth below, each Monthly Contract Payment for the entire Term shall receive a Location Bonus calculated as follows:

Location Bonus = Sum of monthly TOD Periodn Payments * 0.10

The Generating Facility shall be deemed to be located in a High-Value Area if it is interconnected to Buyer's electric system at a location which, in the year of the Effective Date, is identified pursuant to CPUC D. 09-12-042 (as modified by other AB 1613 Decisions) as a "Local Resource Adequacy" area based on the most recent CAISO Local Capacity Requirement Study adopted by the CPUC.

*** *End of Exhibit B****

Exhibit B (1)

Monthly Contract Payment Calculation

1. Monthly Contract Payment

Each Monthly Contract Payment is calculated on a calendar month basis in dollars as follows:

TOD Period Energy Payment $_{\text{1st TOD Period}}$ +
TOD Period Energy Payment $_{\text{2nd TOD Period}}$ +
TOD Period Energy Payment $_{\text{3rd TOD Period}}$ +
TOD Period Energy Payment $_{\text{4th TOD Period}}$ +
TOD Period Capacity Payment $_{\text{1st TOD Period}}$ +
TOD Period Capacity Payment $_{\text{2nd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{3rd TOD Period}}$ +
TOD Period Capacity Payment $_{\text{4th TOD Period}}$

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit B (1).

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit B (1).

The "1st TOD Period," "2nd TOD Period," "3rd TOD Period" and "4th TOD Period" subscripts refer to the four TOD Periods that apply for the calculation month, as set forth in Section 4 of this Exhibit B (1).

2. TOD Period Energy Payment Calculation.

(a) Each monthly TOD Period Energy Payment is calculated as follows:

$$\text{TOD PERIOD ENERGY PAYMENT, in dollars} = \sum_{\mathit{FirstHour}}^{\mathit{LastHour}} [(\text{EP-LA}) \times \text{APE} + \text{LA} \times \text{MA}]$$

Where:

EP = TOD Period Energy Price, stated in Section 2(b) of this Exhibit B (1), in dollars per kWh.

APE = The sum of the Allowed Payment Energy from the Generating Facility for each hour of the TOD Period, in kWh, as determined in accordance with Section 2(c) of this Exhibit B (1).

LA = Hourly Location Adjustment price, as set forth in SRAC.

MA = Metered Amounts for each hour of the applicable TOD Period, in kWh. Metered Amounts for any hour is equal to the sum of Metered Amounts for all Metering Intervals in that hour.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Once 120% of the Expected Term Year Net Energy Production is achieved, no additional hourly energy payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

(b) Factor "EP" in Section 2(a) of this Exhibit B (1). The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in SRAC.

(c) Factor "APE" in Section 2(a) of this Exhibit B (1). The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The sum of the Metered Energy when Buyer is Scheduling Coordinator or Scheduled Amounts when Buyer is not Scheduling Coordinator from the Generating Facility for each hour of the TOD Period, in kWh.

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = ACP x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit B (1), in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision:

Capacity Payment Allocation Factors		
Season	*TOD Period*	*Factor*
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

(b) Factor "ACP" in Section 3(a) of this Exhibit B (1). The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars

= AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit B (1), in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	*Price $/kW-yr*
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

(c) Factor "AAC" in Section 3(b) of this Exhibit B (1). The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit B (1), in kWh per hour.

(d) Factor "MAC" in Section 3(c) of this Exhibit B (1). The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit B (1), in kWh.

PH = The total number of hours in the TOD Period (period hours).

(e) Factor "LE" in Section 3(d) of this Exhibit B (1). The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{FirstHour}^{LastHour} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit B (1), in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor "E" in Section 3(e) of this Exhibit B (1). The Allowed Hourly Energy is calculated as follows:
ALLOWED HOURLY ENERGY in kWh = 1 hour x CC

Where:

CC = The As-Available Contract Capacity, as set forth in Section 1.03, in kW.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	**Period A – Summer May 1 - October 31**	**Period B - Winter November 1 - April 30**	**Applicable Days**
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. – Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

*** End of Exhibit B (1) ***

EXHIBIT C

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff, as applicable;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements.

   (a) 30-Day Forecast.

   No later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility, no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the Term Start Date (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center at the e-mail address or telephone number(s) listed in Exhibit F.

   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the Delivery Point and the CAISO-Controlled Grid; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit C, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit F.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit C must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change, with notification also by phone to Seller's Real Time Scheduling Desk.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

*** *End of Exhibit C* ***

EXHIBIT D
Outage Schedule Submittal Requirements

1. General Requirements. The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to (a) comply with the CAISO Tariff, (b) accommodate changes to their respective generation technology and organizational structure, and (c) address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements. Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

   (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client") only if web-based system is not available.

   (b) Seller shall provide the following information for each proposed planned outage: (i) Start date and time; (ii) End date and time; and (iii) Capacity online, in MW, during the planned outage in addition to the information required by the CAISO, as indicated by the Buyer-provided web-based system.

   (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.

   (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

   (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

   (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

3. Restriction on Planned Outages. During the Peak Months, Seller may schedule and utilize no more than 12 hours of outages per Peak Month, and only during the non-peak hours of the Peak Months.

**** End of Exhibit D ***

EXHIBIT E
CAISO Charges

Subject to Section 4.01(g), Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if, on or after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller in violation of this Agreement, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site Host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or,

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to curtail output, or reschedule a planned outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

5. Buyer as Seller's Scheduling Coordinator is subject to either Non-Availability Charges or Availability Incentive Payments, or both, during a month within the Resource Adequacy compliance year, as defined by CAISO Tariff, then any such charges or payments shall be offset and the net value shall be entered into Seller's Account for the applicable month pursuant to Section 3.21.

**** End of Exhibit E ****

EXHIBIT F
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	

Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit F ****

EXHIBIT G
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit G ****

(End of Simplified Contract for Eligible CHP)

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SAMPLE FORMS

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PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV

AT&T
Alcantar & Kahl LLP
Ameresco
Anderson & Poole
Arizona Public Service Company
BART
Barkovich & Yap, Inc.
Bartle Wells Associates
Bloomberg
Bloomberg New Energy Finance
Boston Properties
Braun Blaising McLaughlin, P.C.
Brookfield Renewable Power
CA Bldg Industry Association
CLECA Law Office
CSC Energy Services
California Cotton Ginners & Growers Assn
California Energy Commission
California League of Food Processors
California Public Utilities Commission
Calpine
Cardinal Cogen
Casner, Steve
Chris, King
City of Palo Alto
City of Palo Alto Utilities
City of San Jose
City of Santa Rosa
Clean Energy Fuels
Coast Economic Consulting
Commercial Energy
Consumer Federation of California
Crossborder Energy
Davis Wright Tremaine LLP
Day Carter Murphy
Defense Energy Support Center
Department of Water Resources
Dept of General Services
Douglass & Liddell
Downey & Brand
Duke Energy
Economic Sciences Corporation
Ellison Schneider & Harris LLP
Foster Farms
G. A. Krause & Assoc.
GLJ Publications
GenOn Energy, Inc.
Goodin, MacBride, Squeri, Schlotz & Ritchie
Green Power Institute
Hanna & Morton
Hitachi
In House Energy
International Power Technology
Intestate Gas Services, Inc.
Lawrence Berkeley National Lab
Los Angeles Dept of Water & Power
Luce, Forward, Hamilton & Scripps LLP
MAC Lighting Consulting
MBMC, Inc.
MRW & Associates
Manatt Phelps Phillips
McKenzie & Associates
Merced Irrigation District
Modesto Irrigation District
Morgan Stanley
Morrison & Foerster
NLine Energy, Inc.
NRG West
NaturEner
Navigant Consulting
Norris & Wong Associates
North America Power Partners
North Coast SolarResources
Northern California Power Association
Occidental Energy Marketing, Inc.
OnGrid Solar
Praxair
R. W. Beck & Associates
RCS, Inc.
Recurrent Energy
SCD Energy Solutions
SCE
SMUD
SPURR
San Francisco Public Utilities Commission
Seattle City Light
Sempra Utilities
Sierra Pacific Power Company
Silicon Valley Power
Silo Energy LLC
Southern California Edison Company
Spark Energy, L.P.
Sun Light & Power
Sunshine Design
Sutherland, Asbill & Brennan
Tabors Caramanis & Associates
Tecogen, Inc.
Tiger Natural Gas, Inc.
TransCanada
Turlock Irrigation District
United Cogen
Utility Cost Management
Utility Specialists
Verizon
Wellhead Electric Company
Western Manufactured Housing Communities Association (WMA)
eMeter Corporation