

PUBLIC UTILITIES COMMISSION

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December 18, 2017

Advice Letter 5161-E and 5161-E-A

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

**Subject: Submission of Protocol and Appendices for a Solicitation Using the
RAM to Procure Volumes for PG&E's Solar PV Program**

Dear Mr. Jacobson:

Advice Letter 5161-E as supplemented is effective as of December 7, 2017.

Sincerely,

A handwritten signature in cursive script that reads "Edward Randolph".

Edward Randolph
Director, Energy Division



November 30, 2017

Advice 5161-E-A

(Pacific Gas and Electric Company ID U39 E)

Public Utilities Commission of the State of California

Subject: Supplemental: Submission of Protocol and Appendices for a Solicitation Using the Renewable Auction Mechanism to Procure Volumes for PG&E's Solar PV Program

I. Purpose

Per Energy Division's request, Pacific Gas and Electric Company ("PG&E") respectfully submits this supplemental advice letter to AL 5161-E, filed on October 16, 2017. PG&E has modified the photovoltaic ("PV") power purchase agreement ("PPA") submitted in AL 5161-E to conform to the requirements regarding shared equipment contained in the California Public Utilities Commission's ("Commission" or "CPUC") Decision ("D") 15-12-025. PG&E has also revised the supplier diversity section of the PV protocol submitted in AL 5161-E.

A summary of the proposed modifications to the PPA and protocol is provided below. A clean version of the revised 2017 PV protocol is included in Attachment A, and a clean version of the revised 2017 PV PPA is included as Attachment B. A redlined version of the revised 2017 PV protocol against the 2017 PV protocol filed in AL 5161-E is included as Attachment C. A redlined version of the revised 2017 PV PPA against the 2017 PV PPA filed in AL 5161-E is included as Attachment D.

II. Proposed Modifications to the 2017 PV Protocol and PPA for Use in the 2017 PV Solicitation

This section of the Advice Letter summarizes the updates to the 2017 PV PPA and 2017 PV protocol compared to the respective documents filed in AL 5161-E.

A. Proposed Changes to the PV PPA

PG&E has updated the following sections in the PPA to comply with D.15-12-025's requirements allowing projects to share equipment:¹

¹ D.15-12-025, pp. 104-105.

- Cover Sheet, Section B(i)(b)
- Definitions
- Section 3.1(h)
- Section 3.4(a)(i)(E)
- Section 3.6
- Section 10.2(b)
- Section 10.5(a)
- Appendix IV-2
- Appendix XIII

B. Proposed Modifications to the PV Solicitation Protocol

PG&E revised the Supplier Diversity section in the protocol to reflect its supply chain responsibility policy and programs.

C. Request for Commission Approval

PG&E respectfully requests that the Commission approve the modifications set forth above and in the appendices on an expedited basis and requests that the Commission issue a final resolution or disposition letter,² containing:

1. Approval of PG&E's modified 2017 PV PPA in its entirety;
2. Approval of PG&E's modified 2017 PV protocol in its entirety; and,
3. Any other and further relief as the Commission finds just and reasonable.

Protests

Pursuant to CPUC General Order 96-B, Section 7.5.1, PG&E hereby requests the protest period be waived.

Tier Designation and Effective Date

PG&E is designating this as a Tier 2 advice letter to be effective by December 8, 2017.

² If Commission approval is in the form of a disposition letter issued by the Commission's Energy Division, such approval shall be deemed to have made the following findings.

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.15-02-020. Address changes to the General Order 96-B list and electronic approvals should be directed 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>.

_____/S/

Erik Jacobson
Director – Regulatory Relations

cc: Cheryl Lee – Energy Division
Service List R.15-02-020

Attachments:

- Attachment A – Revised Proposed PG&E 2017 PV Protocol**
- Attachment B – Revised Proposed PG&E 2017 PV PPA**
- Attachment C – Redline Version of Revised Proposed 2017 PG&E PV Protocol Compared to PG&E 2017 PV Protocol filed in AL 5161-E**
- Attachment D – Redline Version of the Revised 2017 PV PPA Compared to PG&E 2017 PV PPA filed in AL 5161-E**

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:

ELC

GAS

PLC

HEAT

WATER

Contact Person: Yvonne Yang

Phone #: (415) 973-2084

E-mail: QXY1@pge.com and PGETariffs@pge.com

EXPLANATION OF UTILITY TYPE

(Date Filed/ Received Stamp by CPUC)

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

Advice Letter (AL) #: **5161-E-A**

Tier: 2

Subject of AL: **Supplemental: Submission of Protocol and Appendices for a Solicitation Using the Renewable Auction Mechanism to Procure Volumes for PG&E's Solar PV Program**

Keywords (choose from CPUC listing): Compliance

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #: D. 14-11-042

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: _____

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for: No

Confidential information will be made available to those who have executed a nondisclosure agreement: N/A

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 8, 2017**

No. of tariff sheets: N/A

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: N/A

Service affected and changes proposed: N/A

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

Pursuant to CPUC General Order 96-B, Section 7.5.1, PG&E hereby requests the protest period be waived.

California Public Utilities Commission

Energy Division

EDTariffUnit

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San Francisco, CA 94102

E-mail: EDTariffUnit@cpuc.ca.gov

Pacific Gas and Electric Company

Attn: Erik Jacobson

Director, Regulatory Relations

c/o Megan Lawson

77 Beale Street, Mail Code B13U

P.O. Box 770000

San Francisco, CA 94177

E-mail: PGETariffs@pge.com

Advice 5161-E-A
November 30, 2017

Attachment A

Revised Proposed PG&E 2017 PV Protocol



2017 PV Solicitation Request for Offers

Filed: November 30, 2017

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I. Overview

Overview

Pacific Gas and Electric Company (“PG&E”) is issuing this 2017 PV Program Request for Offers (“RFO”) to meet its remaining PV capacity obligation as governed by Commission Decision (“D.”) 14-11-042.¹ This protocol outlines the parameters governing this solicitation.

PG&E seeks Offers for the sale of Product² for a contract term of 10, 15, or 20 years. Except as noted in the PPA at Appendix B to this solicitation, the Project must be commercially operational no later than 36 months following final and non-appealable CPUC approval of the PPA associated with the Project. As described in PG&E’s most recently Commission approved least-cost-best-fit (“LCBF”) methodology, PG&E has a preference for Offers with terms of less than 20 years.

If PG&E notifies an entity submitting a bid into this RFO (a “Participant”) that its Offer has been selected, the Participant must submit a signed PPA and provide all required documentation as shown in Appendix VIII to the PPA to PG&E within 10 calendar days of selection notification. PG&E reserves the ability to place some Offers on a waiting list to account for the potential that some selected Offers could be withdrawn prior to submission of signed PPA.

Schedule

1. Schedule Overview

D. 14-11-042 requires PG&E to hold two future solicitations, one in 2016 and one in 2017, to meet its remaining rollover PV capacity obligation. **The final RFO schedule is subject to change** to conform to any CPUC requirement and otherwise at the discretion of PG&E at any time. **PG&E will not be launching the RFO until the CPUC has approved this Protocol and updates to the PPA.** PG&E targets to launch the RFO on December 12, 2017 with that date being dependent upon receiving CPUC approval by December 8, 2017.

PG&E will endeavor to notify Participants of any schedule change via notification on

¹ Decision 14-11-042 at p. 116 (Findings of Fact (“FOF”) 45).

² Product means the electricity generated by a Project (the eligible renewable energy resource described in an Offer, together with all capacity and ancillary products, services or attributes which can be produced by or associated with the Project, and any other attributes required by the California Public Utilities Commission (“CPUC”) and/or the California Energy Commission (“CEC”) to count the electricity toward PG&E’s Renewable Portfolio Standard (“RPS”) requirements.

PG&E’s PV RFO Website.³

As further described below, Participants may register at PG&E’s RFO website to receive notice of these and other RFO changes by electronic mail. PG&E will have no liability or responsibility to any Participant for any change in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO is as follows (all times are in Pacific Prevailing Time (“PPT”)); and assumes that the CPUC approves this updated Protocol and updates to the PPA by December 8, 2017. Delay in the CPUC approval past this date will change the timeline below in a manner to be determined by PG&E.

This schedule is also subject to change just prior to the launch of the solicitation once the 2018 PRG schedule has been established.

Date/Time	Event
Ongoing	Participants may register online to receive notices regarding the RFO.
December 12, 2017	PG&E issues the RFO.
TBD	Bidders’ Conference for RFO (via webinar).
January 24, 2018 no later than 1:00 P.M.	Offers Due. Offer(s) must be submitted to the online platform at Power Advocate. All Projects must have an executed Interconnection Agreement, a completed Phase II interconnection study (or equivalent), or documentation showing that the Project passed the Distribution Provider or CAISO Fast Track screens at the time of Offer submittal, as further stipulated in this Protocol. Offer evaluation begins.
April 24, 2018	PG&E selects offers. PG&E notifies Selected Participants and any Waitlisted Participants (Selection Notification).
April 27, 2018	Primary and Waitlisted Participants that wish to continue in PG&E’s RFO must return required documentation.
May 2, 2018	Waitlisted Participants are notified.
May 4, 2018 no later than 1:00 P.M.	Submittal of Signed PPA. Selected Participants that wish to continue participation in PG&E’s RFO must return a signed PPA and required documentation as shown in Appendix VIII of the PPA via Power Advocate.
May 11, 2018 no later than 1:00 P.M.	Selected Waitlisted Participants that wish to continue participation in PG&E’s RFO must return a signed PPA with required documentation as shown in Appendix VIII of the PPA via Power Advocate.
May 31, 2018	PG&E executes PPAs.
July 2, 2018	Advice Letter Filing for executed PPAs.

³ <http://www.pge.com/rfo/PV2017>

2. RFO Process

- a. Registration. Participants may register at PG&E's RFO website at www.pge.com/rfo to receive announcements and updates about this RFO by electronic mail.
- b. Bidders' Webinar. PG&E will hold a Bidders' Webinar to review key Protocol and PPA items related to this solicitation.
- c. Offers Due. Participant's Offer must be submitted via Power Advocate and must include all of the documents described in Section VII. By responding to this RFO, the Participant agrees to be bound by all of the terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.
- d. PG&E Selects Offers. Participants whose Offers have been selected will be notified via email. PG&E will select Offers within each Product Category described below according to the evaluation criteria described in Section IV. Some of the next-best Offers beyond those selected may be placed on a waiting list to be selected in order of priority should any selected Offers fail to complete the RFO process.
- e. Submittal of Signed PPA. Participants with selected Offers must submit a signed PPA with all required documentation in accordance with the timeline described above. If a Participant fails to submit a signed PPA with required documentation for one or more Selected Offers as described above, PG&E will disqualify the originally selected Offer and will select the next-best Offer on the waiting list. A waitlisted Participant whose Offer is selected must return a signed PPA and the required documentation in accordance with the timeline described above.
- f. Execution and Regulatory Approval. Once PG&E has fully executed each of the PPAs resulting from this RFO, it will submit all such PPAs to the CPUC for approval via a Tier 2 advice filing.

Disclaimers for Rejecting Offers and/or Terminating this RFO

This RFO does not constitute an offer to buy and creates no obligation to execute any PPA or to enter into a transaction under a PPA as a consequence of the RFO. PG&E shall retain the right at any time, at its sole discretion, to reject any Offer on the grounds that it does not conform to the terms and conditions of this RFO and reserves the right to request information at any time during the solicitation process.

PG&E retains the discretion, subject to, if applicable, the approval of the CPUC, to: (a) reject any Offer on the basis, including but not limited to the bases that an Offer is the

result of market manipulation or is not cost competitive or any other reason; (b) modify this RFO with the approval of the CPUC, the form PPA as it deems appropriate to implement the RFO and to comply with applicable law or other decisions or direction provided by the CPUC; and (c) terminate the RFO should the CPUC not authorize PG&E to purchase Products in the manner proposed in this RFO. In addition, PG&E reserves the right to either suspend or terminate this RFO at any time if such suspension is required by or with the approval of the CPUC. PG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Participant, whether submitting an Offer or not.

II. RFO Goals

PG&E is seeking to procure 77.5 MW in this solicitation for new and existing PV Projects.

For this Solicitation, PG&E is only accepting As-Available Product (as that term is defined in the PPA) from a solar photovoltaic project that is greater than 3 MW. No other forms of generation will be considered.

Additionally, as more particularly described in the PPA, each Offer should be identified as a full buy/sale transaction or an excess sales transaction, as follows:

- “Full buy/sale” transaction means 100% of the energy production, net of station use, is sold by the generator to PG&E.
- “Excess sales” transaction means that the output from the Project serves the generating facility’s own on-site load first and then sells the remaining energy production to PG&E.

Given the requirements that the PV projects must achieve commercial operation within 36 months of CPUC approval, it would be expected that a project selected from this RFO would achieve commercial operation by approximately July 2021.

III. Eligibility

PG&E is seeking Products that meet the specific eligibility requirements below. The Participant’s Offer must demonstrate that the Project meets each of the items in this Section III. PG&E will not be entertaining any storage related offers in this solicitation and will select from eligible Offers only.

All Projects must have the capability to comply with Section 3.1(q) (Seller Equipment Required for Curtailment Instruction Communications) of the PPA.

1. Existing and new generation facilities are eligible. An existing generating facility must be certified as an eligible renewable resource (“ERR”).⁴ PG&E encourages new resources to apply for pre-certification.
2. Existing facilities may participate providing that, if the project is currently under contract, the existing contract is scheduled to expire within 36 months of the expected date of Commission approval of the PPA. For this RFO, the existing contract must expire by July 2021.⁵
3. The Project must interconnect within the electric distribution or transmission system of PG&E, SCE, or SDG&E.
4. The Offer’s contract capacity must be greater than 3 MW.

Project Viability Eligibility Requirements

1. Interconnection

In order to participate in this RFO, Participants must have an executed Interconnection Agreement, a completed Phase II interconnection study⁶ (or equivalent⁷), or documentation showing that the Project passed the Distribution Provider or CAISO Fast Track screens⁸ at the time of Offer submittal.

Participants that bid in to the RFO must remain active in the applicable interconnection queue until the project’s required network upgrades have been completed. Participants must submit the applicable interconnection study with any applicable appendices with the Offer. If an interconnection agreement for the Project exists, it should be submitted along with the most recent interconnection studies.

PG&E is accepting offers for projects with Full Capacity Deliverability Status (“FCDS”), Partial Capacity Deliverability Status (“PCDS”), and energy-only (“EO”) status.

⁴ The CEC is responsible for certifying ERRs for purposes of compliance with the RPS program. The CEC has published Guidebooks to explain its criteria for RPS eligibility and process for ERR certification. The CEC’s “Renewable Portfolio Standard Eligibility Guidebook” 7th Edition publication number CEC-300-2010-007-CMF, January edition, is available at: <http://www.energy.ca.gov/renewables/documents/>.

⁵ Although subject to change, PG&E expects to file the Advice Letter requesting approval of the PPAs in June 2018 and receive approval 30 days later. PPA approval will be final following a 10 day appeal period.

⁶ Passing of an Electrical Independence Test is not sufficient unless the Project has a completed Phase II interconnection study or equivalent.

⁷ For example, a Facilities Study.

⁸ *Submission* of an Interconnection Request into a Fast Track process is not sufficient unless the project has *passed* the Fast Track screens or has a completed study equivalent to a Phase II interconnection study.

Participants offering fully or partially deliverable resource must provide documentation that the Project has received the FCDS or PCDS or provide documentation that the project is in the process of obtaining that deliverability, including any submitted requests for deliverability to the CAISO. The Participant must provide evidence of at least one of the following:

- a) An executed Interconnection Agreement or Amendment to an Interconnection Agreement that reflects the offered deliverability status⁹;
- b) Application for deliverability with a **completed** deliverability study (i.e., Phase II study or equivalent) with a deliverability status that matches the Offer;
- c) A **completed** deliverability assessment in the annual process that indicates that the project is deliverable pursuant to ISO Tariff Section 9.2 of Appendix DD; or
- d) Documentation that the Project has **received** deliverability through the CAISO's Deliverability for Distribution pursuant to ISO Tariff Section 40.4.6.3.

Providing documentation that an application or request for FCDS or PCDS has been submitted through any CAISO annual process is **not** sufficient **unless** there is a finding of deliverability at the time of Offer submittal. Projects bid in as fully-deliverable must be fully deliverable by the date of deliverability designated in the Offer and need not be fully deliverable as of commercial operation.

Projects bidding as energy-only do not have to pursue any deliverability studies.

Repowering projects must provide an attestation that their plans can be accommodated under the existing interconnection agreement, or that they have received their completed Phase II study for any increased capacity at the time of offer submittal. *In addition, projects must provide an acknowledgment that they understand they will be in default under the PPA if the CAISO does not act as expected and they miss their online date after excused delays.* For further information, refer to Section 12 of the CAISO Business Practice Manual (BPM) for Generator Management.¹⁰

Existing projects will need to ensure that they can participate in the CAISO markets prior to commercial operation. Existing projects will therefore need to fulfill a set of requirements listed in the CAISO's New Resource Implementation Checklist¹¹, ensure all required CAISO metering and telemetry is installed, and potentially

⁹ Where the Interconnection Agreement does not reflect the Deliverability offered, the Participant must provide additional documentation from the CAISO verifying the deliverability

¹⁰ <http://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Generator%20Management>

¹¹CAISO's new resource implementation process is described at:

<http://www.caiso.com/participate/Pages/NewResourceImplementation/Default.aspx>

convert their Interconnection Agreement to a wholesale interconnection agreement under FERC jurisdiction.

Projects must obtain a wholesale interconnection agreement under FERC jurisdiction prior to operation. Note that Electric Rule No. 21 is not under FERC jurisdiction and does not result in a wholesale interconnection agreement under FERC jurisdiction. Wholesale procedures, both the CAISO and PG&E Wholesale Distribution Tariff generation interconnection procedures, can also be viewed on the PG&E website at: <http://www.pge.com/wholesale/>.

2. Site Control

Participants must attest that they have secured site control for the entire delivery term of their Project as part of their Offers. Requirements to demonstrate such site control are detailed in Appendix C to this solicitation. Examples of site control include: (1) ownership of the site, a leasehold interest, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for purposes of constructing a generating facility; and (3) any other business relationship that, in the sole discretion of PG&E, amounts to the same right to develop property as provided in examples (1) or (2) above, between the Participant and another entity that has the right to sell, lease, or grant the right to possess or occupy the site for such a purpose.

Please note that these site control requirements may differ from those required in the interconnection process to achieve a deemed complete status.

3. Experience

A minimum level of developer experience is required for participation in this solicitation. Specifically, the Participant and/or a member of Participant's project development team must have either completed or begun construction of at least one other project of similar technology and capacity. PG&E considers a project to have begun construction if the developer has issued a full notice to proceed to its EPC contractor.

4. Commercialized Technology

The Participant must show that the Project employs technology currently in use at a minimum of two operating facilities of similar capacity worldwide.

5. Commencement of Commercial Operation Deadline

The Project must be able to begin commercial operation within 36 months of CPUC

final and non-appealable approval of the associated PPA, subject to a six-month extension for the specific reasons described in the PPA. Sellers can request this extension by providing a notice 60 days prior to the guaranteed commercial operation date. Sellers that cannot place the Project into commercial operation by this deadline will be in default under the PPA.

Participation in Other Procurement Programs

Neither the Participant nor the owner of the site may sell any Product from the Project, either currently or at any time during the term of the PPA, pursuant to the California Solar Initiative Program (“CSI”) or the Net Energy Metering tariff. For projects up to 5 MW, the owner of the site will be required to sign the letter, attached here as Appendix D to this solicitation, acknowledging familiarity with CSI and NEM and committing to the limitation on participation noted above.

Participation in Future Solicitations

A Participant may submit offers for a Project in a future solicitation notwithstanding the Participant’s withdrawal of the Project’s Offer from this RFO prior to the execution of a PPA. Additionally, Offers that are not selected in this RFO may be bid again into future solicitations.

IV. Evaluation Criteria

Once Participants have met the eligibility requirements set forth in Section III, above, PG&E will use the evaluation criteria discussed in Section IV as the factors in selecting Offers.

PG&E will use the Commission approved LCBF methodology, pursuant to D.14-11-042, which includes a preference for shorter delivery terms.

Least-Cost-Best-Fit

PG&E will evaluate and select eligible Offers based on least-cost best-fit (LCBF)¹² criteria, which includes Market Valuation, Transmission Network Upgrade Costs, Location, and PAV.

¹² Attachment K from the 2014 RPS RFO Protocol outlines a complete and detailed description of PG&E’s Least Cost Best Fit Evaluation Criteria and is available at: http://www.pge.com/includes/docs/pdfs/b2b/wholesaleelectricssolicitation/RPS2014/Attachment_K_LCBF_01052015.pdf. Note that Table 1 may be updated.

Each Offer will be assessed on each of the criteria described in this section.

A. Market Valuation

Market Valuation compares an Offer's costs to its market value. Pursuant to D.12-11-016, NMV is calculated for each Offer as follows:

$$\text{Net Market Value: } R = (E+C)-(P+T+G+I)$$

$$\text{Adjusted Net Market Value: } A = R+S$$

Where:

E = Energy Value

C = Capacity Value

P = Post-Time-Of-Delivery (TOD) Adjusted Power Purchase Agreement (PPA) Price

T = Transmission Network Upgrade Cost

G = Congestion Cost

I = Integration Costs

S = Ancillary Service Value

The risks and uncertainties associated with an Offer's costs and benefits will be considered as part of Market Valuation. These costs and benefits do not include the costs and benefits associated with an Offer's impact on PG&E's portfolio.

1. Energy Value

PG&E will assess the market value of the energy deliveries based on the hourly generation profile of the Offer, initial energy delivery date, delivery term of the Transaction, and delivery location. The market value of the energy will be based on the appropriate forward price curves for the corresponding Trading Hub. The Loss multipliers will be used to incorporate losses specific for the location. With Buyer Curtailment, the energy value will include the expected value of Buyer Curtailments for avoiding (presumably negative) wholesale market spot price for the generation from the project.

2. Capacity Value

The value of capacity, including local reliability benefits, associated with each Offer will be determined based on the projected monthly quantity of qualifying capacity. Resources with an expected finding of full capacity deliverability from the CAISO will be attributed the full capacity value. To the extent that an Offer provides flexible capacity, the capacity that is expected to count for flexible RA will be evaluated at the projected monthly premium for flexible RA and added to the Capacity Benefit. It will be assumed that the qualifying capacity is zero for energy-only deliveries.

3. Ancillary Services

Ancillary Services (A/S) value will be assessed based on the A/S capability of the Offer. For Offers that provide PG&E the ability to schedule A/S and receive market revenues, the incremental benefit of having A/S capability will be captured, not to be double counted with the Energy Value.

4. Post-Time-Of-Delivery (TOD) Adjusted Power Purchase Agreement (PPA) Price

PG&E will calculate the Post-TOD Adjusted PPA Price, including debt equivalence costs, based on the hourly generation profile of the Offer, initial energy delivery date, delivery term of the Transaction, and the Offers contract price. For Dispatchable products, fixed payment calculated from the fixed capacity and Offer's fixed capacity price (\$/kW-yr) under the Offer will also be added to the Post-TOD Adjusted PPA price after being levelized by the energy quantity.

5. Transmission Network Upgrade Cost

PG&E will use results from Participants' interconnection studies to calculate the Transmission Network Upgrade Cost adder. The refundable portion of the costs of Network Upgrades are included in transmission rates and paid by customers. Transmission cost adders reflect the cost of incremental, refundable Network Upgrades borne by customers. For projects that are fully deliverable, PG&E will consider the refundable portion of both Reliability and Delivery Network Upgrades. For energy-only Projects, PG&E will consider only the refundable portion of Reliability Network Upgrades when calculating a transmission adder.

6. Congestion Cost

Congestion cost will be calculated based on the hourly generation profile of the Offer, initial energy delivery date, delivery term of the Transaction, and delivery location. The Congestion Cost will be positive if the project is located in an area where the transmission lines are constrained due to serving loads outside of the area from the generation within the area. The Congestion Cost will be negative if the project is located in an area where the transmission lines are constrained due to serving loads within the area from the generation outside of the area. Congestion Cost multipliers will be used to incorporate congestion costs specific for the location.

B. Portfolio Adjusted Value

Portfolio Adjusted Value ("PAV") consists of several components.

1. Location

PG&E has a preference for projects in its service territory. This preference is influenced by constraints in the market that may limit the amount of capacity in SP15 that PG&E can count toward its RA requirement. Capacity located closer to PG&E's load is likely to have more value for PG&E's bundled electric portfolio, even when market forward prices indicate that energy delivered farther away has greater Market Value. The long-term risk

for PG&E's customers is less when resources are located within PG&E's service territory rather than outside of PG&E's service territory. The calculation of PAV effectuates this by adjusting the value of energy and capacity for offers from resources in SP15. Offers for RPS energy from resources in NP15 will have an equal or higher PAV than comparable offers from resources in SP15.

PG&E reserves the right to reject Offers if they are uncompetitive with other options, including offers received in other PG&E non-RAM-like solicitations, or if there is evidence of market manipulation.

Resource Adequacy Benefit

For Projects that provide full or partial deliverability, PG&E will assume that new resources achieve full or partial capacity deliverability status on the date of the deliverability stated in the Offer, and the applicable RA benefit will be included from this date through the remaining term.

As described in Resolution E-4489, PG&E will evaluate the capacity benefits of a proposal by applying the monthly Net Qualifying Capacity ("NQC") to PG&E's forecast of avoided capacity costs. Due to the RA capacity constraint that currently exists on projects that are located in SP15, PG&E currently discounts the capacity value of SP15 resources and is expected to assign different values to projects that have delivery points located in NP15 versus SP15. This constraint may change in the future.

Supply Chain Responsibility

PG&E is committed to supply chain responsibility, including supplier diversity, sustainability, and ethical supply chain practices.

PG&E's Supplier Diversity Program, launched in 1981, aims to provide diverse suppliers with economic opportunities to supply products and services to PG&E. The Supplier Sustainability Program, launched in 2007, encourages supplier responsibility, excellence and innovation. Promoting an ethical supply chain means that ethical supplier performance, including a supplier's efforts in each of the following areas, is an important consideration in supplier selection: health and safety, labor issues, human rights, ethical business conduct and conflicts of interest.

It is PG&E's policy that small and diverse businesses shall have the maximum practicable opportunity to bid, including Small Business Enterprises (SBEs); Women, Minority and Disabled Veteran Business Enterprises (WMDVBEs); and Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBEs). PG&E may consider Participant's status as an SBE (registered as a small business with a state or federal agency, e.g. California Department of General Services or Small Business Administration).

Additional information on PG&E’s Supplier Diversity program can be found at:
www.pge.com/supplychainresponsibility

Seller Concentration

PG&E is not limiting the number of Offers submitted by a single Participant. However, to ensure that the market for Products sought in this RFO remains competitive, PG&E may cap the amount awarded to any single Participant in this RFO.

V. Guidelines for Offer Development

Price

Participants must submit with their Offer their best and final price using the Energy Pricing Sheet of the Offer Form in Appendix A to this solicitation. PG&E will not consider updated or “refreshed” price offers submitted after the Offer submittal deadline. The Product price must be stated in annual \$/MWh and may be escalated over the 10, 15, or 20 year term of the PPA. Product quantities can vary annually to reflect degradation of the facility, if applicable.

Pursuant to the PPA, Sellers will be paid the contract price multiplied by the applicable TOD factor for each hour. For purposes of bid evaluation, PG&E will levelize bid prices after applying the applicable standard Time of Delivery (“TOD”) factors as specified below.

The price submitted by Participant for an Offer must include, without limitation, the following: (a) all awards, subsidies, and tax credits with respect to the Project, (b) all other benefits that Participants expects to apply, (c) any costs incurred by Participant, including any interconnection costs, (d) the acceptance, without reservation or revision, of the non-price terms and conditions in the PPA, and (e) the assumption that the Product price will be adjusted in each hour of delivery by the Time of Delivery (TOD) factors set forth in the table below by PG&E.

Time of Deliverability

Time of Delivery (TOD) Periods and Factors

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Peak	2. Mid-Day	3. Night
A. July - September	1.546	0.653	1.222

B. October - February	1.505	0.753	1.299
C. March - June	1.315	0.200	1.016

TOD factors shown are consistent with factors submitted in PG&E's 2017 RPS Plan.

Definitions:

1. **Peak** = hours ending 18-22 (Pacific Prevailing Time (PPT)) all days in the applicable Monthly Period.
2. **Mid-Day** = hours ending 09-17 PPT for all days in the applicable Monthly Period.
3. **Night** = hours ending 23-08 PPT all days in the applicable Monthly Period.

PPA Terms and Conditions

PG&E strongly encourages all Participants to review the form PPA and expects all Participants to be able to perform ALL obligations under the PPA.

Any successful Offers must be formalized by the execution of a final PPA. PG&E has provided a form PPA in Appendix B to this solicitation, and the summary of certain terms within the PPA provided in this section of the protocol is not meant to provide a substitute for a careful review of the actual PPA. In the case of any conflict between this protocol and the PPA, the PPA will control.

The terms and conditions of the form PPA are non-negotiable. All project-specific information should be included in the cover sheet.

The delivery term of any executed PPA will be 10, 15, or 20 years. The period of 10, 15, or 20 years will commence on the first date that the Participant delivers the Product to PG&E from the Project.

The PPA requires PG&E's counterparty to submit a project development milestone timeline (Section B(i)(b) in the Cover Sheet of the PPA) upon execution of the PPA and to provide progress reports to PG&E (as outlined in Section 3.9(a)(vii) and 3.9(a)(viii) in the PPA) on the Project's progress towards the achievement of the development milestones until the project begins energy deliveries.

For Projects being bid as fully or partially deliverable, the PPA includes an estimate of when full or partially capacity deliverability status will be attained. Seller is contractually bound by the estimate. If Seller has not achieved full or partial capacity deliverability status consistent with that in the Offer by the designated time, then the Seller will be subject to contractual penalties.

The PPA requires a Participant to post collateral in the form of cash or letter of credit

from a reputable U.S. bank in the following amounts and by the time discussed below:

Project Development Security: \$60 per kW for As-Available facilities due within thirty (30) calendar days following the Execution Date of the PPA. The development deposit will be refunded upon Commercial Operation Date or applied to the subsequent Performance Deposit.

Delivery Term Security: An amount equal to 5% of expected total Project revenues. This amount is equal to 6 months of revenue for a 10 year PPA, 9 months of revenue for a 15 year PPA, or 12 months of revenue for a 20 year PPA, due on the Commercial Operation Date.

Under the PPA, the Project Development Security will be retained by PG&E in the event that the Project should fail to come online by the contractual deadline. Delivery Term Security will be held throughout the 10, 15, or 20-year delivery term.

VI. Information Regarding Interconnection to PG&E's Electric System and Interconnection Screens

Many factors influence the feasibility and cost of interconnecting generating facility systems to an electric system. These factors include, but are not necessarily limited to, the size and type of the system, substation and circuit load and capability, voltage regulation and voltage flicker. Nonetheless, in an effort to assist developers in selecting appropriate sites for their Projects, PG&E has created a web-based map that provides an extensive amount of substation and circuit information. This map and supporting documentation allows developers to determine, among other information, the available capacity of any particular distribution or transmission circuit on PG&E's service territory, defined as the total capacity less allocated capacity. For security purposes, access to the map requires registration with PG&E.

The map is a tool intended to assist Participants to identify and/or evaluate potential Project locations. However, PG&E does not guarantee that conditions in these areas will remain the same or that property suitable for participation in this RFO is available. In addition, actual interconnection requirements and applicable costs will be determined from further detailed studies that will consider a Participant's specific Project location, size, and application date relative to PG&E's electric system and other projects in the same vicinity.

Electric Generation Interconnection Services

All generators must reach commercial operation within 36 months of PPA approval. Sellers are responsible for understanding the relevant interconnection procedures and ensuring they can interconnect within the mandated timelines.

Information regarding interconnection to the PG&E Electric Grid is available at the following site: <http://www.pge.com/wholesale/>. Any interconnection questions should be directed to PG&E's Electric Generation Interconnection department at the email address:

wholesalegen@pge.com.

Any application for interconnection to the transmission system must be directed to the CAISO in accordance with the CAISO Tariff. For more information, please refer to the CAISO Tariff via the CAISO website at:

<http://www.caiso.com/planning/Pages/GeneratorInterconnection/Default.aspx>.

For interconnection applications to SCE's or SDG&E's Distribution Grid, seller should contact the applicable Distribution Provider representative.

VII. Required Information

Submission Overview

All Offer submittal information pertaining to this RFO will be hosted on the Power Advocate site. In order to participate in this RFO, Participants must register through Power Advocate at the Public Registration Link:

TBD. To be updated just prior to solicitation launch.

PG&E strongly encourages Participants to register with Power Advocate well before Offers are due. PG&E will be posting the detailed instructions for submitting Offer(s) and using the on-line platform on PG&E's website prior to Offer submittal.

Electronic Documents: The electronic documents for the attachments must be in a Microsoft Word, Excel file or Adobe Acrobat PDF file as applicable. The Participant should not provide documents in other electronic formats and versions. For each document, please include a company name in each file name. **Telephonic, hardcopy or facsimile transmission of an Offer is not acceptable.**

Required Forms

The following documents, which are located in the Appendices to this solicitation, must be completed and included with each Offer:

1. **Completed Offer Form and Developer Experience Form (Appendix A to this solicitation).** Participant must provide a complete Offer form. Please provide all applicable information requested in the form and include the Project's expected generation profile, CAISO or utility cost estimate for the needed network upgrade costs. Participant must also include the interconnection queue position on the Offer form. Format: MS Excel

2. **A Completed PPA Cover Sheet (Appendix B to this solicitation).** The cover sheet includes spaces for contract capacity, project vintage, milestones, and supplier diversity spend. Other mark-ups are not permitted and will result in rejection of the Offer. Format: MS Word
3. **A Completed PPA Appendix XIII of the PPA.** This appendix includes spaces for all of the project specifications. Other mark-ups are not permitted and will result in rejection of the Offer. Format: MS Word.
4. **Site Control Questionnaire and Attestation (Appendix C to this solicitation).** Participant must attest to site control and provide a map showing site location and key project facilities. The map should show the project boundary, and gen-tie route from the project to the first point of interconnection with the electric grid. The map should be provided in one of the following file formats: (1) Google kml/kmz, (2) ESRI geodatabase (mdb or .gdb) (3) a shapefile with file extension .shp plus at least the 3 supporting files (.shx, .dbf, .sbn). Format: Applicable GIS data file format
5. **Acknowledgement and Commitment of Site Owner Letter (Appendix D to this solicitation).** **This only applies to projects that are 5 MW or less.** The owner of the site on which Participant's Project is proposed to be located must attest to familiarity with the CSI and NEM alternatives. The Participant and the owner of the site must also commit not to sell Product from the Project under these other program alternatives throughout the term of the PPA, if executed. Format: PDF
6. **Interconnection Studies.** Participants must have an executed Interconnection Agreement, a completed Phase II interconnection study¹³ (or equivalent¹⁴), or documentation showing that the Project passed the Distribution Provider or CAISO Fast Track screens¹⁵ at the time of Offer submittal. Format: PDF or MS Word.

Participants offering fully or partially deliverable resource must provide documentation that the Project has received the FCDS or PCDS or provide documentation that the project is in the process of obtaining that deliverability, including any submitted requests for deliverability to the CAISO. The Participant must provide evidence of at least one of the following:

- a) An executed Interconnection Agreement or Amendment to an Interconnection Agreement that reflects the offered deliverability status¹⁶;

¹³ Passing of an Electrical Independence Test is not sufficient unless the Project has a completed Phase II interconnection study or equivalent.

¹⁴ For example, a Facilities Study.

¹⁵ *Submission* of an Interconnection Request into a Fast Track process is not sufficient unless the project has *passed* the Fast Track screens or has a completed study equivalent to a Phase II interconnection study.

¹⁶ Where the Interconnection Agreement does not reflect the Deliverability offered, the Participant must provide additional documentation from the CAISO verifying the deliverability

- b) Application for deliverability with a **completed** deliverability study (i.e., Phase II study or equivalent) with a deliverability status that matches the Offer;
- c) A **completed** deliverability assessment in the annual process that indicates that the project is deliverable pursuant to ISO Tariff Section 9.2 of Appendix DD; or
- d) Documentation that the Project has **received** deliverability through the CAISO's Deliverability for Distribution pursuant to ISO Tariff Section 40.4.6.3.

Providing documentation that an application or request for FCDS or PCDS has been submitted through any CAISO annual process is **not** sufficient **unless** there is a finding of deliverability at the time of Offer submittal. Projects bid in as fully-deliverable must be fully deliverable by the date of deliverability designated in the Offer and need not be fully deliverable as of commercial operation.

- 7. Projects bidding as energy-only do not have to provide any deliverability studies.

VIII. Offer Selection

PG&E will select Offers according to the evaluation criteria described in Section IV. PG&E plans to notify selected Participants by e-mail according to the schedule described above.

PG&E may place some offers on a waitlist. Any waitlisted Participants would be selected in order of priority should any one of the selected Offers fail to return an executed PPA pursuant to the schedule outlined above.

IX. Regulation

Confidentiality

After contract execution, PG&E plans to submit executed PPAs to the CPUC for approval via a Tier 2 advice letter filing. By participating in the RFO, each Participant acknowledges and expressly authorizes PG&E to publicly disclose the following information as required by the Commission: (1) names of the companies that submitted Offers into PG&E's PV RFO; (2) number of Offers received by each company; (3) number of Offers received and shortlisted by PG&E; (4) Project size; (5) participating technologies; (6) the number of Projects which passed the project viability screen; (7) location of bids by county level shown in a map format; and (8) the progression of each executed contract's project development milestones.

Except with PG&E's prior written consent, no Participant shall collaborate on or discuss with any other Participant or potential Participant bidding strategies, the substance of any

Offer(s), including without limitation the price or any other terms or conditions of any Offer(s), or whether an Offer has been selected.

All information and documents in Participant's Offer clearly identified and marked by Participant as "Proprietary and Confidential" on each page on which confidential information appears, shall be considered confidential information. PG&E shall not disclose such confidential information and documents to any third parties except for PG&E's employees, agents, counsel, accountants, advisors, or contractors who have a need to know such information and have agreed to keep such information confidential and except as provided otherwise in this section. In addition, Participant's Offer will be disclosed to the IE.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this RFO may be provided to the CPUC, its staff, and the Procurement Review Group ("PRG"), established pursuant to D. 02-08-071. PG&E retains the right to disclose any information or documents provided by Participant to the CPUC, the PRG, the California Energy Commission ("CEC") and to any other entity in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over PG&E at any time even in the absence of a protective order, confidentiality agreement, or nondisclosure agreement, as the case may be, without notification to Participant and without liability or any responsibility of PG&E to Participant. PG&E cannot ensure that the CPUC will afford confidential treatment to Participant's confidential information, or those confidentiality agreements or orders will be obtained from and/or honored by the PRG, the CEC, or the CPUC. By submitting an Offer, Participant agrees to the confidentiality provisions described in this section.

The treatment of confidential information described above shall continue to apply to information related to Projects that are selected in this RFO and formalized through execution of a PPA.

Changes to RFO

By responding to this RFO, each Participant agrees to be bound by all terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.

X. Communications

PG&E has established the PV RFO website at www.pge.com/rfo/PV2017 where Participants may register and where all the RFO documents, information, announcements and Q&As are posted and available to Participants.

To promote accuracy and consistency of the information provided to all Participants, PG&E encourages Participants to submit any inquiries via e-mail directed to

PVProgram@pge.com for matters related to PV procurement. With respect to matters of general interest raised by any Participant, PG&E may, without reference to the specific Participant raising such matter or initiating the inquiry, post responses on its website. PG&E may, in its sole discretion, decline to respond to any email or other inquiry without liability or responsibility.

Any exchange of material information regarding this RFO between Participant and PG&E must be submitted to **both** PG&E and the Independent Evaluator. The IE for this RFO is TBD.

PG&E may elect to respond to inquiries or comments by individual Participants concerning purely procedural or administrative matters, but may also decline to do so in its sole discretion without liability or responsibility.

XI. Submission of Signed PPAs

Within ten (10) calendar days of selection notification, Participants that wish to continue in this RFO must submit a signed PPA and required documentation for each selected Project meeting all RFO conditions via the Power Advocate on-line platform.

XII. Procurement Review Group Review

Following completion of the evaluation and rankings of Offers, PG&E will submit the results of the evaluation and its recommendations to its PRG members. PG&E will consider any alternative recommendations proposed by the PRG. PG&E, in its sole discretion, shall determine whether any alternatives proposed by the PRG should be adopted. PG&E has no obligation to obtain the concurrence of the PRG with respect to any Offer.

PG&E assumes no responsibility for the actions of the PRG, including actions that may delay or otherwise affect the schedule for this Solicitation, including the timing of the selection of Offers and the obtaining of Regulatory Approval.

XIII. Regulatory Approval

The effectiveness of any executed PPA is expressly conditioned on PG&E's receipt of final and non-appealable CPUC approval of such PPA.

XIV. Participant's Waiver of Claims and Limitations of Remedies

Except as expressly set forth in this Protocol, by submitting an Offer, Participant knowingly and voluntarily waives all remedies or damages at law or equity concerning or related in any way to the RFO, the RFO Protocol and/or any attachments to the RFO

Protocol (“Waived Claims”). The assertion of any Waived Claims by Participant may, to the extent that Participant’s Offer has not already been disqualified, automatically disqualify such Offer from further consideration in the Solicitation or otherwise.

By submitting an Offer, Participant agrees that the only forums in which Participant may assert any challenge with respect to the conduct or results of the RFO is in the proceeding related to D.10-12-048 adopted on December 17, 2010, or through the alternative dispute resolution (“ADR”) services provided by the CPUC pursuant to Resolution ALJ-185, August 25, 2005. The ADR process is voluntary in nature, and does not include processes, such as binding arbitration, that impose a solution on the disputing parties. However, PG&E will consider the use of ADR under the appropriate circumstances. Additional information about this program is available on the CPUC’s website at the following link:

www.cpuc.ca.gov/PUBLISHED/Agenda_resolution/47777.htm.

Participant further agrees that other than through the ADR process, the only means of challenging the conduct or results of the Solicitation is a protest to an Advice Letter seeking approval of one or more PPAs entered into as a result of the RFO, that the sole basis for any such protest shall be that PG&E allegedly failed in a material respect to conduct the RFO in accordance with this Protocol, and the exclusive remedy available to Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the RFO that the CPUC determines was not previously conducted in accordance with the RFO Protocol. Participant expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorney’s fees. Unless PG&E elects to do otherwise in its sole discretion during the pendency of such a protest or ADR process, the RFO and any related regulatory proceedings related to the RFO will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the RFO or PG&E has elected to terminate the RFO.

Participant agrees to indemnify and hold PG&E harmless from any and all claims by any other Participant asserted in response to the assertion of a Waived Claim by Participant or as a result of a Participant’s protest to an advice letter filing with the CPUC resulting from the RFO.

Except as expressly provided in this Protocol, nothing herein, including Participant’s waiver of the Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of PG&E. Nothing in this Protocol is intended to prevent any Participant from informally communicating with the CPUC or its staff regarding this RFO or any other matter.

XV. Termination of the RFO-Related Matters

PG&E reserves the right at any time, in its sole discretion, to terminate the RFO for any reason whatsoever without prior notification to Participants and without liability of any

kind to or responsibility of PG&E or anyone acting on PG&E's behalf. Without limitation, grounds for termination of the RFO may include the assertion of any Waived Claims by a Participant or a determination by PG&E that, following evaluation of the Offers, there are no Offers that are cost competitive.

PG&E reserves the right to terminate further participation in this process by any Participant, to evaluate the qualifications of any Participant, and to reject any or all Offers, all without notice and without liability to PG&E or anyone acting on PG&E's behalf.

In the event of termination of the RFO for any reason, PG&E will not reimburse the Participant for any expenses incurred in connection with the RFO regardless of whether such Participant's Offer is selected, not selected, rejected or disqualified.

Unless earlier terminated, the RFO will terminate automatically upon the execution of one or more PPAs by selected Participants as described herein. In the event that no PPAs are executed, then the RFO will terminate automatically on 12 months after issuance of the RFO.

XVI. Participant's Representations and Warranties

Breach by any Participant of the representations and warranties of the RFO Attachments is, in addition to any other remedies that may be available to PG&E under applicable law, grounds for immediate disqualification of such Participant from participation in the RFO, and depending on the nature or severity of the breach, may also be grounds for terminating the RFO in its entirety.

Advice 5161-E-A
November 30, 2017

Attachment B

Revised Proposed PG&E 2017 PV PPA

Appendix B: PV PROGRAM: Form of Power Purchase Agreement

Standard contract terms and conditions shown in shaded text are those that “may not be modified” per CPUC Decisions (“D.”) 07-11-025; D.10-03-021, as modified by D.11-01-025; and D.13-11-024.

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

POWER PURCHASE AGREEMENT

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APPENDICES

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

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Form of Progress Report
- Appendix IV Construction Start and Commercial Operation Certification Forms and Procedures
 - Appendix IV-1 Construction Start Form of Certification
 - Appendix IV-2 Commercial Operation Certification Procedure
 - Attachment A Commercial Operation Form of Certification
- Appendix V GEP Damages Calculation
- Appendix VI Notification Requirements for Available Capacity and Project Outages
- Appendix VII Form of Financing Consent to Assignment
 - Attachment A Financing Consent Termination Notice
- Appendix VIII Seller Documentation Condition Precedent
- Appendix IX Form of Actual Availability Report
 - Attachment A Form of Actual Availability Report
- Appendix X Telemetry Parameters for Solar Facility
- Appendix XI Form of Letter of Concurrence
- Appendix XII Supplier Diversity Program
- Appendix XIII Project Specifications and Contract Capacity Calculation
- Appendix XIV Section 3.3(e) Liquidated Damages Calculation

POWER PURCHASE AGREEMENT

COVER SHEET

This Power Purchase Agreement (“Agreement”) is entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and _____ *[insert name of Seller]*, a _____ *[include place of formation and business type]* (“Seller”), as of the Execution Date. The information contained in this Cover Sheet shall be completed by Seller and incorporated into the Agreement.

A. Transaction Type

Seller may not modify the Transaction Type designated in this Part A of the Cover Sheet.

Product: As-Available

Deliverability:

Energy Only Status

Partial Capacity Deliverability Status (“PCDS”)

a) If PCDS is selected, provide the Expected PCDS Date, or the date the Project received a PCDS finding if already received:
_____ (mm/dd/yyyy);

b) The Partial Capacity Deliverability Status Amount the Project will obtain is _____ MW.

Full Capacity Deliverability Status (“FCDS”)

a) If FCDS is selected, provide the Expected FCDS Date, or the date the Project received a FCDS finding if already received:
_____ (mm/dd/yyyy).

Seller shall elect one of the following types of transactions pursuant to Section 3.1(b) of the Agreement:

Full Buy/Sell

Excess Sale

Seller shall elect one of the following Delivery Terms:

ten (10) Contract Years

fifteen (15) Contract Years

twenty (20) Contract Years

B. Project Description Including Description of Site

Contract Capacity: [_____] MW *[Provide the maximum capacity to be made available to PG&E pursuant to the transaction, which in the case of an Excess Sale transaction, may be less than the maximum capacity of the Project]*

(i) Project Development:

(a) The Project is an:

[An existing or repowered Project with substantial changes, including but not limited to, new major permits, a new interconnection study, or the construction of new generators, should check “New Project” instead of “Existing Project.”]

Existing Project

New Project

(1) If the Project is a New Project:

(A) The Expected Construction Start Date of the Project:

(B) The date on which the Commercial Operation Date of the Project is expected (must be no later than the Guaranteed Commercial Operation Date):

(2) If the Project is an Existing Project:

(A) The Expected Initial Energy Delivery Date (which shall be no later than the Guaranteed Commercial Operation Date) is:

(b) The Project is:

Utilizing Shared Facilities

Not utilizing Shared Facilities

(c) Project development Milestone schedule *[to be completed by Buyer and Seller. Insert additional rows if necessary]:*

Identify Milestone	Date for Completion

(ii) Supplier Diversity. For the purpose of Section 4 of the Supplier Diversity Program obligation set forth in Appendix XII of this Agreement, Seller’s supplier diversity spend target for work supporting the Project is ___%.

C. Contract Price

The Contract Price and Deemed Delivered Energy Price, for each Contract Year paid by Buyer to Seller subject to Article Four is:

Contract Year	Contract Price (\$/MWh)

Contract Year	Contract Price (\$/MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

D. Delivery Term Contract Quantity Schedule

Length of Delivery Term (in Contract Years):

Contract Year	Contract Quantity (MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

E. Collateral [(as described in the PV Solicitation Protocol)]

- Project Development Security [provide dollar amount]

Dollar Amount: \$ _____

- Cash, or
- Letter of Credit

- Delivery Term Security [provide dollar amount]

Dollar Amount: \$ _____

- Cash, or
- Letter of Credit

F. Buyer Curtailment Orders.

Operational characteristics of the Project for Buyer Curtailment Orders are listed below.

- Maximum generation capacity (PMax of the Project): ____MW
- Minimum generation capacity (PMin of the Project): 0 MW
- Minimum dispatchable level (DMin of the Project): ____ MW
- Ramp rate: ____MW/Minute
- Maximum number of Start-ups per calendar day (if any such operational limitations exist):

Other Requirements:

- Start-Up Time: ____Minutes
- Minimum Run Time after Start-up (if applicable): ____Minutes
- Minimum Down Time after Shut-Down (if applicable): ____Minutes

[Note: Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.]

G. Notices List

Name: *[Seller's Name]*, a *[include place of formation and business type]* ("Seller")

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

All Notices: *[Seller to complete]*

All Notices:

Delivery Address:

Delivery Address:

Street:

77 Beale Street, Mail Code N12E

City: State: Zip:

San Francisco, CA 94105-1702

Mail Address: (if different from above)

Mail Address:
P.O. Box 770000, Mail Code N12E

Attn:

San Francisco, CA 94177
Attn: Candice Chan (CWW9@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780

Phone:

Email:

DUNS:

Federal Tax ID Number:

DUNS:

Federal Tax ID Number:

Invoices:

Attn:

Phone:

Email:

Invoices:

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

Scheduling:

Attn:

Phone:

Email:

Scheduling:

Attn: Day-Ahead Operations (DAEnergy@pge.com)
Phone: (415) 973-1971

Payments:

Attn:

Phone:

Email:

Payments:

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

Wire Transfer per Section 8:

BNK:

ABA:

ACCT:

Wire Transfer per Section 8:

BNK:

ABA:

ACCT:

Electronic funds transfer via ACH:

BNK:

ABA:

ACCT:

Electronic funds transfer via ACH:

BNK:

ABA:

ACCT:

Credit and Collections:

Attn:

Phone:

Email:

Credit and Collections:

Attn: PG&E Credit Risk Management

Phone: (415) 973-4071

Email: pgeriskcredit@exchange.pge.com

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

Attn: _____

Phone: _____

Email: _____

Contract Manager:

Attn: Ted Yura (THY1@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660

With additional Notices of an Event of Default to:

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

PREAMBLE

This Power Purchase Agreement, together with the Cover Sheet, appendices and any other attachments referenced herein, is made and entered into between PG&E and Seller, as of the Execution Date. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

- 1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i)(G).
- 1.2 “Additional Extension” has the meaning set forth in Section 3.1(c)(ii).
- 1.3 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.
- 1.4 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Cover Sheet, Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition. For purposes of Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.
- 1.5 “Ancillary Services” has the meaning set forth in the CAISO Tariff.
- 1.6 “Arbitration” has the meaning set forth in Section 12.4.
- 1.7 “As-Available Product” means a Product that is powered by a solar photovoltaic facility. Subject to the terms of this Agreement, (a) Seller is obligated to sell and deliver and (b) Buyer is obligated to purchase and receive, the Energy component of As-Available Product from the Project whenever such Energy is capable of being generated from the Project. The Seller does not control the availability of fuel supply to the Project producing As-Available Product and lacks the ability to store energy.
- 1.8 “Automated Clearing House” or “ACH” shall mean the automated clearing house as designated by Buyer and agreed upon by the Parties.
- 1.9 “Availability Workbook” has the meaning set forth in Appendix IX.
- 1.10 “Available Capacity” means the capacity from the Project, expressed in whole megawatts, that is available to generate Product.
- 1.11 “Balancing Authority” has the meaning set forth in the CAISO Tariff.
- 1.12 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or

commenced against it and such case filed against it is not dismissed in 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.

1.13 “Bid” has the meaning set forth in the CAISO Tariff.

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

1.15 “Buyer” has the meaning set forth in the Cover Sheet.

1.16 “Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Project below the CAISO final market forecast amount for the Project for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order. Buyer Curtailment Order includes curtailment instructions during time periods that Buyer as the SC or Third-Party SC, either (a) submitted a CAISO final market Energy Supply Bid and such curtailment is solely a result of the CAISO implementing the Energy Supply Bid; or (b) submitted a CAISO final market Self-Schedule for less than the amount of the final market Energy forecasted to be produced from the Project.

1.17 “Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Project pursuant to a Buyer Curtailment Order. The Buyer Curtailment Period excludes any Settlement Interval subject to a Curtailment Order and shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.18 “Buyer’s Notice of First Offer Acceptance” has the meaning set forth in Section 3.9(e)(ii) or Section 11.1(b)(ii), as applicable.

1.19 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

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

1.21 “CAISO Exemption” means that exemption granted by the CAISO, in written form, that approves Seller’s request to install the low-side metering scheme for the Project, as such scheme is defined and required in Section 10.2.10.2 of the CAISO Tariff.

1.22 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the Project and the Project’s dedicated CAISO Revenue Meter.

1.23 “CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

1.24 “CAISO Metered Entity” has the meaning set forth in the CAISO Tariff.

1.25 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case, “CAISO Penalties” do not include the costs and charges related to scheduling and Imbalance Energy as addressed in Section 4.5(b) of this Agreement.

1.26 “CAISO Revenue Meter” means a CAISO approved revenue quality meter, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy produced by the Project less station use.

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

1.28 “CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.29 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill SB1X, and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.30 “Capacity Attributes” means any (a) current or future defined characteristic of the Project, including the ability to generate at a given capacity level, provide Ancillary Services, ramp up or ramp down at a given rate, flexibility or dispatchability attributes, locational attributes, or any other ability of the Project as may be identified at any time during the Delivery Term by the CPUC, the CAISO, any applicable Law, or voluntary or mandatory program of any Governmental Authority; (b) certificate, tag, or credit intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition; and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, or any other Governmental Authority, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

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

1.32 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.33 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred

by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

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

1.35 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that Commercial Operation has commenced, (b) notifies Buyer that all Reliability Network Upgrades identified in the Project’s Generator Interconnection Agreement have been completed, and (c) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix IV-2, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix IV-2 hereto. “Condition Precedent” means each of, or one of, the conditions set forth in Section 2.5(a)(i) through (iv) and “Conditions Precedent” shall refer to all of the conditions set forth in Section 2.5(a)(i) through (iv).

1.36 “Confidential Information” has the meaning set forth in Section 10.7(a)

1.37 “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (b) a written Certification substantially in the form attached hereto as Appendix IV-1.

1.38 “Contract Capacity” has the meaning set forth in Section 3.1(f).

1.39 “Contract Capacity Commitment” means the amount of the Contract Capacity that may be constructed pursuant to the Governmental Approvals received or obtained by Seller as of, for a New Project, the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.9(c)), and for an Existing Project, the Expected Initial Energy Delivery Date specified on the Cover Sheet.

1.40 “Contract Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Cover Sheet.

1.41 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Section 3.1(e) and Cover Sheet Section D .

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

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

1.44 “Cover Sheet” means the cover sheet to this Agreement, completed by Seller and incorporated into the Agreement.

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

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

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

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

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

For purposes of this section, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

1.47 “Credit Rating” means, with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit enhancements) or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody’s. If the entity is rated by both S&P and Moody’s and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody’s, but not both, then the available rating shall determine the Credit Rating.

1.48 “Cure” has the meaning set forth in Section 8.5(b).

1.49 “Cured Performance Measurement Period” has the meaning set forth in Section 3.1(e)(ii)(C).

1.50 “Cure Payment Period” has the meaning set forth in Section 3.1(e)(ii)(C)(III).

1.51 “Curtailed Order” means any of the following:

(a) the CAISO, Reliability Coordinator, Balancing Authority or any other entity having similar authority or performing similar functions during the Delivery Term, communicates via any means to a Party to curtail Energy deliveries, which may come in the form of a request to return to a specified Dispatch Operating Target, consistent with the CAISO Tariff, for any reason;

(b) a curtailment ordered by the Participating Transmission Owner, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for any reason;

(c) maintenance or construction on the Participating Transmission Owner’s or distribution operator’s transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.

(d) a curtailment in accordance with Seller's obligations under its Generator Interconnection Agreement with the Participating Transmission Owner or distribution operator.

For the avoidance of doubt, if Buyer or Third-Party SC submitted a Self-Schedule and/or an Energy Supply Bid that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Curtailment Order.

1.52 "Curtailment Period" means the period of time during which Seller reduces generation from the Project, pursuant to a Curtailment Order. The Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up.

1.53 "DA Price" means the resource specific locational marginal price ("LMP") applied to the PNode applicable to the Project in the CAISO Day-Ahead Market.

1.54 "Daily Delay Damages" means with respect to the Guaranteed Commercial Operation Date, an amount equal to (a) divided by (b), where (a) is \$60/kW multiplied by the Contract Capacity of the Project as reflected in Section B of the Cover Sheet, and (b) is the number 120.

1.55 "Daily Delay Damages Extension" has the meaning set forth in Section 3.9(c)(ii)(B).

1.56 "Damage Payment" means the dollar amount equal to the amount to be posted as Project Development Security pursuant to Section 8.4(a)(i) hereof.

1.57 "Day-Ahead Availability Notice" has the meaning set forth in Section 3.4(c)(iii)(C).

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

1.59 "Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, the result of the equation provided pursuant to Section 3.1(l)(i)(G) and using relevant Project availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO Revenue Meter for the Project, the Deemed Delivered Energy shall be zero (0). For clarity, Deemed Delivered Energy shall not include Delivered Energy that is less than the instructed MWh for a Buyer Curtailment Order during a Buyer Curtailment Period. Deemed Delivered Energy shall be calculated as follows:

Deemed Delivered Energy ("DDE") = A - Max (B,C), where:

A = EIRP Forecast, converted to MWh

B = MWh as instructed during a Buyer Curtailment Period. For the purpose of calculating DDE, the MWh as instructed during a Buyer Curtailment Period shall be the total Expected Energy, as defined in the CAISO Tariff.

C = Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period.

1.60 “Deemed Delivered Energy Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for Deemed Delivered Energy, as specified in the Cover Sheet.

1.61 “Defaulting Party” means the Party that is subject to an Event of Default.

1.62 “Deficient Month” has the meaning set forth in Section 3.1(k)(v).

1.63 “Deliverability Assessment” has the meaning set forth in the CAISO Tariff.

1.64 “Deliverability Finding Deadline” shall be two (2) calendar years after the RA Start Date. The Deliverability Finding Deadline shall be no later than December 31, 2024.

1.65 “Delivered Energy” means all Energy produced from the Project as measured in MWh at the CAISO Revenue Meter of the Project and in accordance with the CAISO Tariff, which shall include any applicable adjustments for power factor and Electrical Losses.

1.66 “Delivery Network Upgrade” has the meaning set forth in the CAISO Tariff.

1.67 “Delivery Point” means the point at which Buyer receives Seller’s Product, as identified in Section 3.1(d).

1.68 “Delivery Term” has the meaning set forth in Section 3.1(c)(i) and shall be of the length specified in the Cover Sheet.

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

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

1.71 “Dispatch Instruction” has the meaning set forth in the CAISO Tariff.

1.72 “Dispatch Interval” has the meaning set forth in the CAISO Tariff.

1.73 “Dispatch Operating Target” has the meaning set forth in the CAISO Tariff.

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

1.75 “Distribution Upgrades” has the meaning set forth in the CAISO Tariff.

1.76 “DMin” has the meaning set forth in the Master File.

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

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

1.79 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.5(a) have been satisfied or waived in writing by both Parties.

1.80 “Effective FCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Full Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Full Capacity Deliverability Status.

1.81 “Effective PCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Partial Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Partial Capacity Deliverability Status.

1.82 “EIRP Forecast” means the final forecast of the Energy to be produced by the Project prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol and communicated to Buyer or Third-Party SC for use in submitting a Schedule for the output of the Project in the Real-Time Market.

1.83 “Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO Revenue Meter(s) and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

1.84 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if connecting to a part of the Participating TO’s electric system that is not part of the CAISO Grid.

1.85 “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

1.86 “Eligible Intermittent Resources Protocol” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

1.87 “Eligible LC Bank” means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

1.88 “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

1.89 “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified).

1.90 “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Project; and (b) Delivered Energy.

1.91 “Energy Only Status Seller” or “EOS Seller” means a Seller that has selected Energy Only Status in the Cover Sheet. For avoidance of doubt, an EOS Seller does not have an obligation to have or obtain a Full Capacity Deliverability Status Finding.

1.92 “Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

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

1.94 “EPC Contractor” means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller’s; provided, however, that the Seller or the Seller’s Affiliate(s) may serve as the EPC Contractor.

1.95 “Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

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

1.97 “Excess Deemed Delivered Energy” has the meaning set forth in Section 4.4(a)(i).

1.98 “Excess Deemed Delivered Energy Price” has the meaning set forth in Section 4.4(a)(ii)(B).

1.99 “Excess Delivered Energy” has the meaning set forth in Section 4.4(a)(i).

1.100 “Excess Delivered Energy Price” has the meaning set forth in Section 4.4(a)(ii)(A).

1.101 “Excess Energy” has the meaning set forth in Section 4.4(a)(i).

1.102 “Excess Network Upgrade Costs” has the meaning set forth in Section 3.9(f)(ii).

1.103 “Excess Sale” means the type of transaction described in Section 3.1(b)(ii).

1.104 “Exclusivity Period” has the meaning set forth in Section 3.9(e)(i) or Section 11.1(b)(i), as applicable.

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

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

1.107 “Exempt Wholesale Generator” has the meaning provided in 18 C.F.R. Section 366.1.

1.108 “Existing Project” is a Project that has achieved Commercial Operation on or prior to the Execution Date.

1.109 “Expected Construction Start Date” has the meaning set forth in the Cover Sheet.

1.110 “Expected FCDS Date” means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Full Capacity Deliverability Status.

1.111 “Expected PCDS Date” means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Partial Capacity Deliverability Status.

1.112 “Expected Initial Energy Delivery Date” is the date specified on the Cover Sheet for an Existing Project.

1.113 “Expected Net Qualifying Capacity” means an estimate of the amount of Net Qualifying Capacity the Project would have received had it obtained deliverability according to the deliverability type selected in Section A of the Cover Sheet, as determined in accordance with Appendix XIV.

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

1.115 “Final True-Up” means the final payment made pursuant to this Agreement settling all invoices by the Party with an outstanding net amount due to the other Party for Product delivered prior to the end of the Delivery Term or other amounts due pursuant to this Agreement incurred prior to the end of the Delivery Term.

1.116 “First Offer” has the meaning set forth in Section 3.9(e)(1) or Section 11.1(b)(i), as applicable.

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

(a) Subject to the foregoing, events that could qualify as Force Majeure include the following:

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

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

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

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

(b) Force Majeure shall not be based on:

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

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

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(iv) Seller's inability to complete interconnection or Electric System Upgrades by the Guaranteed Commercial Operation Date unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

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

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

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

(ix) any equipment failure, including the failure of Shared Facilities, except if such failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

(xi) any invalidation of or change to the CAISO Exemption or failure to comply with the CAISO Tariff due, in any part, to the Shared Facilities.

1.118 "Force Majeure Extension" has the meaning set forth in Section 3.9(c)(ii)(A).

1.119 "Force Majeure Failure" has the meaning set forth in Section 11.1(a).

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

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

1.122 "Full Buy/Sell" is the type of transaction described in Section 3.1(b)(i).

1.123 "Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff except that it applies to any Generating Facility (as defined in the CAISO Tariff).

1.124 "Full Capacity Deliverability Status Finding" or "FCDS Finding" means a written confirmation from the CAISO that the Project is eligible for FCDS.

1.125 "Full Capacity Deliverability Status Seller" or "FCDS Seller" means a Seller that selected Full Capacity Deliverability Status in the Cover Sheet and either has previously obtained, or is obligated to obtain per the terms of the Agreement, a Full Capacity Deliverability Status Finding.

1.126 "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.127 "Generally Accepted Accounting Principles" means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

1.128 "Generator Interconnection Agreement" or "GIA" means, for Projects interconnecting at the transmission level, the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller's interconnection with the CAISO

Grid, including any description of the plan for interconnecting to the CAISO Grid. For Projects interconnecting at the distribution level, it means the agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and the Participating Transmission Owner governing the terms and conditions of Seller's interconnection with the Participating TO's distribution system, including any description of the plan for interconnecting to Participating TO's distribution system.

1.129 "Generator Interconnection Process" or "GIP" means the Generator Interconnection Procedures set forth in the CAISO Tariff or Participating TO's tariff, as applicable, and associated documents; provided that if the GIP is replaced by such other successor procedures governing interconnection (a) to the CAISO Grid or Participating TO's distribution system, as applicable, or (b) of generating facilities with an expected net capacity equal to or greater than the Project's Contract Capacity, the term "GIP" shall then apply to such successor procedure.

1.130 "GEP Cure" has the meaning set forth in Section 3.1(e)(ii)(C).

1.131 "GEP Damages" has the meaning set forth in Appendix V.

1.132 "GEP Failure" means Seller's failure to produce Delivered Energy plus Deemed Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

1.133 "GEP Shortfall" means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

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

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

1.136 "Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

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

1.138 "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: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth's

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

1.139 "Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(i).

1.140 "Guaranteed Energy Production" or "GEP" has the meaning set forth in Section 3.1(e)(ii).

1.141 "Guaranty" means a guaranty issued by an entity and in a form acceptable to Buyer in Buyer's sole discretion.

1.142 "Imbalance Energy" has the meaning set forth in the CAISO Tariff.

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

1.144 "Initial Extension" has the meaning set forth in Section 3.1(c)(ii).

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

1.146 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the CAISO Tariff or Participating TO's tariff, as applicable.

1.147 "Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

1.148 "Interconnection Point" means the physical interconnection point of the Project as identified by Seller in the Cover Sheet.

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

1.149 “Interconnection Study” means any of the studies defined in the CAISO Tariff or, if applicable, any distribution provider’s tariff that reflect the methodology and costs to interconnect the Project to the Participating Transmission Owner’s electric grid.

1.150 “Integrated Forward Market” has the meaning set forth in the CAISO Tariff.

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

1.152 “Interest Payment Date” means the date of returning unused Performance Assurance held in the form of cash.

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

1.154 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15(519), or its successor publication.

1.155 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

1.156 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 1.43 “CPUC Approval,” 10.2(b), “Seller Representations and Warranties” and 10.12 “Governing Law”, the term “law” shall have the meaning set forth in this definition.

1.157 “Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix I to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars (\$10,000,000.00) on the date of Transfer.

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

1.159 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in

determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

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

1.161 “Master File” has the meaning set forth in the CAISO Tariff.

1.162 “Maximum Issuing Amount” means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars (\$25,000,000.00), without Buyer’s prior written consent.

1.163 “Milestone(s)” means the key development activities required for the construction and operation of the Project, as set forth in Section B(i)(b) of the Cover Sheet.

1.164 “Minimum Load” has the meaning set forth in the CAISO Tariff.

1.165 “Minimum Down Time” has the meaning set forth in the CAISO Tariff.

1.166 “Monthly Payment for Excess Energy” has the meaning set forth in Section 4.4(b).

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

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

1.169 “Moody’s” means Moody’s Investors Service, Inc., or its successor.

1.170 “MW” means megawatt in alternating current or AC.

1.171 “MWh” means megawatt-hour.

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

1.173 “Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

1.174 “Network Upgrades” has the meaning set forth in the CAISO Tariff or the Participating TO’s tariff, as applicable.

1.175 “New Project” is a Project that has not achieved Commercial Operation on or prior to the Execution Date.

1.176 “NOAA” means National Oceanic and Atmospheric Administration or successor thereto.

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

1.178 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). The Cover Sheet contains the names and addresses to be used for Notices.

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

1.180 “Operational Deliverability Assessment” has the meaning set forth in the CAISO Tariff.

1.181 “Outage Notification Procedures” means the procedures specified in Appendix VI, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.

1.182 “Partial Capacity Deliverability Status” or “PCDS” has the meaning set forth in the CAISO Tariff.

1.183 “Partial Capacity Deliverability Status Amount” means the number of MW that the Project will obtain, as stated in the Deliverability type selected in Section A of the Cover Sheet.

1.184 “Partial Capacity Deliverability Status Finding” or “PCDS Finding” means a written confirmation from the CAISO that the Project is eligible for PCDS.

1.185 “Participating Intermittent Resource” or “PIRP” has the meaning set forth in the CAISO Tariff.

1.186 “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

1.187 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.12, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.

1.188 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security as applicable. Acceptable forms of collateral are cash or a Letter of Credit as designated in Section E of the Cover Sheet. The required form of Letter of Credit is attached hereto in Appendix I.

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

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

1.191 “Permit Failure” has the meaning set forth in Section 3.9(d). *[For New Projects only]*

1.192 “Permitted Extensions” means extensions to the Guaranteed Commercial Operation Date due to Force Majeure Extension, or payment of Daily Delay Damages, as applicable, pursuant to Section 3.9(c).

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

1.194 “PMax” has the meaning set forth in the CAISO Tariff.

1.195 “PMin” has the meaning set forth in the CAISO Tariff.

1.196 “PNode” has the meaning set forth in the CAISO Tariff.

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

1.198 “Preschedule Day” has the meaning set forth in Section 3.4(c)(iii)(C).

1.199 “Product” means the Energy, capacity, Ancillary Services, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Project, including renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

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

1.201 “Progress Report” means the report similar in form and content to that attached hereto as Appendix III.

1.202 “Project” means all of the Unit(s) and the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including Seller’s interests in the Shared Facilities, as applicable, and any other the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in Appendix XIII.

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

1.204 “Project Specifications” has the meaning set forth in Appendix XIII.

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

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

1.207 “RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(e)(ii).

1.208 “RA Shortfall Period” means the period of consecutive calendar months that starts with the calendar month in which the RA Start Date occurs and concludes with the second calendar month

following the calendar month in which the Effective FCDS Date or Effective PCDS Date occurs. The RA Shortfall Period shall not exceed twenty-six (26) months.

1.209 “RA Shortfall Month” means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.3(e)(ii).

1.210 “RA Start Date” shall be the later of the Initial Energy Delivery Date or the Expected PCDS Date or FCDS Date according to the deliverability type selected in Section A of the Cover Sheet.

1.211 “RA Value” means the value in U.S. dollars per MW of Expected Net Qualifying Capacity for each RA Shortfall Month, as set forth in Appendix XIV.

1.212 “Ramp Rate” has the meaning set forth in the CAISO Tariff.

1.213 “Real-Time Market” means any existing or future intra-day market conducted by the CAISO occurring after the Day-Ahead Market.

1.214 “Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

1.215 “Reductions” has the meaning set forth in Section 4.6(b).

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

1.217 “Reliability Coordinator” has the meaning set forth in the CAISO Tariff.

1.218 “Reliability Network Upgrade” has the meaning set forth in the CAISO Tariff.

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

1.220 “Replacement Capacity Rules” means the replacement requirement for Resource Adequacy Capacity (as defined in the CAISO Tariff) associated with a Planned Outage as set forth in the CAISO Tariff or successor replacement requirements as prescribed by the CPUC, CAISO and/or other regional entity.

1.221 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

1.222 “Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff.

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

1.224 “Resource Adequacy Standards” means (a) the Program set forth in Section 40.9 of the CAISO Tariff and (b) any future program or provision under the CAISO Tariff providing for availability standards or similar standards with respect to any flexible Resource Adequacy resource, product, or procurement obligation; in the case of (a) or (b), as any such program or provision may be amended,

supplemented, or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible changes and incentive payments for performance thereunder.

1.225 “Resource-Specific Settlement Interval LMP” has the meaning set forth in the CAISO Tariff.

1.226 “Revised Offer” has the meaning set forth in Section 3.9(e)(iii) or Section 11.1(b)(iii), as applicable.

1.227 “S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

1.228 “Satisfaction Date” has the meaning set forth in Section 2.6.

1.229 “Schedule” has the meaning set forth in the CAISO Tariff.

1.230 “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator” of the CAISO Tariff, as amended from time to time.

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

1.232 “Self-Schedule” has the meaning set forth in the CAISO Tariff.

1.233 “Seller” has the meaning set forth in the Cover Sheet.

1.234 “Seller Excuse Hours” means those hours during which Seller is unable to deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) Curtailment Period.

1.235 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.236 “Settlement Amount” means the amount in US dollars equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

1.237 “Settlement Interval” has the meaning set forth in the CAISO Tariff.

1.238 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.

1.239 “Shared Contract Year” has the meaning set forth in section 3.1(e)(ii)(C)(I).

1.240 “Shared Facilities” means the gentie lines, transformers, substations, or other equipment, permits, contract rights and obligations, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from Seller’s electric generating facility (which is excluded from this definition of Shared Facilities) to the Point of Interconnection that are used in common with other entities, as applicable.

1.241 “Shared Facilities Agreement(s)” means a cotenancy or similar sharing agreement pertaining to Shared Facilities.

1.242 “Site” means the location of the Project as described in Appendix XIII[.J], excluding that portion of real property pertaining to any other generating facility with which Seller has a Shared Facilities Agreement.] *[Bracketed language shall only apply to Projects that utilize Shared Facilities].*

1.243 “Start-up” means the action of bringing a Unit from non-operation to operation at or above the Unit’s Minimum Load, or with positive generation output if Minimum Load is zero.

1.244 “Surplus Delivered Energy” means, in any Settlement Interval, the Delivered Energy that exceeds the product of one hundred percent (100%) of Contract Capacity multiplied by a Settlement Interval.

1.245 “Supply Plan” has the meaning set forth in the CAISO Tariff.

1.246 “System Emergency” has the meaning set forth in the CAISO Tariff.

1.247 “Term” has the meaning provided in Section 2.6.

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

1.249 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

1.250 “Test Period” means the period of not more than ninety (90) consecutive days, as extended by the Initial Extension and Additional Extension according to Section 3.1(c)(ii), as applicable, which period shall commence upon the first date that the following have occurred (a) the Project is operating in parallel with the Participating Transmission Owner and the first kWh of Energy is measured by the CAISO Revenue Meter, and (b) the items in Section 3.4(a)(i)(E) have been fulfilled and implemented, and shall end upon the Initial Energy Delivery Date.

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

1.252 “TOD” means time of delivery of Delivered Energy from Seller to Buyer.

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

1.254 “TOD Periods” has the meaning set forth in Section 4.2.

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

1.256 “Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder, if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

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

1.258 “Uninstructed Imbalance Energy” shall have the meaning set forth in the CAISO Tariff.

1.259 “Unit” means the technology used to produce the Products, which are identified in Appendix XIII for the Transaction entered into under this Agreement.

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

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

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

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

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

1.265 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet, Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

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

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

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

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

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

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

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

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

(h) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.

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

2.4 Separation of Functions. The Parties acknowledge that this Agreement is between (a) Seller and (b) Buyer acting solely in its merchant function. The Parties further acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as Participating Transmission Owner, including orders or instructions relating to Electric System Upgrades and/or Curtailment Periods.

2.5 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.7 hereof, the Term shall not commence until the occurrence of all of the following:

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

(ii) CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

(iii) the advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order; and

(iv) Buyer receives from Seller the documentation listed in Appendix VIII (Seller Documentation Condition Precedent).

(b) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 2.4(a)(ii) and (iii) are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.6 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.5(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.5(b), Section 5.2 or Section 11.1 of this Agreement (the “Term”); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due pursuant to the Final True-Up, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security or Delivery Term Security as applicable, is released and/or returned as applicable (the “Satisfaction Date”) or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.5 (“Indemnities”) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.7 (“Confidentiality”) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 11.1(b) shall survive the Satisfaction Date for three (3) years.

2.7 Binding Nature.

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

- (i) Sections 3.9(a)(vii), 5.1(a)(iv)-(v), and 5.1(b)(iv);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.7;
- (iii) Sections 5.2 through 5.7;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.6 through 10.8, and Sections 10.12 through 10.16; and
- (vi) Articles One, Two, Seven, Twelve and Thirteen.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is set forth in the Cover Sheet. Buyer shall have exclusive rights to all Product during the Delivery Term, including the right to re-sell all or a portion of the Product purchased under this Agreement (“Resold Product”). If Buyer re-sells Product, Seller agrees to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller further agrees to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 3.1(b)(i) and 3.1(b)(ii) below. Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (1) to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement, or (2) sell Product from the Project to a third party. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except during the Test Period. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt at and from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(i) Full Buy/Sell. If “Full Buy/Sell” is elected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product measured in kilowatt-hours, net of station use and transformation and transmission losses to and at the Delivery Point. Seller shall purchase all Energy required to serve the Project's on-site load, net of station use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule.

(ii) Excess Sale. If “Excess Sale” is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product measured in kilowatt-hours, net of station use, any on-site load and transformation and transmission losses to the Delivery Point. Seller agrees to convey to Buyer all elements of Product associated with the Energy sold to Buyer.

(c) Delivery Term.

(i) Delivery Term and Initial Energy Delivery Date. As used herein, “Delivery Term” shall mean the period of Contract Years specified on the Cover Sheet, beginning on the first date that Buyer accepts delivery of the Product from the Project in connection with this Agreement following Seller's demonstration of satisfaction of the items listed below in this Section 3.1(c)(i) (“Initial Energy Delivery Date”) and continuing until the end of the tenth, fifteenth, or twentieth Contract Year (as applicable, based on the Cover Sheet election) unless terminated pursuant to the terms of this Agreement; provided that the Expected Initial Energy Delivery Date may be extended pursuant to Section 3.1(c)(ii).

The Initial Energy Delivery Date shall be the later of the (A) date that the Buyer receives the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix II and (B) the date listed as the Initial Energy Delivery Date on the Initial Energy Delivery Date Confirmation Letter. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied:

- (I) Seller notifies Buyer that Commercial Operation has occurred;
- (II) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable;
- (III) Seller shall have obtained the requisite CEC Certification and Verification for the Project;
- (IV) all of the applicable Conditions Precedent in Section 2.5(a) have been satisfied or waived in writing;
- (V) for resources that are already under a contract as of the Execution Date, that existing contract must have expired by its own terms before the Initial Energy Delivery Date;
- (VI) Seller shall demonstrate compliance with 3.1(o) and the ability to respond to a Buyer Curtailment Order consistent with the physical characteristics of the Project including those in Part F of the Cover Sheet.
- (VII) Seller shall have demonstrated satisfaction of Seller's other obligations in this Agreement that commence prior to or as of the Delivery Term; and
- (VIII) unless Seller has been directed by Buyer to not participate in the Participating Intermittent Resource Program, Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent the Participating Intermittent Resource Program exists for the Project's technology type at such time as the conditions in subsections (I) through (VII) of this Section 3.1(c)(i) are satisfied.

[The following bracketed version of Section 3.1(c)(ii) "Extensions of Test Period" shall only apply to a New Project.]

[(ii) Extensions of Test Period In the event that Seller cannot satisfy the requirements for the Initial Energy Delivery Date by the end of the Test Period, as set forth in Section 3.1(c)(i), then Seller may provide Buyer with a one-time Notice of a thirty (30) day extension of the Test Period ("Initial Extension") along with a written explanation of the basis for the extension, no later than five (5) Business Days prior to the end of the Test Period. In the event that Seller requires an additional extension of the Test Period beyond the Initial Extension, Seller may request a further extension of the Test Period from Buyer no later than ten (10) days prior to the expiration of the Initial Extension of up to sixty (60) days by providing Notice to Buyer along with a detailed written explanation of the basis for such request ("Additional Extension"). Buyer shall provide Seller with Notice of Buyer's acceptance or rejection, in its sole discretion, of such Notice of Additional Extension within ten (10) days of receipt of Seller's Notice of Additional Extension. If Buyer fails to provide a Notice of Buyer's acceptance or rejection, then Seller's Notice of Additional Extension shall be deemed accepted. If Buyer provides Seller with Notice of Buyer's rejection of the Additional Extension, then Seller may be subject to an Event of Default. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange

the “Initial Energy Delivery Date Confirmation Letter,” attached hereto as Appendix II, on the Initial Energy Delivery Date.]

[The following bracketed version of Section 3.1(c)(ii) “Extensions of Expected Initial Energy Delivery Date” shall only apply to an Existing Project.]

[(ii) Extensions of Expected Initial Energy Delivery Date. In the event that Seller cannot satisfy the requirements for the Initial Energy Delivery Date by the Expected Initial Energy Delivery Date, as set forth in Section 3.1(c)(i), then Seller may provide Buyer with a one-time Notice of a thirty (30) day extension of the Expected Initial Energy Delivery Date (“Initial Extension”) along with a written explanation of the basis for the extension, no later than five (5) Business Days prior to the Expected Initial Energy Delivery Date. In the event that Seller requires an additional extension of the Expected Initial Energy Delivery Date beyond the Initial Extension, Seller may request a further extension of the Expected Initial Energy Delivery Date from Buyer no later than ten (10) days prior to the expiration of the Initial Extension of up to sixty (60) days by providing Notice to Buyer along with a detailed written explanation of the basis for such request (“Additional Extension”). Buyer shall provide Seller with Notice of Buyer’s acceptance or rejection, in its sole discretion, of such Notice of Additional Extension within ten (10) days of receipt of Seller’s Notice of Additional Extension. If Buyer fails to provide a Notice of Buyer’s acceptance or rejection, then Seller’s Notice of Additional Extension shall be deemed accepted. If Buyer provides Seller with Notice of Buyer’s rejection of the Additional Extension, then Seller may be subject to an Event of Default. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the “Initial Energy Delivery Date Confirmation Letter,” attached hereto as Appendix II, on the Initial Energy Delivery Date.]

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is the amount set forth in the applicable Contract Year in Section D of the Cover Sheet (“Delivery Term Contract Quantity Schedule”), which amount is inclusive of outages.

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” is equal to the product of (x) and (y), where (x) is one hundred sixty percent (160%) of the average of the Contract Quantities applicable to the two (2) Contract Years comprising the Performance Measurement Period, and (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = (160% × average of the Contract Quantities in MWh in Performance Measurement Period) × [(Hrs in Performance Measurement Period – Seller Excuse Hrs in Performance Measurement Period) / Hrs in Performance Measurement Period]

(B) In no event shall any amount of Delivered Energy plus Deemed Delivered Energy in any Settlement Interval that exceeds the Contract Capacity be credited toward or added to Seller's Guaranteed Energy Production requirement.

(C) GEP Failure, Cure, Damages.

(I) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly provide Notice to Seller of such failure, provided that Buyer's failure to provide Notice shall not constitute as a waiver of Buyer's rights to collect GEP Damages. Seller may cure the GEP Failure by providing to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, that is no less than ninety percent (90%) of the Contract Quantity, for the Contract Year following the GEP Failure, subject to adjustment for Seller Excuse Hours as set forth in the formula below ("GEP Cure").

$$\text{GEP Cure} = (90\% \times \text{Contract Quantity in MWh}) \times [(\text{Hrs in next following Contract Year} - \text{Seller Excuse Hrs in next following Contract Year}) / \text{Hrs in next following Contract Year}]$$

If Seller fails to provide sufficient Delivered Energy plus Deemed Delivered Energy, if any, as adjusted by Seller Excuse Hours, to qualify for the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix V ("GEP Damages Calculation"). If Seller provides a GEP Cure or pays GEP Damages for the Contract Years in a particular Performance Measurement Period ("Cured Performance Measurement Period"), then for purposes of calculating the Guaranteed Energy Production in the following Performance Measurement Period, the amount of Delivered Energy plus Deemed Delivered Energy in the second Contract Year of the Cured Performance Measurement Period, which is also the first Contract Year of the following Performance Measurement Period ("Shared Contract Year"), shall be deemed equal to the greater of (X) the Delivered Energy plus Deemed Delivered Energy, if any, for the Shared Contract Year, subject to adjustment for Seller Excuse Hours, or (Y) eighty percent (80%) of Contract Quantity in the Shared Contract Year, where X and Y are calculated as follows:

$$X = (\text{Delivered Energy} + \text{Deemed Delivered Energy in Shared Contract Year}) \times [(\text{Hrs in Shared Contract Year} - \text{Seller Excuse Hours in Shared Contract Year}) / \text{Hrs in Shared Contract Year}]$$
 or;

$$Y = 80\% \times \text{Contract Quantity in Shared Contract Year}$$

For the avoidance of doubt, the calculation set forth above for the amount of Delivered Energy plus Deemed Delivered Energy for the Shared Contract Year shall not apply to the cumulative GEP Shortfall under Section 5.1(b)(v)(B).

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

(III) After the GEP Cure period has run, if Seller has not achieved the GEP Cure, Buyer shall have forty-five (45) days to notify Seller of such failure. Within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide Notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice (the "Cure Payment Period"). If Seller does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(v)(A) within ninety (90) days following the Cure Payment Period. If Seller has failed to pay the GEP Damages, and

Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(v) within the ninety (90) day period, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller's failure with respect to the Performance Measurement Period which served as the basis for the notice of GEP Failure, GEP Damages, or default, subject to the limitations set forth in Section 5.1(b)(v)(B).

(f) Contract Capacity. The generation capability designated for the Project shall be the contract capacity in MW designated in the Cover Sheet, (the "Contract Capacity"), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix XIII. Throughout the Delivery Term, Seller shall sell and deliver all Product produced by the Project solely to Buyer. In no event shall Buyer be obligated to receive, in any Settlement Interval, any Surplus Delivered Energy. Seller shall not receive payment for any Surplus Delivered Energy. To the extent Seller delivers Surplus Delivered Energy to the Delivery Point in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy (in MWh) during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration, addition, or modification to the Project without Buyer's prior written consent. The Project is further described in Appendix XIII.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.6. Seller shall be deemed to have relinquished possession of the Project if after the Commercial Operation Date Seller has ceased work on the Project or ceased production and delivery of Product for a consecutive thirty (30) day period and such cessation is not a result of a Force Majeure event or direct action of Buyer.

(h) Interconnection Facilities.

[The following bracketed language applies to Projects that do not utilize Shared Facilities]

[(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any Generator Interconnection Agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer's Interconnection Facilities, including metering facilities, to be maintained; (C) comply with the procedures set forth in the GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades; and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.]

[The following bracketed language applies to Projects that utilize Shared Facilities.]

[(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any Generator Interconnection Agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer's Interconnection Facilities, including Shared Facilities and metering facilities, to be maintained; (C) comply with the procedures set forth in the GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades; (D) obtain Electric System Upgrades, as needed, in order to ensure the safe

and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project; and (E) ensure that Seller has sufficient interconnection capacity and rights under or through the Shared Facilities Agreements to fulfill its obligations under this Agreement.]

(ii) Coordination with Buyer.

(A) Seller shall (I) provide to Buyer copies of all material correspondence related to the GIA and CAISO Exemption; ; (II) provide Buyer with written reports of the status of the GIA on a monthly basis prior to the Delivery Term; and (III) obtain consent from Buyer before making any material amendment to the GIA or CAISO Exemption. The foregoing shall not preclude Seller from executing a GIA or obtaining a CAISO Exemption that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law

(B) Excess Network Upgrade Costs. Seller shall provide Buyer within ten (10) Business Days of receipt thereof, copies of any Interconnection Study or the interconnection agreement tendered to Seller by the Participating Transmission Owner that may give rise to a termination right of Buyer under Section 3.9(f)(i). Within that same period Seller shall also provide Buyer a Notice of its irrevocable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Cost pursuant to Section 3.9(f)(i), with a failure to provide such an election deemed to be an election not to exercise such rights for purposes of administration and enforcement of the terms of this Agreement.

(i) Performance Excuses.

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

(ii) Buyer Excuses. Buyer shall be excused from (A) receiving and paying for the Product only (I) during periods of Force Majeure, (II) by Seller's failure to perform, (III) during Curtailment Periods and (B) receiving Product during Buyer Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project during any Curtailment Period or Buyer Curtailment Period.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any. Nothing in this Section 3.1(j) shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

(k) WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer even if Buyer does not accept and/or pay for the underlying energy per Section 3.1(f). Seller shall comply

with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.1(k)(viii), provided that Seller fulfills its obligations under Sections 3.1(k)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“Buyer’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

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

(v) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month (“Deficient Month”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer’s payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller’s next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer’s subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller’s obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) as reasonably required to cause and

enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

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

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

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Term, which changes Buyer determines are necessary to forecast output from the Project, and/or comply with Law:

(A) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (G) of this list;

(B) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project; provided that if Buyer is unable to access the Project's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in 1-minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

(C) read-only access to the Project's CAISO Revenue Meter and all Project meter data at the Site;

(D) full, real-time access to the Project's CAISO Outage Management System(OMS) client application, or its successor system;

(E) net plant electrical output at the CAISO Revenue Meter;

(F) instantaneous data measurements at sixty (60) second or increased frequency for the parameters set forth in Appendix X ("Telemetry Parameters for Wind or Solar Facilities"), which measurements shall be provided by Seller to Buyer in consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup; and

(G) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation, temperature, wind speed, and, if applicable, wind direction. Such equation shall take into account the expected availability of the facility.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix IX ("Actual Availability Report"). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise

commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(l)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

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

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

(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 3.1(l)(i) of this Agreement, and for wind Projects, each wind turbine must be equipped with meteorological measurement equipment (e.g. anemometers) which are individually linked to Seller's plant information system. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

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

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

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

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least ninety (90) days prior to the Initial Energy Delivery Date.

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Buyer may request and Seller shall promptly provide one (1) year, if available, but no less than six (6)

months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) total global horizontal irradiance, plane of array or direct normal insolation as is applicable for project type, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in fog areas (forward scatter sensor) and humidity at the Site, as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure [***Include the following bracketed language only if winter season output of solar Project is an issue***] [and visibility in fog areas] All data, except peak values, should be 1-second samples averaged into 10-minute periods; (B) elevation, latitude and longitude of the weather station; and (C) any other data reasonably requested by Buyer.

(m) Prevailing Wage. Seller shall use reasonable efforts to ensure that all Electricians hired by Seller, Seller's contractors and subcontractors are paid wages at rates not less than those prevailing for Electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code.

(n) Obtaining and Maintaining CEC Certification and Verification. Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(o) Curtailement Requirements.

(i) Order. Seller shall reduce generation from the Project as required pursuant to a Buyer Curtailement Order or Curtailement Order, provided that a Buyer Curtailement Order or Curtailement Order shall be consistent with the operational characteristics set forth in Section F of the Cover Sheet. Seller agrees to reduce the Project's generation by the amount and for the period set forth in the Buyer Curtailement Order or Curtailement Order. Buyer's communication to Seller in advance of a Buyer Curtailement Order need not be greater than that required to support the Dispatch Interval in the Real-Time Market. The Parties agree that the Buyer Curtailement Period or Curtailement Orders shall be for unlimited hours cumulatively per Contract Year (which may or may not be consecutive). Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailement Period pursuant to Article Four.

(ii) Failure to Comply. If Seller fails to comply with a Buyer Curtailement Order or Curtailement Order provided in compliance with Section 3.1(o)(i), then, for each MWh of Delivered Energy that the Project generated in contradiction to the Buyer Curtailement Order or Curtailement Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh (for example, the Contract Price adjusted by TOD Factors) and, (B) is the absolute value of the Real-Time Price for the applicable PNode, if such price is negative, for the Buyer Curtailement Period or Curtailement Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailement Order or Curtailement Order.

(iii) Operational Characteristics. Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the actual physical characteristics of the Project including those listed in Part F of the Cover Sheet. The DMin value in Part F of the Cover Sheet shall be 0 MW unless otherwise demonstrated via certification by a Licensed Professional Engineer prior to the Initial Energy Delivery Date pursuant to Section 3.1(c)(VI). Upon

mutual written agreement between the Parties, Buyer, as the Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of an audit.

(p) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, software, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day Dispatch Instructions, to operate the Units as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 3.1(o)(ii) for failure to comply with a Buyer Curtailment Order or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

(q) Supplier Diversity Program. Seller shall comply with Buyer's Supplier Diversity Program in accordance with Appendix XII.

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

3.3 Resource Adequacy.

(a) During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes from the Project, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a Supply Plan or Resource Adequacy Plan ("Resource Adequacy Requirements"). From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the capacity of the Project, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements during the Delivery Term.

(b) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Resource Adequacy Standards, if applicable.

(c) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules by the earlier of ninety (90) days before the first day of the month for which the outage will occur or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(d) To the extent Seller has an exemption from the Resource Adequacy Standards or under the CAISO Tariff, Section 3.3(b) above shall not apply. To the extent Seller has an exemption from the Replacement Capacity Rules under the CAISO Tariff, Section 3.3(c) shall not apply. If Seller would like to request such an exemption for this Agreement from the CAISO, Seller shall provide to Buyer, as Seller's Scheduling Coordinator, Notice specifically requesting that Buyer seek certification or approval of this Agreement as an exempt contract pursuant to the CAISO Tariff; provided that Buyer's failure to obtain such exemption shall not be an Event of Default and Buyer shall not have any liability to Seller for such failure.

(e) Resource Adequacy Failure.

(i) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 3.4(a)(i)(A) or anything to the contrary herein, the Parties acknowledge and agree that:

(A) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the RA Start Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer; and

(B) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the Deliverability Finding Deadline, then Seller shall be in breach of this Agreement and subject to an Event of Default under Sections 5.1(b)(vi) - (vii), regardless of Seller's payment of any RA Deficiency Amount hereunder.

(ii) RA Deficiency Amount Calculation.

(A) Buyer shall calculate the RA Deficiency Amount for each RA Shortfall Month using the formula set forth in Section 3.3(e)(ii)(B). Buyer shall notify Seller of the RA Deficiency Amount for a given RA Shortfall Month no later than the last day of that RA Shortfall Month. The Parties agree that these liquidated damages shall be paid to Buyer for each RA Shortfall Month and constitute a reasonable approximation of the harm or loss suffered by Buyer. The Parties further agree that Buyer may use such liquidated damages for any purpose in its sole discretion. Seller shall pay the RA Deficiency Amount for a given RA Shortfall Month in the form of a deduction from the amount invoiced by Seller in such month pursuant to Section 6.1. In the event that the RA Deficiency Amount for a given RA Shortfall Month exceeds the amount invoiced pursuant to Section 6.1, Buyer shall make no payment to Seller for that month, and the difference between the invoiced amount and the RA Deficiency Amount shall be deducted from the amount(s) invoiced in the succeeding month(s) until all of the RA Deficiency Amount for such RA Shortfall Month has been deducted. Any dispute regarding Buyer's calculation of any RA Deficiency Amount shall be resolved in accordance with Article Twelve.

(B) The RA Deficiency Amount for a given RA Shortfall Month shall be equal to the product of the RA Value and the Expected Net Qualifying Capacity, as calculated in accordance with Appendix XIV. The RA Deficiency Amount is represented by the following equation:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

To the extent the Project obtains Net Qualifying Capacity that Seller applies towards its obligations under Section 3.3(a) before the Project obtains the deliverability type selected in Section A of the Cover Page (e.g., through the CAISO's Operational Deliverability Assessment), then the RA Deficiency Amount calculated above for a given RA Shortfall Month shall be reduced accordingly

(e.g. the RA Deficiency Amount would equal the product of (x) the RA Value and (y) the difference between the Expected Net Qualifying Capacity and the actual Net Qualifying Capacity):

RA Deficiency Amount (\$/Month) = RA Value (\$/MW/Month) × [Expected Net Qualifying Capacity (MW) – actual Net Qualifying Capacity (MW)].

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. Throughout the Term, and consistent with the terms of this Agreement, Seller shall:

(A) arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller's interconnection, distribution and/or transmission arrangements shall provide for the deliverability type selected in Section A of the Cover Sheet as of the RA Start Date and throughout the Delivery Term.

(B) If Seller has elected Energy Only Status on the Cover Sheet, this Section 3.4(a)(i)(B) is not applicable. An FCDS or PCDS Seller shall have either previously obtained, or is obligated to obtain per the terms of the Agreement, a FCDS or PCDS Finding. If Seller's Project has not attained Full Capacity Deliverability Status or Partial Capacity Deliverability Status prior to the Execution Date, Seller shall take all actions necessary or appropriate to cause the Delivery Network Upgrades necessary for it to obtain Full Capacity Deliverability Status or Partial Capacity Deliverability Status to be constructed and placed into service. The cost of each Deliverability Assessment and any necessary Delivery Network Upgrades to ensure Full Capacity Deliverability Status or Partial Capacity Deliverability Status shall be borne solely by Seller. When the CAISO advises Seller that the Project has Full Capacity Deliverability Status or Partial Capacity Deliverability Status, Seller shall Notify Buyer of such status within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. The Effective FCDS Date or Effective PCDS Date must occur on or before the Deliverability Finding Deadline; a failure to do so shall constitute an Event of Default under Section 5.1(a)(iii). The Termination Payment for an Event of Default caused by Seller's failure to achieve the Effective FCDS Date or Effective PCDS Date on or before the Deliverability Finding Deadline shall be capped at the amount of Seller's Delivery Term Security obligation under Section 8.4(a)(ii).

(C) if the Project has or obtains FCDS, Seller shall Notify Buyer of such status as of the Execution Date, if applicable, or within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO.

(D) bear all risks and costs associated with such transmission service, including any transmission outages or curtailment to the Delivery Point.

(E) fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff, including any CAISO Exemption, and implementing CAISO standards and requirements, so as to be able to deliver Energy from the Project according to the terms of this Agreement.

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

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

(B) Buyer shall bear all risks and costs associated with such transmission service, including any transmission outages or curtailment from the Delivery Point.

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

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

(b) EIRP Requirements. Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. As of the first date of the Test Period and until the Project receives certification as a Participating Intermittent Resource, Seller, at its sole cost, shall comply with EIRP and additional protocols issued by the CAISO for Eligible Intermittent Resources. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with EIRP and all additional protocols issued by the CAISO for a Participating Intermittent Resource. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with all other protocols issued by the CAISO for generating facilities providing energy on an intermittent basis; provided that, if multiple options exist, then Seller shall comply with any such protocols, rules or regulations as directed by Buyer. Throughout the Delivery Term, Buyer in its limited capacity as Seller's Scheduling Coordinator shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to satisfy Seller's obligations as Seller's Scheduling Coordinator and to the extent such actions are at *de minimis* cost to Buyer.

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

(i) Designation as Scheduling Coordinator.

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

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

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

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Project availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 4.5(c)(iii), Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Seller shall provide to Buyer and Third-Party SC (if applicable), pursuant to subsections (I) and (II) below, a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer:

(I) by the earlier of ninety (90) days before the beginning of the Test Period or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC, and

(II) throughout the Delivery Term, by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC.

(C) Daily Forecast of Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix VI, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. Any reduction of one (1) MW or greater to the PMax of the Project, as set forth in Section F of the Cover Sheet, must be reported as an outage pursuant to Appendix VI. The current industry standard Preschedule Day timetable in the WECC is as follows:

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

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

Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for submittal of Schedules into the Day-Ahead Market then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix VI.

Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

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

(D) Real-Time Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the CAISO rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Outage. Seller shall inform Buyer of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. These notices and changes to Available Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than 60 days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 3.4(c)(iii)(D), then Seller shall send such communications by telephone to Buyer's Real-Time Desk and shall be sent to Buyer's internet site as set forth in Appendix VI.

(E) To the extent that Seller obtains, in the normal course of business, other forecasts of energy production at the Project not otherwise specified in this Section 3.4, then Seller shall grant Buyer read-only access to such forecasts.

(iv) Replacement of Scheduling Coordinator.

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

(B) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable)

resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, safety, ownership and/or operation of the Project). In the event Seller requires any data or information from Buyer in order to comply with any applicable requirements of Law, including the requirements of CAISO, NERC and WECC, relating to the Project (including those related to construction, safety, ownership and/or operation of the Project), then Seller shall request in writing such data from Buyer no less than forty-five (45) calendar days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.

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

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, "Enforcement of Maintenance and Operation Standards for Electric Generating Facilities", and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering. At Seller's expense, Seller shall install, maintain, and test all CAISO Revenue Meters to accommodate the Project pursuant to the CAISO Tariff, as a CAISO Metered Entity. ***[The following bracketed language applies to Projects that utilize a Shared Facilities.]*** [Seller shall install and maintain all metering arrangements, including the CAISO Exemption, that utilize the Transformer or Line Loss Correction Factors (as such terms are defined by the CAISO Tariff) to meter the Project independently.] All Delivered Energy purchased under this Agreement must be measured by the Project's CAISO Revenue Meter to be eligible for payment under this Agreement. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

(a) CAISO Approval of Outage(s). Buyer, in its capacity as Scheduling Coordinator, is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Buyer's schedules or cancels previously approved outages and for entering Project outages in the CAISO Outage Management System ("OMS") or successor system. As

Scheduling Coordinator, Buyer shall put forth commercially reasonable efforts to secure and communicate CAISO approvals for Project outages in a timely manner to Seller.

(b) Planned Outages. During the Delivery Term, Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with Section 3.4(c)(iii)(A), (“Annual Forecast of Available Capacity”) and Section 3.4(c)(iii)(B), (Monthly Forecast of Available Capacity”) and implementing the notification procedures set forth in Appendix VI no later than July 1st of each year during the Delivery Term. Seller shall also notify Buyer of the proposed Planned Outage schedule for the Project by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer’s monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC. The Planned Outage schedule is subject to Buyer’s approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage by the earlier of fourteen (14) days prior to each Planned Outage or two (2) Business Days prior to the CAISO deadline for submitting Planned Outages. Seller shall not conduct Planned Outages during the months of January, May through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer’s approval, not to be unreasonably withheld or conditioned. Subject to Section 3.7(a), after any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage schedule requested by Buyer, Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer’s request.

(c) Forced Outages. Seller shall notify Buyer of a Forced Outage as promptly as possible, but no later than ten (10) minutes after the commencement of the Forced Outage and in accordance with the notification procedures set forth in Appendix VI. Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the notification provisions in Appendix VI. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Capacity on a *pro rata* basis also in accordance with the notification provisions in Appendix VI.

(e) Force Majeure. Within two (2) Business Days of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(f) Communications with CAISO. Buyer shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations

management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, 3.8, or 10.13, or Appendix VI, and consistent with Section 3.5, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and scheduling, forecast, bidding, notification and operating procedures described in the above-referenced sections are subject to change. If such changes are provided by (i) Notice from Buyer, then Seller shall implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increased cost of performance to Seller hereunder other than *de minimis* amounts, or (ii) Law, then the Parties shall implement such changes as necessary for Seller and Buyer to perform their respective rights and obligations in accordance with the Law.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice (which no case shall be less than three (3) Business Days) visit the Project during normal business hours for purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; (ii) not interfere with the operation of the Project; and (iii) unless waived in writing by Seller, be escorted by a representative of Seller. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

- (a) Seller, at no cost to Buyer, shall be responsible to:
- (i) Design and construct the Project.
 - (ii) Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO, the Participating Transmission Owner, and the applicable distribution provider for the Interconnection Facilities to Schedule and deliver the Product.
 - (iii) Acquire all permits and other approvals necessary for the construction, operation, and maintenance of the Project.
 - (iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project.

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

(vi) Seller shall Notify Buyer of the Construction Start Date by sending to Buyer a written Certification substantially in the form provided in Appendix IV-1 as soon as practical upon issuance of Notice to Proceed.

(vii) Within fifteen (15) days after the close of each quarter from the first quarter following the Execution Date, until the month in which the Construction Start Date has occurred, provide to Buyer a quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such quarterly reports and discuss Seller's construction progress. The quarterly Progress Report shall indicate whether Seller is on target to meet the Guaranteed Commercial Operation Date.

(viii) Within fifteen (15) days after the close of each month following the Construction Start Date until the Commercial Operation Date, provide to Buyer a monthly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The monthly Progress Report shall indicate whether Seller is on target to meet the Guaranteed Commercial Operation Date.

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

(i) Notify Seller in writing of the results of the review performed pursuant to Section 3.9(a)(v) within thirty (30) days of Buyer's receipt of all specifications for the Project, including a description of any flaws perceived by Buyer in the design.

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

(c) Guaranteed Commercial Operation Date.

(i) The Parties agree time is of the essence in regards to the Agreement. As such, Seller shall have demonstrated Commercial Operation per the terms of Appendix IV-2 by the date that is no later than thirty-six (36) months after the Effective Date of this Agreement, except as such date may be extended on a day for day basis for not more than a cumulative six (6) month period for a Permitted Extension (the "Guaranteed Commercial Operation Date"), provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date.

(ii) Permitted Extensions. The Permitted Extensions to the Guaranteed Commercial Operation Date are as follows:

(A) Force Majeure Extension. The Guaranteed Commercial Operation Date may be extended on a day for day basis in the event of Force Majeure ("Force Majeure Extension"); provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

(B) Daily Delay Damage Extension. The Guaranteed Commercial Operation Date may be extended on a day-to-day basis, corresponding to the number of days for which Seller has paid Daily Delay Damages, for a cumulative period of not more than six (6) months (“Daily Delay Damages Extension”).

(iii) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 3.9(c)(ii), such extensions cannot cumulatively exceed six (6) months and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(iv) Notice of Permitted Extension.

(A) In the case of a Force Majeure Extension, if sixty (60) days prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(B) In the case of a Daily Delay Damages Extension, Seller must, at the earliest possible time, but no later than sixty (60) Business Days before the commencement of the proposed Daily Delay Damages Extension, provide Buyer with Notice of its election to extend the Guaranteed Commercial Operation Date along with Seller’s estimate of the duration of the extension and its payment of Daily Delay Damages for the full estimated Daily Delay Damages Extension.

(v) Daily Delay Damage Payment. Daily Delay Damages payments applicable to days included in any Daily Delay Damages Extension are nonrefundable and are in addition to, and not a part of, the Project Development Security; provided that Seller will be entitled to a refund (without interest) of any estimated Daily Delay Damages payments paid by Seller to Buyer which exceed the amount required to cover the number of days by which the Guaranteed Commercial Operation Date was actually extended. Each Party agrees and acknowledges that the damages that Buyer would incur due to Seller’s delay in achieving the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty and the Daily Delay Damages are an appropriate approximation of such damages.

(vi) Failure to Meet the Guaranteed Commercial Operation Date. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions, then Buyer shall be entitled to declare an Event of Default and collect the Damage Payment pursuant to Article Five.

[The following subsections (d) and (e) shall only apply to a New Project:]

[(d) Resize of Project Due to Permit Failure.

(i) If Seller has not received or obtained by the earlier of the Expected Construction Start Date and the date that is six (6) months after the Effective Date final and non-appealable Governmental Approvals required for the construction of the Project with the Contract Capacity set forth in the Cover Sheet, after using commercially reasonable efforts to do so (including timely filings with all applicable Governmental Authorities and timely payment of any required fees) (“Permit Failure”), Seller may make a Contract Capacity Commitment on the Expected Construction Start Date (as may be extended), equal to, at a minimum, seventy percent (70%) of the Contract Capacity set forth in the Cover Sheet, provided that such amount shall also be the maximum amount of the generation capacity permitted under the final and non-appealable Governmental Approvals that Seller has received as of the Expected Construction Start Date (as may be extended), and may not be under one (1) MW, and

provided further that for a period of two (2) years from any such resizing pursuant to this Section 3.9(d), Seller must offer Buyer a Right of First Offer for any Products from the Project up to the Contract Capacity set forth in the Cover Sheet as further provided in Section 3.9(e), below. Seller shall provide Notice of such Contract Capacity Commitment to Buyer no later than ten (10) Business Days following the Expected Construction Start Date.

(ii) In the event that the Contract Capacity is reduced pursuant to Section 3.9(d)(i) above, the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Quantity Schedule in the Cover Sheet shall be adjusted proportionately with such reduction.

(iii) In the event that the Contract Capacity and Contract Quantity are reduced pursuant to Sections 3.9(d)(i) and (ii), the revised Contract Capacity and Contract Quantity shall be used to determine Seller's performance under the Agreement, including the amount of Guaranteed Energy Production under Section 3.1(e) and the amount of Delivery Term Security required under Section 8.4.

(iv) If the final Contract Capacity is less than the initial Contract Capacity due to a resize of the Project pursuant to Section 3.9(d)(i), then Seller shall forfeit a proportional share of the Project Development Security on a percent-for-percent basis.

(e) Right of First Offer.

(i) If Seller resizes the Project due to Permit Failure, then for a period of three (3) years from the date on which Seller Notifies Buyer of the Contract Capacity Commitment ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project in excess of the Contract Capacity Commitment, up to the Contract Capacity set forth in the Cover Sheet, to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's management approval and CPUC Approval ("Buyer's Notice of First Offer Acceptance"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller's documented incremental costs in overcoming the Permit Failure.

(iii) If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more

favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate./

(f) Excess Network Upgrade Cost Termination Right.

(i) Buyer has the right to terminate this Agreement by Notice on or before the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study, or the GIA tendered to Seller by the Participating Transmission Owner, if such Interconnection Study or GIA as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of the Network Upgrades to Buyer, or any Participating Transmission Owner under the jurisdiction of the CAISO, including costs reimbursed to Seller by Buyer or any Participating Transmission Owner under the jurisdiction of the CAISO (“Aggregate Network Upgrade Costs”), may in the aggregate exceed one hundred and ten percent (110%) of the amount identified in the Interconnection Studies that were submitted with Seller’s original bid offer (package) so long as the exceeded dollar amount is equal to or greater than one hundred thousand dollars (\$100,000.00) (“Network Upgrades Cap”), and Seller has not agreed to assume financial responsibility for Excess Network Upgrade Costs. This termination right is irrespective of any subsequent amendments of such Interconnection Study or GIA or any contingencies or assumptions upon which such Interconnection Study or GIA is based. Buyer’s Notice to terminate will be effective five (5) Business Days after such Notice is given to Seller.

(ii) Notwithstanding anything to the contrary in this Section 3.9(f)(ii), Buyer shall have no right to terminate this Agreement under Section 3.9(f)(i), if (A) Seller concurrently with its provision of the relevant Interconnection Study or GIA, as applicable, pursuant to Section 3.1(h)(ii)(B), irrevocably agrees to pay to the Participating Transmission Owner the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap (“Excess Network Upgrade Cost”) and (B) Seller enters into a GIA that states that Seller must pay all Excess Network Upgrade Costs without reimbursement from the Participating Transmission Owner. For sake of certainty, if Seller agrees to the above-described payment for the Excess Network Upgrade Costs pursuant to this Section 3.9(f)(ii), such agreement shall not independently convey to Seller any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights (as defined in the CAISO Tariff) in connection with the development of the Project or the delivery of Product to Buyer pursuant to this Agreement.

(iii) Buyer shall have the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, (A) if Seller elects to exercise its right to pay for any Excess Network Upgrade Costs, but (B) FERC, CAISO, or any Participating Transmission Owner, as applicable, rejects Seller’s interconnection agreement, in whole or in part, or modifies Seller’s interconnection agreement in a manner that would make Seller unable to comply with Seller’s obligation pursuant to Section 3.9(f)(i). In order to be effective, Buyer’s Notice of termination must be given on or before the date that is ninety (90) days after such rejection or modification by FERC, CAISO, or any Participating Transmission Owner.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Price.

(a) Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year is set forth in Section C of the Cover Sheet. For the avoidance of doubt, Seller shall not be compensated for any Surplus Delivered Energy.

(b) Test Period Payments. During the Test Period, Seller’s full compensation for Product sold to Buyer shall be the CAISO Revenues for the Delivered Energy, which revenues Buyer shall forward to Seller in accordance with the schedule described in Section 6.1.

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

Monthly Period	TOD PERIOD		
	1. Peak	2. Mid-Day	3. Night
A. July – Sept.	A1	A2	A3
B. Oct. – Feb.	B1	B2	B3
C. March. – June	C1	C2	C3

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

- A. July – September;
- B. October – February; and
- C. March – June.

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

1. **Peak** = hours ending 18 - 22 (Pacific Prevailing Time (PPT)) all days in the applicable Monthly Period.
2. **Mid-Day** = hours ending 09 - 17 PPT all days in the applicable Monthly Period.
3. **Night** = hours ending 23 – 08 PPT all days in the applicable Monthly Period.

4.3 TOD Factors and Monthly TOD Payment.

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

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Peak	2. Mid-Day	3. Night
A. July – Sept.	1.546	0.653	1.222
B. Oct –February	1.505	0.753	1.299
C. March – June	1.315	0.200	1.016

(b) Monthly TOD Payment. Except as provided in Section 4.4, for each month in each Contract Year, Buyer shall pay Seller for Delivered Energy and Deemed Delivered Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from (i) multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the sum of Delivered Energy (exclusive of Surplus Delivered Energy) for such TOD Period plus (ii) for each hour in the TOD Period, the Deemed Delivered Energy Price applicable to that hour times the TOD Factor for the applicable TOD Period, times the amount of Deemed Delivered Energy for such hour:

$$\text{Monthly TOD Payment} = \sum_{\text{hour}=1}^n ([\text{Contract Price } \$] \times \text{TOD Factor} \times \text{Delivered Energy MWh}_{\text{hour}}) + ([\text{Deemed Delivered Energy Price}_{\text{hour}} \$] \times \text{TOD Factor} \times \text{Deemed Delivered Energy MWh}_{\text{hour}})$$

For the avoidance of doubt, Excess Energy shall be compensated as set forth in Section 4.4 and shall not be included in the determination of payment set forth above; and “Delivered Energy” as used in the formula above excludes Surplus Delivered Energy, for which Seller will receive no compensation.

4.4 Excess Delivered and Deemed Delivered Energy.

(a) Excess Energy Price. If, at any point in any Contract Year, the amount of Delivered Energy (exclusive of Surplus Delivered Energy) plus the amount of Deemed Delivered Energy exceeds one hundred percent (100%) of the annual Contract Quantity amount, then:

(i) each MWh of additional Delivered Energy during such Contract Year shall be deemed “Excess Delivered Energy” and each MWh of additional Deemed Delivered Energy during such Contract Year shall be deemed “Excess Deemed Delivered Energy” (Excess Delivered Energy and Excess Deemed Delivered Energy, cumulatively, “Excess Energy”) and

(ii) for the remainder of such Contract Year:

(A) for every MWh of Excess Delivered Energy, the price paid to Seller shall be the lesser of (I) or (II), where (I) is fifty percent (50%) of the Contract Price for such Contract Year times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the “Excess Delivered Energy Price”); and

(B) for every MWh of Excess Deemed Delivered Energy the price paid to Seller shall be the lesser of (I) and (II) where (I) is fifty percent (50%) of the Deemed Delivered Energy Price times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the “Excess Deemed Delivered Energy Price”).

$$\text{Excess Delivered Energy Price}_{\text{hour}} = \text{the lesser of } ([50\% \times \text{Contract Price} \times \text{TOD Factor}] \text{ OR } \text{DA Price}_{\text{hour}})$$

Excess Deemed Delivered Energy Price_{hour} = the lesser of ([50% × Deemed Delivered Energy Price_{hour} × TOD Factor] OR DA Price_{hour})

For the avoidance of doubt, Excess Energy shall not include any Surplus Delivered Energy.

(b) Monthly Payment for Excess Energy. Buyer shall pay Seller for Excess Energy in each hour (“Monthly Payment for Excess Energy”) the amount resulting from (i) multiplying the Excess Delivered Energy Price applicable to that hour times the Excess Delivered Energy for such hour plus (ii) the Excess Deemed Delivered Energy Price applicable to that hour times the amount of Excess Deemed Delivered Energy for such hour:

$$\text{Monthly Payment for Excess Energy} = \sum_{\text{hour}=1}^n (\text{Excess Delivered Energy Price}_{\text{hour}} \times \text{Excess Delivered Energy MWh}_{\text{hour}}) + (\text{Excess Deemed Delivered Energy Price}_{\text{hour}} \times \text{Excess Deemed Delivered Energy MWh}_{\text{hour}})$$

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller’s failure to perform any covenant or obligation set forth in this Agreement. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer’s actions, including those resulting in a Buyer Curtailment Period.

(b) Buyer, as Scheduling Coordinator, shall (i) be responsible for all costs and charges assessed by the CAISO with respect to scheduling and Imbalance Energy, subject to Sections 4.5(a) and (c) and (ii) retain all CAISO revenues as a result of Energy from the Project throughout the Delivery Term. Seller and Buyer shall cooperate to minimize such charges and Uninstructed Imbalance Energy to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller’s and Buyer’s respective responsibilities for payment for Imbalance Energy and costs and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

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

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

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to the greater of (A) one hundred fifty percent (150%) of the Contract Price or (B) the absolute value of the Real-Time Price, in each case for each MWh of Energy Deviation outside the Performance Tolerance

Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

4.6 Additional Compensation.

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

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reduction and Seller shall retain the Reductions.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

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

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

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

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

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within forty-five (45) days after Notice from the Non-Defaulting Party, which time period shall be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed forty-five (45) additional days;

(iv) such Party becomes Bankrupt; or

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

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

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

(ii) failure by Seller for any reason, other than as explicitly provided in Section 11.1(a)(i) to meet, the Guaranteed Commercial Operation Date as may be extended by Permitted Extensions;

(iii) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement and such failure is not cured within any applicable cure period;

(iv) if Seller has provided and Buyer has accepted, a Guaranty to satisfy the collateral obligations under this Agreement, then with respect to such guarantor or the Guaranty, if Seller had not replaced the Guaranty in accordance with Section 8.6 within five (5) Business Days following Buyer's Notice of a request for replacement;

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

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

(B) if, after any Performance Measurement Period the cumulative GEP Shortfall for all preceding Performance Measurement Periods occurring during the Delivery Term equals or exceeds two times the Contract Quantity (as may be adjusted pursuant to Sections 3.9(d) and 3.1(e)(ii)); provided, however, that if all or a portion of the GEP Shortfall during an applicable Performance Measurement Period is principally caused by a non-Force Majeure major equipment malfunction, breakdown, or failure resulting in a reduction of Energy production of the Project by at least fifty percent (50%) of the Contract Quantity in one or both years of the Performance Measurement Period, as applicable, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Utility Practice, such failure shall be excluded from the calculation of the cumulative GEP Shortfall for purposes of this subsection.

(vi) Seller has not obtained the deliverability type selected in Section A (FCDS or PCDS) of the Cover Sheet by the Deliverability Finding Deadline.

(vii) Seller has not obtained the Partial Capacity Deliverability Status Amount identified in Section A of the Cover Sheet by the Deliverability Finding Deadline.

5.2 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party (“Non-Defaulting Party”) shall have the following rights:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) on which to collect the Damage Payment or Termination Payment in accordance with 5.2(c);

(b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;

(c) (i) collect the Damage Payment (in the case of any Event of Default of Seller that arose at any time prior to the commencement of the Delivery Term), or (ii) collect the Termination Payment (in the case of any Event of Default of Seller that arose during the Delivery Term or in the case of any Event of Default of Buyer at any time);

(d) withhold any payments due to the Defaulting Party under this Agreement;

(e) suspend performance;

(f) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance;

(g) demand payment for damages due to Buyer’s unexcused failure to take delivery or pay for Product; and

(h) exercise any other rights or remedies available at Law or in equity (including the collection of monetary damages) to the extent otherwise permitted under this Agreement.

Notwithstanding anything to the contrary contained herein, Seller may exercise the rights or remedies set forth in Sections 5.2(e), (g), and (h) without terminating this Agreement.

5.3 Calculation of Termination Payment.

(a) In the case where the Non-Defaulting Party is entitled to collect the Termination Payment pursuant to Section 5.2, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes shall be obtained in a commercially reasonable manner and shall be: (i) for a like amount, (ii) of the same Product, (iii) at the same Delivery Point, and (iv) for the remaining Delivery Term. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

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

5.7 Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

5.8 Damage Payment for Failure to Achieve Guaranteed Dates. The Parties agree that the Damage Payment to be paid by Seller for an Event of Default arising under Section 5.1(b)(ii) associated with Seller's failure to achieve the Guaranteed Commercial Operation Date shall be considered liquidated damages and not a penalty, in accordance with Section 7.1.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of Article Four. Seller shall continue to provide to Buyer an invoice of CAISO charges, net any sums Buyer owes Seller under this Agreement, on or about the tenth (10th) day of each month until the date of the Final True-Up. Buyer shall pay the undisputed amount of such invoices less the amount of any RA Deficiency Amount and the amount of any Forecasting Penalties, as applicable on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is

not a Business Day, then such invoice or payment shall be provided on the next following Business Day. During the Test Period, and for twelve (12) months following the Test Period only, Buyer shall provide to Seller a statement of the CAISO Revenues and any true-ups of CAISO Revenues from prior months and Buyer shall forward to Seller the CAISO Revenues from such statement, according to the invoice and payment schedules described in this Section 6.1. Each Party will make payments by electronic funds transfer via ACH, to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required, Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of adjustment. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made on the next invoice after such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made; provided that, such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR Contract; and provided further that, any disputes with respect to a statement of CAISO Revenues is waived unless Seller notifies Buyer in accordance with this Section 6.2 within one (1) month after the last statement of CAISO Revenues is provided. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY 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. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 ("INDEMNITIES"), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

8.3 **Grant of Security Interest/Remedies.** To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Project Development Security or Delivery Term Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued

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

8.4 Performance Assurance.

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

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of \$60/kW multiplied by the Contract Capacity of the Project as reflected in Section B of the Cover Sheet, within thirty (30) days following the Execution Date of this Agreement until Seller posts Delivery Term Security pursuant to Section 8.4(a)(ii) below with Buyer.

(ii) Delivery Term Security pursuant to this Section 8.4(a)(ii) in the amount of five percent (5%) of expected total Project revenues from the date required pursuant to Section 3.1(c)(i) as a condition precedent to the Initial Energy Delivery Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(ii).

The amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. Except as specifically provided for in this Section 8.4(a), Buyer acknowledges that Seller shall not be required to post any additional security.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Initial Energy Delivery Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security, as applicable unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Delivery Term Security posted pursuant to Section 8.4(a)(ii), as applicable.

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

(e) Return of Performance Assurance. Buyer shall return the unused portion of Project Development Security or Delivery Term Security, as applicable, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including payments pursuant to Section 4.5 (“CAISO Charges”), Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

(f) Adjustment of Security Amounts for Project Resizing. The required amount of Delivery Term Security shall be proportionally and automatically adjusted in connection with any resizing of the Project under Section 3.9(d), and Buyer shall promptly return to Seller the unused portion of Delivery Term Security in connection with any such adjustment.

8.5 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer’s Notice to Seller of an occurrence listed in this subsection (Seller’s compliance with either (A) or (B) below is considered the “Cure”):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer’s Notice to Seller in Section 8.5(b) above, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Eight.

(c) Notwithstanding the foregoing in Section 8.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on “credit watch” negative or developing by S&P, or is on Moody’s “watch list” under review for downgrade or uncertain ratings action (either a “Watch”), then Buyer may make a demand to Seller by Notice (“LC Notice”) to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch (“Substitute Letter of Credit”). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit (“Substitute Bank Period”).

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period (“Ineligible LC Bank Notice Period”) that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank (“Ineligible LC Bank”) and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer’s Notice to Cure pursuant to Section 8.5(b) and, if Seller fails to Cure, then the last paragraph in Section 8.5(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

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

8.6 Guaranty. If at any time Seller’s guarantor or Guaranty is no longer acceptable to Buyer in its sole discretion, Seller shall replace the Guaranty with Performance Assurance as provided herein. Within five (5) Business Days following Buyer’s written request for replacement of the Guaranty, Seller shall deliver to Buyer replacement Performance Assurance in the form of a replacement Guaranty, Letter of Credit or cash in an amount equal to the applicable amount of the Guaranty issued pursuant to this Agreement. In the event Seller shall fail to provide replacement Performance Assurance to Buyer as required in the preceding sentence, then Buyer may declare an Event of Default pursuant to Section 5.1(b)(iv) by providing Notice thereof to Seller in accordance with Section 5.2.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

ARTICLE TEN: MISCELLANEOUS

10.1 Recording. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer's employees or representatives performing a Scheduling Coordinator function as provided in Section 3.4(c) and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

10.2 Representations and Warranties.

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

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

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

(iii) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

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

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

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

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

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

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

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

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

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

[The following bracketed language shall only be applicable to Projects that utilize Shared Facilities.] [The term “change in law” as used in Section 10.2(b) does not include an invalidation, rescission or modification of the CAISO Exemption nor any disapproval, disallowance, or other change by WREGIS, the CEC or the CPUC with regards to the RECs as a result Seller’s Shared Facilities]

10.3 Covenants.

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

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

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

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

(b) Seller Covenants.

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

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements and/or Participating TO tariff requirements, as applicable, that are applicable to an Interconnection

Customer (as defined in the CAISO Tariff or Participating TO's tariff, as applicable) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the RA Start Date.

[The following clause (iii) applies to Existing Projects only:]

(iii) Seller covenants that the Initial Energy Delivery Date shall occur no later than the Expected Initial Energy Delivery Date specified in Section B of the Cover Sheet, except as provided pursuant to Section 3.1(c)(ii) or Section 11.1(a)(i).

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

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, [or] (ii) Seller's operation and/or maintenance of the Project, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers., or (iii) any penalties, sanctions or fines imposed by the CAISO or any other any Governmental Authority with respect to the Shared Facilities or as a result of the inaccuracy or recalibration of the CAISO Approved Meter(s).] ***[The bracketed language shall only be applicable to projects that utilize Shared Facilities.]***

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.6 Assignment.

(a) General Assignment. Except as provided in Sections 10.6 (b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other

Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.6(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix VII provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix VII, including extension of any cure periods or additional remedies for financing providers, and (ii) Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, attorneys' fees.

(c) Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates', Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.6 is void.

10.7 Confidentiality.

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement (the "Confidential Information") to a third party, other than as follows:

(i) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential,

(ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement,

(iii) to the CPUC under seal for purposes of review,

(iv) for disclosure of those certain terms specified in and pursuant to Section 10.8 of this Agreement;

(v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi);

(vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC; or

(vii) to the extent necessary for Buyer to exercise its exclusive rights to the Product during the Delivery Term, including its rights to resell any or all portions of the Product as set forth in Section 3.1(a), other than the Contract Price.

(b) If a Party is required to disclose Confidential Information in order to satisfy an obligation pursuant to subsection 10.7(a)(v) above (“Disclosure Order”) each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the Confidential Information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (y) prohibited from complying with a Disclosure Order or (z) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(c) Notwithstanding the provisions in Section 10.7(a), the Parties are permitted to disclose information related to the bidding and negotiation process as follows: (i) to Buyer’s Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (ii) to the CPUC (including CPUC staff) under seal for purposes of review (if such seal is applicable to the nature of the Confidential Information), and (iii) to the Independent Evaluator, as defined and specified in the PG&E PV Solicitation Protocol dated December 15, 2017 (“Protocol”).

(d) The Parties agree that the confidentiality provisions under this Section 10.7 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.7 shall govern confidential treatment of all non-public information exchanged between the Parties related directly or indirectly to this Agreement as of and after the Effective Date.

10.8 RPS Confidentiality.

(a) Notwithstanding Section 10.7(a) of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, the number of bids per company, Project size, resource type, Delivery Term, Project location, Capacity Factor and Contract Capacity, Commercial Operation Date, Expected Initial Energy Delivery Date, Contract Quantity, Delivery Point, and the achievement of Project development Milestones.

(b) Seller acknowledges and agrees that pursuant to CPUC Decision D.06-06-066, which implements Senate Bill (SB) No. 1488 (2004 Cal. Stats., Ch. 690 (Sept. 22, 2004)), this Agreement may be publicly available three (3) years from the Commercial Operation Date stated herein. Seller further acknowledges that the CPUC’s rules regarding confidential treatment of this Agreement is subject to change and therefore the timing and extent of disclosure is subject to amendment per CPUC order, rule or regulation.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until

paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage. The obligations of the Seller in this Section 10.10 constitute material obligations of the Agreement.

(a) Workers' Compensation and Employers' Liability.

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

(ii) Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

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

(ii) The limit shall not be less than three million dollars (\$3,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

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

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

(C) include a severability of interest clause.

(c) Business Auto.

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

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

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

(d) All Risk Property Insurance.

(i) During construction, an All Risk Property insurance policy including earthquake and flood (with sublimits as appropriate) shall be maintained during the course of Work being performed and include Start-up and testing for installed equipment and delayed opening coverage. Such policy shall include coverage for materials and equipment while under the care, custody and control of the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(e) Additional Insurance Requirements.

(i) Upon Buyer's request, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.

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

(f) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against Buyer, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

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

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

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

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

10.12 Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

10.13 General. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. The Parties acknowledge and agree that this Agreement is a “forward contract” (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.15. This Agreement shall be binding on each Party’s successors and permitted assigns.

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

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

10.16 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written 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 States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

ARTICLE ELEVEN: TERMINATION EVENT

11.1 Force Majeure Termination Event

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

(i) If prior to the Delivery Term, Seller is unable, due solely to a Force Majeure event, to achieve the Commercial Operation Date or place the Project into Commercial Operation by the Guaranteed Commercial Operation Date, after applicable extensions or cure periods have run, as set forth in Section 3.9(c); provided that if a Force Majeure event is caused by a catastrophic natural disaster, then upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days from the date of such Force Majeure event to obtain a report from an independent, third party

engineer stating whether the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller shall provide Buyer a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within twenty-four (24) months from the date of the Seller provides the engineer's report to Buyer and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the repair or replacement period deemed necessary by the engineer's report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and Seller has resumed and is satisfying its obligations under this Agreement.

(ii) If during the Delivery Term:

(A) the Project fails to deliver at least forty percent (40%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project and Buyer has provided Notice to Seller of such failure; provided that, if Seller within forty-five (45) days of receipt of Notice from Buyer, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from the above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer's written acknowledgement of such plan, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the mitigation period deemed necessary by Seller to repair the Project (which shall not exceed six (6) months); provided that Seller diligently pursues such mitigation plan throughout the mitigation period, and after which time Buyer may terminate this Agreement unless the Project has been repaired, and the Seller has resumed and is satisfying all of its obligations under this Agreement; or

(B) the Project is destroyed or rendered inoperable by a Force Majeure event caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced no later than twenty-four (24) months from the date of the report and Seller shall provide Buyer with a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer's report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying all of its obligations under this Agreement.

(b) Termination and Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Sections 2.6(a) and (b). The Parties agree that for a period of three (3) years from the date on which Buyer Notifies Seller of termination due to the Force Majeure Failure ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's management approval and CPUC Approval ("Buyer's Notice of First Offer Acceptance"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice of First Offer Acceptance to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller's documented incremental costs in overcoming the Force Majeure event.

(iii) If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the "Revised Offer") in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

12.2 Management Negotiations.

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

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from

the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS shall administer. As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS's then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the arbitrator shall administer by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

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

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

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

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

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

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

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

ARTICLE THIRTEEN: NOTICES

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

SIGNATURES

Agreement Execution

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

[SELLER, a (*include place of formation and business type*)]

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

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

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

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Pursuant to the terms of that certain **[insert name of the agreement]** (the “Agreement”), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the Agreement]** under the Agreement; or
 - B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the Agreement]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ **[print or type name]**

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

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

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

Tariff: Dated: Docket Number:

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

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX III
FORM OF PROGRESS REPORT

Progress Report

of

("Seller")

provided to

Pacific Gas and Electric Company
("Buyer")

[Date]

Instructions.

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

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

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For guidance, each “overview” subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous month. Each “expected activities” subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to [REDACTED], together with all attachments and exhibits, with copies of this report delivered to GCMTGroup@pge.com and [REDACTED].

1. Executive Summary

Please provide an overview of the Project, including technology, size, location, and ownership.

Please provide a brief chronological cumulative summary of the **major** activities completed for each of the following aspects of the Project. Include the date each item was added to the summary (e.g., *in Milestone section “January 2012 – notice of Construction Start Date milestone achieved was reported to PG&E on January 15, 2012” and in Construction section “January 2012 - Notice to Proceed was issued to EPC contractor on January 10, 2012”*):

- 1.1 Milestones**
- 1.2 Governmental Approvals**
- 1.3 Financing**
- 1.4 Property Acquisition**
- 1.5 Design and Engineering**
- 1.6 Major Equipment procurement**
- 1.7 Construction**
- 1.8 Interconnection**
- 1.9 Startup**

2. Milestones

In this section, please include information on each Milestone listed in the Cover Sheet, plus any additional significant milestones related to the project.

2.1 Milestone schedule

Please state the status and progress of each Milestone. Provide the date of completion of completed Milestone(s) and the expected date of completion of uncompleted Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

2.2 Remedial Action Plan (applicable if Seller fails to achieve a Milestone by the Milestone Date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates. Describe the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Describe Seller’s Remedial Action Plan which shall include detailed plans to achieve the missed Milestone and subsequent Milestones.

3. Governmental Approvals

In this section, please include information on each of the Governmental Approvals required for the construction of the Units and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination, and/or issuance of permit. If the government agency maintains a website with information on the approval process for the Project, please provide a link.

3.1 Environmental Impact Report/Statement (EIR/EIS)

Please describe the environmental review process and each of the Governmental Approval(s) to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity in the process.

3.2 Other Governmental Approvals

Please describe each of the other Governmental Approvals to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity.

3.3 Recent Governmental Approval activities

Please describe in detail the Governmental Approval activities that occurred during the previous calendar month.

3.4 Expected Governmental Approval activities

Please list all Governmental Approval activities that are expected to be performed during the current calendar month.

3.5 Governmental Approval Notices received

Please attach to this Progress Report copies of any Notices related to Governmental Approval activities received during the previous calendar month.

4. Financing Activities

In this section, please include information on each separate phase of financing for the Project. Include information on debt, equity, and/or federal or state loans or grants.

4.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

4.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

4.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

5. Property Acquisition Activities

In this section, please include information on property acquisition or site control activities for the Project.

5.1 Overview of property acquisition activities

Please provide a summary of the status and progress of each major property acquisition activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent property acquisition activities

Please describe in detail the property acquisition activities that occurred during the previous calendar month.

5.3 Expected property acquisition activities

Please list the property acquisition activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the Project.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Project to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the Project infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the Project.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Project, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 EPC Contractor Progress Report

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

8.5 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

8.6 OSHA Recordables

Please list all OSHA recordables from the previous calendar month.

8.7 Work stoppages

Please describe any work stoppage from the previous calendar month and its effect on the construction schedule.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements including Shared Facilities Agreements as applicable, design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Project construction information in Section 8), Shared Facilities as applicable, Network Upgrades, and grid outage and/or interconnection schedules.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Project may deliver Energy to the grid and/or declare Commercial Operation.

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

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

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV

CONSTRUCTION START AND COMMERCIAL OPERATION CERTIFICATION FORMS AND PROCEDURES

Appendix IV-1: CONSTRUCTION START FORM OF CERTIFICATION

Appendix IV-2: COMMERCIAL OPERATION CERTIFICATION PROCEDURE

Attachment A Commercial Operation Form of Certification

APPENDIX IV-1

**CONSTRUCTION START
FORM OF CERTIFICATION**

_____(Date)_____

Director Contract Management and Settlements
Pacific Gas and Electric Company
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Re: Construction Start Date

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

- a) the EPC Contract related to the Project was executed on _____;
- b) [permitting agency name] _ issued grading permits to the Seller on _____; and
- c) the Notice to Proceed was issued on _____ (attached), and.
- d) mobilization at the Project Site commenced on _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of the Seller as of the ___ day of _____.

(Seller)

(Name)

(Position)

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV-2

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with the terms of that certain Power Purchase Agreement dated _____, 20__ by and between Pacific Gas and Electric Company (“Buyer”) and _____ (“Seller”) to declare and recognize the Commercial Operation Date of the Project, Seller shall provide all of the documents set forth herein to Buyer as of the Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

- (1) A certification from an authorized officer of Seller, substantially in the form of Attachment A to this Appendix IV-2, dated as of the Commercial Operation Date; and
- (2) A certificate or report from a Licensed Professional Engineer containing all of the following:
 - (a) A statement that the Project has achieved Mechanical Completion and the date on which it was achieved;
 - (b) A statement that the Project has successfully completed Project Testing and the dates on which Seller has accepted the test results; and
 - (c) A statement that the Project has achieved Substantial Completion and the date on which it was achieved.
- (3) Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the CAISO agreement, interconnection agreement, and metering requirements in Sections 3.4 and 3.6 and has enabled Buyer to schedule the Facility with the CAISO for the Facility’s full unrestricted output.
- (4) Definitions.
 - (a) “Mechanical Completion” means that (i) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (ii) the Project is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.
 - (b) “Project Testing Completion” means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as “Project Testing”) as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Project has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) to assure warranty coverage for equipment and systems over their warranty periods.
 - (c) “Substantial Completion” means when the following has occurred: (i) the Project is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Project in the use for which it is intended; (ii) the Project has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Project is fully and properly interconnected and synchronized with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

APPENDIX IV-2 –Attachment A

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

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

Seller hereby certifies and represents to Buyer the following:

- (1) Mechanical Completion of the Project was achieved on ____ [DATE] ____.
- (2) Project Testing Completion successfully occurred on:

[Seller to indicate each type of Project Testing and date completed]

- (a) NAME OF TEST [DATE]
- (b) NAME OF TEST [DATE]
- (c) NAME OF TEST [DATE]
- (3) Substantial Completion of the Project was achieved on ____ [DATE] ____
- (4) Pre-parallel inspection of the Project was successfully completed on ____ [DATE] ____
- (5) Authorization to parallel the Project was obtained on ____ [DATE] ____
- (6) Telemetry / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Project on ____ [DATE] ____
- (7) Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Project on ____ [DATE] ____
- (8) Power system stabilizer testing and calibration was obtained for the Project on ____ [DATE] ____ or, was not required
- (9) Full Capacity Deliverability Status Finding from CAISO was obtained for the Project on ____ [DATE] ____ or, was not required because the Project is Energy Only.
- (10) The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on ____ [DATE] ____.
- (11) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on ____ [DATE] ____.

[The following shall only apply to Projects that utilize Shared Facilities]

- (12) The CAISO has provided approval of the CAISO Exemption in accordance with the CAISO Tariff on ____ [DATE] ____.

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

EXECUTED by SELLER this _____ day of _____, 20__.

Signature: _____	[Licensed Professional Engineer]
Name: _____	Signature: _____
Title: _____	Name: _____
	Title: _____

_____ Date: _____
License Number and LPE Stamp _____

APPENDIX V

GEP DAMAGES CALCULATION

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

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

Where:

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

B = Sum of Delivered Energy plus Deemed Delivered Energy, if any, over the Performance Measurement Period, in MWh

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

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

The Parties agree that in the above calculation of GEP Damages, the result of “(C-D)” is less than \$20/MWh, the “(C-D)” will be replaced with \$20/MWh.

APPENDIX VI

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify the applicable Participating Transmission Owner's (PTO) switching center

- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk to advise of the intent to parallel before any Start-up.
- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after the unit has been paralleled and report the parallel time and intended unit output.
- Call the applicable Participant Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after any routine separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PLANNED OUTAGES

1. Submit information by posting to PG&E's approved web-based system, which is located at www.pge.com under "Business to Business," or alternative website designated by PG&E (both, "PG&E's Website"). Once directed to the appropriate page, enter the username and password assigned by PG&E's Bilateral Settlements Group. If PG&E's Website is unavailable, implement the procedures set forth below:
 - a. **For all email correspondence, enter the following in the email subject field: Delivery Date Range, Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity,")**
 - b. For Annual Forecasts of Available Capacity, email to DAenergy@pge.com and Bilat_Settlements@pge.com.
 - c. For Monthly and Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Schedules into the Day-Ahead Market, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.
 - e. For Hourly Forecasts of Available Capacity, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com.

- f. For Planned Outages and Prolonged Outages, complete the specifics below and submit by email to ESMOutageCoordinator@pge.com, DAenergy@pge.com, and Bilat_Settlements@pge.com.
 - i. **Email subject field: Company Name, Contract Name, Email Purpose, Date Range (For example: “dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity”)**
 - ii. **Email body:**
 1. **Type of Outage: Planned Outage or Prolonged Outage**
 2. **Start Date and Start Time**
 3. **Estimated or Actual End Date and End Time for Outage**
 4. **Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted**
 5. **Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage.**
 6. **Contact name: first and last name of the individual at the Unit to contact regarding the outage(s) at issue in the email.**

C. FORCED OUTAGE REPORTING

1. Forced Outages – Seller shall notify PG&E Merchant Generation desk verbally at (415) 973-4500 within ten (10) minutes of event or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.
 - a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.
 - b. After verbally notifying PG&E Merchant Generation desk of the forced outage, Seller shall also put forth commercially reasonable efforts to notify PG&E Settlements via PG&E’s Website, as defined above.
 - c. If PG&E’s Website is unavailable, submit the following information via email to Bilat_Settlements@pge.com.
 - i. **Email subject field: Company Name, Contract Name, Email Purpose, Date Range (For example: “dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity”)**
 - ii. **Email body:**
 1. **Type of Outage: Forced Outage**
 2. **Start Date and Start Time**
 3. **Estimated or Actual End Date and End Time**

4. *Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted.*
5. *Text description of additional information as needed.*
6. *Primary and secondary causes of Forced Outage, including a detailed description of specific equipment involved and the nature of the problem or condition.*
7. *Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System (GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available.*
8. *Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.*
9. *Associated events, e.g. operation of Special Protection Schemes.*
10. *Impact on CAISO-controlled Grid.*

APPENDIX VII

FORM OF FINANCING CONSENT TO ASSIGNMENT

FINANCING CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2___], between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (“PG&E”), and [_____, *[include place of formation and business type]*] as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to as a “Party” and collectively as the “Parties”.

Recitals

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

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including, but not limited to a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

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

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing Documents of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).
3. Limitations on Assignment.
 - 3.1 Limitations. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party designated by Financing Provider, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement is a Permitted Transferee (as defined below). Financing Provider further acknowledges that this assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until

an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to designate a Permitted Transferee, after completing the process of obtaining PG&E’s acceptance in accordance with Section 3.2(a), to assume all of the rights and benefits and be subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if the Permitted Transferee were an original party to the Assigned Agreement.

3.2 Permitted Transferee

(a) A Permitted Transferee is a person or entity that (i) cures any and all defaults of Seller under the Assigned Agreement which are “Capable of Being Cured” as defined in Section 3.2(b); (ii) executes and delivers to PG&E a written assumption of all of Seller’s rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (iii) otherwise satisfies and complies with all requirements of the Assigned Agreement, including credit and collateral requirements; (iv) if requested by PG&E, provides (A) tax and enforceability assurance as PG&E may reasonably request to ensure PG&E does not incur any costs or loss any benefits by such assignment; (B) documentation to demonstrate the Permitted Transferee’s safety record and ability to meet applicable safety obligations; and (C) its ability to construct (if applicable), operate, and maintain the Project, and evidence that the Permitted Transferee has operated other energy storage facilities with a similar technology and operating profile; and (v) is reasonably acceptable to PG&E.

(b) “Capable of Being Cured” means that the Assigned Agreement specifies that a cure is available to Seller for a default(s), whether such cure is financial or by performance, and the terms of the cure as specified in the Assigned Agreement remain unfulfilled and available as set forth in the Assigned Agreement without modification. If the Assigned Agreement does not specify that a cure is available for a default(s), or a cure is specified but is no longer available as a cure (due to the passage of time or for any other reason), then the default(s) shall not be “Capable of Being Cured”. An incurable (default by Seller shall be cause for termination by PG&E of the Assigned Agreement and the Assigned Agreement will not be available for assignment to a Permitted Transferee.

(c) Financing Provider shall, following the occurrence of a Financing Default, Notify PG&E of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider’s rights under the Financing Documents, and PG&E shall, within thirty (30) Business Days of its receipt of such Notice, confirm to Financing Provider whether or not such proposed transferee is a Permitted Transferee (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a Permitted Transferee.

4. Cure Rights.

4.1 Notice to Financing Provider by PG&E. Concurrently with the delivery to Seller of any Notice of an event of default under the Assigned Agreement (each, an “Event of Default”) (and a “Default Notice”), PG&E shall provide a copy of such Default Notice to Financing Provider pursuant to Section 9.1 of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next Business Day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

4.2 Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, but only if the default is curable, PG&E agrees not to terminate the Assigned Agreement unless it or Seller first provides Financing Provider with Notice of the Event of

Default and PG&E affords Financing Provider an additional cure period of ten (10) calendar days for the financial cure or thirty (30) calendar days for a non-financial cure.

4.3 Failure to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4.1, then the Financing Provider's applicable cure period shall begin on the date on which Notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller, whichever is received first. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E's ability to terminate the Assigned Agreement (in each case only if both PG&E and Seller fail to deliver Notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E's right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such Notice.

4.4 Extension for Foreclosure Proceedings. If (a) it is necessary for the Financing Provider to have possession of the Project (as defined in the Assigned Agreement) in order for Financing Provider to cure an Event of Default which is Capable of Being Cured, as defined in Section 3.2(b), and (b) Financing Provider commences foreclosure proceedings against Seller within thirty (30) calendar days of receiving Notice of an Event of Default from PG&E or Seller, whichever is received first, then Financing Provider shall be allowed an additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) calendar days; provided, however, that Financing Provider shall provide a written Notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) calendar days of receiving a Notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider or its designated Permitted Transferee succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or Permitted Transferee shall be subject to the requirements of Section 3 of this Consent and Agreement.

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

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

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

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

Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

9.1 Notices. All Notices given or requirements of a Party to Notify hereunder shall be in writing, receipt of which shall be deemed complete (i) at the close of business of the date of receipt, if delivered by hand or by electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such Notice was properly addressed to the appropriate address set forth below or to such other address that a Party may designate by prior Notice to the other Parties:

To Financing Provider:

Attn: _____
Department _____
Street Address: _____

Telephone: _____
Facsimile _____
Email: _____

To PG&E:

Attn: _____
Department _____
Street Address: _____

Telephone: _____
Facsimile _____
Email: _____

9.2 No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and Permitted Transferees and assigns under the Financing Documents.

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

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

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

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

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

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

9.9 Amendments and Termination. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all Parties hereto. Notwithstanding the foregoing, Seller and Financing Provider may terminate this Consent by delivering a signed notice to PG&E in substantially the form of Attachment A, attached hereto and made a part hereof.

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

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation *[FINANCING PROVIDER, a (include place of formation and business type)], as collateral agent*

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ACKNOWLEDGEMENT

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

[SELLER, a (include place of formation and business type)]

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX VII -- Attachment A

FINANCING CONSENT TERMINATION NOTICE

[Date]

VIA E-MAIL

Pacific Gas and Electric Company
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177

Attention: [Candice Chan, Director Contract Management Settlement]

Re: Termination of Financing Consent to Assignment

Dear [Ms. Chan]:

Pacific Gas and Electric Company (“PG&E”) and [_____] (“Seller”) are parties to a Power Purchase Agreement (“Agreement”) dated as of [_____] for the Facility described as the [_____] Project (PG&E Log No. [_____]). All capitalized terms used but not defined herein shall have the meanings provided to them in the Agreement or Consent described below.

Subsequent to the execution of the Agreement, Seller and PG&E entered into a Financing Consent and Agreement dated as of [_____] with [_____] as Financing Provider, with respect to the Agreement (“Consent”). Pursuant to Section 9.9 of the Consent, Seller and Financing Provider are hereby providing Notice that effective as of [_____] (the “Termination Date”), they now wish to terminate the Consent.

As of the Termination Date, PG&E is hereby instructed to make all payments due Seller under the Agreement directly to Seller as provided therein.

[SELLER, a (include place of formation and business type)]

[FINANCING PROVIDER, a (include place of formation and business type)], as collateral agent

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX VIII

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, “Charter Documents”) as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate signed by an authorized officer of Seller (who must be a different person than the officers listed in clause (C) below), dated no earlier than ten (10) Business Days prior to the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller’s incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms, an option to lease or purchase, or proof of ownership) satisfactory to Buyer. PG&E will not accept a “Memorandum of Option Agreement” as filed with a County Recorder because it is a summary of a transaction and lacks the actual terms of the option.
5. Evidence of CEC Certification and Verification (pre-certification) satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated no earlier than ten (10) Business Days prior to the Execution Date, to the effect that, to the best of such officer’s knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.
7. An executed Letter of Concurrence substantially in the form specified in Appendix XI.

APPENDIX IX

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix IX.

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

APPENDIX IX

Attachment A

Form of Actual Availability Report

Seller's Actual Availability Report

All amounts are in MWs

Settlement Interval No.	Date	HE1	HE2	HE3	HE4	HE5	HE6	HE7	HE8	HE9	HE10	HE11	HE12	HE13	HE14	HE15	HE16	HE17	HE18	HE19	HE20	HE21	HE22	HE23	HE24
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
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3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
6	mm/dd/yyyy																								

Date/Time of Submittal _____

APPENDIX X

TELEMETRY PARAMETERS FOR SOLAR FACILITY

Technology Type	Telemetry Parameters	Units
Solar Photovoltaic	Back Panel Temperature	°C
	Global Horizontal Irradiance	W/m ²
	Plane of Array Irradiance (If PV is fixed) Direct Normal Irradiance (If PV is Tracking)	W/m ²
	Wind Speed	m/s
	Peak Wind Speed (Within 1 minute)	m/s
	Wind Direction	Degrees
	Ambient Air Temperature	°C
	Dewpoint Air Temperature or Relative Humidity	°C
	Horizontal Visibility	m
	Precipitation (Rain Rate)	mm/hr
	Precipitation (Running 30 day total)	mm
	Barometric Pressure	Millibars or Hecto Pascals (HPa)

APPENDIX XI

FORM OF LETTER OF CONCURRENCE

[Date]

[Name]

[Position]

[Company]

[Address]

Re: Letter of Concurrence Regarding Control of [Name] Facility

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company (“PG&E”) and [Company Name] with respect to [Facility Name (the “Facility”)] for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission’s (“Commission”) Order No. 697.¹ Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.² The Commission further requires that “a seller making such an affirmative statement seek a ‘letter of concurrence’ from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing.”³

PG&E and [Company Name] have executed a [power purchase and sale agreement (the “Agreement”)] with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] maintains sole control of the Facility. [Company Name] agrees to provide subsequent Letters of Concurrence as may be necessary should any of the information provided herein change after the execution date of this letter.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

[Author]

[Position]

Pacific Gas and Electric Company

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

² Order No. 697 at P 186.

³ Order No. 697 at P 187.

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____

[Name]

[Company Position]

[Company Name]

APPENDIX XII

SUPPLIER DIVERSITY PROGRAM

1. Seller shall provide Women-, Minority-, and service Disabled Veteran-, and Lesbian, Gay, Bisexual and/or Transgender-owned Business Enterprises, as verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156 (“WMDVLBE”), the maximum practicable opportunity to participate in the performance of work supporting Seller’s construction, operation, and maintenance of the Project. General Order 156 can be found on <http://www.cpuc.ca.gov/puc/documents/go.htm>.
2. Upon request from Buyer, Seller shall provide a separate “Supplier Plan” consisting of a specific list of suppliers that may participate in the performance of the work supporting the construction of the Project prior to the Commercial Operation Date and operation and maintenance of the Project after the Initial Energy Delivery Date, and a statement setting forth any additional efforts Seller will employ to increase the participation of WMDVLBE suppliers supporting the construction, operation and maintenance of the Project.
3. Upon request from Buyer, but no less than once per 365 day period of time between the Execution Date and the end of the Delivery Term, Seller shall report its spending with WMDVLBE suppliers per instructions to be provided by PG&E.
4. Targets.
 - a) Seller’s supplier diversity spending target for Work supporting the construction of the Project prior to the Commercial Operation Date is ____ percent (___%) as measured relative to Seller’s total expenditures on construction of the Project prior to the Commercial Operation Date, and;
 - b) Seller’s annual supplier diversity spending target for Work supporting the operation and maintenance of the Project after the Initial Energy Delivery Date is ____percent (___%) as measured relative to the net payments made by Buyer to Seller in each Contract Year.
5. Seller shall use good faith efforts in meeting the requirements of this Appendix XII which efforts shall be material obligations.

[Bracketed language applicable to WMDVLBE Sellers only]

6. Seller is a WMDVLBE, as certified by _____ [please identify the certifying agency].

**APPENDIX XIII
PROJECT SPECIFICATIONS AND CONTRACT CAPACITY CALCULATION**

I. PROJECT SPECIFICATIONS

“MVA” means megavolt ampere, the unit of apparent power.

“Nameplate Rated Output” means, with respect to an inverter or electric generator, the MVA that the manufacturer of the inverter or generator has designed such equipment to produce under normal operating conditions as specified by such manufacturer.

“Designated Power Factor” means, with respect to an inverter or electric generator, the power factor required to satisfy the portion of the Project’s reactive power requirements that are specified in *[please identify the applicable source, such as the PTO’s Interconnection Handbook, the CAISO’s Phase II Study, or the Generator Interconnection Agreement for the Project]* and are not being satisfied by other sources of reactive power within the Project.

“Nameplate Rated Power” means, with respect to an inverter or electric generator, the multiplication product of the Nameplate Rated Output and the Designated Power Factor for such inverter or generator, in MWs.

The project specifications shall consist of the following ten (10) items (each item of which shall be a “Project Specification”). As provided in Section 3.1(g), Seller shall not make any change or modification to any Project Specification without Buyer’s prior written consent.

1. Project name:
2. Project Site name:
3. Project physical address:
4. Total number of Units at the Project:
5. Technology Type:
6. Interconnection Point of Project:
7. Service Territory of Project:
8. Substation:
9. Description of Units:

- a. For each type of inverter in the Project, specify in the table below the type, the number of inverters, the Nameplate Rated Output, the total Nameplate Rated Output, the Designated Power Factor, the Nameplate Rated Power and the total Nameplate Rated Power: *[add rows as needed]*

Inverter Type	Number of Inverters	Nameplate Rated Output (MVA)		Designated Power Factor	Nameplate Rated Power (MW)	
		Per Inverter	Total		Per Inverter	Total
Total		N/A			N/A	

- b. For each type of panel technology (e.g., multi-crystalline silicon, mono-crystalline silicon, thin-film CdTe, multi-junction, bifacial, concentrating, etc.) and each type of

panel orientation (e.g., fixed-mount, tilt-angle, azimuth, single-axis tracker, double axis tracker, etc.) specify in the table below the technology, the type of orientation and the total DC rating at Standard Test Conditions: *[add rows as needed]*

Panel Technology	Orientation	DC Rating at STC (MW _{DC})
Total	N/A	

“Standard Test Conditions” means, with respect to determining the nameplate DC rating of a solar PV panel in a factory flash test, an irradiance of 1,000 W/m², a panel temperature of 25°C, and an air mass of 1.5.

10. Description of Land:

The Site contains the following Assessor Parcel Numbers upon which the Project is located and as identified on the topographical map included in this Appendix XIII below:

11. Description of Interconnection Facilities and metering:

The Project will use the following Interconnection Facilities, Shared Facilities, as applicable, and metering configuration as identified in this one-line diagram included in this Appendix XIII:

[Insert One-Line Diagram for Interconnection Facilities, Shared Facilities as applicable, and Metering]

12. Maps: The Site is identified in the following topographical map:

[INSERT MAP]

II. CONTRACT CAPACITY CALCULATION

The Contract Capacity specified in Section B of the Cover Sheet shall be the factor (A) minus each of the factors (B) through (E) provided below:

A	Sum of the Nameplate Rated Power of all inverters/generators	_____ MW
B	Calculated electrical losses from inverter/generator output terminals to CAISO Revenue Meter(s) (with all inverters/generators operating at Nameplate Rated Outputs)	_____ MW
C	Electrical Losses	_____ MW
D	Auxiliary and station loads coincident with inverters/generators operating at Nameplate Rated Outputs	_____ MW
E	Other factors (explain below)	_____ MW
F	Contract Capacity at the Delivery Point (F = A – B – C – D – E), which shall be the same as the MW amount specified for the Contract Capacity in Section B of the Cover Sheet	_____ MW

Inputs for the Nameplate Rated Power calculation:

Designated Power Factor:

	Leading	Lagging
Project power factor requirements	_____	_____
Seller's Designated Power Factor for inverters/generators	_____	_____

Power factor requirement is measured at (check one):

- inverter/generator terminals; Point of Interconnection; Other: _____

APPENDIX XIV

SECTION 3.3(e) LIQUIDATED DAMAGES CALCULATION

I. Equation and Formulas for Calculating RA Deficiency Amount

As provided in Section 3.3(e)(ii)(B), the formula for calculating the RA Deficiency Amount in a given RA Shortfall Month is:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

Where the:

- A. RA Value shall be \$4,010/MW/Month in calendar year 2017 and shall escalate at 2.5% per year for each succeeding calendar year; and
- B. Expected Net Qualifying Capacity for projects that selected Full Capacity Deliverability Status shall be the product of the Contract Capacity and the applicable monthly Qualifying Capacity factor in the table below; or
- C. Expected Net Qualifying Capacity for Projects seeking Partial Capacity Deliverability Status shall be the product of the Partial Capacity Deliverability Status Amount and the applicable monthly Qualifying Capacity factor in the table below..

Table XIV-1 Monthly Qualifying Capacity Factor

Month	Solar
Jan	0.0%
Feb	2.4%
March	10.4%
April	33.2%
May	30.5%
June	44.8%
July	41.7%
Aug	41.0%
Sept	33.4%
Oct	29.4%
Nov	4.1%
Dec	0.0%

II. Example of Calculation of the RA Deficiency Amount (for illustrative purposes only) if:

- RA Shortfall Month is June 2020
- Project is a solar system
- Contract Capacity is 20 MW
- RA Start Date is based on the Expected FCDS Date, which is January 1, 2020
- FCDS is achieved on August 14, 2020

RA Value (\$/MW/Month) = \$4,010.00, escalated at 2.5% per year for 3 years, from 2017 to 2020

$$\$4,010 \times (1.025)^3 = \$4,318/\text{MW/Month}.$$

Monthly Qualifying Capacity factor for a solar project in June is 44.8% (from table above).

Expected Net Qualifying Capacity =

$$\text{Contract Capacity (MW)} \times \text{monthly Qualifying Capacity factor} =$$

$$20 \text{ MW} \times 44.8\% = 8.96 \text{ MW}$$

RA Deficiency Amount (\$/Month) =

$$\text{RA Value ($/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)} =$$

$$\$4,318/\text{MW/Month} \times 8.96 \text{ MW} = \$38,689.28$$

In this example, the RA Shortfall Period is from January through October 2020. The calculations above would be performed and the result applied for each month in this RA Shortfall Period.

Advice 5161-E-A
November 30, 2017

Attachment C

**Redline Version of Revised Proposed 2017
PG&E PV Protocol Compared to PG&E 2017
PV Protocol filed in AL 5161-E**



2017 PV Solicitation Request for Offers

Filed: ~~October 12~~ November 30, 2017

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I. Overview

Overview

Pacific Gas and Electric Company (“PG&E”) is issuing this 2017 PV Program Request for Offers (“RFO”) to meet its remaining PV capacity obligation as governed by Commission Decision (“D.”) 14-11-042.¹ This protocol outlines the parameters governing this solicitation.

PG&E seeks Offers for the sale of Product² for a contract term of 10, 15, or 20 years. Except as noted in the PPA at Appendix B to this solicitation, the Project must be commercially operational no later than 36 months following final and non-appealable CPUC approval of the PPA associated with the Project. As described in PG&E’s most recently Commission approved least-cost-best-fit (“LCBF”) methodology, PG&E has a preference for Offers with terms of less than 20 years.

If PG&E notifies an entity submitting a bid into this RFO (a “Participant”) that its Offer has been selected, the Participant must submit a signed PPA and provide all required documentation as shown in Appendix VIII to the PPA to PG&E within 10 calendar days of selection notification. PG&E reserves the ability to place some Offers on a waiting list to account for the potential that some selected Offers could be withdrawn prior to submission of signed PPA.

Schedule

1. Schedule Overview

D. 14-11-042 requires PG&E to hold two future solicitations, one in 2016 and one in 2017, to meet its remaining rollover PV capacity obligation. **The final RFO schedule is subject to change** to conform to any CPUC requirement and otherwise at the discretion of PG&E at any time. **PG&E will not be launching the RFO until the CPUC has approved this Protocol and updates to the PPA.** PG&E targets to launch the RFO on December 12, 2017 with that date being dependent upon receiving CPUC approval by December 8, 2017.

PG&E will endeavor to notify Participants of any schedule change via notification on

¹ Decision 14-11-042 at p. 116 (Findings of Fact (“FOF”) 45).

² Product means the electricity generated by a Project (the eligible renewable energy resource described in an Offer, together with all capacity and ancillary products, services or attributes which can be produced by or associated with the Project, and any other attributes required by the California Public Utilities Commission (“CPUC”) and/or the California Energy Commission (“CEC”) to count the electricity toward PG&E’s Renewable Portfolio Standard (“RPS”) requirements.

PG&E’s PV RFO Website.³

As further described below, Participants may register at PG&E’s RFO website to receive notice of these and other RFO changes by electronic mail. PG&E will have no liability or responsibility to any Participant for any change in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO is as follows (all times are in Pacific Prevailing Time (“PPT”)); and assumes that the CPUC approves this updated Protocol and updates to the PPA by December 8, 2017. Delay in the CPUC approval past this date will change the timeline below in a manner to be determined by PG&E.

This schedule is also subject to change just prior to the launch of the solicitation once the 2018 PRG schedule has been established.

Date/Time	Event
Ongoing	Participants may register online to receive notices regarding the RFO.
December 12, 2017	PG&E issues the RFO.
TBD	Bidders’ Conference for RFO (via webinar).
January 24, 2018 no later than 1:00 P.M.	Offers Due. Offer(s) must be submitted to the online platform at Power Advocate. All Projects must have an executed Interconnection Agreement, a completed Phase II interconnection study (or equivalent), or documentation showing that the Project passed the Distribution Provider or CAISO Fast Track screens at the time of Offer submittal, as further stipulated in this Protocol. Offer evaluation begins.
April 24, 2018	PG&E selects offers. PG&E notifies Selected Participants and any Waitlisted Participants (Selection Notification).
April 27, 2018	Primary and Waitlisted Participants that wish to continue in PG&E’s RFO must return required documentation.
May 2, 2018	Waitlisted Participants are notified.
May 4, 2018 no later than 1:00 P.M.	Submittal of Signed PPA. Selected Participants that wish to continue participation in PG&E’s RFO must return a signed PPA and required documentation as shown in Appendix VIII of the PPA via Power Advocate.
May 11, 2018 no later than 1:00 P.M.	Selected Waitlisted Participants that wish to continue participation in PG&E’s RFO must return a signed PPA with required documentation as shown in Appendix VIII of the PPA via Power Advocate.
May 31, 2018	PG&E executes PPAs.
July 2, 2018	Advice Letter Filing for executed PPAs.

³ <http://www.pge.com/rfo/PV2017>

2. RFO Process

- a. Registration. Participants may register at PG&E's RFO website at www.pge.com/rfo to receive announcements and updates about this RFO by electronic mail.
- b. Bidders' Webinar. PG&E will hold a Bidders' Webinar to review key Protocol and PPA items related to this solicitation.
- c. Offers Due. Participant's Offer must be submitted via Power Advocate and must include all of the documents described in Section VII. By responding to this RFO, the Participant agrees to be bound by all of the terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.
- d. PG&E Selects Offers. Participants whose Offers have been selected will be notified via email. PG&E will select Offers within each Product Category described below according to the evaluation criteria described in Section IV. Some of the next-best Offers beyond those selected may be placed on a waiting list to be selected in order of priority should any selected Offers fail to complete the RFO process.
- e. Submittal of Signed PPA. Participants with selected Offers must submit a signed PPA with all required documentation in accordance with the timeline described above. If a Participant fails to submit a signed PPA with required documentation for one or more Selected Offers as described above, PG&E will disqualify the originally selected Offer and will select the next-best Offer on the waiting list. A waitlisted Participant whose Offer is selected must return a signed PPA and the required documentation in accordance with the timeline described above.
- f. Execution and Regulatory Approval. Once PG&E has fully executed each of the PPAs resulting from this RFO, it will submit all such PPAs to the CPUC for approval via a Tier 2 advice filing.

Disclaimers for Rejecting Offers and/or Terminating this RFO

This RFO does not constitute an offer to buy and creates no obligation to execute any PPA or to enter into a transaction under a PPA as a consequence of the RFO. PG&E shall retain the right at any time, at its sole discretion, to reject any Offer on the grounds that it does not conform to the terms and conditions of this RFO and reserves the right to request information at any time during the solicitation process.

PG&E retains the discretion, subject to, if applicable, the approval of the CPUC, to: (a) reject any Offer on the basis, including but not limited to the bases that an Offer is the

result of market manipulation or is not cost competitive or any other reason; (b) modify this RFO with the approval of the CPUC, the form PPA as it deems appropriate to implement the RFO and to comply with applicable law or other decisions or direction provided by the CPUC; and (c) terminate the RFO should the CPUC not authorize PG&E to purchase Products in the manner proposed in this RFO. In addition, PG&E reserves the right to either suspend or terminate this RFO at any time if such suspension is required by or with the approval of the CPUC. PG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Participant, whether submitting an Offer or not.

II. RFO Goals

PG&E is seeking to procure 77.5 MW in this solicitation for new and existing PV Projects.

For this Solicitation, PG&E is only accepting As-Available Product (as that term is defined in the PPA) from a solar photovoltaic project that is greater than 3 MW. No other forms of generation will be considered.

Additionally, as more particularly described in the PPA, each Offer should be identified as a full buy/sale transaction or an excess sales transaction, as follows:

- “Full buy/sale” transaction means 100% of the energy production, net of station use, is sold by the generator to PG&E.
- “Excess sales” transaction means that the output from the Project serves the generating facility’s own on-site load first and then sells the remaining energy production to PG&E.

Given the requirements that the PV projects must achieve commercial operation within 36 months of CPUC approval, it would be expected that a project selected from this RFO would achieve commercial operation by approximately July 2021.

III. Eligibility

PG&E is seeking Products that meet the specific eligibility requirements below. The Participant’s Offer must demonstrate that the Project meets each of the items in this Section III. PG&E will not be entertaining any storage related offers in this solicitation and will select from eligible Offers only.

All Projects must have the capability to comply with Section 3.1(q) (Seller Equipment Required for Curtailment Instruction Communications) of the PPA.

1. Existing and new generation facilities are eligible. An existing generating facility must be certified as an eligible renewable resource (“ERR”).⁴ PG&E encourages new resources to apply for pre-certification.
2. Existing facilities may participate providing that, if the project is currently under contract, the existing contract is scheduled to expire within 36 months of the expected date of Commission approval of the PPA. For this RFO, the existing contract must expire by July 2021.⁵
3. The Project must interconnect within the electric distribution or transmission system of PG&E, SCE, or SDG&E.
4. The Offer’s contract capacity must be greater than 3 MW.

Project Viability Eligibility Requirements

1. Interconnection

In order to participate in this RFO, Participants must have an executed Interconnection Agreement, a completed Phase II interconnection study⁶ (or equivalent⁷), or documentation showing that the Project passed the Distribution Provider or CAISO Fast Track screens⁸ at the time of Offer submittal.

Participants that bid in to the RFO must remain active in the applicable interconnection queue until the project’s required network upgrades have been completed. Participants must submit the applicable interconnection study with any applicable appendices with the Offer. If an interconnection agreement for the Project exists, it should be submitted along with the most recent interconnection studies.

PG&E is accepting offers for projects with Full Capacity Deliverability Status (“FCDS”), Partial Capacity Deliverability Status (“PCDS”), and energy-only (“EO”) status.

⁴ The CEC is responsible for certifying ERRs for purposes of compliance with the RPS program. The CEC has published Guidebooks to explain its criteria for RPS eligibility and process for ERR certification. The CEC’s “Renewable Portfolio Standard Eligibility Guidebook” 7th Edition publication number CEC-300-2010-007-CMF, January edition, is available at: <http://www.energy.ca.gov/renewables/documents/>.

⁵ Although subject to change, PG&E expects to file the Advice Letter requesting approval of the PPAs in June 2018 and receive approval 30 days later. PPA approval will be final following a 10 day appeal period.

⁶ Passing of an Electrical Independence Test is not sufficient unless the Project has a completed Phase II interconnection study or equivalent.

⁷ For example, a Facilities Study.

⁸ *Submission* of an Interconnection Request into a Fast Track process is not sufficient unless the project has *passed* the Fast Track screens or has a completed study equivalent to a Phase II interconnection study.

Participants offering fully or partially deliverable resource must provide documentation that the Project has received the FCDS or PCDS or provide documentation that the project is in the process of obtaining that deliverability, including any submitted requests for deliverability to the CAISO. The Participant must provide evidence of at least one of the following:

- a) An executed Interconnection Agreement or Amendment to an Interconnection Agreement that reflects the offered deliverability status⁹;
- b) Application for deliverability with a **completed** deliverability study (i.e., Phase II study or equivalent) with a deliverability status that matches the Offer;
- c) A **completed** deliverability assessment in the annual process that indicates that the project is deliverable pursuant to ISO Tariff Section 9.2 of Appendix DD; or
- d) Documentation that the Project has **received** deliverability through the CAISO's Deliverability for Distribution pursuant to ISO Tariff Section 40.4.6.3.

Providing documentation that an application or request for FCDS or PCDS has been submitted through any CAISO annual process is **not** sufficient **unless** there is a finding of deliverability at the time of Offer submittal. Projects bid in as fully-deliverable must be fully deliverable by the date of deliverability designated in the Offer and need not be fully deliverable as of commercial operation.

Projects bidding as energy-only do not have to pursue any deliverability studies.

Repowering projects must provide an attestation that their plans can be accommodated under the existing interconnection agreement, or that they have received their completed Phase II study for any increased capacity at the time of offer submittal. *In addition, projects must provide an acknowledgment that they understand they will be in default under the PPA if the CAISO does not act as expected and they miss their online date after excused delays.* For further information, refer to Section 12 of the CAISO Business Practice Manual (BPM) for Generator Management.¹⁰

Existing projects will need to ensure that they can participate in the CAISO markets prior to commercial operation. Existing projects will therefore need to fulfill a set of requirements listed in the CAISO's New Resource Implementation Checklist¹¹, ensure all required CAISO metering and telemetry is installed, and potentially

⁹ Where the Interconnection Agreement does not reflect the Deliverability offered, the Participant must provide additional documentation from the CAISO verifying the deliverability

¹⁰ <http://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Generator%20Management>

¹¹CAISO's new resource implementation process is described at:

<http://www.caiso.com/participate/Pages/NewResourceImplementation/Default.aspx>

convert their Interconnection Agreement to a wholesale interconnection agreement under FERC jurisdiction.

Projects must obtain a wholesale interconnection agreement under FERC jurisdiction prior to operation. Note that Electric Rule No. 21 is not under FERC jurisdiction and does not result in a wholesale interconnection agreement under FERC jurisdiction. Wholesale procedures, both the CAISO and PG&E Wholesale Distribution Tariff generation interconnection procedures, can also be viewed on the PG&E website at: <http://www.pge.com/wholesale/>.

2. Site Control

Participants must attest that they have secured site control for the entire delivery term of their Project as part of their Offers. Requirements to demonstrate such site control are detailed in Appendix C to this solicitation. Examples of site control include: (1) ownership of the site, a leasehold interest, or a right to develop a site for the purpose of constructing a generating facility; (2) an option to purchase or acquire a leasehold site for purposes of constructing a generating facility; and (3) any other business relationship that, in the sole discretion of PG&E, amounts to the same right to develop property as provided in examples (1) or (2) above, between the Participant and another entity that has the right to sell, lease, or grant the right to possess or occupy the site for such a purpose.

Please note that these site control requirements may differ from those required in the interconnection process to achieve a deemed complete status.

3. Experience

A minimum level of developer experience is required for participation in this solicitation. Specifically, the Participant and/or a member of Participant's project development team must have either completed or begun construction of at least one other project of similar technology and capacity. PG&E considers a project to have begun construction if the developer has issued a full notice to proceed to its EPC contractor.

4. Commercialized Technology

The Participant must show that the Project employs technology currently in use at a minimum of two operating facilities of similar capacity worldwide.

5. Commencement of Commercial Operation Deadline

The Project must be able to begin commercial operation within 36 months of CPUC

final and non-appealable approval of the associated PPA, subject to a six-month extension for the specific reasons described in the PPA. Sellers can request this extension by providing a notice 60 days prior to the guaranteed commercial operation date. Sellers that cannot place the Project into commercial operation by this deadline will be in default under the PPA.

Participation in Other Procurement Programs

Neither the Participant nor the owner of the site may sell any Product from the Project, either currently or at any time during the term of the PPA, pursuant to the California Solar Initiative Program (“CSI”) or the Net Energy Metering tariff. For projects up to 5 MW, the owner of the site will be required to sign the letter, attached here as Appendix D to this solicitation, acknowledging familiarity with CSI and NEM and committing to the limitation on participation noted above.

Participation in Future Solicitations

A Participant may submit offers for a Project in a future solicitation notwithstanding the Participant’s withdrawal of the Project’s Offer from this RFO prior to the execution of a PPA. Additionally, Offers that are not selected in this RFO may be bid again into future solicitations.

IV. Evaluation Criteria

Once Participants have met the eligibility requirements set forth in Section III, above, PG&E will use the evaluation criteria discussed in Section IV as the factors in selecting Offers.

PG&E will use the Commission approved LCBF methodology, pursuant to D.14-11-042, which includes a preference for shorter delivery terms.

Least-Cost-Best-Fit

PG&E will evaluate and select eligible Offers based on least-cost best-fit (LCBF)¹² criteria, which includes Market Valuation, Transmission Network Upgrade Costs, Location, and PAV.

¹² Attachment K from the 2014 RPS RFO Protocol outlines a complete and detailed description of PG&E’s Least Cost Best Fit Evaluation Criteria and is available at: http://www.pge.com/includes/docs/pdfs/b2b/wholesaleelectricssolicitation/RPS2014/Attachment_K_LCBF_01052015.pdf. Note that Table 1 may be updated.

Each Offer will be assessed on each of the criteria described in this section.

A. Market Valuation

Market Valuation compares an Offer's costs to its market value. Pursuant to D.12-11-016, NMV is calculated for each Offer as follows:

$$\text{Net Market Value: } R = (E+C)-(P+T+G+I)$$

$$\text{Adjusted Net Market Value: } A = R+S$$

Where:

E = Energy Value

C = Capacity Value

P = Post-Time-Of-Delivery (TOD) Adjusted Power Purchase Agreement (PPA) Price

T = Transmission Network Upgrade Cost

G = Congestion Cost

I = Integration Costs

S = Ancillary Service Value

The risks and uncertainties associated with an Offer's costs and benefits will be considered as part of Market Valuation. These costs and benefits do not include the costs and benefits associated with an Offer's impact on PG&E's portfolio.

1. Energy Value

PG&E will assess the market value of the energy deliveries based on the hourly generation profile of the Offer, initial energy delivery date, delivery term of the Transaction, and delivery location. The market value of the energy will be based on the appropriate forward price curves for the corresponding Trading Hub. The Loss multipliers will be used to incorporate losses specific for the location. With Buyer Curtailment, the energy value will include the expected value of Buyer Curtailments for avoiding (presumably negative) wholesale market spot price for the generation from the project.

2. Capacity Value

The value of capacity, including local reliability benefits, associated with each Offer will be determined based on the projected monthly quantity of qualifying capacity. Resources with an expected finding of full capacity deliverability from the CAISO will be attributed the full capacity value. To the extent that an Offer provides flexible capacity, the capacity that is expected to count for flexible RA will be evaluated at the projected monthly premium for flexible RA and added to the Capacity Benefit. It will be assumed that the qualifying capacity is zero for energy-only deliveries.

3. Ancillary Services

Ancillary Services (A/S) value will be assessed based on the A/S capability of the Offer. For Offers that provide PG&E the ability to schedule A/S and receive market revenues, the incremental benefit of having A/S capability will be captured, not to be double counted with the Energy Value.

4. Post-Time-Of-Delivery (TOD) Adjusted Power Purchase Agreement (PPA) Price

PG&E will calculate the Post-TOD Adjusted PPA Price, including debt equivalence costs, based on the hourly generation profile of the Offer, initial energy delivery date, delivery term of the Transaction, and the Offers contract price. For Dispatchable products, fixed payment calculated from the fixed capacity and Offer's fixed capacity price (\$/kW-yr) under the Offer will also be added to the Post-TOD Adjusted PPA price after being levelized by the energy quantity.

5. Transmission Network Upgrade Cost

PG&E will use results from Participants' interconnection studies to calculate the Transmission Network Upgrade Cost adder. The refundable portion of the costs of Network Upgrades are included in transmission rates and paid by customers. Transmission cost adders reflect the cost of incremental, refundable Network Upgrades borne by customers. For projects that are fully deliverable, PG&E will consider the refundable portion of both Reliability and Delivery Network Upgrades. For energy-only Projects, PG&E will consider only the refundable portion of Reliability Network Upgrades when calculating a transmission adder.

6. Congestion Cost

Congestion cost will be calculated based on the hourly generation profile of the Offer, initial energy delivery date, delivery term of the Transaction, and delivery location. The Congestion Cost will be positive if the project is located in an area where the transmission lines are constrained due to serving loads outside of the area from the generation within the area. The Congestion Cost will be negative if the project is located in an area where the transmission lines are constrained due to serving loads within the area from the generation outside of the area. Congestion Cost multipliers will be used to incorporate congestion costs specific for the location.

B. Portfolio Adjusted Value

Portfolio Adjusted Value ("PAV") consists of several components.

1. Location

PG&E has a preference for projects in its service territory. This preference is influenced by constraints in the market that may limit the amount of capacity in SP15 that PG&E can count toward its RA requirement. Capacity located closer to PG&E's load is likely to have more value for PG&E's bundled electric portfolio, even when market forward prices indicate that energy delivered farther away has greater Market Value. The long-term risk

for PG&E's customers is less when resources are located within PG&E's service territory rather than outside of PG&E's service territory. The calculation of PAV effectuates this by adjusting the value of energy and capacity for offers from resources in SP15. Offers for RPS energy from resources in NP15 will have an equal or higher PAV than comparable offers from resources in SP15.

PG&E reserves the right to reject Offers if they are uncompetitive with other options, including offers received in other PG&E non-RAM-like solicitations, or if there is evidence of market manipulation.

Resource Adequacy Benefit

For Projects that provide full or partial deliverability, PG&E will assume that new resources achieve full or partial capacity deliverability status on the date of the deliverability stated in the Offer, and the applicable RA benefit will be included from this date through the remaining term.

As described in Resolution E-4489, PG&E will evaluate the capacity benefits of a proposal by applying the monthly Net Qualifying Capacity ("NQC") to PG&E's forecast of avoided capacity costs. Due to the RA capacity constraint that currently exists on projects that are located in SP15, PG&E currently discounts the capacity value of SP15 resources and is expected to assign different values to projects that have delivery points located in NP15 versus SP15. This constraint may change in the future.

Supplier Diversity

~~PG&E may consider Participant's status as a Small Business Administration self certified~~

~~small business.~~ **Supply Chain Responsibility**

PG&E is committed to supply chain responsibility ~~which includes, including~~ supplier diversity, sustainability, and ethical supply chain practices.

~~The~~PG&E's Supplier Diversity Program, launched in 1981, aims to provide diverse suppliers with economic opportunities to supply products and services to PG&E. The Supplier Sustainability Program, launched in 2007, encourages supplier responsibility, excellence and innovation. Promoting an ethical supply chain means that ethical supplier performance, including a supplier's efforts in each of the following areas, is an important consideration in supplier selection: health and safety, labor issues, human rights, ethical business conduct and conflicts of interest.

~~Promoting an ethical supply chain means that Health and Safety, Labor Issues, Human Rights, Ethical Business Conduct and Conflicts of Interest are important considerations in supplier selection. PG&E will determine how an Offer will assist PG&E in reaching its enterprise wide supply chain responsibility goals. It is PG&E's policy that small and diverse businesses shall have the maximum practicable opportunity to bid, including~~

Small Business Enterprises (SBEs); Women, Minority and Disabled Veteran Business Enterprises (WMDVBEs); and Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBEs). PG&E may consider Participant's status as an SBE (registered as a small business with a state or federal agency, e.g. California Department of General Services or Small Business Administration).

Additional information on PG&E's Supplier Diversity program can be found at:
www.pge.com/supplychainresponsibility

Seller Concentration

PG&E is not limiting the number of Offers submitted by a single Participant. However, to ensure that the market for Products sought in this RFO remains competitive, PG&E may cap the amount awarded to any single Participant in this RFO.

V. Guidelines for Offer Development

Price

Participants must submit with their Offer their best and final price using the Energy Pricing Sheet of the Offer Form in Appendix A to this solicitation. PG&E will not consider updated or "refreshed" price offers submitted after the Offer submittal deadline. The Product price must be stated in annual \$/MWh and may be escalated over the 10, 15, or 20 year term of the PPA. Product quantities can vary annually to reflect degradation of the facility, if applicable.

Pursuant to the PPA, Sellers will be paid the contract price multiplied by the applicable TOD factor for each hour. For purposes of bid evaluation, PG&E will levelize bid prices after applying the applicable standard Time of Delivery ("TOD") factors as specified below.

The price submitted by Participant for an Offer must include, without limitation, the following: (a) all awards, subsidies, and tax credits with respect to the Project, (b) all other benefits that Participants expects to apply, (c) any costs incurred by Participant, including any interconnection costs, (d) the acceptance, without reservation or revision, of the non-price terms and conditions in the PPA, and (e) the assumption that the Product price will be adjusted in each hour of delivery by the Time of Delivery (TOD) factors set forth in the table below by PG&E.

Time of Deliverability

Time of Delivery (TOD) Periods and Factors

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Peak	2. Mid-Day	3. Night
A. July - September	1.546	0.653	1.222
B. October - February	1.505	0.753	1.299
C. March - June	1.315	0.200	1.016

TOD factors shown are consistent with factors submitted in PG&E’s 2017 RPS Plan.

Definitions:

1. **Peak** = hours ending 18-22 (Pacific Prevailing Time (PPT)) all days in the applicable Monthly Period.
2. **Mid-Day** = hours ending 09-17 PPT for all days in the applicable Monthly Period.
3. **Night** = hours ending 23-08 PPT all days in the applicable Monthly Period.

PPA Terms and Conditions

PG&E strongly encourages all Participants to review the form PPA and expects all Participants to be able to perform ALL obligations under the PPA.

Any successful Offers must be formalized by the execution of a final PPA. PG&E has provided a form PPA in Appendix B to this solicitation, and the summary of certain terms within the PPA provided in this section of the protocol is not meant to provide a substitute for a careful review of the actual PPA. In the case of any conflict between this protocol and the PPA, the PPA will control.

The terms and conditions of the form PPA are non-negotiable. All project-specific information should be included in the cover sheet.

The delivery term of any executed PPA will be 10, 15, or 20 years. The period of 10, 15, or 20 years will commence on the first date that the Participant delivers the Product to PG&E from the Project.

The PPA requires PG&E’s counterparty to submit a project development milestone timeline (Section B(i)(b) in the Cover Sheet of the PPA) upon execution of the PPA and to provide progress reports to PG&E (as outlined in Section 3.9(a)(vii) and 3.9(a)(viii) in the PPA) on the Project’s progress towards the achievement of the development

milestones until the project begins energy deliveries.

For Projects being bid as fully or partially deliverable, the PPA includes an estimate of when full or partially capacity deliverability status will be attained. Seller is contractually bound by the estimate. If Seller has not achieved full or partial capacity deliverability status consistent with that in the Offer by the designated time, then the Seller will be subject to contractual penalties.

The PPA requires a Participant to post collateral in the form of cash or letter of credit from a reputable U.S. bank in the following amounts and by the time discussed below:

Project Development Security: \$60 per kW for As-Available facilities due within thirty (30) calendar days following the Execution Date of the PPA. The development deposit will be refunded upon Commercial Operation Date or applied to the subsequent Performance Deposit.

Delivery Term Security: An amount equal to 5% of expected total Project revenues. This amount is equal to 6 months of revenue for a 10 year PPA, 9 months of revenue for a 15 year PPA, or 12 months of revenue for a 20 year PPA, due on the Commercial Operation Date.

Under the PPA, the Project Development Security will be retained by PG&E in the event that the Project should fail to come online by the contractual deadline. Delivery Term Security will be held throughout the 10, 15, or 20-year delivery term.

VI. Information Regarding Interconnection to PG&E's Electric System and Interconnection Screens

Many factors influence the feasibility and cost of interconnecting generating facility systems to an electric system. These factors include, but are not necessarily limited to, the size and type of the system, substation and circuit load and capability, voltage regulation and voltage flicker. Nonetheless, in an effort to assist developers in selecting appropriate sites for their Projects, PG&E has created a web-based map that provides an extensive amount of substation and circuit information. This map and supporting documentation allows developers to determine, among other information, the available capacity of any particular distribution or transmission circuit on PG&E's service territory, defined as the total capacity less allocated capacity. For security purposes, access to the map requires registration with PG&E.

The map is a tool intended to assist Participants to identify and/or evaluate potential Project locations. However, PG&E does not guarantee that conditions in these areas will remain the same or that property suitable for participation in this RFO is available. In addition, actual interconnection requirements and applicable costs will be determined from further detailed studies that will consider a Participant's specific Project location, size, and application date relative to PG&E's electric system and other projects in the same vicinity.

Electric Generation Interconnection Services

All generators must reach commercial operation within 36 months of PPA approval. Sellers are responsible for understanding the relevant interconnection procedures and ensuring they can interconnect within the mandated timelines.

Information regarding interconnection to the PG&E Electric Grid is available at the following site: <http://www.pge.com/wholesale/>. Any interconnection questions should be directed to PG&E's Electric Generation Interconnection department at the email address: wholesalegen@pge.com.

Any application for interconnection to the transmission system must be directed to the CAISO in accordance with the CAISO Tariff. For more information, please refer to the CAISO Tariff via the CAISO website at:

<http://www.caiso.com/planning/Pages/GeneratorInterconnection/Default.aspx>.

For interconnection applications to SCE's or SDG&E's Distribution Grid, seller should contact the applicable Distribution Provider representative.

VII. Required Information

Submission Overview

All Offer submittal information pertaining to this RFO will be hosted on the Power Advocate site. In order to participate in this RFO, Participants must register through Power Advocate at the Public Registration Link:

TBD. To be updated just prior to solicitation launch.

PG&E strongly encourages Participants to register with Power Advocate well before Offers are due. PG&E will be posting the detailed instructions for submitting Offer(s) and using the on-line platform on PG&E's website prior to Offer submittal.

Electronic Documents: The electronic documents for the attachments must be in a Microsoft Word, Excel file or Adobe Acrobat PDF file as applicable. The Participant should not provide documents in other electronic formats and versions. For each document, please include a company name in each file name. **Telephonic, hardcopy or facsimile transmission of an Offer is not acceptable.**

Required Forms

The following documents, which are located in the Appendices to this solicitation, must

be completed and included with each Offer:

1. **Completed Offer Form and Developer Experience Form (Appendix A to this solicitation).** Participant must provide a complete Offer form. Please provide all applicable information requested in the form and include the Project's expected generation profile, CAISO or utility cost estimate for the needed network upgrade costs. Participant must also include the interconnection queue position on the Offer form. Format: MS Excel
2. **A Completed PPA Cover Sheet (Appendix B to this solicitation).** The cover sheet includes spaces for contract capacity, project vintage, milestones, and supplier diversity spend. Other mark-ups are not permitted and will result in rejection of the Offer. Format: MS Word
3. **A Completed PPA Appendix XIII of the PPA.** This appendix includes spaces for all of the project specifications. Other mark-ups are not permitted and will result in rejection of the Offer. Format: MS Word.
4. **Site Control Questionnaire and Attestation (Appendix C to this solicitation).** Participant must attest to site control and provide a map showing site location and key project facilities. The map should show the project boundary, and gen-tie route from the project to the first point of interconnection with the electric grid. The map should be provided in one of the following file formats: (1) Google kml/kmz, (2) ESRI geodatabase (mdb or .gdb) (3) a shapefile with file extension .shp plus at least the 3 supporting files (.shx, .dbf, .sbn). Format: Applicable GIS data file format
5. **Acknowledgement and Commitment of Site Owner Letter (Appendix D to this solicitation).** **This only applies to projects that are 5 MW or less.** The owner of the site on which Participant's Project is proposed to be located must attest to familiarity with the CSI and NEM alternatives. The Participant and the owner of the site must also commit not to sell Product from the Project under these other program alternatives throughout the term of the PPA, if executed. Format: PDF
6. **Interconnection Studies.** Participants must have an executed Interconnection Agreement, a completed Phase II interconnection study¹³ (or equivalent¹⁴), or documentation showing that the Project passed the Distribution Provider or CAISO Fast Track screens¹⁵ at the time of Offer submittal. Format: PDF or MS Word.

Participants offering fully or partially deliverable resource must provide documentation that the Project has received the FCDS or PCDS or provide documentation that the project is in the process of obtaining that deliverability,

¹³ Passing of an Electrical Independence Test is not sufficient unless the Project has a completed Phase II interconnection study or equivalent.

¹⁴ For example, a Facilities Study.

¹⁵ *Submission* of an Interconnection Request into a Fast Track process is not sufficient unless the project has *passed* the Fast Track screens or has a completed study equivalent to a Phase II interconnection study.

including any submitted requests for deliverability to the CAISO. The Participant must provide evidence of at least one of the following:

- a) An executed Interconnection Agreement or Amendment to an Interconnection Agreement that reflects the offered deliverability status¹⁶;
- b) Application for deliverability with a **completed** deliverability study (i.e., Phase II study or equivalent) with a deliverability status that matches the Offer;
- c) A **completed** deliverability assessment in the annual process that indicates that the project is deliverable pursuant to ISO Tariff Section 9.2 of Appendix DD; or
- d) Documentation that the Project has **received** deliverability through the CAISO's Deliverability for Distribution pursuant to ISO Tariff Section 40.4.6.3.

Providing documentation that an application or request for FCDS or PCDS has been submitted through any CAISO annual process is **not** sufficient **unless** there is a finding of deliverability at the time of Offer submittal. Projects bid in as fully-deliverable must be fully deliverable by the date of deliverability designated in the Offer and need not be fully deliverable as of commercial operation.

7. Projects bidding as energy-only do not have to provide any deliverability studies.

VIII. Offer Selection

PG&E will select Offers according to the evaluation criteria described in Section IV. PG&E plans to notify selected Participants by e-mail according to the schedule described above.

PG&E may place some offers on a waitlist. Any waitlisted Participants would be selected in order of priority should any one of the selected Offers fail to return an executed PPA pursuant to the schedule outlined above.

IX. Regulation

Confidentiality

After contract execution, PG&E plans to submit executed PPAs to the CPUC for approval via a Tier 2 advice letter filing. By participating in the RFO, each Participant acknowledges and expressly authorizes PG&E to publicly disclose the following

¹⁶ Where the Interconnection Agreement does not reflect the Deliverability offered, the Participant must provide additional documentation from the CAISO verifying the deliverability

information as required by the Commission: (1) names of the companies that submitted Offers into PG&E's PV RFO; (2) number of Offers received by each company; (3) number of Offers received and shortlisted by PG&E; (4) Project size; (5) participating technologies; (6) the number of Projects which passed the project viability screen; (7) location of bids by county level shown in a map format; and (8) the progression of each executed contract's project development milestones.

Except with PG&E's prior written consent, no Participant shall collaborate on or discuss with any other Participant or potential Participant bidding strategies, the substance of any Offer(s), including without limitation the price or any other terms or conditions of any Offer(s), or whether an Offer has been selected.

All information and documents in Participant's Offer clearly identified and marked by Participant as "Proprietary and Confidential" on each page on which confidential information appears, shall be considered confidential information. PG&E shall not disclose such confidential information and documents to any third parties except for PG&E's employees, agents, counsel, accountants, advisors, or contractors who have a need to know such information and have agreed to keep such information confidential and except as provided otherwise in this section. In addition, Participant's Offer will be disclosed to the IE.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this RFO may be provided to the CPUC, its staff, and the Procurement Review Group ("PRG"), established pursuant to D. 02-08-071. PG&E retains the right to disclose any information or documents provided by Participant to the CPUC, the PRG, the California Energy Commission ("CEC") and to any other entity in order to comply with any applicable law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over PG&E at any time even in the absence of a protective order, confidentiality agreement, or nondisclosure agreement, as the case may be, without notification to Participant and without liability or any responsibility of PG&E to Participant. PG&E cannot ensure that the CPUC will afford confidential treatment to Participant's confidential information, or those confidentiality agreements or orders will be obtained from and/or honored by the PRG, the CEC, or the CPUC. By submitting an Offer, Participant agrees to the confidentiality provisions described in this section.

The treatment of confidential information described above shall continue to apply to information related to Projects that are selected in this RFO and formalized through execution of a PPA.

Changes to RFO

By responding to this RFO, each Participant agrees to be bound by all terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E.

X. Communications

PG&E has established the PV RFO website at www.pge.com/rfo/PV2017 where Participants may register and where all the RFO documents, information, announcements and Q&As are posted and available to Participants.

To promote accuracy and consistency of the information provided to all Participants, PG&E encourages Participants to submit any inquiries via e-mail directed to PVProgram@pge.com for matters related to PV procurement. With respect to matters of general interest raised by any Participant, PG&E may, without reference to the specific Participant raising such matter or initiating the inquiry, post responses on its website. PG&E may, in its sole discretion, decline to respond to any email or other inquiry without liability or responsibility.

Any exchange of material information regarding this RFO between Participant and PG&E must be submitted to **both** PG&E and the Independent Evaluator. The IE for this RFO is TBD.

PG&E may elect to respond to inquiries or comments by individual Participants concerning purely procedural or administrative matters, but may also decline to do so in its sole discretion without liability or responsibility.

XI. Submission of Signed PPAs

Within ten (10) calendar days of selection notification, Participants that wish to continue in this RFO must submit a signed PPA and required documentation for each selected Project meeting all RFO conditions via the Power Advocate on-line platform.

XII. Procurement Review Group Review

Following completion of the evaluation and rankings of Offers, PG&E will submit the results of the evaluation and its recommendations to its PRG members. PG&E will consider any alternative recommendations proposed by the PRG. PG&E, in its sole discretion, shall determine whether any alternatives proposed by the PRG should be adopted. PG&E has no obligation to obtain the concurrence of the PRG with respect to any Offer.

PG&E assumes no responsibility for the actions of the PRG, including actions that may delay or otherwise affect the schedule for this Solicitation, including the timing of the selection of Offers and the obtaining of Regulatory Approval.

XIII. Regulatory Approval

The effectiveness of any executed PPA is expressly conditioned on PG&E's receipt of final and non-appealable CPUC approval of such PPA.

XIV. Participant's Waiver of Claims and Limitations of Remedies

Except as expressly set forth in this Protocol, by submitting an Offer, Participant knowingly and voluntarily waives all remedies or damages at law or equity concerning or related in any way to the RFO, the RFO Protocol and/or any attachments to the RFO Protocol ("Waived Claims"). The assertion of any Waived Claims by Participant may, to the extent that Participant's Offer has not already been disqualified, automatically disqualify such Offer from further consideration in the Solicitation or otherwise.

By submitting an Offer, Participant agrees that the only forums in which Participant may assert any challenge with respect to the conduct or results of the RFO is in the proceeding related to D.10-12-048 adopted on December 17, 2010, or through the alternative dispute resolution ("ADR") services provided by the CPUC pursuant to Resolution ALJ-185, August 25, 2005. The ADR process is voluntary in nature, and does not include processes, such as binding arbitration, that impose a solution on the disputing parties. However, PG&E will consider the use of ADR under the appropriate circumstances. Additional information about this program is available on the CPUC's website at the following link:

www.cpuc.ca.gov/PUBLISHED/Agenda_resolution/47777.htm.

Participant further agrees that other than through the ADR process, the only means of challenging the conduct or results of the Solicitation is a protest to an Advice Letter seeking approval of one or more PPAs entered into as a result of the RFO, that the sole basis for any such protest shall be that PG&E allegedly failed in a material respect to conduct the RFO in accordance with this Protocol, and the exclusive remedy available to Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the RFO that the CPUC determines was not previously conducted in accordance with the RFO Protocol. Participant expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorney's fees. Unless PG&E elects to do otherwise in its sole discretion during the pendency of such a protest or ADR process, the RFO and any related regulatory proceedings related to the RFO will continue as if the protest had not been filed, unless the CPUC has issued an order suspending the RFO or PG&E has elected to terminate the RFO.

Participant agrees to indemnify and hold PG&E harmless from any and all claims by any other Participant asserted in response to the assertion of a Waived Claim by Participant or as a result of a Participant's protest to an advice letter filing with the CPUC resulting from the RFO.

Except as expressly provided in this Protocol, nothing herein, including Participant's waiver of the Waived Claims as set forth above, shall in any way limit or otherwise affect

the rights and remedies of PG&E. Nothing in this Protocol is intended to prevent any Participant from informally communicating with the CPUC or its staff regarding this RFO or any other matter.

XV. Termination of the RFO-Related Matters

PG&E reserves the right at any time, in its sole discretion, to terminate the RFO for any reason whatsoever without prior notification to Participants and without liability of any kind to or responsibility of PG&E or anyone acting on PG&E's behalf. Without limitation, grounds for termination of the RFO may include the assertion of any Waived Claims by a Participant or a determination by PG&E that, following evaluation of the Offers, there are no Offers that are cost competitive.

PG&E reserves the right to terminate further participation in this process by any Participant, to evaluate the qualifications of any Participant, and to reject any or all Offers, all without notice and without liability to PG&E or anyone acting on PG&E's behalf.

In the event of termination of the RFO for any reason, PG&E will not reimburse the Participant for any expenses incurred in connection with the RFO regardless of whether such Participant's Offer is selected, not selected, rejected or disqualified.

Unless earlier terminated, the RFO will terminate automatically upon the execution of one or more PPAs by selected Participants as described herein. In the event that no PPAs are executed, then the RFO will terminate automatically on 12 months after issuance of the RFO.

XVI. Participant's Representations and Warranties

Breach by any Participant of the representations and warranties of the RFO Attachments is, in addition to any other remedies that may be available to PG&E under applicable law, grounds for immediate disqualification of such Participant from participation in the RFO, and depending on the nature or severity of the breach, may also be grounds for terminating the RFO in its entirety.

Advice 5161-E-A
November 30, 2017

Attachment D

**Redline Version of the Revised 2017 PV PPA
Compared to PG&E 2017 PV PPA filed in AL
5161-E**

Appendix B: PV PROGRAM: Form of Power Purchase Agreement

Standard contract terms and conditions shown in shaded text are those that “may not be modified” per CPUC Decisions (“D.”) 07-11-025; D.10-03-021, as modified by D.11-01-025; and D.13-11-024.

POWER PURCHASE AGREEMENT

Between

PACIFIC GAS AND ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

POWER PURCHASE AGREEMENT

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APPENDICES

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

- Appendix I Form of Letter of Credit
- Appendix II Initial Energy Delivery Date Confirmation Letter
- Appendix III Form of Progress Report
- Appendix IV Construction Start and Commercial Operation Certification Forms and Procedures
 - Appendix IV-1 Construction Start Form of Certification
 - Appendix IV-2 Commercial Operation Certification Procedure
 - Attachment A Commercial Operation Form of Certification
- Appendix V GEP Damages Calculation
- Appendix VI Notification Requirements for Available Capacity and Project Outages
- Appendix VII Form of Financing Consent to Assignment
 - Attachment A Financing Consent Termination Notice
- Appendix VIII Seller Documentation Condition Precedent
- Appendix IX Form of Actual Availability Report
 - Attachment A Form of Actual Availability Report
- Appendix X Telemetry Parameters for Solar Facility
- Appendix XI Form of Letter of Concurrence
- Appendix XII Supplier Diversity Program
- Appendix XIII Project Specifications and Contract Capacity Calculation
- Appendix XIV Section 3.3(e) Liquidated Damages Calculation

POWER PURCHASE AGREEMENT

COVER SHEET

This Power Purchase Agreement (“Agreement”) is entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and _____ *[insert name of Seller]*, a _____ *[include place of formation and business type]* (“Seller”), as of the Execution Date. The information contained in this Cover Sheet shall be completed by Seller and incorporated into the Agreement.

A. Transaction Type

Seller may not modify the Transaction Type designated in this Part A of the Cover Sheet.

Product: As-Available

Deliverability:

- Energy Only Status
- Partial Capacity Deliverability Status (“PCDS”)
 - a) If PCDS is selected, provide the Expected PCDS Date, or the date the Project received a PCDS finding if already received:
_____ (mm/dd/yyyy);
 - b) The Partial Capacity Deliverability Status Amount the Project will obtain is _____ MW.
- Full Capacity Deliverability Status (“FCDS”)
 - a) If FCDS is selected, provide the Expected FCDS Date, or the date the Project received a FCDS finding if already received:
_____ (mm/dd/yyyy).

Seller shall elect one of the following types of transactions pursuant to Section 3.1(b) of the Agreement:

- Full Buy/Sell
- Excess Sale

Seller shall elect one of the following Delivery Terms:

- ten (10) Contract Years
- fifteen (15) Contract Years
- twenty (20) Contract Years

B. Project Description Including Description of Site

Contract Capacity: [_____] MW *[Provide the maximum capacity to be made available to PG&E pursuant to the transaction, which in the case of an Excess Sale transaction, may be less than the maximum capacity of the Project]*

- (i) Project Development:

(a) The Project is an:

[An existing or repowered Project with substantial changes, including but not limited to, new major permits, a new interconnection study, or the construction of new generators, should check "New Project" instead of "Existing Project."]

Existing Project

New Project

(1) If the Project is a New Project:

(A) The Expected Construction Start Date of the Project:

(B) The date on which the Commercial Operation Date of the Project is expected (must be no later than the Guaranteed Commercial Operation Date):

(2) If the Project is an Existing Project:

(A) The Expected Initial Energy Delivery Date (which shall be no later than the Guaranteed Commercial Operation Date) is:

~~(b)~~ The Project is:

Utilizing Shared Facilities

Not utilizing Shared Facilities

(c) Project development Milestone schedule *[to be completed by Buyer and Seller. Insert additional rows if necessary]:*

Identify Milestone	Date for Completion

(ii) Supplier Diversity. For the purpose of Section 4 of the Supplier Diversity Program obligation set forth in Appendix XII of this Agreement, Seller's supplier diversity spend target for work supporting the Project is ___%.

C. Contract Price

The Contract Price and Deemed Delivered Energy Price, for each Contract Year paid by Buyer to Seller subject to Article Four is:

Contract Year	Contract Price (\$/MWh)
---------------	-------------------------

Contract Year	Contract Price (\$/MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

D. Delivery Term Contract Quantity Schedule

Length of Delivery Term (in Contract Years):

Contract Year	Contract Quantity (MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

E. Collateral [(as described in the PV Solicitation Protocol)]

- Project Development Security [provide dollar amount]

Dollar Amount: \$ _____

- Cash, or
- Letter of Credit

- Delivery Term Security [provide dollar amount]

Dollar Amount: \$ _____

- Cash, or
- Letter of Credit

F. Buyer Curtailment Orders.

Operational characteristics of the Project for Buyer Curtailment Orders are listed below.

- Maximum generation capacity (PMax of the Project): ____ MW
- Minimum generation capacity (PMin of the Project): 0 MW
- Minimum dispatchable level (DMin of the Project): ____ MW
- Ramp rate: ____ MW/Minute
- Maximum number of Start-ups per calendar day (if any such operational limitations exist):

Other Requirements:

- Start-Up Time: _____ Minutes
- Minimum Run Time after Start-up (if applicable): _____ Minutes
- Minimum Down Time after Shut-Down (if applicable): _____ Minutes

[Note: Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.]

G. Notices List

Name: [Seller's Name], a [include place of formation and business type] ("Seller")

All Notices: [Seller to complete]

Delivery Address:

Street:
City: State: Zip:

Mail Address: (if different from above)

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

All Notices:

Delivery Address:

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

Mail Address:
P.O. Box 770000, Mail Code N12E

Attn: San Francisco, CA 94177
Attn: Candice Chan (CWW9@pge.com)
Director, Contract Mgmt & Settlements
Phone: (415) 973-7780
~~Facsimile: (415) 972-5507~~
Email:

DUNS: DUNS:
Federal Tax ID Number: Federal Tax ID Number:

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

Scheduling:
Attn: Attn: Day-Ahead Operations (DAEnergy@pge.com)
Phone: (415) 973-1971
~~Facsimile: (415) 973-0400~~
Email:

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

Wire Transfer per Section 8:
BNK: BNK:
ABA: ABA:
ACCT: ACCT:

Electronic funds transfer via ACH:
BNK: BNK:
ABA: ABA:
ACCT: ACCT:

Credit and Collections:
Attn: Attn: PG&E Credit Risk Management
Phone: (415) 973-4071
~~Facsimile:~~
Email: pgeriskcredit@exchange.pge.com

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

Attn: _____

Phone: _____

~~Facsimile: _____~~

Email: _____

Contract Manager:

Attn: Ted Yura (THY1@pge.com)
Senior Manager, Contract Management
Phone: (415) 973-8660
~~Facsimile: (415) 972-5507~~

With additional Notices of an Event of Default to:

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

PREAMBLE

This Power Purchase Agreement, together with the Cover Sheet, appendices and any other attachments referenced herein, is made and entered into between PG&E and Seller, as of the Execution Date. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i)(G).

1.2 “Additional Extension” has the meaning set forth in Section 3.1(c)(ii).

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

1.4 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Cover Sheet, Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, the word “agreement” shall have the meaning set forth in this definition. For purposes of Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.

1.5 “Ancillary Services” has the meaning set forth in the CAISO Tariff.

1.6 “Arbitration” has the meaning set forth in Section 12.4.

1.7 “As-Available Product” means a Product that is powered by a solar photovoltaic facility. Subject to the terms of this Agreement, (a) Seller is obligated to sell and deliver and (b) Buyer is obligated to purchase and receive, the Energy component of As-Available Product from the Project whenever such Energy is capable of being generated from the Project. The Seller does not control the availability of fuel supply to the Project producing As-Available Product and lacks the ability to store energy.

1.8 “Automated Clearing House” or “ACH” shall mean the automated clearing house as designated by Buyer and agreed upon by the Parties.

1.9 “Availability Workbook” has the meaning set forth in Appendix IX.

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

1.11 “Balancing Authority” has the meaning set forth in the CAISO Tariff.

1.12 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or

commenced against it and such case filed against it is not dismissed in 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.

1.13 “Bid” has the meaning set forth in the CAISO Tariff.

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

1.15 “Buyer” has the meaning set forth in the Cover Sheet.

1.16 “Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Project below the CAISO final market forecast amount for the Project for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order. Buyer Curtailment Order includes curtailment instructions during time periods that Buyer as the SC or Third-Party SC, either (a) submitted a CAISO final market Energy Supply Bid and such curtailment is solely a result of the CAISO implementing the Energy Supply Bid; or (b) submitted a CAISO final market Self-Schedule for less than the amount of the final market Energy forecasted to be produced from the Project.

1.17 “Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Project pursuant to a Buyer Curtailment Order. The Buyer Curtailment Period excludes any Settlement Interval subject to a Curtailment Order and shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.18 “Buyer’s Notice of First Offer Acceptance” has the meaning set forth in Section 3.9(e)(ii) or Section 11.1(b)(ii), as applicable.

1.19 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

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

1.21 “CAISO Exemption” means that exemption granted by the CAISO, in written form, that approves Seller’s request to install the low-side metering scheme for the Project, as such scheme is defined and required in Section 10.2.10.2 of the CAISO Tariff.

~~1.21.22~~ “CAISO Global Resource ID” means the number or name assigned by the CAISO to the Project; and the Project’s dedicated CAISO Revenue Meter.

~~1.22.23~~ “CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

1.24 “CAISO Metered Entity” has the meaning set forth in the CAISO Tariff.

1.25 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case, “CAISO Penalties” do not include the costs and charges related to scheduling and Imbalance Energy as addressed in Section 4.5(b) of this Agreement.

1.231.26 “CAISO Revenue Meter” means a CAISO approved revenue quality meter, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all electric energy produced by the Project less station use.

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

1.251.28 “CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.261.29 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill SB1X, and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.271.30 “Capacity Attributes” means any (a) current or future defined characteristic of the Project, including the ability to generate at a given capacity level, provide Ancillary Services, ramp up or ramp down at a given rate, flexibility or dispatchability attributes, locational attributes, or any other ability of the Project as may be identified at any time during the Delivery Term by the CPUC, the CAISO, any applicable Law, or voluntary or mandatory program of any Governmental Authority; (b) certificate, tag, or credit intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition; and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, or any other Governmental Authority, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

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

1.291.32 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.301.33 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred

by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

~~1.31~~1.34 “Commercial Operation” means the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

~~1.32~~1.35 “Commercial Operation Date” means the date on which Seller (a) notifies Buyer that Commercial Operation has commenced, (b) notifies Buyer that all Reliability Network Upgrades identified in the Project’s Generator Interconnection Agreement have been completed, and (c) provides a certification of a Licensed Professional Engineer, substantially in the form attached hereto as Attachment A to Appendix IV-2, demonstrating satisfactory completion of the Commercial Operation Certification Procedure as provided in Appendix IV-2 hereto. “Condition Precedent” means each of, or one of, the conditions set forth in Section 2.5(a)(i) through (iv) and “Conditions Precedent” shall refer to all of the conditions set forth in Section 2.5(a)(i) through (iv).

~~1.33~~1.36 “Confidential Information” has the meaning set forth in Section 10.7(a)

~~1.34~~1.37 “Construction Start Date” means the later to occur of the date on which Seller delivers to Buyer (a) a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Project, and (b) a written Certification substantially in the form attached hereto as Appendix IV-1.

~~1.35~~1.38 “Contract Capacity” has the meaning set forth in Section 3.1(f).

~~1.36~~1.39 “Contract Capacity Commitment” means the amount of the Contract Capacity that may be constructed pursuant to the Governmental Approvals received or obtained by Seller as of, for a New Project, the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.9(c)), and for an Existing Project, the Expected Initial Energy Delivery Date specified on the Cover Sheet.

~~1.37~~1.40 “Contract Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Cover Sheet.

~~1.38~~1.41 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Contract Year as set forth in Section 3.1(e) and Cover Sheet Section D .

~~1.39~~1.42 “Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.

~~1.40~~1.43 “Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

~~1.41~~1.44 “Cover Sheet” means the cover sheet to this Agreement, completed by Seller and incorporated into the Agreement.

~~1.42~~1.45 “CPUC” or “Commission” means the California Public Utilities Commission, or successor entity.

~~1.431.46~~ “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

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

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

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

For purposes of this section, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

~~1.441.47~~ “Credit Rating” means, with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit enhancements) or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody’s. If the entity is rated by both S&P and Moody’s and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody’s, but not both, then the available rating shall determine the Credit Rating.

~~1.451.48~~ “Cure” has the meaning set forth in Section 8.5(b).

~~1.461.49~~ “Cured Performance Measurement Period” has the meaning set forth in Section 3.1(e)(ii)(C).

~~1.471.50~~ “Cure Payment Period” has the meaning set forth in Section 3.1(e)(ii)(C)(III).

~~1.481.51~~ “Curtailed Order” means any of the following:

(a) the CAISO, Reliability Coordinator, Balancing Authority or any other entity having similar authority or performing similar functions during the Delivery Term, communicates via any means to a Party to curtail Energy deliveries, which may come in the form of a request to return to a specified Dispatch Operating Target, consistent with the CAISO Tariff, for any reason;

(b) a curtailment ordered by the Participating Transmission Owner, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for any reason;

(c) maintenance or construction on the Participating Transmission Owner’s or distribution operator’s transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.

(d) a curtailment in accordance with Seller’s obligations under its Generator Interconnection Agreement with the Participating Transmission Owner or distribution operator.

For the avoidance of doubt, if Buyer or Third-Party SC submitted a Self-Schedule and/or an Energy Supply Bid that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Curtailment Order.

~~1.49~~1.52 “Curtailment Period” means the period of time during which Seller reduces generation from the Project, pursuant to a Curtailment Order. The Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up.

~~1.50~~1.53 “DA Price” means the resource specific locational marginal price (“LMP”) applied to the PNode applicable to the Project in the CAISO Day-Ahead Market.

~~1.51~~1.54 “Daily Delay Damages” means with respect to the Guaranteed Commercial Operation Date, an amount equal to (a) divided by (b), where (a) is \$60/kW multiplied by the Contract Capacity of the Project as reflected in Section B of the Cover Sheet, and (b) is the number 120.

~~1.52~~1.55 “Daily Delay Damages Extension” has the meaning set forth in Section 3.9(c)(ii)(B).

~~1.53~~1.56 “Damage Payment” means the dollar amount equal to the amount to be posted as Project Development Security pursuant to Section 8.4(a)(i) hereof.

~~1.54~~1.57 “Day-Ahead Availability Notice” has the meaning set forth in Section 3.4(c)(iii)(C).

~~1.55~~1.58 “Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

~~1.56~~1.59 “Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, the result of the equation provided pursuant to Section 3.1(l)(i)(G) and using relevant Project availability, weather and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO ~~revenue meter~~Revenue Meter for the Project, the Deemed Delivered Energy shall be zero (0). For clarity, Deemed Delivered Energy shall not include Delivered Energy that is less than the instructed MWh for a Buyer Curtailment Order during a Buyer Curtailment Period. Deemed Delivered Energy shall be calculated as follows:

Deemed Delivered Energy (“DDE”) = A - Max (B,C), where:

A = EIRP Forecast, converted to MWh

B = MWh as instructed during a Buyer Curtailment Period. For the purpose of calculating DDE, the MWh as instructed during a Buyer Curtailment Period shall be the total Expected Energy, as defined in the CAISO Tariff.

C = Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period.

~~1.57~~1.60 “Deemed Delivered Energy Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for Deemed Delivered Energy, as specified in the Cover Sheet.

~~1.58~~1.61 “Defaulting Party” means the Party that is subject to an Event of Default.

~~1.59~~1.62 “Deficient Month” has the meaning set forth in Section 3.1(k)(v).

~~1.60~~1.63 “Deliverability Assessment” has the meaning set forth in the CAISO Tariff.

~~1.61~~1.64 “Deliverability Finding Deadline” shall be two (2) calendar years after the RA Start Date. The Deliverability Finding Deadline shall be no later than December 31, 2024.

~~1.62~~1.65 “Delivered Energy” means all Energy produced from the Project as measured in MWh at the CAISO ~~revenue meter~~Revenue Meter of the Project and in accordance with the CAISO Tariff, which shall include any applicable adjustments for power factor and Electrical Losses.

~~1.63~~1.66 “Delivery Network Upgrade” has the meaning set forth in the CAISO Tariff.

~~1.64~~1.67 “Delivery Point” means the point at which Buyer receives Seller’s Product, as identified in Section 3.1(d).

~~1.65~~1.68 “Delivery Term” has the meaning set forth in Section 3.1(c)(i) and shall be of the length specified in the Cover Sheet.

~~1.66~~1.69 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.

~~1.67~~1.70 “Disclosing Party” has the meaning set forth in Section 10.7.

~~1.68~~1.71 “Dispatch Instruction” has the meaning set forth in the CAISO Tariff.

~~1.69~~1.72 “Dispatch Interval” has the meaning set forth in the CAISO Tariff.

~~1.70~~1.73 “Dispatch Operating Target” has the meaning set forth in the CAISO Tariff.

~~1.71~~1.74 “Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of interconnection, where the Participating Transmission Owner’s meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

~~1.72~~1.75 “Distribution Upgrades” has the meaning set forth in the CAISO Tariff.

~~1.73~~1.76 “DMin” has the meaning set forth in the Master File.

~~1.74~~1.77 “DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun & Bradstreet, Inc.

~~1.75~~1.78 “Early Termination Date” has the meaning set forth in Section 5.2.

~~1.76~~1.79 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.5(a) have been satisfied or waived in writing by both Parties.

~~1.77~~1.80 “Effective FCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Full Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Full Capacity Deliverability Status.

~~1.78~~1.81 “Effective PCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Partial Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Partial Capacity Deliverability Status.

~~1.79~~1.82 “EIRP Forecast” means the final forecast of the Energy to be produced by the Project prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol and communicated to Buyer or Third-Party SC for use in submitting a Schedule for the output of the Project in the Real-Time Market.

~~1.80~~1.83 “Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO ~~revenue meter~~Revenue Meter(s) and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

~~1.81~~1.84 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if connecting to a part of the Participating TO’s electric system that is not part of the CAISO Grid.

~~1.82~~1.85 “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

~~1.83~~1.86 “Eligible Intermittent Resources Protocol” or “EIRP” means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

~~1.84~~1.87 “Eligible LC Bank” means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s,

but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

~~1.851.88~~ "Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

~~1.861.89~~ "Energy" means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified).

~~1.871.90~~ "Energy Deviation(s)" means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Project; and (b) Delivered Energy.

~~1.881.91~~ "Energy Only Status Seller" or "EOS Seller" means a Seller that has selected Energy Only Status in the Cover Sheet. For avoidance of doubt, an EOS Seller does not have an obligation to have or obtain a Full Capacity Deliverability Status Finding.

~~1.891.92~~ "Energy Supply Bid" has the meaning set forth in the CAISO Tariff.

~~1.901.93~~ "EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

~~1.911.94~~ "EPC Contractor" means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller's; provided, however, that the Seller or the Seller's Affiliate(s) may serve as the EPC Contractor.

~~1.921.95~~ "Equitable Defenses" means any bankruptcy, insolvency, reorganization or other Laws affecting creditors' rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

~~1.931.96~~ "Event of Default" has the meaning set forth in Section 5.1.

~~1.941.97~~ "Excess Deemed Delivered Energy" has the meaning set forth in Section 4.4(a)(i).

~~1.951.98~~ "Excess Deemed Delivered Energy Price" has the meaning set forth in Section 4.4(a)(ii)(B).

~~1.961.99~~ "Excess Delivered Energy" has the meaning set forth in Section 4.4(a)(i).

~~1.971.100~~ "Excess Delivered Energy Price" has the meaning set forth in Section 4.4(a)(ii)(A).

~~1.981.101~~ "Excess Energy" has the meaning set forth in Section 4.4(a)(i).

~~1.991.102~~ "Excess Network Upgrade Costs" has the meaning set forth in Section 3.9(f)(ii).

~~1.1001.103~~ "Excess Sale" means the type of transaction described in Section 3.1(b)(ii).

~~1.101.104~~ “Exclusivity Period” has the meaning set forth in Section 3.9(e)(i) or Section 11.1(b)(i), as applicable.

~~1.102.105~~ “Execution Date” means the latest signature date found on the signature page of this Agreement.

~~1.103.106~~ “Executive(s)” has the meaning set forth in Section 12.2(a).

~~1.104.107~~ “Exempt Wholesale Generator” has the meaning provided in 18 C.F.R. Section 366.1.

~~1.105.108~~ “Existing Project” is a Project that has achieved Commercial Operation on or prior to the Execution Date.

~~1.106.109~~ “Expected Construction Start Date” has the meaning set forth in the Cover Sheet.

~~1.107.110~~ “Expected FCDS Date” means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Full Capacity Deliverability Status.

~~1.108.111~~ “Expected PCDS Date” means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Partial Capacity Deliverability Status.

~~1.109.112~~ “Expected Initial Energy Delivery Date” is the date specified on the Cover Sheet for an Existing Project.

~~1.110.113~~ “Expected Net Qualifying Capacity” means an estimate of the amount of Net Qualifying Capacity the Project would have received had it obtained deliverability according to the deliverability type selected in Section A of the Cover Sheet, as determined in accordance with Appendix XIV.

~~1.111.114~~ “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

~~1.112.115~~ “Final True-Up” means the final payment made pursuant to this Agreement settling all invoices by the Party with an outstanding net amount due to the other Party for Product delivered prior to the end of the Delivery Term or other amounts due pursuant to this Agreement incurred prior to the end of the Delivery Term.

~~1.113.116~~ “First Offer” has the meaning set forth in Section 3.9(e)(1) or Section 11.1(b)(i), as applicable.

~~1.114.117~~ “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include the following:

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

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

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

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

(b) Force Majeure shall not be based on:

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

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

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(iv) Seller's inability to complete interconnection or Electric System Upgrades by the Guaranteed Commercial Operation Date unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

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

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

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

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

(ix) any equipment failure, including the failure of Shared Facilities, except if such ~~equipment~~ failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; ~~or~~

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

(xi) any invalidation of or change to the CAISO Exemption or failure to comply with the CAISO Tariff due, in any part, to the Shared Facilities.

~~1.1151.118~~ "Force Majeure Extension" has the meaning set forth in Section 3.9(c)(ii)(A).

~~1.1161.119~~ "Force Majeure Failure" has the meaning set forth in Section 11.1(a).

~~1.1171.120~~ "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Product in whole or in part from a Unit in response to any control system trip or operator-initiated trip in response to an alarm or equipment malfunction; or any other unavailability of the Project or a Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

~~1.1181.121~~ "Forecasting Penalty" has the meaning set forth in Section 4.5(c)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty.

~~1.1191.122~~ "Full Buy/Sell" is the type of transaction described in Section 3.1(b)(i).

~~1.1201.123~~ "Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff except that it applies to any Generating Facility (as defined in the CAISO Tariff).

~~1.1211.124~~ "Full Capacity Deliverability Status Finding" or "FCDS Finding" means a written confirmation from the CAISO that the Project is eligible for FCDS.

~~1.1221.125~~ "Full Capacity Deliverability Status Seller" or "FCDS Seller" means a Seller that selected Full Capacity Deliverability Status in the Cover Sheet and either has previously obtained, or is obligated to obtain per the terms of the Agreement, a Full Capacity Deliverability Status Finding.

~~1.1231.126~~ "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

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~~1.1241.127~~ “Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

~~1.1251.128~~ “Generator Interconnection Agreement” or “GIA” means, for Projects interconnecting at the transmission level, the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller’s interconnection with the CAISO Grid, including any description of the plan for interconnecting to the CAISO Grid. For Projects interconnecting at the distribution level, it means the agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and the Participating Transmission Owner governing the terms and conditions of Seller’s interconnection with the Participating TO’s distribution system, including any description of the plan for interconnecting to Participating TO’s distribution system.

~~1.1261.129~~ “Generator Interconnection Process” or “GIP” means the Generator Interconnection Procedures set forth in the CAISO Tariff or Participating TO’s tariff, as applicable, and associated documents; provided that if the GIP is replaced by such other successor procedures governing interconnection (a) to the CAISO Grid or Participating TO’s distribution system, as applicable, or (b) of generating facilities with an expected net capacity equal to or greater than the Project’s Contract Capacity, the term “GIP” shall then apply to such successor procedure.

~~1.1271.130~~ “GEP Cure” has the meaning set forth in Section 3.1(e)(ii)(C).

~~1.1281.131~~ “GEP Damages” has the meaning set forth in Appendix V.

~~1.1291.132~~ “GEP Failure” means Seller’s failure to produce Delivered Energy plus Deemed Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

~~1.1301.133~~ “GEP Shortfall” means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

~~1.1311.134~~ “Good Utility Practice” has the meaning provided in the CAISO Tariff.

~~1.1321.135~~ “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use and operation of the Project.

~~1.1331.136~~ “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

~~1.1341.137~~ “Governmental Charges” has the meaning set forth in Section 9.2.

~~1.1351.138~~ “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: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides

(SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹ (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

~~1.136~~1.139 "Guaranteed Commercial Operation Date" has the meaning set forth in Section 3.9(c)(i).

~~1.137~~1.140 "Guaranteed Energy Production" or "GEP" has the meaning set forth in Section 3.1(e)(ii).

~~1.138~~1.141 "Guaranty" means a guaranty issued by an entity and in a form acceptable to Buyer in Buyer's sole discretion.

~~1.139~~1.142 "Imbalance Energy" has the meaning set forth in the CAISO Tariff.

~~1.140~~1.143 "Initial Energy Delivery Date" has the meaning set forth in Section 3.1(c)(i).

~~1.141~~1.144 "Initial Extension" has the meaning set forth in Section 3.1(c)(ii).

~~1.142~~1.145 "Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

~~1.143~~1.146 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the CAISO Tariff or Participating TO's tariff, as applicable.

~~1.144~~1.147 "Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

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

~~1.145~~1.148 “Interconnection Point” means the physical interconnection point of the Project as identified by Seller in the Cover Sheet.

~~1.146~~1.149 “Interconnection Study” means any of the studies defined in the CAISO Tariff or, if applicable, any distribution provider’s tariff that reflect the methodology and costs to interconnect the Project to the Participating Transmission Owner’s electric grid.

~~1.147~~1.150 “Integrated Forward Market” has the meaning set forth in the CAISO Tariff.

~~1.148~~1.151 “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

~~1.149~~1.152 “Interest Payment Date” means the date of returning unused Performance Assurance held in the form of cash.

~~1.150~~1.153 “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.

~~1.151~~1.154 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15(519), or its successor publication.

~~1.152~~1.155 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

~~1.153~~1.156 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of Sections 1.43 “CPUC Approval,” 10.2(b), “Seller Representations and Warranties” and 10.12 “Governing Law”, the term “law” shall have the meaning set forth in this definition.

~~1.154~~1.157 “Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix I to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars (\$10,000,000.00) on the date of Transfer.

~~1.155~~1.158 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

~~1.1561.159~~ “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

~~1.1571.160~~ “Manager” has the meaning set forth in Section 12.2(a).

~~1.1581.161~~ “Master File” has the meaning set forth in the CAISO Tariff.

~~1.1591.162~~ “Maximum Issuing Amount” means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars (\$25,000,000.00), without Buyer’s prior written consent.

~~1.1601.163~~ “Milestone(s)” means the key development activities required for the construction and operation of the Project, as set forth in Section B(i)(b) of the Cover Sheet.

~~1.1611.164~~ “Minimum Load” has the meaning set forth in the CAISO Tariff.

~~1.1621.165~~ “Minimum Down Time” has the meaning set forth in the CAISO Tariff.

~~1.1631.166~~ “Monthly Payment for Excess Energy” has the meaning set forth in Section 4.4(b).

~~1.1641.167~~ “Monthly Period” has the meaning set forth in Section 4.2.

~~1.1651.168~~ “Monthly TOD Payment” has the meaning set forth in Section 4.3(b).

~~1.1661.169~~ “Moody’s” means Moody’s Investors Service, Inc., or its successor.

~~1.1671.170~~ “MW” means megawatt in alternating current or AC.

~~1.1681.171~~ “MWh” means megawatt-hour.

~~1.1691.172~~ “NERC” means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

~~1.1701.173~~ “Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

~~1.1711.174~~ “Network Upgrades” has the meaning set forth in the CAISO Tariff or the Participating TO’s tariff, as applicable.

~~1.1721.175~~ “New Project” is a Project that has not achieved Commercial Operation on or prior to the Execution Date.

~~1.173~~1.176 “NOAA” means National Oceanic and Atmospheric Administration or successor thereto.

~~1.174~~1.177 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

~~1.175~~1.178 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). The Cover Sheet contains the names and addresses to be used for Notices.

~~1.176~~1.179 “Notice to Proceed” means the full notice to proceed, provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin mobilization and construction of the Project without any delay or waiting periods.

~~1.177~~1.180 “Operational Deliverability Assessment” has the meaning set forth in the CAISO Tariff.

~~1.178~~1.181 “Outage Notification Procedures” means the procedures specified in Appendix VI, attached hereto. PG&E reserves the right to revise or change the procedures upon written Notice to Seller.

~~1.179~~1.182 “Partial Capacity Deliverability Status” or “PCDS” has the meaning set forth in the CAISO Tariff.

~~1.180~~1.183 “Partial Capacity Deliverability Status Amount” means the number of MW that the Project will obtain, as stated in the Deliverability type selected in Section A of the Cover Sheet.

~~1.181~~1.184 “Partial Capacity Deliverability Status Finding” or “PCDS Finding” means a written confirmation from the CAISO that the Project is eligible for PCDS.

~~1.182~~1.185 “Participating Intermittent Resource” or “PIRP” has the meaning set forth in the CAISO Tariff.

~~1.183~~1.186 “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

~~1.184~~1.187 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.12, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.

~~1.185~~1.188 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Project Development Security and Delivery Term Security as applicable. Acceptable forms of collateral are cash or a Letter of Credit as designated in Section E of the Cover Sheet. The required form of Letter of Credit is attached hereto in Appendix I.

~~1.186~~1.189 “Performance Measurement Period” has the meaning set forth in Section 3.1(e)(ii).

~~1.187~~1.190 “Performance Tolerance Band” shall be calculated as set forth in Section 4.5(c)(ii).

~~1.188~~1.191 “Permit Failure” has the meaning set forth in Section 3.9(d). [*For New Projects only*]

~~1.189~~1.192 “Permitted Extensions” means extensions to the Guaranteed Commercial Operation Date due to Force Majeure Extension, or payment of Daily Delay Damages, as applicable, pursuant to Section 3.9(c).

~~1.190~~1.193 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.

~~1.191~~1.194 “PMax” has the meaning set forth in the CAISO Tariff.

~~1.192~~1.195 “PMin” has the meaning set forth in the CAISO Tariff.

~~1.193~~1.196 “PNode” has the meaning set forth in the CAISO Tariff.

~~1.194~~1.197 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.

~~1.195~~1.198 “Preschedule Day” has the meaning set forth in Section 3.4(c)(iii)(C).

~~1.196~~1.199 “Product” means the Energy, capacity, Ancillary Services, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Project, including renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

~~1.197~~1.200 “Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

~~1.198~~1.201 “Progress Report” means the report similar in form and content to that attached hereto as Appendix III.

~~1.199~~1.202 “Project” means all of the Unit(s) and the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including Seller’s interests in the Shared Facilities, as applicable, and any other the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in Appendix XIII.

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~~1.200~~1.203 “Project Development Security” is the collateral required of Seller, as specified and referred to in Section 8.4(a).

~~1.201~~1.204 “Project Specifications” has the meaning set forth in Appendix XIII.

~~1.202~~1.205 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.

~~1.203~~1.206 “Qualifying Facility” has the meaning provided in the Public Utility Regulatory Policies Act (“PURPA”) and in regulations of the FERC at 18 C.F.R. §§ 292.201 through 292.207.

~~1.204~~1.207 “RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.3(e)(ii).

~~1.205~~1.208 “RA Shortfall Period” means the period of consecutive calendar months that starts with the calendar month in which the RA Start Date occurs and concludes with the second calendar month following the calendar month in which the Effective FCDS Date or Effective PCDS Date occurs. The RA Shortfall Period shall not exceed twenty-six (26) months.

~~1.206~~1.209 “RA Shortfall Month” means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.3(e)(ii).

~~1.207~~1.210 “RA Start Date” shall be the later of the Initial Energy Delivery Date or the Expected PCDS Date or FCDS Date according to the deliverability type selected in Section A of the Cover Sheet.

~~1.208~~1.211 “RA Value” means the value in U.S. dollars per MW of Expected Net Qualifying Capacity for each RA Shortfall Month, as set forth in Appendix XIV.

~~1.209~~1.212 “Ramp Rate” has the meaning set forth in the CAISO Tariff.

~~1.210~~1.213 “Real-Time Market” means any existing or future intra-day market conducted by the CAISO occurring after the Day-Ahead Market.

~~1.211~~1.214 “Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

~~1.212~~1.215 “Reductions” has the meaning set forth in Section 4.6(b).

~~1.213~~1.216 “Referral Date” has the meaning set forth in Section 12.2(a).

~~1.214~~1.217 “Reliability Coordinator” has the meaning set forth in the CAISO Tariff.

~~1.215~~1.218 “Reliability Network Upgrade” has the meaning set forth in the CAISO Tariff.

~~1.216~~1.219 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

~~1.217~~1.220 “Replacement Capacity Rules” means the replacement requirement for Resource Adequacy Capacity (as defined in the CAISO Tariff) associated with a Planned Outage as set forth in the CAISO Tariff or successor replacement requirements as prescribed by the CPUC, CAISO and/or other regional entity.

~~1.218~~1.221 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

~~1.219~~1.222 “Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff.

~~1.220~~1.223 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.

~~1.221~~1.224 “Resource Adequacy Standards” means (a) the Program set forth in Section 40.9 of the CAISO Tariff and (b) any future program or provision under the CAISO Tariff providing for availability standards or similar standards with respect to any flexible Resource Adequacy resource, product, or procurement obligation; in the case of (a) or (b), as any such program or provision may be amended, supplemented, or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible changes and incentive payments for performance thereunder.

~~1.222~~1.225 “Resource-Specific Settlement Interval LMP” has the meaning set forth in the CAISO Tariff.

~~1.223~~1.226 “Revised Offer” has the meaning set forth in Section 3.9(e)(iii) or Section 11.1(b)(iii), as applicable.

~~1.224~~1.227 “S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

~~1.225~~1.228 “Satisfaction Date” has the meaning set forth in Section 2.6.

~~1.226~~1.229 “Schedule” has the meaning set forth in the CAISO Tariff.

~~1.227~~1.230 “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator” of the CAISO Tariff, as amended from time to time.

~~1.228~~1.231 “SEC” means the U.S. Securities and Exchange Commission.

~~1.229~~1.232 “Self-Schedule” has the meaning set forth in the CAISO Tariff.

~~1.230~~1.233 “Seller” has the meaning set forth in the Cover Sheet.

~~1.231~~1.234 “Seller Excuse Hours” means those hours during which Seller is unable to deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) Curtailment Period.

~~1.232~~1.235 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

~~1.233~~1.236 “Settlement Amount” means the amount in US dollars equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

~~1.234~~1.237 “Settlement Interval” has the meaning set forth in the CAISO Tariff.

~~1.235~~1.238 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.

~~1.236~~1.239 “Shared Contract Year” has the meaning set forth in section 3.1(e)(ii)(C)(I).

1.240 “Shared Facilities” means the gentie lines, transformers, substations, or other equipment, permits, contract rights and obligations, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from Seller’s electric generating facility (which is excluded from this definition of Shared Facilities) to the Point of Interconnection that are used in common with other entities, as applicable.

1.241 “Shared Facilities Agreement(s)” means a cotenancy or similar sharing agreement pertaining to Shared Facilities.

~~1.237~~1.242 “Site” means the location of the Project as described in Appendix XIII-~~L.II~~, excluding that portion of real property pertaining to any other generating facility with which Seller has a Shared Facilities Agreement.][Bracketed language shall only apply to Projects that utilize Shared Facilities].

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~~1.238~~1.243 “Start-up” means the action of bringing a Unit from non-operation to operation at or above the Unit’s Minimum Load, or with positive generation output if Minimum Load is zero.

~~1.239~~1.244 “Surplus Delivered Energy” means, in any Settlement Interval, the Delivered Energy that exceeds the product of one hundred percent (100%) of Contract Capacity multiplied by a Settlement Interval.

~~1.240~~1.245 “Supply Plan” has the meaning set forth in the CAISO Tariff.

~~1.241~~1.246 “System Emergency” has the meaning set forth in the CAISO Tariff.

~~1.242~~1.247 “Term” has the meaning provided in Section 2.6.

~~1.243~~1.248 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.

~~1.244~~1.249 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

~~1.245~~1.250 “Test Period” means the period of not more than ninety (90) consecutive days, as extended by the Initial Extension and Additional Extension according to Section 3.1(c)(ii), as applicable, which period shall commence upon the first date that the following have occurred (a) the Project is operating in parallel with the Participating Transmission Owner and the first kWh of Energy is measured by the CAISO ~~revenue meter~~Revenue Meter, and (b) the items in Section 3.4(a)(i)(E) have been fulfilled and implemented, and shall end upon the Initial Energy Delivery Date.

~~1.246~~1.251 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.

~~1.247~~1.252 “TOD” means time of delivery of Delivered Energy from Seller to Buyer.

~~1.248~~1.253 “TOD Factors” has the meaning set forth in Section 4.3(a).

~~1.249~~1.254 “TOD Periods” has the meaning set forth in Section 4.2.

~~1.250~~1.255 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

~~1.254~~1.256 “Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder, if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

~~1.252~~1.257 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

~~1.253~~1.258 “Uninstructed Imbalance Energy” shall have the meaning set forth in the CAISO Tariff.

~~1.254~~1.259 “Unit” means the technology used to produce the Products, which are identified in Appendix XIII for the Transaction entered into under this Agreement.

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~~1.255~~1.260 “WECC” means the Western Electricity Coordinating Council or successor agency.

~~1.256~~1.261 “Work” means (a) work or operations performed by a Party or on a Party’s behalf, and (b) materials, parts or equipment furnished in connection with such work or operations, including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”, and (ii) the providing of or failure to provide warnings or instructions.

~~1.257~~1.262 “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

~~1.258~~1.263 “WREGIS Certificate Deficit” has the meaning set forth in Section 3.1(k)(v).

~~1.259~~1.264 “WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

~~1.260~~1.265 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet, Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

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

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

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

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

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

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

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

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

(h) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.

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

2.4 Separation of Functions. The Parties acknowledge that this Agreement is between (a) Seller and (b) Buyer acting solely in its merchant function. The Parties further acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any

relationship between the Parties in which PG&E is acting in its capacity as Participating Transmission Owner, including orders or instructions relating to Electric System Upgrades and/or Curtailment Periods.

2.5 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.7 hereof, the Term shall not commence until the occurrence of all of the following:

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

(ii) CPUC Approval has been obtained for the terms, conditions and pricing of this Agreement;

(iii) the advice letter submitting this Agreement to the CPUC becomes effective in accordance with CPUC General Order 96-B or its successor order, or as otherwise provided by CPUC order; and

(iv) Buyer receives from Seller the documentation listed in Appendix VIII (Seller Documentation Condition Precedent).

(b) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 2.4(a)(ii) and (iii) are not satisfied or waived in writing by both Parties on or before one hundred and eighty (180) days from the date on which Buyer files an advice letter submitting this Agreement to the CPUC, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.6 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.5(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.5(b), Section 5.2 or Section 11.1 of this Agreement (the "Term"); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due pursuant to the Final True-Up, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Project Development Security or Delivery Term Security as applicable, is released and/or returned as applicable (the "Satisfaction Date") or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.5 ("Indemnities") and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.7 ("Confidentiality") shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 11.1(b) shall survive the Satisfaction Date for three (3) years.

2.7 Binding Nature.

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

- (i) Sections 3.9(a)(vii), 5.1(a)(iv)-(v), and 5.1(b)(iv);
- (ii) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.7;
- (iii) Sections 5.2 through 5.7;
- (iv) Sections 8.3, 8.4(a)(i), 8.4(b), and 8.5;
- (v) Sections 10.2, 10.6 through 10.8, and Sections 10.12 through 10.16; and
- (vi) Articles One, Two, Seven, Twelve and Thirteen.

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

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is set forth in the Cover Sheet. Buyer shall have exclusive rights to all Product during the Delivery Term, including the right to re-sell all or a portion of the Product purchased under this Agreement ("Resold Product"). If Buyer re-sells Product, Seller agrees to follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product to the extent such instructions are consistent with Seller's obligations under this Agreement. Seller further agrees to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product in a manner consistent with Buyer's rights under this Agreement. If Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller to comply with the terms of this Agreement, then Seller shall be liable to Buyer for any liabilities Seller would have incurred under this Confirmation if Buyer had not resold the Product.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 3.1(b)(i) and 3.1(b)(ii) below. Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (1) to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement, or (2) sell Product from the Project to a third party. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term, except during the Test Period. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its

receipt at and from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(i) Full Buy/Sell. If “Full Buy/Sell” is elected on the Cover Sheet, Seller agrees to sell to Buyer the Project’s gross output of Product measured in kilowatt-hours, net of station use and transformation and transmission losses to and at the Delivery Point. Seller shall purchase all Energy required to serve the Project’s on-site load, net of station use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule.

(ii) Excess Sale. If “Excess Sale” is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project’s gross output of Product measured in kilowatt-hours, net of station use, any on-site load and transformation and transmission losses to the Delivery Point. Seller agrees to convey to Buyer all elements of Product associated with the Energy sold to Buyer.

(c) Delivery Term.

(i) Delivery Term and Initial Energy Delivery Date. As used herein, “Delivery Term” shall mean the period of Contract Years specified on the Cover Sheet, beginning on the first date that Buyer accepts delivery of the Product from the Project in connection with this Agreement following Seller’s demonstration of satisfaction of the items listed below in this Section 3.1(c)(i) (“Initial Energy Delivery Date”) and continuing until the end of the tenth, fifteenth, or twentieth Contract Year (as applicable, based on the Cover Sheet election) unless terminated pursuant to the terms of this Agreement; provided that the Expected Initial Energy Delivery Date may be extended pursuant to Section 3.1(c)(ii). The Initial Energy Delivery Date shall be the later of the (A) date that the Buyer receives the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix II and (B) the date listed as the Initial Energy Delivery Date on the Initial Energy Delivery Date Confirmation Letter. The Initial Energy Delivery Date shall occur as soon as practicable once all of the following have been satisfied:

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- (I) Seller notifies Buyer that Commercial Operation has occurred;
- (II) Buyer shall have received and accepted the Delivery Term Security in accordance with the relevant provisions of Article Eight of the Agreement, as applicable;
- (III) Seller shall have obtained the requisite CEC Certification and Verification for the Project;
- (IV) all of the applicable Conditions Precedent in Section 2.5(a) have been satisfied or waived in writing;
- (V) for resources that are already under a contract as of the Execution Date, that existing contract must have expired by its own terms before the Initial Energy Delivery Date;
- (VI) Seller shall demonstrate compliance with 3.1(o) and the ability to respond to a Buyer Curtailment Order consistent with the physical characteristics of the Project including those in Part F of the Cover Sheet.
- (VII) Seller shall have demonstrated satisfaction of Seller’s other obligations in this Agreement that commence prior to or as of the Delivery Term; and

(VIII) unless Seller has been directed by Buyer to not participate in the Participating Intermittent Resource Program, Buyer shall have received written notice from the CAISO that the Project is certified as a Participating Intermittent Resource to the extent the Participating Intermittent Resource Program exists for the Project's technology type at such time as the conditions in subsections (I) through (VII) of this Section 3.1(c)(i) are satisfied.

[The following bracketed version of Section 3.1(c)(ii) "Extensions of Test Period" shall only apply to a New Project.]

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[(ii) Extensions of Test Period In the event that Seller cannot satisfy the requirements for the Initial Energy Delivery Date by the end of the Test Period, as set forth in Section 3.1(c)(i), then Seller may provide Buyer with a one-time Notice of a thirty (30) day extension of the Test Period ("Initial Extension") along with a written explanation of the basis for the extension, no later than five (5) Business Days prior to the end of the Test Period. In the event that Seller requires an additional extension of the Test Period beyond the Initial Extension, Seller may request a further extension of the Test Period from Buyer no later than ten (10) days prior to the expiration of the Initial Extension of up to sixty (60) days by providing Notice to Buyer along with a detailed written explanation of the basis for such request ("Additional Extension"). Buyer shall provide Seller with Notice of Buyer's acceptance or rejection, in its sole discretion, of such Notice of Additional Extension within ten (10) days of receipt of Seller's Notice of Additional Extension. If Buyer fails to provide a Notice of Buyer's acceptance or rejection, then Seller's Notice of Additional Extension shall be deemed accepted. If Buyer provides Seller with Notice of Buyer's rejection of the Additional Extension, then Seller may be subject to an Event of Default. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter," attached hereto as Appendix II, on the Initial Energy Delivery Date.]

[The following bracketed version of Section 3.1(c)(ii) "Extensions of Expected Initial Energy Delivery Date" shall only apply to an Existing Project.]

[(ii) Extensions of Expected Initial Energy Delivery Date. In the event that Seller cannot satisfy the requirements for the Initial Energy Delivery Date by the Expected Initial Energy Delivery Date, as set forth in Section 3.1(c)(i), then Seller may provide Buyer with a one-time Notice of a thirty (30) day extension of the Expected Initial Energy Delivery Date ("Initial Extension") along with a written explanation of the basis for the extension, no later than five (5) Business Days prior to the Expected Initial Energy Delivery Date. In the event that Seller requires an additional extension of the Expected Initial Energy Delivery Date beyond the Initial Extension, Seller may request a further extension of the Expected Initial Energy Delivery Date from Buyer no later than ten (10) days prior to the expiration of the Initial Extension of up to sixty (60) days by providing Notice to Buyer along with a detailed written explanation of the basis for such request ("Additional Extension"). Buyer shall provide Seller with Notice of Buyer's acceptance or rejection, in its sole discretion, of such Notice of Additional Extension within ten (10) days of receipt of Seller's Notice of Additional Extension. If Buyer fails to provide a Notice of Buyer's acceptance or rejection, then Seller's Notice of Additional Extension shall be deemed accepted. If Buyer provides Seller with Notice of Buyer's rejection of the Additional Extension, then Seller may be subject to an Event of Default. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter," attached hereto as Appendix II, on the Initial Energy Delivery Date.]

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(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project.

(e) Contract Quantity and Guaranteed Energy Production.

(i) Contract Quantity. The Contract Quantity during each Contract Year is the amount set forth in the applicable Contract Year in Section D of the Cover Sheet (“Delivery Term Contract Quantity Schedule”), which amount is inclusive of outages.

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production over two (2) consecutive Contract Years during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” is equal to the product of (x) and (y), where (x) is one hundred sixty percent (160%) of the average of the Contract Quantities applicable to the two (2) Contract Years comprising the Performance Measurement Period, and (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = $(160\% \times \text{average of the Contract Quantities in MWh in Performance Measurement Period}) \times [(\text{Hrs in Performance Measurement Period} - \text{Seller Excuse Hrs in Performance Measurement Period}) / \text{Hrs in Performance Measurement Period}]$

(B) In no event shall any amount of Delivered Energy plus Deemed Delivered Energy in any Settlement Interval that exceeds the Contract Capacity be credited toward or added to Seller’s Guaranteed Energy Production requirement.

(C) GEP Failure, Cure, Damages.

(I) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly provide Notice to Seller of such failure, provided that Buyer’s failure to provide Notice shall not constitute as a waiver of Buyer’s rights to collect GEP Damages. Seller may cure the GEP Failure by providing to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, that is no less than ninety percent (90%) of the Contract Quantity, for the Contract Year following the GEP Failure, subject to adjustment for Seller Excuse Hours as set forth in the formula below (“GEP Cure”).

GEP Cure = $(90\% \times \text{Contract Quantity in MWh}) \times [(\text{Hrs in next following Contract Year} - \text{Seller Excuse Hrs in next following Contract Year}) / \text{Hrs in next following Contract Year}]$

If Seller fails to provide sufficient Delivered Energy plus Deemed Delivered Energy, if any, as adjusted by Seller Excuse Hours, to qualify for the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix V (“GEP Damages Calculation”). If Seller provides a GEP Cure or pays GEP Damages for the Contract Years in a particular Performance Measurement Period (“Cured Performance Measurement Period”), then for purposes of calculating the Guaranteed Energy Production in the following Performance Measurement Period, the amount of Delivered Energy plus Deemed Delivered Energy in the second Contract Year of the Cured Performance Measurement Period, which is also the first Contract Year of the following Performance Measurement Period (“Shared Contract Year”), shall be deemed equal to the greater of (X) the Delivered Energy plus Deemed Delivered Energy, if any, for the Shared Contract Year, subject to

adjustment for Seller Excuse Hours, or (Y) eighty percent (80%) of Contract Quantity in the Shared Contract Year, where X and Y are calculated as follows:

$X = (\text{Delivered Energy} + \text{Deemed Delivered Energy in Shared Contract Year}) \times [\text{Hrs in Shared Contract Year} / (\text{Hrs in Shared Contract Year} - \text{Seller Excuse Hours in Shared Contract Year})]$ or;

$Y = 80\% \times \text{Contract Quantity in Shared Contract Year}$

For the avoidance of doubt, the calculation set forth above for the amount of Delivered Energy plus Deemed Delivered Energy for the Shared Contract Year shall not apply to the cumulative GEP Shortfall under Section 5.1(b)(v)(B).

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

(III) After the GEP Cure period has run, if Seller has not achieved the GEP Cure, Buyer shall have forty-five (45) days to notify Seller of such failure. Within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide Notice to Seller in writing of the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice (the "Cure Payment Period"). If Seller does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(v)(A) within ninety (90) days following the Cure Payment Period. If Seller has failed to pay the GEP Damages, and Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(v) within the ninety (90) day period, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller's failure with respect to the Performance Measurement Period which served as the basis for the notice of GEP Failure, GEP Damages, or default, subject to the limitations set forth in Section 5.1(b)(v)(B).

(f) Contract Capacity. The generation capability designated for the Project shall be the contract capacity in MW designated in the Cover Sheet, (the "Contract Capacity"), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix XIII. Throughout the Delivery Term, Seller shall sell and deliver all Product produced by the Project solely to Buyer. In no event shall Buyer be obligated to receive, in any Settlement Interval, any Surplus Delivered Energy. Seller shall not receive payment for any Surplus Delivered Energy. To the extent Seller delivers Surplus Delivered Energy to the Delivery Point in a Settlement Interval in which the Real-Time Price for the applicable PNode is negative, Seller shall pay Buyer an amount equal to the Surplus Delivered Energy (in MWh) during such Settlement Interval, multiplied by the absolute value of the Real-Time Price per MWh for such Settlement Interval.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration, addition, or modification to the Project without Buyer's prior written consent. The Project is further described in Appendix XIII.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.6. Seller shall be deemed to have relinquished possession of the Project if after the Commercial Operation Date Seller has ceased work on the Project or ceased production and delivery of

Product for a consecutive thirty (30) day period and such cessation is not a result of a Force Majeure event or direct action of Buyer.

(h) Interconnection Facilities.

[The following bracketed language applies to Projects that do not utilize Shared Facilities]

[(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any Generator Interconnection Agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer's Interconnection Facilities, including metering facilities, to be maintained; ~~and~~ (C) comply with the procedures set forth in the GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades; and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project~~-.]~~

[The following bracketed language applies to Projects that utilize Shared Facilities.]

[(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any Generator Interconnection Agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer's Interconnection Facilities, including Shared Facilities and metering facilities, to be maintained; (C) comply with the procedures set forth in the GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades; (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project; and (E) ensure that Seller has sufficient interconnection capacity and rights under or through the Shared Facilities Agreements to fulfill its obligations under this Agreement.]

(ii) Coordination with Buyer.

(A) Seller shall (I) provide to Buyer copies of all material correspondence related ~~thereto;~~ to the GIA and CAISO Exemption; ; (II) provide Buyer with written reports of the status of the GIA on a monthly basis: prior to the Delivery Term; and (III) obtain consent from Buyer before making any material amendment to the GIA or CAISO Exemption. The foregoing shall not preclude Seller from executing a GIA or obtaining a CAISO Exemption that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law~~-.]~~

(B) Excess Network Upgrade Costs. Seller shall provide Buyer within ten (10) Business Days of receipt thereof, copies of any Interconnection Study or the interconnection agreement tendered to Seller by the Participating Transmission Owner that may give rise to a termination right of Buyer under Section 3.9(f)(i). Within that same period Seller shall also provide Buyer a Notice of its irrevocable election to exercise or not exercise its right to assume financial responsibility for any Excess Network Upgrade Cost pursuant to Section 3.9(f)(i), with a failure to provide such an election deemed to be an election not to exercise such rights for purposes of administration and enforcement of the terms of this Agreement.

(i) Performance Excuses.

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

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(ii) Buyer Excuses. Buyer shall be excused from (A) receiving and paying for the Product only (I) during periods of Force Majeure, (II) by Seller's failure to perform, (III) during Curtailment Periods and (B) receiving Product during Buyer Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project during any Curtailment Period or Buyer Curtailment Period.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any. Nothing in this Section 3.1(j) shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

(k) WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer even if Buyer does not accept and/or pay for the underlying energy per Section 3.1(f). Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.1(k)(viii), provided that Seller fulfills its obligations under Sections 3.1(k)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance with Article 6 before the WREGIS Certificates for such month are formally

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

(v) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month (“Deficient Month”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer’s payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller’s next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer’s subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller’s obligations under this Section 3.1(k), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

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

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

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

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Term, which changes Buyer determines are necessary to forecast output from the Project, and/or comply with Law:

(A) read-only access to meteorological measurements, inverter and transformer availability, any other facility availability information, all parameters necessary for use in the equation under item (G) of this list;

(B) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project; provided that if Buyer is unable to access the Project’s SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in 1-minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

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

(D) full, real-time access to the Project's CAISO Outage Management System(OMS) client application, or its successor system;

(E) net plant electrical output at the CAISO ~~revenue meter~~Revenue Meter;

(F) instantaneous data measurements at sixty (60) second or increased frequency for the parameters set forth in Appendix X ("Telemetry Parameters for Wind or Solar Facilities"), which measurements shall be provided by Seller to Buyer in consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup; and

(G) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of solar insolation, temperature, wind speed, and, if applicable, wind direction. Such equation shall take into account the expected availability of the facility.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix IX ("Actual Availability Report"). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(l)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

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

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

(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 3.1(l)(i) of this Agreement, and for wind Projects, each wind turbine must be equipped with meteorological measurement equipment (e.g. anemometers) which are individually linked to Seller's plant information system. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third-Party SC (as applicable) to enable Buyer or the Third-Party SC to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such meteorological stations,

telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

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

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

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least ninety (90) days prior to the Initial Energy Delivery Date.

(vi) No later than ninety (90) days before the Initial Energy Delivery Date, Buyer may request and Seller shall promptly provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (A) total global horizontal irradiance, plane of array or direct normal insolation as is applicable for project type, air temperature, wind speed and direction, precipitation, barometric pressure, visibility in fog areas (forward scatter sensor) and humidity at the Site, as well as time-average data including 10-minute and hourly values of irradiance or insolation, air temperature, wind speed, wind direction, standard deviation of wind direction, relative humidity, precipitation, barometric pressure ***[Include the following bracketed language only if winter season output of solar Project is an issue]*** [and visibility in fog areas] All data, except peak values, should be 1-second samples averaged into 10-minute periods; (B) elevation, latitude and longitude of the weather station; and (C) any other data reasonably requested by Buyer.

(m) Prevailing Wage. Seller shall use reasonable efforts to ensure that all Electricians hired by Seller, Seller's contractors and subcontractors are paid wages at rates not less than those prevailing for Electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code.

(n) Obtaining and Maintaining CEC Certification and Verification. Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(o) Curtailement Requirements.

(i) Order. Seller shall reduce generation from the Project as required pursuant to a Buyer Curtailement Order or Curtailement Order, provided that a Buyer Curtailement Order or Curtailement Order shall be consistent with the operational characteristics set forth in Section F of the Cover Sheet. Seller agrees to reduce the Project's generation by the amount and for the period set forth in

the Buyer Curtailment Order or Curtailment Order. Buyer's communication to Seller in advance of a Buyer Curtailment Order need not be greater than that required to support the Dispatch Interval in the Real-Time Market. The Parties agree that the Buyer Curtailment Period or Curtailment Orders shall be for unlimited hours cumulatively per Contract Year (which may or may not be consecutive). Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Article Four.

(ii) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order or Curtailment Order provided in compliance with Section 3.1(o)(i), then, for each MWh of Delivered Energy that the Project generated in contradiction to the Buyer Curtailment Order or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh (for example, the Contract Price adjusted by TOD Factors) and, (B) is the absolute value of the Real-Time Price for the applicable PNode, if such price is negative, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order or Curtailment Order.

(iii) Operational Characteristics. Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the actual physical characteristics of the Project including those listed in Part F of the Cover Sheet. The DMin value in Part F of the Cover Sheet shall be 0 MW unless otherwise demonstrated via certification by a Licensed Professional Engineer prior to the Initial Energy Delivery Date pursuant to Section 3.1(c)(VI). Upon mutual written agreement between the Parties, Buyer, as the Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of an audit.

(p) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, software, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day Dispatch Instructions, to operate the Units as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 3.1(o)(ii) for failure to comply with a Buyer Curtailment Order or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

(q) Supplier Diversity Program. Seller shall comply with Buyer's Supplier Diversity Program in accordance with Appendix XII.

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

3.3 Resource Adequacy.

(a) During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes from the Project, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a Supply Plan or Resource Adequacy Plan ("Resource Adequacy Requirements"). From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the capacity of the Project, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements during the Delivery Term.

(b) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Resource Adequacy Standards, if applicable.

(c) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules by the earlier of ninety (90) days before the first day of the month for which the outage will occur or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(d) To the extent Seller has an exemption from the Resource Adequacy Standards or under the CAISO Tariff, Section 3.3(b) above shall not apply. To the extent Seller has an exemption from the Replacement Capacity Rules under the CAISO Tariff, Section 3.3(c) shall not apply. If Seller would like to request such an exemption for this Agreement from the CAISO, Seller shall provide to Buyer, as Seller's Scheduling Coordinator, Notice specifically requesting that Buyer seek certification or approval of this Agreement as an exempt contract pursuant to the CAISO Tariff; provided that Buyer's failure to obtain such exemption shall not be an Event of Default and Buyer shall not have any liability to Seller for such failure.

(e) Resource Adequacy Failure.

(i) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 3.4(a)(i)(A) or anything to the contrary herein, the Parties acknowledge and agree that:

(A) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the RA Start Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer; and

(B) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the Deliverability Finding Deadline, then Seller shall be in breach of this

Agreement and subject to an Event of Default under Sections 5.1(b)(vi) - (vii), regardless of Seller's payment of any RA Deficiency Amount hereunder.

(ii) RA Deficiency Amount Calculation.

(A) Buyer shall calculate the RA Deficiency Amount for each RA Shortfall Month using the formula set forth in Section 3.3(e)(ii)(B). Buyer shall notify Seller of the RA Deficiency Amount for a given RA Shortfall Month no later than the last day of that RA Shortfall Month. The Parties agree that these liquidated damages shall be paid to Buyer for each RA Shortfall Month and constitute a reasonable approximation of the harm or loss suffered by Buyer. The Parties further agree that Buyer may use such liquidated damages for any purpose in its sole discretion. Seller shall pay the RA Deficiency Amount for a given RA Shortfall Month in the form of a deduction from the amount invoiced by Seller in such month pursuant to Section 6.1. In the event that the RA Deficiency Amount for a given RA Shortfall Month exceeds the amount invoiced pursuant to Section 6.1, Buyer shall make no payment to Seller for that month, and the difference between the invoiced amount and the RA Deficiency Amount shall be deducted from the amount(s) invoiced in the succeeding month(s) until all of the RA Deficiency Amount for such RA Shortfall Month has been deducted. Any dispute regarding Buyer's calculation of any RA Deficiency Amount shall be resolved in accordance with Article Twelve.

(B) The RA Deficiency Amount for a given RA Shortfall Month shall be equal to the product of the RA Value and the Expected Net Qualifying Capacity, as calculated in accordance with Appendix XIV. The RA Deficiency Amount is represented by the following equation:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

To the extent the Project obtains Net Qualifying Capacity that Seller applies towards its obligations under Section 3.3(a) before the Project obtains the deliverability type selected in Section A of the Cover Page (e.g., through the CAISO's Operational Deliverability Assessment), then the RA Deficiency Amount calculated above for a given RA Shortfall Month shall be reduced accordingly (e.g. the RA Deficiency Amount would equal the product of (x) the RA Value and (y) the difference between the Expected Net Qualifying Capacity and the actual Net Qualifying Capacity):

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times [\text{Expected Net Qualifying Capacity (MW)} - \text{actual Net Qualifying Capacity (MW)}].$$

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. Throughout the Term, and consistent with the terms of this Agreement, Seller shall:

(A) arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller's interconnection, distribution and/or transmission arrangements shall provide for the deliverability type selected in Section A of the Cover Sheet as of the RA Start Date and throughout the Delivery Term.

(B) If Seller has elected Energy Only Status on the Cover Sheet, this Section 3.4(a)(i)(B) is not applicable. An FCDS or PCDS Seller shall have either previously obtained, or is obligated to obtain per the terms of the Agreement, a FCDS or PCDS Finding. If Seller's Project has

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not attained Full Capacity Deliverability Status or Partial Capacity Deliverability Status prior to the Execution Date, Seller shall take all actions necessary or appropriate to cause the Delivery Network Upgrades necessary for it to obtain Full Capacity Deliverability Status or Partial Capacity Deliverability Status to be constructed and placed into service. The cost of each Deliverability Assessment and any necessary Delivery Network Upgrades to ensure Full Capacity Deliverability Status or Partial Capacity Deliverability Status shall be borne solely by Seller. When the CAISO advises Seller that the Project has Full Capacity Deliverability Status or Partial Capacity Deliverability Status, Seller shall Notify Buyer of such status within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. The Effective FCDS Date or Effective PCDS Date must occur on or before the Deliverability Finding Deadline; a failure to do so shall constitute an Event of Default under Section 5.1(a)(iii). The Termination Payment for an Event of Default caused by Seller's failure to achieve the Effective FCDS Date or Effective PCDS Date on or before the Deliverability Finding Deadline shall be capped at the amount of Seller's Delivery Term Security obligation under Section 8.4(a)(ii).

(C) if the Project has or obtains FCDS, Seller shall Notify Buyer of such status as of the Execution Date, if applicable, or within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO.

(D) bear all risks and costs associated with such transmission service, including any transmission outages or curtailment to the Delivery Point.

(E) fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff, including any CAISO Exemption, and implementing CAISO standards and requirements, so as to be able to deliver Energy from the Project according to the terms of this Agreement.

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

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

(B) Buyer shall bear all risks and costs associated with such transmission service, including any transmission outages or curtailment from the Delivery Point.

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

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

(b) EIRP Requirements. Seller shall provide Buyer with a copy of the notice from CAISO certifying the Project as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. As of the first date of the Test Period and until the Project receives certification as a Participating Intermittent Resource, Seller, at its sole cost, shall comply with EIRP and additional protocols issued by the CAISO for Eligible Intermittent Resources. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with EIRP and all additional protocols issued by the CAISO for a Participating Intermittent Resource. Throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with all other protocols issued by the CAISO for generating facilities providing energy on an intermittent basis; provided that, if multiple options exist, then Seller shall comply

with any such protocols, rules or regulations as directed by Buyer. Throughout the Delivery Term, Buyer in its limited capacity as Seller's Scheduling Coordinator shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to satisfy Seller's obligations as Seller's Scheduling Coordinator and to the extent such actions are at *de minimis* cost to Buyer.

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

(i) Designation as Scheduling Coordinator.

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

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

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

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. Seller's availability forecasts below shall include Project availability and updated status of photovoltaic panels, inverters, transformers, and any other equipment that may impact availability. To avoid Forecasting Penalties set forth in Section 4.5(c)(iii), Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Seller shall provide to Buyer and Third-Party SC (if applicable), pursuant to subsections (I) and (II) below, a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer:

(I) by the earlier of ninety (90) days before the beginning of the Test Period or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC, and

(II) throughout the Delivery Term, by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC.

(C) Daily Forecast of Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) via Buyer's internet site, as provided in Appendix VI, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. Any reduction of one (1) MW or greater to the PMax of the Project, as set forth in Section F of the Cover Sheet, must be reported as an outage pursuant to Appendix VI. The current industry standard Preschedule Day timetable in the WECC is as follows:

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

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Preschedule Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for submittal of Schedules into the Day-Ahead Market then Seller must notify Buyer of such change by telephone and shall send a revised notice to Buyer's Internet site set forth in Appendix VI.

Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

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

(D) Real-Time Available Capacity. During the Test Period and thereafter during the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in

accordance with the CAISO rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Outage. Seller shall inform Buyer of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. These notices and changes to Available Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than 60 days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 3.4(c)(iii)(D), then Seller shall send such communications by telephone to Buyer's Real-Time Desk and shall be sent to Buyer's internet site as set forth in Appendix VI.

(E) To the extent that Seller obtains, in the normal course of business, other forecasts of energy production at the Project not otherwise specified in this Section 3.4, then Seller shall grant Buyer read-only access to such forecasts.

(iv) Replacement of Scheduling Coordinator.

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

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

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, safety, ownership and/or operation of the Project). In the event Seller requires any data or information from Buyer in order to comply with any applicable requirements of Law, including the requirements of CAISO, NERC and WECC, relating to the Project (including those related to construction, safety, ownership and/or operation of the Project), then Seller shall request in writing such data from Buyer no less than forty-five (45) calendar days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria,

rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, “Enforcement of Maintenance and Operation Standards for Electric Generating Facilities”, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering. ~~All output from the Project must be delivered through a single-At Seller's expense. Seller shall install, maintain, and test all CAISO revenue meter located on the high voltage side of the Project's final step-up transformer (which must be dedicated solely to the Project) nearest Revenue Meters to accommodate the Project pursuant to the Interconnection Point that exclusively measures output for the Project described herein. The Project shall be a CAISO Tariff, as a CAISO Metered Entity, as: [The following bracketed language applies to Projects that utilize a Shared Facilities.] [Seller shall install and maintain all metering arrangements, including the CAISO Exemption, that utilize the Transformer or Line Loss Correction Factors (as such terms are defined by the CAISO Tariff-) to meter the Project independently.]~~ All Delivered Energy purchased under this Agreement must be measured by the Project's CAISO ~~revenue meter~~ Revenue Meter to be eligible for payment under this Agreement. ~~Seller shall bear all costs relating to all metering equipment installed to accommodate the Project.~~ In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

(a) CAISO Approval of Outage(s). Buyer, in its capacity as Scheduling Coordinator, is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Buyer's schedules or cancels previously approved outages and for entering Project outages in the CAISO Outage Management System (“OMS”) or successor system. As Scheduling Coordinator, Buyer shall put forth commercially reasonable efforts to secure and communicate CAISO approvals for Project outages in a timely manner to Seller.

(b) Planned Outages. During the Delivery Term, Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by complying with Section 3.4(c)(iii)(A), (“Annual Forecast of Available Capacity”) and Section 3.4(c)(iii)(B), (Monthly Forecast of Available Capacity”) and implementing the notification procedures set forth in Appendix VI no later than July 1st of each year during the Delivery Term. Seller shall also notify Buyer of the proposed Planned Outage schedule for the Project by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer regarding the Planned Outage by the earlier of fourteen (14) days prior to each Planned Outage or two (2) Business Days prior to the CAISO deadline for submitting Planned Outages. Seller shall not conduct Planned Outages during the months of January, May through September, and December. During all other months, Seller shall not schedule

Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Subject to Section 3.7(a), after any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage schedule requested by Buyer, Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Forced Outages. Seller shall notify Buyer of a Forced Outage as promptly as possible, but no later than ten (10) minutes after the commencement of the Forced Outage and in accordance with the notification procedures set forth in Appendix VI. Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

(d) Prolonged Outages. Seller shall notify Buyer of a Prolonged Outage as soon as practicable in accordance with the notification provisions in Appendix VI. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Capacity on a *pro rata* basis also in accordance with the notification provisions in Appendix VI.

(e) Force Majeure. Within two (2) Business Days of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(f) Communications with CAISO. Buyer shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, 3.8, or 10.13, or Appendix VI, and consistent with Section 3.5, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and scheduling, forecast, bidding, notification and operating procedures described in the above-referenced sections are subject to change. If such changes are provided by (i) Notice from Buyer, then Seller shall implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increased cost of performance to Seller hereunder other than *de minimis* amounts, or (ii) Law, then the Parties shall implement such changes as necessary for Seller and Buyer to perform their respective rights and obligations in accordance with the Law.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice (which no case shall be less than three (3) Business Days) visit the Project during normal business hours for purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; (ii) not interfere with the operation of the Project; and (iii) unless waived in writing by Seller, be escorted by a representative of Seller. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

3.9 New Generation Facility.

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

(i) Design and construct the Project.

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

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

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

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

(vi) Seller shall Notify Buyer of the Construction Start Date by sending to Buyer a written Certification substantially in the form provided in Appendix IV-1 as soon as practical upon issuance of Notice to Proceed.

(vii) Within fifteen (15) days after the close of each quarter from the first quarter following the Execution Date, until the month in which the Construction Start Date has occurred, provide to Buyer a quarterly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such quarterly reports and discuss Seller's construction

progress. The quarterly Progress Report shall indicate whether Seller is on target to meet the Guaranteed Commercial Operation Date.

(viii) Within fifteen (15) days after the close of each month following the Construction Start Date until the Commercial Operation Date, provide to Buyer a monthly Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The monthly Progress Report shall indicate whether Seller is on target to meet the Guaranteed Commercial Operation Date.

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

(i) Notify Seller in writing of the results of the review performed pursuant to Section 3.9(a)(v) within thirty (30) days of Buyer's receipt of all specifications for the Project, including a description of any flaws perceived by Buyer in the design.

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

(c) Guaranteed Commercial Operation Date.

(i) The Parties agree time is of the essence in regards to the Agreement. As such, Seller shall have demonstrated Commercial Operation per the terms of Appendix IV-2 by the date that is no later than thirty-six (36) months after the Effective Date of this Agreement, except as such date may be extended on a day for day basis for not more than a cumulative six (6) month period for a Permitted Extension (the "Guaranteed Commercial Operation Date"), provided, however, that the Commercial Operation Date shall not occur more than one hundred eighty (180) days prior to the Guaranteed Commercial Operation Date.

(ii) Permitted Extensions. The Permitted Extensions to the Guaranteed Commercial Operation Date are as follows:

(A) Force Majeure Extension. The Guaranteed Commercial Operation Date may be extended on a day for day basis in the event of Force Majeure ("Force Majeure Extension"); provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

(B) Daily Delay Damage Extension. The Guaranteed Commercial Operation Date may be extended on a day-to-day basis, corresponding to the number of days for which Seller has paid Daily Delay Damages, for a cumulative period of not more than six (6) months ("Daily Delay Damages Extension").

(iii) Notwithstanding the foregoing, if Seller claims more than one Permitted Extension under Section 3.9(c)(ii), such extensions cannot cumulatively exceed six (6) months and all Permitted Extensions taken shall be concurrent, rather than cumulative, during any overlapping days.

(iv) Notice of Permitted Extension.

(A) In the case of a Force Majeure Extension, if sixty (60) days prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(B) In the case of a Daily Delay Damages Extension, Seller must, at the earliest possible time, but no later than sixty (60) Business Days before the commencement of the proposed Daily Delay Damages Extension, provide Buyer with Notice of its election to extend the Guaranteed Commercial Operation Date along with Seller's estimate of the duration of the extension and its payment of Daily Delay Damages for the full estimated Daily Delay Damages Extension.

(v) Daily Delay Damage Payment. Daily Delay Damages payments applicable to days included in any Daily Delay Damages Extension are nonrefundable and are in addition to, and not a part of, the Project Development Security; provided that Seller will be entitled to a refund (without interest) of any estimated Daily Delay Damages payments paid by Seller to Buyer which exceed the amount required to cover the number of days by which the Guaranteed Commercial Operation Date was actually extended. Each Party agrees and acknowledges that the damages that Buyer would incur due to Seller's delay in achieving the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty and the Daily Delay Damages are an appropriate approximation of such damages.

(vi) Failure to Meet the Guaranteed Commercial Operation Date. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date after giving effect to Permitted Extensions, then Buyer shall be entitled to declare an Event of Default and collect the Damage Payment pursuant to Article Five.

[The following subsections (d) and (e) shall only apply to a New Project:]

[(d) Resize of Project Due to Permit Failure.

(i) If Seller has not received or obtained by the earlier of the Expected Construction Start Date and the date that is six (6) months after the Effective Date final and non-appealable Governmental Approvals required for the construction of the Project with the Contract Capacity set forth in the Cover Sheet, after using commercially reasonable efforts to do so (including timely filings with all applicable Governmental Authorities and timely payment of any required fees) ("Permit Failure"), Seller may make a Contract Capacity Commitment on the Expected Construction Start Date (as may be extended), equal to, at a minimum, seventy percent (70%) of the Contract Capacity set forth in the Cover Sheet, provided that such amount shall also be the maximum amount of the generation capacity permitted under the final and non-appealable Governmental Approvals that Seller has received as of the Expected Construction Start Date (as may be extended), and may not be under one (1) MW, and provided further that for a period of two (2) years from any such resizing pursuant to this Section 3.9(d), Seller must offer Buyer a Right of First Offer for any Products from the Project up to the Contract Capacity set forth in the Cover Sheet as further provided in Section 3.9(e), below. Seller shall provide Notice of such Contract Capacity Commitment to Buyer no later than ten (10) Business Days following the Expected Construction Start Date.

(ii) In the event that the Contract Capacity is reduced pursuant to Section 3.9(d)(i) above, the Contract Quantity during each Contract Year set forth in the Delivery Term Contract Quantity Schedule in the Cover Sheet shall be adjusted proportionately with such reduction.

(iii) In the event that the Contract Capacity and Contract Quantity are reduced pursuant to Sections 3.9(d)(i) and (ii), the revised Contract Capacity and Contract Quantity shall be used to determine Seller's performance under the Agreement, including the amount of Guaranteed Energy Production under Section 3.1(e) and the amount of Delivery Term Security required under Section 8.4.

(iv) If the final Contract Capacity is less than the initial Contract Capacity due to a resize of the Project pursuant to Section 3.9(d)(i), then Seller shall forfeit a proportional share of the Project Development Security on a percent-for-percent basis.

(e) Right of First Offer.

(i) If Seller resizes the Project due to Permit Failure, then for a period of three (3) years from the date on which Seller Notifies Buyer of the Contract Capacity Commitment (“Exclusivity Period”), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project in excess of the Contract Capacity Commitment, up to the Contract Capacity set forth in the Cover Sheet, to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the “First Offer”) and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer’s management approval and CPUC Approval (“Buyer’s Notice of First Offer Acceptance”), and then the Parties shall have not more than ninety (90) days from the date of Buyer’s Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller’s documented incremental costs in overcoming the Permit Failure.

(iii) If Buyer rejects or fails to accept Seller’s First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.]

(f) Excess Network Upgrade Cost Termination Right.

(i) Buyer has the right to terminate this Agreement by Notice on or before the date that is sixty (60) days after Seller provides to Buyer the results of any Interconnection Study, or the GIA tendered to Seller by the Participating Transmission Owner, if such Interconnection Study or GIA as of the date of the termination Notice, estimates, includes, specifies or reflects that the maximum total cost of the Network Upgrades to Buyer, or any Participating Transmission Owner under the jurisdiction of the CAISO, including costs reimbursed to Seller by Buyer or any Participating Transmission Owner under the jurisdiction of the CAISO (“Aggregate Network Upgrade Costs”), may in the aggregate exceed one hundred and ten percent (110%) of the amount identified in the Interconnection

Studies that were submitted with Seller’s original bid offer (package) so long as the exceeded dollar amount is equal to or greater than one hundred thousand dollars (\$100,000.00) (“Network Upgrades Cap”), and Seller has not agreed to assume financial responsibility for Excess Network Upgrade Costs. This termination right is irrespective of any subsequent amendments of such Interconnection Study or GIA or any contingencies or assumptions upon which such Interconnection Study or GIA is based. Buyer’s Notice to terminate will be effective five (5) Business Days after such Notice is given to Seller.

(ii) Notwithstanding anything to the contrary in this Section 3.9(f)(ii), Buyer shall have no right to terminate this Agreement under Section 3.9(f)(i), if (A) Seller concurrently with its provision of the relevant Interconnection Study or GIA, as applicable, pursuant to Section 3.1(h)(ii)(B), irrevocably agrees to pay to the Participating Transmission Owner the amount by which the Aggregate Network Upgrade Costs exceed the Network Upgrades Cap (“Excess Network Upgrade Cost”) and (B) Seller enters into a GIA that states that Seller must pay all Excess Network Upgrade Costs without reimbursement from the Participating Transmission Owner. For sake of certainty, if Seller agrees to the above-described payment for the Excess Network Upgrade Costs pursuant to this Section 3.9(f)(ii), such agreement shall not independently convey to Seller any interest in or rights or title to any Network Upgrades or Congestion Revenue Rights (as defined in the CAISO Tariff) in connection with the development of the Project or the delivery of Product to Buyer pursuant to this Agreement.

(iii) Buyer shall have the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, (A) if Seller elects to exercise its right to pay for any Excess Network Upgrade Costs, but (B) FERC, CAISO, or any Participating Transmission Owner, as applicable, rejects Seller’s interconnection agreement, in whole or in part, or modifies Seller’s interconnection agreement in a manner that would make Seller unable to comply with Seller’s obligation pursuant to Section 3.9(f)(i). In order to be effective, Buyer’s Notice of termination must be given on or before the date that is ninety (90) days after such rejection or modification by FERC, CAISO, or any Participating Transmission Owner.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Price.

(a) Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year is set forth in Section C of the Cover Sheet. For the avoidance of doubt, Seller shall not be compensated for any Surplus Delivered Energy.

(b) Test Period Payments. During the Test Period, Seller’s full compensation for Product sold to Buyer shall be the CAISO Revenues for the Delivered Energy, which revenues Buyer shall forward to Seller in accordance with the schedule described in Section 6.1.

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

	TOD PERIOD		
Monthly Period	1. Peak	2. Mid-Day	3. Night
A. July – Sept.	A1	A2	A3
B. Oct. – Feb.	B1	B2	B3

C. March. – June	C1	C2	C3
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Monthly Period Definitions. The Monthly Periods are defined as follows:

- A. July – September;
- B. October – February; and
- C. March – June.

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

- 1. **Peak** = hours ending 18 - 22 (Pacific Prevailing Time (PPT)) all days in the applicable Monthly Period.
- 2. **Mid-Day** = hours ending 09 - 17 PPT all days in the applicable Monthly Period.
- 3. **Night** = hours ending 23 – 08 PPT all days in the applicable Monthly Period.

4.3 TOD Factors and Monthly TOD Payment.

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

TOD FACTORS FOR EACH TOD PERIOD			
Period	1. Peak	2. Mid-Day	3. Night
A. July – Sept.	1.546	0.653	1.222
B. Oct –February	1.505	0.753	1.299
C. March – June	1.315	0.200	1.016

(b) Monthly TOD Payment. Except as provided in Section 4.4, for each month in each Contract Year, Buyer shall pay Seller for Delivered Energy and Deemed Delivered Energy in each TOD Period (“Monthly TOD Payment”) the amount resulting from (i) multiplying the Contract Price times the TOD Factor for the applicable TOD Period, times the sum of Delivered Energy (exclusive of Surplus Delivered Energy) for such TOD Period plus (ii) for each hour in the TOD Period, the Deemed Delivered Energy Price applicable to that hour times the TOD Factor for the applicable TOD Period, times the amount of Deemed Delivered Energy for such hour:

$$\text{Monthly TOD Payment} = \sum_{hour=1}^n ([\text{Contract Price } \$] \times \text{TOD Factor} \times \text{Delivered Energy } MWh_{hour}) + ([\text{Deemed Delivered Energy Price}_{hour} \$] \times \text{TOD Factor} \times \text{Deemed Delivered Energy } MWh_{hour})$$

For the avoidance of doubt, Excess Energy shall be compensated as set forth in Section 4.4 and shall not be included in the determination of payment set forth above; and “Delivered Energy” as used in the formula above excludes Surplus Delivered Energy, for which Seller will receive no compensation.

4.4 Excess Delivered and Deemed Delivered Energy.

(a) Excess Energy Price. If, at any point in any Contract Year, the amount of Delivered Energy (exclusive of Surplus Delivered Energy) plus the amount of Deemed Delivered Energy exceeds one hundred percent (100%) of the annual Contract Quantity amount, then:

(i) each MWh of additional Delivered Energy during such Contract Year shall be deemed “Excess Delivered Energy” and each MWh of additional Deemed Delivered Energy during such Contract Year shall be deemed “Excess Deemed Delivered Energy” (Excess Delivered Energy and Excess Deemed Delivered Energy, cumulatively, “Excess Energy”) and

(ii) for the remainder of such Contract Year:

(A) for every MWh of Excess Delivered Energy, the price paid to Seller shall be the lesser of (I) or (II), where (I) is fifty percent (50%) of the Contract Price for such Contract Year times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the “Excess Delivered Energy Price”); and

(B) for every MWh of Excess Deemed Delivered Energy the price paid to Seller shall be the lesser of (I) and (II) where (I) is fifty percent (50%) of the Deemed Delivered Energy Price times the TOD Factor for the applicable TOD Period and (II) is the hourly DA Price at the Delivery Point (the “Excess Deemed Delivered Energy Price”).

Excess Delivered Energy Price_{hour} = the lesser of ([50% × Contract Price × TOD Factor] OR DA Price_{hour})

Excess Deemed Delivered Energy Price_{hour} = the lesser of ([50% × Deemed Delivered Energy Price_{hour} × TOD Factor] OR DA Price_{hour})

For the avoidance of doubt, Excess Energy shall not include any Surplus Delivered Energy.

(b) Monthly Payment for Excess Energy. Buyer shall pay Seller for Excess Energy in each hour (“Monthly Payment for Excess Energy”) the amount resulting from (i) multiplying the Excess Delivered Energy Price applicable to that hour times the Excess Delivered Energy for such hour plus (ii) the Excess Deemed Delivered Energy Price applicable to that hour times the amount of Excess Deemed Delivered Energy for such hour:

$$\text{Monthly Payment for Excess Energy} = \sum_{\text{hour}=1}^n (\text{Excess Delivered Energy Price}_{\text{hour}} \times \text{Excess Delivered Energy MWh}_{\text{hour}}) + (\text{Excess Deemed Delivered Energy Price}_{\text{hour}} \times \text{Excess Deemed Delivered Energy MWh}_{\text{hour}})$$

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller’s failure to perform any covenant or obligation set forth in this Agreement. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer’s actions, including those resulting in a Buyer Curtailment Period.

(b) Buyer, as Scheduling Coordinator, shall (i) be responsible for all costs and charges assessed by the CAISO with respect to scheduling and Imbalance Energy, subject to Sections 4.5(a) and (c) and (ii) retain all CAISO revenues as a result of Energy from the Project throughout the

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

(c) Forecasting Penalties.

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

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

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

4.6 Additional Compensation.

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

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reduction and Seller shall retain the Reductions.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

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

- (a) with respect to a Party that is subject to the Event of Default, the occurrence of any of the following:
- (i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written Notice is received by the Party failing to make such payment;
 - (ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;
 - (iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within forty-five (45) days after Notice from the Non-Defaulting Party, which time period shall be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed forty-five (45) additional days;
 - (iv) such Party becomes Bankrupt; or
 - (v) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:
- (i) if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;
 - (ii) failure by Seller for any reason, other than as explicitly provided in Section 11.1(a)(i) to meet, the Guaranteed Commercial Operation Date as may be extended by Permitted Extensions;
 - (iii) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.3, 8.4, or 8.5 of this Agreement and such failure is not cured within any applicable cure period;
 - (iv) if Seller has provided and Buyer has accepted, a Guaranty to satisfy the collateral obligations under this Agreement, then with respect to such guarantor or the Guaranty, if Seller

had not replaced the Guaranty in accordance with Section 8.6 within five (5) Business Days following Buyer's Notice of a request for replacement;

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

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

(B) if, after any Performance Measurement Period the cumulative GEP Shortfall for all preceding Performance Measurement Periods occurring during the Delivery Term equals or exceeds two times the Contract Quantity (as may be adjusted pursuant to Sections 3.9(d) and 3.1(e)(ii)); provided, however, that if all or a portion of the GEP Shortfall during an applicable Performance Measurement Period is principally caused by a non-Force Majeure major equipment malfunction, breakdown, or failure resulting in a reduction of Energy production of the Project by at least fifty percent (50%) of the Contract Quantity in one or both years of the Performance Measurement Period, as applicable, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Utility Practice, such failure shall be excluded from the calculation of the cumulative GEP Shortfall for purposes of this subsection.

(vi) Seller has not obtained the deliverability type selected in Section A (FCDS or PCDS) of the Cover Sheet by the Deliverability Finding Deadline.

(vii) Seller has not obtained the Partial Capacity Deliverability Status Amount identified in Section A of the Cover Sheet by the Deliverability Finding Deadline.

5.2 **Remedies.** If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") on which to collect the Damage Payment or Termination Payment in accordance with 5.2(c);

(b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;

(c) (i) collect the Damage Payment (in the case of any Event of Default of Seller that arose at any time prior to the commencement of the Delivery Term), or (ii) collect the Termination Payment (in the case of any Event of Default of Seller that arose during the Delivery Term or in the case of any Event of Default of Buyer at any time);

(d) withhold any payments due to the Defaulting Party under this Agreement;

(e) suspend performance;

(f) exercise its rights pursuant to Section 8.3 to draw upon and retain Performance Assurance;

(g) demand payment for damages due to Buyer's unexcused failure to take delivery or pay for Product; and

(h) exercise any other rights or remedies available at Law or in equity (including the collection of monetary damages) to the extent otherwise permitted under this Agreement.

Notwithstanding anything to the contrary contained herein, Seller may exercise the rights or remedies set forth in Sections 5.2(e), (g), and (h) without terminating this Agreement.

5.3 Calculation of Termination Payment.

(a) In the case where the Non-Defaulting Party is entitled to collect the Termination Payment pursuant to Section 5.2, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes shall be obtained in a commercially reasonable manner and shall be: (i) for a like amount, (ii) of the same Product, (iii) at the same Delivery Point, and (iv) for the remaining Delivery Term. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

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

5.7 Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

5.8 Damage Payment for Failure to Achieve Guaranteed Dates. The Parties agree that the Damage Payment to be paid by Seller for an Event of Default arising under Section 5.1(b)(ii) associated with Seller's failure to achieve the Guaranteed Commercial Operation Date shall be considered liquidated damages and not a penalty, in accordance with Section 7.1.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of either the Test Period or the first Contract Year, whichever occurs first, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months, (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of Article Four. Seller shall continue to provide to Buyer an invoice of CAISO charges, net any sums Buyer owes Seller under this Agreement, on or about the tenth (10th) day of each month until the date of the Final True-Up. Buyer shall pay the undisputed amount of such invoices less the amount of any RA Deficiency Amount and the amount of any Forecasting Penalties, as applicable on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. During the Test Period, and for twelve (12) months following the Test Period only, Buyer shall provide to Seller a statement of the CAISO Revenues and any true-ups of CAISO Revenues from prior months and Buyer shall forward to Seller the CAISO Revenues from such statement, according to the invoice and payment schedules described in this Section 6.1. Each Party will make payments by electronic funds transfer via ACH, to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Subject to Section 3.6, in the event adjustments to payments are required, Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of adjustment. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made on the next invoice after such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months

after the invoice is rendered or any specific adjustment to the invoice is made; provided that, such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR Contract; and provided further that, any disputes with respect to a statement of CAISO Revenues is waived unless Seller notifies Buyer in accordance with this Section 6.2 within one (1) month after the last statement of CAISO Revenues is provided. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY 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. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 ("INDEMNITIES"), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

guarantor's, if applicable, annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Project Development Security or Delivery Term Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Project Development Security or Delivery Term Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.4 Performance Assurance.

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

(i) Project Development Security pursuant to this Section 8.4(a)(i) in the amount of \$60/kW multiplied by the Contract Capacity of the Project as reflected in Section B of the Cover Sheet, within thirty (30) days following the Execution Date of this Agreement until Seller posts Delivery Term Security pursuant to Section 8.4(a)(ii) below with Buyer.

(ii) Delivery Term Security pursuant to this Section 8.4(a)(ii) in the amount of five percent (5%) of expected total Project revenues from the date required pursuant to Section 3.1(c)(i) as a condition precedent to the Initial Energy Delivery Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Delivery Term Security posted pursuant to this Section 8.4(a)(ii).

The amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. Except as specifically provided for in this Section 8.4(a), Buyer acknowledges that Seller shall not be required to post any additional security.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Initial Energy Delivery Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less the amounts drawn in accordance with Section 8.4(b). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security, as applicable unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 8.4(a)(i) toward the Delivery Term Security posted pursuant to Section 8.4(a)(ii), as applicable.

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

(e) Return of Performance Assurance. Buyer shall return the unused portion of Project Development Security or Delivery Term Security, as applicable, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including payments pursuant to Section 4.5 ("CAISO Charges"), Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

(f) Adjustment of Security Amounts for Project Resizing. The required amount of Delivery Term Security shall be proportionally and automatically adjusted in connection with any resizing of the Project under Section 3.9(d), and Buyer shall promptly return to Seller the unused portion of Delivery Term Security in connection with any such adjustment.

8.5 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit,

Seller shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 8.5(b) above, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Eight.

(c) Notwithstanding the foregoing in Section 8.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then Buyer may make a demand to Seller by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit ("Substitute Bank Period").

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period ("Ineligible LC Bank Notice Period") that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank ("Ineligible LC Bank") and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer's Notice to Cure pursuant to Section 8.5(b) and, if Seller fails to Cure, then the last paragraph in Section 8.5(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

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

8.6 Guaranty. If at any time Seller's guarantor or Guaranty is no longer acceptable to Buyer in its sole discretion, Seller shall replace the Guaranty with Performance Assurance as provided herein. Within five (5) Business Days following Buyer's written request for replacement of the Guaranty, Seller shall deliver to Buyer replacement Performance Assurance in the form of a replacement Guaranty, Letter of Credit or cash in an amount equal to the applicable amount of the Guaranty issued pursuant to this Agreement. In the event Seller shall fail to provide replacement Performance Assurance to Buyer as

required in the preceding sentence, then Buyer may declare an Event of Default pursuant to Section 5.1(b)(iv) by providing Notice thereof to Seller in accordance with Section 5.2.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

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

ARTICLE TEN: MISCELLANEOUS

10.1 Recording. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer’s employees or representatives performing a Scheduling Coordinator function as provided in Section 3.4(c) and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

10.2 Representations and Warranties.

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

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

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

(iii) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

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

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

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

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

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

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

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

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

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

[The following bracketed language shall only be applicable to Projects that utilize Shared Facilities.] [The term “change in law” as used in Section 10.2(b) does not include an invalidation,

rescission or modification of the CAISO Exemption nor any disapproval, disallowance, or other change by WREGIS, the CEC or the CPUC with regards to the RECs as a result Seller's Shared Facilities]

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10.3 Covenants.

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

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

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

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

(b) Seller Covenants.

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

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements and/or Participating TO tariff requirements, as applicable, that are applicable to an Interconnection Customer (as defined in the CAISO Tariff or Participating TO's tariff, as applicable) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the RA Start Date.

[The following clause (iii) applies to Existing Projects only:]

(iii) Seller covenants that the Initial Energy Delivery Date shall occur no later than the Expected Initial Energy Delivery Date specified in Section B of the Cover Sheet, except as provided pursuant to Section 3.1(c)(ii) or Section 11.1(a)(i).

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

10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, **[or]** (ii) Seller's operation and/or maintenance of the Project, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the

willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers-~~], or (iii) any penalties, sanctions or fines imposed by the CAISO or any other any Governmental Authority with respect to the Shared Facilities or as a result of the inaccuracy or recalibration of the CAISO Approved Meter(s).]~~*[The bracketed language shall only be applicable to projects that utilize Shared Facilities.]*

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.6 Assignment.

(a) General Assignment. Except as provided in Sections 10.6 (b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.6(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix VII provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix VII, including extension of any cure periods or additional remedies for financing providers, and (ii) Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, attorneys' fees.

(c) Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates', Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.6 is void.

10.7 Confidentiality.

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement (the "Confidential Information") to a third party, other than as follows:

(i) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential,

(ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement,

(iii) to the CPUC under seal for purposes of review,

(iv) for disclosure of those certain terms specified in and pursuant to Section 10.8 of this Agreement;

(v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi);

(vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC; or

(vii) to the extent necessary for Buyer to exercise its exclusive rights to the Product during the Delivery Term, including its rights to resell any or all portions of the Product as set forth in Section 3.1(a), other than the Contract Price.

(b) If a Party is required to disclose Confidential Information in order to satisfy an obligation pursuant to subsection 10.7(a)(v) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the Confidential Information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (y) prohibited from complying with a Disclosure Order or (z) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the Confidential Information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(c) Notwithstanding the provisions in Section 10.7(a), the Parties are permitted to disclose information related to the bidding and negotiation process as follows: (i) to Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (ii) to the CPUC (including CPUC staff) under seal for purposes of review (if such seal is applicable to the nature of the Confidential Information), and (iii) to the Independent Evaluator, as defined and specified in the PG&E PV Solicitation Protocol dated December 14, 2017 ("Protocol").

(d) The Parties agree that the confidentiality provisions under this Section 10.7 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.7 shall govern confidential treatment of all non-public information exchanged between the Parties related directly or indirectly to this Agreement as of and after the Effective Date.

10.8 RPS Confidentiality.

(a) Notwithstanding Section 10.7(a) of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, the number of bids per company, Project size, resource type, Delivery Term, Project location, Capacity Factor and Contract Capacity, Commercial Operation Date, Expected Initial Energy Delivery Date, Contract Quantity, Delivery Point, and the achievement of Project development Milestones.

(b) Seller acknowledges and agrees that pursuant to CPUC Decision D.06-06-066, which implements Senate Bill (SB) No. 1488 (2004 Cal. Stats., Ch. 690 (Sept. 22, 2004)), this Agreement may be publicly available three (3) years from the Commercial Operation Date stated herein. Seller further acknowledges that the CPUC's rules regarding confidential treatment of this Agreement is subject to change and therefore the timing and extent of disclosure is subject to amendment per CPUC order, rule or regulation.

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

10.10 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage. The obligations of the Seller in this Section 10.10 constitute material obligations of the Agreement.

(a) Workers' Compensation and Employers' Liability.

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

(ii) Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

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

(ii) The limit shall not be less than three million dollars (\$3,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

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

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

(C) include a severability of interest clause.

(c) Business Auto.

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

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

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

(d) All Risk Property Insurance.

(i) During construction, an All Risk Property insurance policy including earthquake and flood (with sublimits as appropriate) shall be maintained during the course of Work being performed and include Start-up and testing for installed equipment and delayed opening coverage. Such policy shall include coverage for materials and equipment while under the care, custody and control of the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(e) Additional Insurance Requirements.

(i) Upon Buyer's request, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.

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

(f) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against Buyer, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

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

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

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

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

10.12 Governing Law. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

10.13 General. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. The Parties acknowledge and agree that this Agreement is a "forward contract" (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.15. This Agreement shall be binding on each Party's successors and permitted assigns.

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

10.15 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.16 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written 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 States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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ARTICLE ELEVEN: TERMINATION EVENT

11.1 Force Majeure Termination Event.

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

(i) If prior to the Delivery Term, Seller is unable, due solely to a Force Majeure event, to achieve the Commercial Operation Date or place the Project into Commercial Operation by the Guaranteed Commercial Operation Date, after applicable extensions or cure periods have run, as set forth in Section 3.9(c); provided that if a Force Majeure event is caused by a catastrophic natural disaster, then upon Buyer’s written request to Seller, Seller shall have not more than ninety (90) days from the date of such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller shall provide Buyer a copy of the engineer’s report, at no cost to Buyer; provided further that if such engineer’s report concludes that the Project is capable of being repaired or replaced within twenty-four (24) months from the date of the Seller provides the engineer’s report to Buyer and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the repair or replacement period deemed necessary by the engineer’s report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and Seller has resumed and is satisfying its obligations under this Agreement.

(ii) If during the Delivery Term:

(A) the Project fails to deliver at least forty percent (40%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project and Buyer has provided Notice to Seller of such failure; provided that, if Seller within forty-five (45) days of receipt of Notice from Buyer, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from the above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the

mitigation period deemed necessary by Seller to repair the Project (which shall not exceed six (6) months); provided that Seller diligently pursues such mitigation plan throughout the mitigation period, and after which time Buyer may terminate this Agreement unless the Project has been repaired, and the Seller has resumed and is satisfying all of its obligations under this Agreement; or

(B) the Project is destroyed or rendered inoperable by a Force Majeure event caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced no later than twenty-four (24) months from the date of the report and Seller shall provide Buyer with a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer's report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying all of its obligations under this Agreement.

(b) Termination and Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Sections 2.6(a) and (b). The Parties agree that for a period of three (3) years from the date on which Buyer Notifies Seller of termination due to the Force Majeure Failure ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's management approval and CPUC Approval ("Buyer's Notice of First Offer Acceptance"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice of First Offer Acceptance to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, subject to CPUC Approval, if necessary; provided that the Contract Price may only be increased to reflect Seller's documented incremental costs in overcoming the Force Majeure event.

(iii) If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more

favorable terms and conditions (the “Revised Offer”) in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller’s Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

12.2 Management Negotiations.

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

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

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS shall administer. As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS’s then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be

compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the arbitrator shall administer by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

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

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

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

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

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

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

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

ARTICLE THIRTEEN: NOTICES

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

SIGNATURES

Agreement Execution

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

[SELLER, a (include place of formation and business type)]

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

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

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

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Pursuant to the terms of that certain **[insert name of the agreement]** (the “Agreement”), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the Agreement]** under the Agreement; or
 - B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the Agreement]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: **[print or type name]** _____

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

APPENDIX II

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), this letter (“Initial Energy Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Buyer has accepted delivery of the Product, as specified in the Agreement, as of this _____ day of _____, _____ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

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

Tariff: Dated: Docket Number:

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

[SELLER]

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX III
FORM OF PROGRESS REPORT

Progress Report

of

("Seller")

provided to

Pacific Gas and Electric Company
("Buyer")

[Date]

Instructions.

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

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

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For guidance, each “overview” subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous month. Each “expected activities” subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Progress Report to [REDACTED], together with all attachments and exhibits, with copies of this report delivered to GCMTGroup@pge.com and [REDACTED].

1. Executive Summary

Please provide an overview of the Project, including technology, size, location, and ownership.

Please provide a brief chronological cumulative summary of the **major** activities completed for each of the following aspects of the Project. Include the date each item was added to the summary (*e.g., in Milestone section “January 2012 – notice of Construction Start Date milestone achieved was reported to PG&E on January 15, 2012” and in Construction section “January 2012 - Notice to Proceed was issued to EPC contractor on January 10, 2012”*):

- 1.1 Milestones**
- 1.2 Governmental Approvals**
- 1.3 Financing**
- 1.4 Property Acquisition**
- 1.5 Design and Engineering**
- 1.6 Major Equipment procurement**
- 1.7 Construction**
- 1.8 Interconnection**
- 1.9 Startup**

2. Milestones

In this section, please include information on each Milestone listed in the Cover Sheet, plus any additional significant milestones related to the project.

2.1 Milestone schedule

Please state the status and progress of each Milestone. Provide the date of completion of completed Milestone(s) and the expected date of completion of uncompleted Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

2.2 Remedial Action Plan (applicable if Seller fails to achieve a Milestone by the Milestone Date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates. Describe the cause of the delay (*e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor*). Describe Seller’s Remedial Action Plan which shall include detailed plans to achieve the missed Milestone and subsequent Milestones.

3. Governmental Approvals

In this section, please include information on each of the Governmental Approvals required for the construction of the Units and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination, and/or issuance of permit. If the government agency maintains a website with information on the approval process for the Project, please provide a link.

3.1 Environmental Impact Report/Statement (EIR/EIS)

Please describe the environmental review process and each of the Governmental Approval(s) to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity in the process.

3.2 Other Governmental Approvals

Please describe each of the other Governmental Approvals to be obtained for the Project. Provide the status and completion date (expected or actual) of each significant activity.

3.3 Recent Governmental Approval activities

Please describe in detail the Governmental Approval activities that occurred during the previous calendar month.

3.4 Expected Governmental Approval activities

Please list all Governmental Approval activities that are expected to be performed during the current calendar month.

3.5 Governmental Approval Notices received

Please attach to this Progress Report copies of any Notices related to Governmental Approval activities received during the previous calendar month.

4. Financing Activities

In this section, please include information on each separate phase of financing for the Project. Include information on debt, equity, and/or federal or state loans or grants.

4.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

4.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

4.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

5. Property Acquisition Activities

In this section, please include information on property acquisition or site control activities for the Project.

5.1 Overview of property acquisition activities

Please provide a summary of the status and progress of each major property acquisition activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent property acquisition activities

Please describe in detail the property acquisition activities that occurred during the previous calendar month.

5.3 Expected property acquisition activities

Please list the property acquisition activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the Project.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Project to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the Project infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the Project.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Project, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full Notice to Proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 EPC Contractor Progress Report

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

8.5 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

8.6 OSHA Recordables

Please list all OSHA recordables from the previous calendar month.

8.7 Work stoppages

Please describe any work stoppage from the previous calendar month and its effect on the construction schedule.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the Project to deliver Product to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements [including Shared Facilities Agreements as applicable](#), design and construction of Interconnection Facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Project construction information in Section 8), [Shared Facilities as applicable](#), Network Upgrades, and grid outage and/or interconnection schedules.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Project may deliver Energy to the grid and/or declare Commercial Operation.

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

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

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV

**CONSTRUCTION START AND COMMERCIAL OPERATION
CERTIFICATION FORMS AND PROCEDURES**

Appendix IV-1: CONSTRUCTION START FORM OF CERTIFICATION

Appendix IV-2: COMMERCIAL OPERATION CERTIFICATION PROCEDURE

Attachment A Commercial Operation Form of Certification

APPENDIX IV-1
CONSTRUCTION START
FORM OF CERTIFICATION

_____(Date)_____

Director Contract Management and Settlements
Pacific Gas and Electric Company
77 Beale Street, Mail Code N12E
San Francisco, CA 94105-1702

Re: Construction Start Date

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

- a) the EPC Contract related to the Project was executed on _____;
- b) [permitting agency name] _ issued grading permits to the Seller on _____; and
- c) the Notice to Proceed was issued on _____ (attached), and.
- d) mobilization at the Project Site commenced on _____.

IN WITNESS WHEREOF, the undersigned has executed this certificate on behalf of the Seller as of the ___ day of _____.

(Seller)

(Name)

(Position)

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX IV-2

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

In accordance with the terms of that certain Power Purchase Agreement dated _____, 20__ by and between Pacific Gas and Electric Company (“Buyer”) and _____ (“Seller”) to declare and recognize the Commercial Operation Date of the Project, Seller shall provide all of the documents set forth herein to Buyer as of the Commercial Operation Date. All terms not defined herein shall have the meaning set forth in the Agreement.

- (1) A certification from an authorized officer of Seller, substantially in the form of Attachment A to this Appendix IV-2, dated as of the Commercial Operation Date; and
- (2) A certificate or report from a Licensed Professional Engineer containing all of the following:
 - (a) A statement that the Project has achieved Mechanical Completion and the date on which it was achieved;
 - (b) A statement that the Project has successfully completed Project Testing and the dates on which Seller has accepted the test results; and
 - (c) A statement that the Project has achieved Substantial Completion and the date on which it was achieved.
- (3) Seller has provided to Buyer all documents which demonstrate that Seller has satisfied all of the CAISO agreement, interconnection agreement, and metering requirements in Sections 3.4 and 3.6 and has enabled Buyer to schedule the Facility with the CAISO for the Facility’s full unrestricted output.
- (4) Definitions.
 - (a) “Mechanical Completion” means that (i) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (ii) the Project is ready for startup testing and commissioning; (iii) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.
 - (b) “Project Testing Completion” means the written acceptance to the EPC Contractor of the completion of startup testing / commissioning, emissions testing (as applicable), and performance / acceptance / warranty testing (all such testing shall be collectively referred to as “Project Testing”) as required under the EPC Contract. The objectives of the tests shall be generally (i) to verify that the Project has been properly designed and constructed to meet the performance and operating requirements of the EPC Contract; (ii) to assure warranty coverage for equipment and systems over their warranty periods.
 - (c) “Substantial Completion” means when the following has occurred: (i) the Project is sufficiently complete, in accordance with the EPC Contract, that Seller has full and unrestricted use and benefit of the Project in the use for which it is intended; (ii) the Project has achieved Mechanical Completion; (iii) utilities are fully connected and operating normally; (iv) all necessary permits have been issued; (v) the Project is fully and properly interconnected and synchronized with the electrical grid and is capable of producing electricity in accordance with the EPC Contract; (vi) the operating manual has been approved by Seller; (vii) all work other than incidental corrective and incidental punch list work is complete; and (viii) Seller has provided written acceptance to the EPC Contractor of substantial completion as that term is specifically defined in the EPC Contract.

APPENDIX IV-2 –Attachment A

COMMERCIAL OPERATION
FORM OF CERTIFICATION

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

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Seller hereby certifies and represents to Buyer the following:

- (1) Mechanical Completion of the Project was achieved on ____ [DATE] ____.
- (2) Project Testing Completion successfully occurred on:

[Seller to indicate each type of Project Testing and date completed]

- (a) NAME OF TEST [DATE]
- (b) NAME OF TEST [DATE]
- (c) NAME OF TEST [DATE]

- (3) Substantial Completion of the Project was achieved on ____ [DATE] ____
- (4) Pre-parallel inspection of the Project was successfully completed on ____ [DATE] ____
- (5) Authorization to parallel the Project was obtained on ____ [DATE] ____
- (6) Telemetering / SCADA visibility with PTO and CAISO grid control and power dispatch centers was obtained for the Project on ____ [DATE] ____
- (7) Reliability Network Upgrades (as defined in the CAISO Tariff) were completed on the Project on ____ [DATE] ____
- (8) Power system stabilizer testing and calibration was obtained for the Project on ____ [DATE] ____ or, was not required
- (9) Full Capacity Deliverability Status Finding from CAISO was obtained for the Project on ____ [DATE] ____ or, was not required because the Project is Energy Only.
- (10) The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on ____ [DATE] ____.
- (11) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO ~~tariff~~Tariff on ____ [DATE] ____.

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[The following shall only apply to Projects that utilize Shared Facilities]

(12) The CAISO has provided approval of the CAISO Exemption in accordance with the CAISO Tariff on [DATE] ____.

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

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EXECUTED BY SELLER this _____ day of _____, 20__.

[Licensed Professional Engineer]

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
License Number and LPE Stamp _____	

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APPENDIX V

GEP DAMAGES CALCULATION

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

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

Where:

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

B = Sum of Delivered Energy plus Deemed Delivered Energy, if any, over the Performance Measurement Period, in MWh

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

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

The Parties agree that in the above calculation of GEP Damages, the result of “(C-D)” is less than \$20/MWh, the “(C-D)” will be replaced with \$20/MWh.

APPENDIX VI

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify the applicable Participating Transmission Owner's (PTO) switching center

- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk to advise of the intent to parallel before any Start-up.
- Call the applicable Participating Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after the unit has been paralleled and report the parallel time and intended unit output.
- Call the applicable Participant Transmission Owner's (PTO) switching center and Buyer's Real-Time Desk after any routine separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PLANNED OUTAGES

1. Submit information by posting to PG&E's approved web-based system, which is located at www.pge.com under "Business to Business," or alternative website designated by PG&E (both, "PG&E's Website"). Once directed to the appropriate page, enter the username and password assigned by PG&E's Bilateral Settlements Group. If PG&E's Website is unavailable, implement the procedures set forth below:
 - a. **For all email correspondence, enter the following in the email subject field: Delivery Date Range, Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity,")**
 - b. For Annual Forecasts of Available Capacity, email to DAenergy@pge.com and Bilat_Settlements@pge.com.
 - c. For Monthly and Daily Forecasts of Available Capacity, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Schedules into the Day-Ahead Market, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.
 - e. For Hourly Forecasts of Available Capacity, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com.

- f. For Planned Outages and Prolonged Outages, complete the specifics below and submit by email to ESMOutageCoordinator@pge.com, DAenergy@pge.com, and Bilat_Settlements@pge.com.

i. **Email subject field: Company Name, Contract Name, Email Purpose, Date Range (For example: “dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity”)**

ii. **Email body:**

1. **Type of Outage: Planned Outage or Prolonged Outage**
2. **Start Date and Start Time**
3. **Estimated or Actual End Date and End Time for Outage**
4. **Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted**
5. **Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage.**
6. **Contact name: first and last name of the individual at the Unit to contact regarding the outage(s) at issue in the email.**

C. FORCED OUTAGE REPORTING

1. Forced Outages – Seller shall notify PG&E Merchant Generation desk verbally at (415) 973-4500 within ten (10) minutes of event or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.
 - a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.
 - b. After verbally notifying PG&E Merchant Generation desk of the forced outage, Seller shall also put forth commercially reasonable efforts to notify PG&E Settlements via PG&E’s Website, as defined above.
 - c. If PG&E’s Website is unavailable, submit the following information via email to Bilat_Settlements@pge.com.
 - i. **Email subject field: Company Name, Contract Name, Email Purpose, Date Range (For example: “dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity”)**

ii. **Email body:**

1. **Type of Outage: Forced Outage**
2. **Start Date and Start Time**
3. **Estimated or Actual End Date and End Time**

4. *Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted.*
5. *Text description of additional information as needed.*
6. *Primary and secondary causes of Forced Outage, including a detailed description of specific equipment involved and the nature of the problem or condition.*
7. *Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System (GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available.*
8. *Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.*
9. *Associated events, e.g. operation of Special Protection Schemes.*
10. *Impact on CAISO-controlled Grid.*

APPENDIX VII

FORM OF FINANCING CONSENT TO ASSIGNMENT

FINANCING CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2___], between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (“PG&E”), and [_____, *include place of formation and business type*] as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to as a “Party” and collectively as the “Parties”.

Recitals

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

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including, but not limited to a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

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

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing Documents of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).
3. Limitations on Assignment.
 - 3.1 Limitations. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party designated by Financing Provider, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement is a Permitted Transferee (as defined below). Financing Provider further acknowledges that this assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until

an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to designate a Permitted Transferee, after completing the process of obtaining PG&E’s acceptance in accordance with Section 3.2(a), to assume all of the rights and benefits and be subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if the Permitted Transferee were an original party to the Assigned Agreement.

3.2 Permitted Transferee

(a) A Permitted Transferee is a person or entity that (i) cures any and all defaults of Seller under the Assigned Agreement which are “Capable of Being Cured” as defined in Section 3.2(b); (ii) executes and delivers to PG&E a written assumption of all of Seller’s rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (iii) otherwise satisfies and complies with all requirements of the Assigned Agreement, including credit and collateral requirements; (iv) if requested by PG&E, provides (A) tax and enforceability assurance as PG&E may reasonably request to ensure PG&E does not incur any costs or loss any benefits by such assignment; (B) documentation to demonstrate the Permitted Transferee’s safety record and ability to meet applicable safety obligations; and (C) its ability to construct (if applicable), operate, and maintain the Project, and evidence that the Permitted Transferee has operated other energy storage facilities with a similar technology and operating profile; and (v) is reasonably acceptable to PG&E.

(b) “Capable of Being Cured” means that the Assigned Agreement specifies that a cure is available to Seller for a default(s), whether such cure is financial or by performance, and the terms of the cure as specified in the Assigned Agreement remain unfulfilled and available as set forth in the Assigned Agreement without modification. If the Assigned Agreement does not specify that a cure is available for a default(s), or a cure is specified but is no longer available as a cure (due to the passage of time or for any other reason), then the default(s) shall not be “Capable of Being Cured”. An incurable (default by Seller shall be cause for termination by PG&E of the Assigned Agreement and the Assigned Agreement will not be available for assignment to a Permitted Transferee.

(c) Financing Provider shall, following the occurrence of a Financing Default, Notify PG&E of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider’s rights under the Financing Documents, and PG&E shall, within thirty (30) Business Days of its receipt of such Notice, confirm to Financing Provider whether or not such proposed transferee is a Permitted Transferee (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a Permitted Transferee.

4. Cure Rights.

4.1 Notice to Financing Provider by PG&E. Concurrently with the delivery to Seller of any Notice of an event of default under the Assigned Agreement (each, an “Event of Default”) (and a “Default Notice”), PG&E shall provide a copy of such Default Notice to Financing Provider pursuant to Section 9.1 of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next Business Day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

4.2 Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, but only if the default is curable, PG&E agrees not to terminate the Assigned Agreement unless it or Seller first provides Financing Provider with Notice of the Event of

Default and PG&E affords Financing Provider an additional cure period of ten (10) calendar days for the financial cure or thirty (30) calendar days for a non-financial cure.

4.3 Failure to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4.1, then the Financing Provider's applicable cure period shall begin on the date on which Notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller, whichever is received first. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E's ability to terminate the Assigned Agreement (in each case only if both PG&E and Seller fail to deliver Notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E's right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such Notice.

4.4 Extension for Foreclosure Proceedings. If (a) it is necessary for the Financing Provider to have possession of the Project (as defined in the Assigned Agreement) in order for Financing Provider to cure an Event of Default which is Capable of Being Cured, as defined in Section 3.2(b), and (b) and Financing Provider commences foreclosure proceedings against Seller within thirty (30) calendar days of receiving Notice of an Event of Default from PG&E or Seller, whichever is received first, then Financing Provider shall be allowed an additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) calendar days; provided, however, that Financing Provider shall provide a written Notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) calendar days of receiving a Notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider or its designated Permitted Transferee succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or Permitted Transferee shall be subject to the requirements of Section 3 of this Consent and Agreement.

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

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

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

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

Assigned Agreement shall satisfy PG&E's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

9.1 Notices. All Notices given or requirements of a Party to Notify hereunder shall be in writing, receipt of which shall be deemed complete (i) at the close of business of the date of receipt, if delivered by hand or by electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such Notice was properly addressed to the appropriate address set forth below or to such other address that a Party may designate by prior Notice to the other Parties:

To Financing Provider:

Attn: _____
Department _____
Street Address: _____

Telephone: _____
Facsimile _____
Email: _____

To PG&E:

Attn: _____
Department _____
Street Address: _____

Telephone: _____
Facsimile _____
Email: _____

9.2 No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and Permitted Transferees and assigns under the Financing Documents.

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

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

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

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

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

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

9.9 Amendments and Termination. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all Parties hereto. Notwithstanding the foregoing, Seller and Financing Provider may terminate this Consent by delivering a signed notice to PG&E in substantially the form of Attachment A, attached hereto and made a part hereof.

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

PACIFIC GAS AND ELECTRIC COMPANY, *[FINANCING PROVIDER, a (include place of formation and business type)], as collateral agent*
a California corporation

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

ACKNOWLEDGEMENT

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

[SELLER, a (include place of formation and business type)]

Signature: _____
Name: _____
Title: _____
Date: _____

APPENDIX VII -- Attachment A

FINANCING CONSENT TERMINATION NOTICE

[Date]

VIA E-MAIL

Pacific Gas and Electric Company
P.O. Box 770000, Mail Code N12E
San Francisco, CA 94177

Attention: [Candice Chan, Director Contract Management Settlement]

Re: Termination of Financing Consent to Assignment

Dear [Ms. Chan]:

Pacific Gas and Electric Company ("PG&E") and [] ("Seller") are parties to a Power Purchase Agreement ("Agreement") dated as of [] for the Facility described as the [] Project (PG&E Log No. []). All capitalized terms used but not defined herein shall have the meanings provided to them in the Agreement or Consent described below.

Subsequent to the execution of the Agreement, Seller and PG&E entered into a Financing Consent and Agreement dated as of [] with [] as Financing Provider, with respect to the Agreement ("Consent"). Pursuant to Section 9.9 of the Consent, Seller and Financing Provider are hereby providing Notice that effective as of [] (the "Termination Date"), they now wish to terminate the Consent.

As of the Termination Date, PG&E is hereby instructed to make all payments due Seller under the Agreement directly to Seller as provided therein.

[SELLER, a (include place of formation and business type)]

[FINANCING PROVIDER, a (include place of formation and business type)], as collateral agent

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX VIII

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, "Charter Documents") as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate signed by an authorized officer of Seller (who must be a different person than the officers listed in clause (C) below), dated no earlier than ten (10) Business Days prior to the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller's incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms, an option to lease or purchase, or proof of ownership) satisfactory to Buyer. PG&E will not accept a "Memorandum of Option Agreement" as filed with a County Recorder because it is a summary of a transaction and lacks the actual terms of the option.
5. Evidence of CEC Certification and Verification (pre-certification) satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated no earlier than ten (10) Business Days prior to the Execution Date, to the effect that, to the best of such officer's knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.
7. An executed Letter of Concurrence substantially in the form specified in Appendix XI.

APPENDIX IX

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix IX.

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

APPENDIX IX

Attachment A

Form of Actual Availability Report

Seller's Actual Availability Report

All amounts are in MWs

<u>Settlement Interval No.</u>	<u>Date</u>	<u>HE1</u>	<u>HE2</u>	<u>HE3</u>	<u>HE4</u>	<u>HE5</u>	<u>HE6</u>	<u>HE7</u>	<u>HE8</u>	<u>HE9</u>	<u>HE10</u>	<u>HE11</u>	<u>HE12</u>	<u>HE13</u>	<u>HE14</u>	<u>HE15</u>	<u>HE16</u>	<u>HE17</u>	<u>HE18</u>	<u>HE19</u>	<u>HE20</u>	<u>HE21</u>	<u>HE22</u>	<u>HE23</u>	<u>HE24</u>
1	mm/dd/yyyy																								
2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
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Date/Time of Submittal _____

APPENDIX X

TELEMETRY PARAMETERS FOR SOLAR FACILITY

Technology Type	Telemetry Parameters	Units
Solar Photovoltaic	Back Panel Temperature	°C
	Global Horizontal Irradiance	W/m ²
	Plane of Array Irradiance (If PV is fixed) Direct Normal Irradiance (If PV is Tracking)	W/m ²
	Wind Speed	m/s
	Peak Wind Speed (Within 1 minute)	m/s
	Wind Direction	Degrees
	Ambient Air Temperature	°C
	Dewpoint Air Temperature or Relative Humidity	°C
	Horizontal Visibility	m
	Precipitation (Rain Rate)	mm/hr
	Precipitation (Running 30 day total)	mm
	Barometric Pressure	Millibars or Hecto Pascals (HPa)

APPENDIX XI

FORM OF LETTER OF CONCURRENCE

[Date]

[Name]
[Position]
[Company]
[Address]

Re: Letter of Concurrence Regarding Control of [Name] Facility

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company (“PG&E”) and [Company Name] with respect to [Facility Name (the “Facility”)] for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission’s (“Commission”) Order No. 697.¹ Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.² The Commission further requires that “a seller making such an affirmative statement seek a ‘letter of concurrence’ from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing.”³

PG&E and [Company Name] have executed a [power purchase and sale agreement (the “Agreement”)] with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] maintains sole control of the Facility. [Company Name] agrees to provide subsequent Letters of Concurrence as may be necessary should any of the information provided herein change after the execution date of this letter.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

[Author]
[Position]
Pacific Gas and Electric Company

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

² Order No. 697 at P 186.

³ Order No. 697 at P 187.

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____

[Name]

[Company Position]

[Company Name]

APPENDIX XII

SUPPLIER DIVERSITY PROGRAM

1. Seller shall provide Women-, Minority-, and service Disabled Veteran-, and Lesbian, Gay, Bisexual and/or Transgender-owned Business Enterprises, as verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156 (“WMDVLBE”), the maximum practicable opportunity to participate in the performance of work supporting Seller’s construction, operation, and maintenance of the Project. General Order 156 can be found on <http://www.cpuc.ca.gov/puc/documents/go.htm> .
2. Upon request from Buyer, Seller shall provide a separate “Supplier Plan” consisting of a specific list of suppliers that may participate in the performance of the work supporting the construction of the Project prior to the Commercial Operation Date and operation and maintenance of the Project after the Initial Energy Delivery Date, and a statement setting forth any additional efforts Seller will employ to increase the participation of WMDVLBE suppliers supporting the construction, operation and maintenance of the Project.
3. Upon request from Buyer, but no less than once per 365 day period of time between the Execution Date and the end of the Delivery Term, Seller shall report its spending with WMDVLBE suppliers per instructions to be provided by PG&E.
4. Targets.
 - a) Seller’s supplier diversity spending target for Work supporting the construction of the Project prior to the Commercial Operation Date is ____ percent (____%) as measured relative to Seller’s total expenditures on construction of the Project prior to the Commercial Operation Date, and;
 - b) Seller’s annual supplier diversity spending target for Work supporting the operation and maintenance of the Project after the Initial Energy Delivery Date is ____percent (____%) as measured relative to the net payments made by Buyer to Seller in each Contract Year.
5. Seller shall use good faith efforts in meeting the requirements of this Appendix XII which efforts shall be material obligations.

[Bracketed language applicable to WMDVLBE Sellers only]

6. Seller is a WMDVLBE, as certified by _____ [please identify the certifying agency].

**APPENDIX XIII
PROJECT SPECIFICATIONS AND CONTRACT CAPACITY CALCULATION**

I. PROJECT SPECIFICATIONS

“MVA” means megavolt ampere, the unit of apparent power.

“Nameplate Rated Output” means, with respect to an inverter or electric generator, the MVA that the manufacturer of the inverter or generator has designed such equipment to produce under normal operating conditions as specified by such manufacturer.

“Designated Power Factor” means, with respect to an inverter or electric generator, the power factor required to satisfy the portion of the Project’s reactive power requirements that are specified in *[please identify the applicable source, such as the PTO’s Interconnection Handbook, the CAISO’s Phase II Study, or the Generator Interconnection Agreement for the Project]* and are not being satisfied by other sources of reactive power within the Project.

“Nameplate Rated Power” means, with respect to an inverter or electric generator, the multiplication product of the Nameplate Rated Output and the Designated Power Factor for such inverter or generator, in MWs.

The project specifications shall consist of the following ten (10) items (each item of which shall be a “Project Specification”). As provided in Section 3.1(g), Seller shall not make any change or modification to any Project Specification without Buyer’s prior written consent.

1. Project name:
2. Project Site name:
3. Project physical address:
4. Total number of Units at the Project:
5. Technology Type:
6. Interconnection Point of Project:
7. Service Territory of Project:
8. Substation:
9. Description of Units:
 - a. For each type of inverter in the Project, specify in the table below the type, the number of inverters, the Nameplate Rated Output, the total Nameplate Rated Output, the Designated Power Factor, the Nameplate Rated Power and the total Nameplate Rated Power: *[add rows as needed]*

Inverter Type	Number of Inverters	Nameplate Rated Output (MVA)		Designated Power Factor	Nameplate Rated Power (MW)	
		Per Inverter	Total		Per Inverter	Total
Total		N/A			N/A	

- b. For each type of panel technology (e.g., multi-crystalline silicon, mono-crystalline silicon, thin-film CdTe, multi-junction, bifacial, concentrating, etc.) and each type of

panel orientation (e.g., fixed-mount, tilt-angle, azimuth, single-axis tracker, double axis tracker, etc.) specify in the table below the technology, the type of orientation and the total DC rating at Standard Test Conditions: *[add rows as needed]*

Panel Technology	Orientation	DC Rating at STC (MW _{DC})
Total	N/A	

“Standard Test Conditions” means, with respect to determining the nameplate DC rating of a solar PV panel in a factory flash test, an irradiance of 1,000 W/m², a panel temperature of 25°C, and an air mass of 1.5.

10. Description of Land:

The Site contains the following Assessor Parcel Numbers upon which the Project is located and as identified on the topographical map included in this Appendix XIII below:

11. Description of Interconnection Facilities and metering:

The Project will use the following Interconnection Facilities- Shared Facilities, as applicable, and metering configuration as identified in this one-line diagram included in this Appendix XIII:

[Insert One-Line Diagram for Interconnection Facilities, Shared Facilities as applicable, and Metering]

12. Maps: The Site is identified in the following topographical map:

[INSERT MAP]

II. CONTRACT CAPACITY CALCULATION

The Contract Capacity specified in Section B of the Cover Sheet shall be the factor (A) minus each of the factors (B) through (E) provided below:

A	Sum of the Nameplate Rated Power of all inverters/generators	_____ MW
B	Calculated electrical losses from inverter/generator output terminals to CAISO revenue meter <u>Revenue Meter</u> (s) (with all inverters/generators operating at Nameplate Rated Outputs)	_____ MW
C	Electrical Losses	_____ MW
D	Auxiliary and station loads coincident with inverters/generators operating at Nameplate Rated Outputs	_____ MW
E	Other factors (explain below)	_____ MW
F	Contract Capacity at the Delivery Point (F = A – B – C – D – E), which shall be the same as the MW amount specified for the Contract Capacity in Section B of the Cover Sheet	_____ MW

Inputs for the Nameplate Rated Power calculation:

Designated Power Factor:

	Leading	Lagging
Project power factor requirements	_____	_____
Seller's Designated Power Factor for inverters/generators	_____	_____

Power factor requirement is measured at (check one):

- inverter/generator terminals; Point of Interconnection; Other:_____

APPENDIX XIV

SECTION 3.3(e) LIQUIDATED DAMAGES CALCULATION

I. Equation and Formulas for Calculating RA Deficiency Amount

As provided in Section 3.3(e)(ii)(B), the formula for calculating the RA Deficiency Amount in a given RA Shortfall Month is:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

Where the:

- A. RA Value shall be \$4,010/MW/Month in calendar year 2017 and shall escalate at 2.5% per year for each succeeding calendar year; and
- B. Expected Net Qualifying Capacity for projects that selected Full Capacity Deliverability Status shall be the product of the Contract Capacity and the applicable monthly Qualifying Capacity factor in the table below; or
- C. Expected Net Qualifying Capacity for Projects seeking Partial Capacity Deliverability Status shall be the product of the Partial Capacity Deliverability Status Amount and the applicable monthly Qualifying Capacity factor in the table below..

Table XIV-1 Monthly Qualifying Capacity Factor

Month	Solar
Jan	0.0%
Feb	2.4%
March	10.4%
April	33.2%
May	30.5%
June	44.8%
July	41.7%
Aug	41.0%
Sept	33.4%
Oct	29.4%
Nov	4.1%
Dec	0.0%

II. Example of Calculation of the RA Deficiency Amount (for illustrative purposes only) if:

- RA Shortfall Month is June 2020
- Project is a solar system
- Contract Capacity is 20 MW
- RA Start Date is based on the Expected FCDS Date, which is January 1, 2020
- FCDS is achieved on August 14, 2020

RA Value (\$/MW/Month) = \$4,010.00, escalated at 2.5% per year for 3 years, from 2017 to 2020

$$\$4,010 \times (1.025)^3 = \$4,318/\text{MW}/\text{Month}.$$

Monthly Qualifying Capacity factor for a solar project in June is 44.8% (from table above).

Expected Net Qualifying Capacity =

$$\text{Contract Capacity (MW)} \times \text{monthly Qualifying Capacity factor} =$$

$$20 \text{ MW} \times 44.8\% = 8.96 \text{ MW}$$

RA Deficiency Amount (\$/Month) =

$$\text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)} =$$

$$\$4,318/\text{MW}/\text{Month} \times 8.96 \text{ MW} = \$38,689.28$$

In this example, the RA Shortfall Period is from January through October 2020. The calculations above would be performed and the result applied for each month in this RA Shortfall Period.

**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

AT&T	Don Pickett & Associates, Inc.	Office of Ratepayer Advocates
Albion Power Company	Douglass & Liddell	OnGrid Solar
Alcantar & Kahl LLP	Downey & Brand	Pacific Gas and Electric Company
Anderson & Poole	Ellison Schneider & Harris LLP	Praxair
Atlas ReFuel	Energy Management Service	Regulatory & Cogeneration Service, Inc.
BART	Evaluation + Strategy for Social Innovation	SCD Energy Solutions
Barkovich & Yap, Inc.	G. A. Krause & Assoc.	SCE
Braun Blaising Smith Wynne P.C.	GenOn Energy, Inc.	SDG&E and SoCalGas
CalCom Solar	Goodin, MacBride, Squeri, Schlotz & Ritchie	SPURR
California Cotton Ginners & Growers Assn	Green Charge Networks	San Francisco Water Power and Sewer
California Energy Commission	Green Power Institute	Seattle City Light
California Public Utilities Commission	Hanna & Morton	Sempra Utilities
California State Association of Counties	ICF	Southern California Edison Company
Calpine	International Power Technology	Southern California Gas Company
Casner, Steve	Intestate Gas Services, Inc.	Spark Energy
Cenergy Power	Kelly Group	Sun Light & Power
Center for Biological Diversity	Ken Bohn Consulting	Sunshine Design
City of Palo Alto	Leviton Manufacturing Co., Inc.	Tecogen, Inc.
City of San Jose	Linde	TerraVerde Renewable Partners
Clean Power Research	Los Angeles County Integrated Waste Management Task Force	Tiger Natural Gas, Inc.
Coast Economic Consulting	Los Angeles Dept of Water & Power	TransCanada
Commercial Energy	MRW & Associates	Troutman Sanders LLP
Cool Earth Solar, Inc.	Manatt Phelps Phillips	Utility Cost Management
County of Tehama - Department of Public Works	Marin Energy Authority	Utility Power Solutions
Crossborder Energy	McKenna Long & Aldridge LLP	Utility Specialists
Crown Road Energy, LLC	McKenzie & Associates	Verizon
Davis Wright Tremaine LLP	Modesto Irrigation District	Water and Energy Consulting
Day Carter Murphy	Morgan Stanley	Wellhead Electric Company
Defense Energy Support Center	NLine Energy, Inc.	Western Manufactured Housing Communities Association (WMA)
Dept of General Services	NRG Solar	Yep Energy
Division of Ratepayer Advocates	Nexant, Inc.	