

ATTACHMENT A – EXHIBIT 1

{Instructions: Review this Amendment to ensure that (i) any term with a bracketed asterisk next to it is defined in the Agreement, and (ii) the defined terms and all other provisions in this Amendment, including but not limited to payment provisions, do not duplicate, and are otherwise consistent with the defined terms and other provisions of the Agreement that is the subject of this Amendment. This note, the bracketed asterisks and any other instructions must be deleted before execution of this Amendment.

Buyer is only required to make this Amendment available to Seller as of the Settlement Effective Date (as defined in that certain Settlement Agreement, dated October 8, 2010, which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001). If Seller elects to enter into this Amendment, this Amendment must be fully executed by the Parties on or before the 180th calendar day following the Settlement Effective Date. Further, Buyer is only required to make this Amendment available to Seller if Buyer and Seller are parties to an existing power purchase and sale agreement for Qualifying Facilities that is in full force and effect on the Settlement Effective Date (including any extensions of such existing power purchase and sale agreement, as set forth in D.07-09-040, D.04-01-050 or D.05-12-009), excluding power purchase and sale agreement entered into pursuant to the RPS Program.}

AMENDMENT NO. []
TO
[TITLE OF APPLICABLE CONTRACT]
(PG&E Log # [])

This Amendment No. [] to [Title of applicable contract] (this "Amendment"), by and between Pacific Gas and Electric Company, a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is entered into and effective as of [Date of execution] (the "Amendment Effective Date"). Buyer and Seller are sometimes referred to in this Amendment individually as a "Party" and collectively as the "Parties". Unless the context specifies or requires, any initially capitalized term used but not otherwise defined in this Amendment has the meaning given to such term in the Agreement (as defined in Recital A).

CONDITIONS PRECEDENT

Even if fully executed, this Amendment shall not be effective until and unless each of the following conditions has been fully satisfied or waived in writing by the Parties.

- A.** The California Public Utilities Commission ("Commission") must approve the "Settlement Agreement" (as defined in Recital D) in a final and non-appealable decision, without condition or modification unacceptable to Buyer or Seller.
- B.** The Federal Energy Regulatory Commission ("FERC") must approve the elimination of the PURPA must-take provision as requested by the California Investor-Owned Utilities, without condition or modification unacceptable to Buyer or Seller.
- C.** This Amendment must be fully executed by the Parties on or before the 180th calendar day following the Settlement Agreement Effective Date.
- D.** This Amendment is available to Seller only if Buyer and Seller are parties to a currently effective QF contract.

RECITALS

- A. The Parties entered into that certain [Title of applicable contract] dated [Date of applicable contract], [as amended by [Title and date of earlier amendments, if any]] ([collectively,] the "Agreement").
- B. On or about September 20, 2007, the Commission issued Decision 07-09-040 (the "Decision") which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to Qualifying Facilities meeting the eligibility criteria set forth in the Decision.
- C. Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the "Settling Parties") entered into Commission-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.
- D. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the "Settlement Agreement"), which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.
- E. On [Date of Commission Decision], the Commission issued Decision [] approving the Settlement Agreement.
- F. Pursuant to the Settlement Agreement, the Settling Parties developed a form of a power purchase agreement amendment (the "Form Amendment") that certain Qualifying Facilities may elect, at their option and subject to certain restrictions set forth in the Settlement Agreement, to enter into with the applicable California investor-owned utility. This Amendment is based on the Form Amendment.
- G. Buyer must offer this Amendment to Seller in order to fulfill its obligations under the Settlement Agreement, and Seller desires to accept such offer and enter into this Amendment.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. AMENDMENTS TO THE AGREEMENT

- 1.01 Pricing.** Section [] of the Agreement is deleted and replaced as of the Pricing Effective Date (as defined below) with one of the options ("Options") set forth below in this Section 1.01, which must be checked by Seller in the blank space provided, for next to such Option, and will be the only Option incorporated into the Agreement; *provided*,

however, that if Seller selects Option C.1, Seller must also select one of Option A, Option B, Option C.2 or Option C.3, as further described in Option C.1 below.

For purposes of this Section 1.01, the "Pricing Effective Date" means the later of the following events or dates: (1) the Amendment Effective Date; (2) [], which is the primary expiration date of a currently-effective fixed price period or fixed heat rate period, as provided in that certain [Title of applicable amendment], dated [Date of applicable amendment], between the Parties; (3) if Seller selects Option B, Option C.2, or Option C.3, January 1, 2011.

To the extent that the Agreement requires Buyer to purchase and pay for Energy[*] based on the short run avoided cost pricing scheme, and Seller elects Option A, Option A will replace such short run avoided cost pricing scheme.

{Instructions: The Options set forth below must be modified to account for the termination of the Agreement that is the subject of this Amendment. Specifically, if the Agreement terminates before the commencement of any of the time-periods set forth in an Option, the provisions of this Amendment relating to such time-periods must be deleted, and all section references and any other cross references should be updated as necessary. By way of example only, with respect to Option A, if the Agreement expires in 2011, the final two rows of the first table may need to be deleted, as well as all other references to the calculation of the Energy price on and after January 1, 2012. }

OPTION A.

- (a) Energy Price. Subject to subsections (b) through (e) of this Section, Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price \$/kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

Applicable HR = The Heat Rate for the specified time-period, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,225
January 1, 2013 through December 31, 2014	8,125
January 1, 2015 until the termination of this Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

GHG Charges = All taxes, charges or fees assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable HR or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula.

TOU (i.e., Time of Use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
Peak	1.2564	N/A
Partial-Peak	1.1535	1.1395
Off-Peak	0.9155	0.9628
Super Off-Peak	0.7439	0.8216

Buyer shall update the TOU factors set forth above at the beginning of each calendar year using the energy-only portion of the TOU factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC-approved TOU periods) set forth in Buyer's most recent RPS solicitation (e.g., 2012 TOU factors are those based on Buyer's 2011 RPS solicitation).

Off-Peak TOU factors will be calculated as a residual – similar to the current method – to preserve the correctness of the monthly hourly weighting. An example for Period A – Summer is:

$$\frac{[\text{Number of hours in month} - (1.2564 * \text{Number of Summer Peak hours in Month}) - (1.1535 * \text{Number of Summer Partial-Peak hours in Month}) - (0.7439 * \text{Number of Summer Super Off-Peak hours in Month})]}{\text{Number of Summer Off-Peak hours in Month}}$$

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where the hourly location adjustment (i.e., LA) will be based on the hourly Day-Ahead prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e.,

SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

(b) Energy Price during the Floor Test Term.

(i) If there is a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), then, during the Floor Test Term, the Energy price will be the higher of the two formulas provided in subsection (b)(i)(1) or (b)(i)(2) of this Section (the "GHG Floor Test"):

(1) Energy Price \$/kWh = ((Market Heat Rate * BTGP/1,000,000) + VOM) * TOU + LA

Where:

Market Heat Rate (Btu/kWh) = As defined in Section [];

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

OR

(2) Energy Price \$/kWh = ((Applicable HR * (BTGP + GHG Allowance Price) /1,000,000) + VOM) * TOU + LA + GHG Charges

Where:

Applicable HR = (A) 8,225 Btu/kWh through December 31, 2012; (B) 8,125 Btu/kWh from January 1, 2013 through December 31, 2014; and (C) Actual HR from January 1, 2015 until the end of the Floor Test Term;

BTGP (\$/MMBtu) = As set forth above;

GHG Allowance Price (\$/MMBtu) = Allowance Cost (\$/MT) * 117lbs of GHG per MMBtu / 2,204.6 lbs per MT

Where:

Allowance Cost (\$/MT) = The cost of one Allowance, determined using the GHG Auction clearing price from the latest GHG Auction that has taken place during the calendar quarter immediately preceding the date that Buyer's payment is due to Seller; *provided, however*, that if there is no GHG Auction held during the applicable time-period, then the Allowance Cost is determined in accordance with subsection (d) of this Section.

VOM (\$/kWh) = As set forth above;

GHG Charges (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (c) Free Allowance Reporting and Allocation. If, at any time, Buyer makes a monthly payment to Seller utilizing the GHG Floor Test formula set forth in subsection (b)(i)(2) of this Section, then Buyer shall deduct from the monthly payment to Seller for the applicable month the value of the Free Allowances disclosed in and based on all Free Allowance Notices that have not already been applied to a prior payment to Seller; *provided, however*, that if Buyer, using reasonable efforts, is unable to process such payment adjustment for the applicable month, then Buyer shall make such payment adjustment to the next monthly payment due to Seller. For any month that Buyer utilizes the formula set forth in subsection (b)(i)(1) of this Section to make a monthly payment to Seller, Buyer shall maintain a record of the value and quantity of all Free Allowances disclosed in the Free Allowance Notices, if any, and shall deduct the value of such Free Allowances to any subsequent monthly payment due to Seller where Buyer calculates such monthly payment utilizing the formula set forth in subsection (b)(i)(2) of this Section until such time that the value of all such Free Allowances are expended.

In order for Buyer to make the payment adjustment set forth in the immediately preceding paragraph, Seller agrees to deliver to Buyer, within twenty (20) calendar days of receiving any Free Allowances, a Free Allowance Notice for the applicable month, which Free Allowance Notice must include all Additional GHG Documentation. Buyer shall value any such Free Allowances using the same methodology Buyer uses in valuing the Allowance Cost, as set forth above.

- (d) Determining Allowance Costs under the GHG Floor Test if there is No GHG Auction. This subsection (d) is applicable if no GHG Auction has been held during the time-period for which the Allowance Cost variable set forth in subsection (b)(i) of this Section is to be determined. In such an instance, publicly available indices will be used to determine the price for the applicable period. If no such indices exist, Buyer will meet with the Trade Organizations to negotiate in good faith to reach an agreement on setting the Allowance Cost variable. If,

after negotiating for fifteen (15) Business Days, Buyer and the Trade Organizations have not reached an agreement on setting the Allowance Cost variable, then Buyer and the Trade Organizations shall each select, within fifteen (15) calendar days after such failed negotiations, price quotations from two (2) different Reference Market-Makers, for a total of four (4) price quotations. The Allowance Cost variable for the applicable time-period will be determined by taking the average of the four (4) price quotations so selected by Buyer and the Trade Organizations. Seller agrees and acknowledges that it shall be bound by any agreement as to the Allowance Cost variable between Buyer and the Trade Organizations, in accordance with the foregoing.

- (e) Energy Price from the End of the Floor Test Term. As of the end of the Floor Test Term until the termination of this Agreement, Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price } \$/\text{kWh} = ((\text{Market Heat Rate} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Market Heat Rate (Btu/kWh) = As defined in Section [redacted];

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (f) Seller's Responsibility. Other than Buyer's payment to Seller for GHG Compliance Costs and GHG Charges as set forth in payment formulae in Section [redacted] above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of GHG emissions with respect to Seller or the Generating Facility.

OPTION B.

Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Applicable HR = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

TOU (i.e., Time of Use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
Peak	1.2564	N/A
Partial-Peak	1.1535	1.1395
Off-Peak	0.9155	0.9628
Super Off-Peak	0.7439	0.8216

Buyer shall update the TOU factors set forth above at the beginning of each calendar year using the energy-only portion of the TOU factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC-approved TOU periods) set forth in Buyer's most recent RPS solicitation (e.g., 2012 TOU factors are those based on Buyer's 2011 RPS solicitation).

Off-Peak TOU factors will be calculated as a residual – similar to the current method – to preserve the correctness of the monthly hourly weighting. An example for Period A – Summer is:

$$\frac{[\text{Number of hours in month} - (1.2564 * \text{Number of Summer Peak hours in Month}) - (1.1535 * \text{Number of Summer Partial-Peak hours in Month}) - (0.7439 * \text{Number of Summer Super Off-Peak hours in Month})]}{\text{Number of Summer Off-Peak hours in Month}}$$

and

$$LA \text{ (i.e., hourly location adjustment, in \$/kWh)} = LMP_{QF} - LMP_{\text{Trading Hub}}$$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

{Instructions: Use the above formula if the Qualifying Facility is a "cogeneration facility", as described in 18 CFR §292.203(b), or a non-renewable "small power production facility", as described in 18 CFR §292.203(a).}

LA (i.e., hourly location adjustment, in \$/kWh) = Zero (0).

{Instructions: Use the above formula if the Qualifying Facility is a renewable "small power production facility", as described in 18 CFR §292.203(a).}

As part of calculating the Energy price, the hourly location adjustment (i.e., LA) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

Seller's Responsibility. Notwithstanding anything to the contrary set forth in this Agreement, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility.

OPTION C.1.

For a period of no more than ninety (90) calendar days following the Amendment Effective Date, Buyer and Seller shall negotiate in good faith so that Buyer and Seller shall, if such negotiations are successful, enter into a mutually agreed upon tolling agreement ("Tolling Agreement"), pursuant to which Seller shall cause the Generating Facility to be dispatchable and Buyer shall purchase electric energy and related attributes from Seller on a dispatchable basis. Until such time that Buyer and Seller have entered into such Tolling Agreement and the payment terms thereof are in effect, or if Buyer and Seller are unable to successfully negotiate and enter into a Tolling Agreement, Seller shall be paid in accordance with the terms of this Agreement, as the pricing provision have been amended by this Agreement, pursuant to which Seller selected to receive payment under one of Option A, Option B, Option C.2, or Option C.3.

OPTION C.2.

Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\$/\text{kWh} = [((\text{Applicable HR} * \text{TOU}) - \text{Applicable BTU}) * \text{BTGP}/1,000,000] + (\text{VOM} * \text{TOU}) + \text{LA}$$

Where:

Applicable HR = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

TOU (i.e., Time of Use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
Peak	1.2564	N/A
Partial-Peak	1.1535	1.1395
Off-Peak	0.9155	0.9628
Super Off-Peak	0.7439	0.8216

Buyer shall update the TOU factors set forth above at the beginning of each calendar year using the energy-only portion of the TOU factors (as adjusted by Buyer, if necessary, to reflect Buyer’s CPUC-approved TOU periods) set forth in Buyer’s most recent RPS solicitation (e.g., 2012 TOU factors are those based on Buyer’s 2011 RPS solicitation).

Off-Peak TOU factors will be calculated as a residual – similar to the current method – to preserve the correctness of the monthly hourly weighting. An example for Period A – Summer is:

$$[\text{Number of hours in month} - (1.2564 * \text{Number of Summer Peak hours in Month}) - (1.1535 * \text{Number of Summer Partial-Peak hours in Month}) - (0.7439 * \text{Number of Summer Super Off-Peak hours in Month})] / \text{Number of Summer Off-Peak hours in Month}$$

Applicable BTU = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Agreement;

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246; and

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

LMP_{Trading Hub} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Agreement as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Agreement, Buyer shall make payments to Seller for GHG Compliance Costs, if applicable, in accordance with the following formula (and subject to accounting for Free Allowances, as described below), with the first such payment to be made on or before the thirtieth (30th) Business Day after the end of the First GHG Year, and additional GHG Compliance Costs payments to be made on or before the thirtieth (30th) Business Day after at the end of each calendar quarter following the First GHG Year:

$(\$) = ((E * 936 \text{ lbs/MWh}) \div 2204.6 \text{ lbs/MT of Greenhouse Gas}) * \text{Allowance Cost}$

Where:

E = Energy (in MWh) generated by the Generating Facility and delivered to Buyer during the applicable time-period; and

Allowance Cost = Zero (0); *provided, however*, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost*

equals the lesser of (i) \$20/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Buyer, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Buyer. Buyer shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Buyer shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Buyer the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility.

OPTION C.3.

Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$$/kWh = [((Applicable HR * TOU) - Applicable BTU) * BTGP/1,000,000] + (VOM * TOU) + LA$$

Where:

Applicable HR = The Heat Rate applicable to the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

TOU (i.e., Time of Use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
Peak	1.2564	N/A
Partial-Peak	1.1535	1.1395
Off-Peak	0.9155	0.9628
Super Off-Peak	0.7439	0.8216

Buyer shall update the TOU factors set forth above at the beginning of each calendar year using the energy-only portion of the TOU factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC-approved TOU periods) set forth in Buyer's most recent RPS solicitation (e.g., 2012 TOU factors are those based on Buyer's 2011 RPS solicitation).

Off-Peak TOU factors will be calculated as a residual – similar to the current method – to preserve the correctness of the monthly hourly weighting. An example for Period A – Summer is:

$$[\text{Number of hours in month} - (1.2564 * \text{Number of Summer Peak hours in Month}) - (1.1535 * \text{Number of Summer Partial-Peak hours in Month}) - (0.7439 * \text{Number of Summer Super Off-Peak hours in Month})] / \text{Number of Summer Off-Peak hours in Month}$$

Applicable BTU = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Agreement;

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{\text{Trading Hub}}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

LMP_{Trading Hub} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Agreement as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Agreement, Buyer shall, within thirty (30) Business Days of receiving Seller's Quarterly Emissions Notice, make payments for the applicable calendar quarter to Seller for GHG Compliance Costs, if applicable, up to the Annual Facility Emissions Cap, according to the following formula and subject to accounting for Free Allowances, as described below (*provided, however*, that Seller must also deliver the information required in the Base Year Emissions Notice before Buyer makes any such payments):

$$(\$) = G * \text{Allowance Cost}$$

Where:

G = Greenhouse Gas emissions (in MTs) attributable to the Generating Facility for Energy generated by the Generating Facility and delivered to Buyer during the applicable quarter and based on Seller's Quarterly Emissions Notice. *G* is calculated using the formula $G_e * [E_d / (E_{sh} + E_d)]$ (as these variables are described in the definition of "Free Allowance Notice" set forth in Section 1.07 of this Amendment); *provided* that, once the aggregate quantity of the variable *G* for the applicable calendar year equals or exceeds the Annual Facility Emissions Cap for such calendar year, *G* equals zero (0); and *provided further* that, if such Greenhouse Gas emissions equals or exceeds the Annual Facility Emissions Cap for such calendar year in the middle of the applicable month, Buyer shall make a pro rated payment for Seller's GHG Compliance Costs for the applicable month;

and

Allowance Cost = Zero (0); *provided, however*, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost* equals the lesser of (i) \$12.50/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Buyer, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Buyer. Buyer shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Buyer shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free

Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Buyer the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility.

1.02 Reporting Requirements. The following is added to the Agreement as Section []:

Reporting Requirements.

- (a) From the Amendment Effective Date through the end of the term of this Agreement (and for any period following the termination of this Agreement to the extent relating back to the term of this Agreement), Seller shall provide to Buyer the following information (together, the "Annual GHG Reports"):
 - (i) On or before the fifth (5th) Business Day following Seller's timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB, detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Report"), Seller shall deliver such CARB Annual Report to Buyer; and
 - (ii) To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; **and (5) the number of Allowances (including Free Allowances) held and/or**

surrendered by Seller for such calendar year during any period where the Energy price is calculated based on the GHG Floor Test.]

{Instructions: The bracketed and highlighted provision immediately above is only applicable if Seller selected Option A, and should otherwise be deleted.}

- (b) If Buyer requires any other information not delineated in subsection (a) of this Section in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB and/or by any other Governmental Authority and imposed on Buyer (other than the information that Seller must provide in accordance with subsection (c) of this Section), then Buyer shall meet and confer with the Trade Organizations regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations, in accordance with the foregoing.
- (c) Each Party shall deliver to the other Party, or before the tenth (10th) Business Day following receipt of a notice from the other Party, such information as such other Party is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement.

Buyer will review the Annual GHG Reports described in this Section to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under this Agreement, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under this Agreement. If this Agreement terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the thirty- (30) day period after the termination of this Agreement.

To the extent that the information provided by the disclosing Party in accordance with this Section is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Facilities under the existing Qualifying Facilities monitoring compliance program.

1.03 Market Disruption Event. The following is added to the Agreement as Section []:

Unless this Agreement has terminated, if, on or after the date that the Market Heat Rate applies to and is used in the calculation of the Energy price and until the end of the term of this Agreement, there occurs a Market Disruption Event, then the Market Heat Rate for

the affected Trading Day(s) must be determined by reference to the Market Heat Rate for the first Trading Day thereafter on which no Market Disruption Event exists; *provided, however*, that if the Market Heat Rate is not so determined within five (5) Trading Days after the Market Disruption Event occurred or existed, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on a Market Heat Rate (or a method for determining a Market Heat Rate), and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Trading Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Market Heat Rate will be determined in good faith by taking the average of the price quotations for energy and relevant Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by each of Buyer and the Trade Organizations (for a total of four (4) price quotations). Seller hereby agrees and acknowledges that it shall be bound by any agreement as to a Market Heat Rate (or a method for determining a Market Heat Rate) between Buyer and the Trade Organizations, in accordance with the foregoing.

1.04 Addition of Forecasting Appendix. The following is added to the Agreement as Appendix []:

1. General Requirements. The Parties shall make good faith efforts to abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to (i) support Buyer's compliance with the CAISO's scheduling requirements related to the Agreement, (ii) accommodate changes to the Parties' respective generation technology and organizational structure, (iii) address changes in the Operating[*] and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions. The Parties agree that the Forecasts generated by, or otherwise resulting from, the Forecasting requirements and procedures in this Appendix are non-binding on Seller, the Generating Facility or the Site Host.
2. Seller's Forecasting Submittal Requirements.
 - a. 30-Day Forecast. No later than 30 days before the first day of the Initial Forecast Month, Seller shall provide Buyer with a Forecast for the 30-day period commencing on the first day of the Initial Forecast Month using the Web Client. If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail at [] or by telephoning Buyer's generation operations center at []. The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall (i) not include any anticipated or expected electric energy losses between the meter(s) used for measuring the Energy sold to Buyer by Seller and the point of delivery of the Energy delivered to Buyer by Seller, and (ii) limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.
 - b. Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. California time of the Wednesday before the first week covered by the Forecast

provided pursuant to Section 2.a of this Appendix, and on or before 5:00 p.m. California time every Wednesday thereafter for the remainder of the term of the Agreement, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer at the e-mail address or telephone number listed in Section 2.a of this Appendix.

- c. Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates to take into account expected changes in daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Seller's Facility[*] ambient conditions, a Forced Outage[*], or a Real-Time Forced Outage, any of which results or is expected to result in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Appendix must be submitted to Buyer via the Web Client by no later than (i) 5:00 p.m. California time on the day before the day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council Preschedule Calendar (as found on the Western Electricity Coordinating Council's website) is impacted by the change, if the change is known to Seller at that time, (ii) the Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time, (iii) if the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected Energy production change. Seller's updated Forecast must contain the following information: (w) the beginning date and time of the event resulting in a change in the availability of the Generating Facility and expected hourly Energy production in MWh/h; (x) the expected ending date and time of the event; (y) the expected Energy production or available generation capacity, as applicable, in MWh; and (z) any other information required by the CAISO as communicated to Seller by Buyer.
3. Miscellaneous. Buyer is responsible for all CAISO charges and is entitled to receive all CAISO revenues. Except as set forth in this Appendix, there shall be no modification of Seller's existing communication protocols and designated contacts with Buyer, if any, including any requirement to notify Buyer of Generating Facility parallel operation or separation from the electrical system.

1.05 Additional Representations, Warranties, and Covenants Applicable to Renewable Facilities. If the Generating Facility is a small power production facility (as described in 18 Code of Federal Regulations Part 292, Section 292.203(a)) that utilizes a technology referenced in Section 399.12 of the California Public Utilities Code, then the following is added to the Agreement as Section []:

RPS Eligibility; Conveyance of Green Attributes.

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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.

1.06 Dispute Resolution. [Section [__] is deleted in its entirety and replaced with the following:] [The following is added to the Agreement as Section [__]]:

{Instructions: The following dispute resolution provisions are intended to replace any that are set forth in the Agreement. Select the appropriate highlighted language above.}

Informal Dispute Resolution. Either Party may at any time notify the other Party of an intention to discuss or dispute any matter connected with this Agreement, including, without limitation, a change to the CARB's authority (or the authority of any other authorized Governmental Authority having jurisdiction in California), or any other development in the regulation of Greenhouse Gas that makes it impossible to perform or administer any provision of this Agreement, or results, or could reasonably be forecasted to result, in an inability of the Parties to quantify or value GHG Compliance Costs. Within fifteen (15) days of receiving such notification, the Parties shall each appoint a

representative knowledgeable on the topic at issue and such representatives shall meet within the following thirty (30) days in an attempt to settle the matter at issue. If the representatives of the Parties are unable to resolve the matter at issue within thirty (30) days of their first meeting, then the Parties shall each appoint a senior officer knowledgeable on the topic at issue and such senior officers shall meet within fifteen (15) days in an attempt to resolve the matter at issue. If the senior officers of the parties are unable to resolve the matter at issue within a further thirty (30) day period following their first meeting, or if either Party fails to appoint a representative or senior officer or if such representatives or senior officers fail to meet with each other in either case within the time-periods specified herein, then either party may refer the matter at issue to binding arbitration in accordance with the paragraph immediately below.

Mediation. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraph, either Party may initiate mediation by delivering to the other Party a written request for mediation, setting forth a description of the dispute and the relief requested. The Parties will cooperate with one another in selecting a mediator (“Mediator”) from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) days after delivery of the written request for mediation. Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one-hundred twenty (120) days from the date of delivery of the written request for mediation. The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the mediation, which fees and costs will be borne by such Party). All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator’s agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however*, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Binding Arbitration. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraphs, either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with the immediately preceding paragraph by providing notice of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) at any time following the unsuccessful conclusion of the mediation provided for in the immediately preceding paragraph. The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal

court, or retired justice of any appellate or supreme court. Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator. Upon notice of a Party's demand for binding arbitration, such disagreement or dispute submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws. Except as provided for in this section, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

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

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the dispute or disagreement or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

- (h) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

The Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy. Judgment on the award may be entered in any court having jurisdiction. The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail. Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

1.07 Addition of Certain Defined Terms. The following defined terms, which are deemed to include any variations thereof, are added to Section [] of the Agreement:

{Instructions: If any of the defined terms set forth below are not applicable to this Amendment due to Seller's election of one of the Options set forth above, such terms must be deleted before its execution. }

Actual HR: The Heat Rate that must be used in accordance with and subject to the terms set forth in subsection (b)(i)(2) of Section [], which Heat Rate Buyer shall calculate, on the date of the commencement of the First Compliance Period, using the following formula:

Actual HR_n = The average of the Daily HR_n for each delivery or flow date in the two (2) year period immediately preceding the commencement of the First Compliance Period

Where:

$$Daily\ HR_n = [EP_n - VOM_n] / [GP_n + GT_n]$$

Where:

EP_n = The average of the Day-Ahead hourly electric energy prices, as determined by the Integrated Forward Market (as defined in the CAISO Tariff) for NP15 Existing Zone Generation Trading Hub (formerly known as NP15), or its successor;

VOM_n = Calendar month avoided variable O&M for the applicable month (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

GP_n = The applicable daily gas price index, which is Platt's Gas Daily (currently SoCalGas and PG&E Malin gas indices), if Buyer is PG&E; and

GT_n = The gas transportation rate for the applicable month, per CPUC Resolution E-4246.

Additional GHG Documentation: Documentation necessary to allocate Free Allowances to Energy delivered by Seller to Buyer, which documentation consists of the following, in each case for the time-period to which the Free Allowances are to apply: (a) the total amount of GHG emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the Energy delivered to Buyer; (b) the Useful Thermal Energy Output of the Generating Facility; (c) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; and (d) total fuel usage of the Generating Facility.

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

Amendment Effective Date: [Date of execution of this Amendment], which is the date that the Parties entered into Amendment No. [].

Amendment No. []: That certain Amendment No. [] to [Title of applicable contract], dated as of [Date of execution of this Amendment], by and between Buyer and Seller.

Annual Facility Emissions Cap: (i) 100% of Base Year Emissions if the Generating Facility is a gas-fired 'cogeneration facility' (as described in 18 CFR §292.203(b)), or (ii) 85% of Base Year Emissions if the Generating Facility is not a gas-fired Generating Facility. The Annual Facility Emissions Cap is a calendar-year cap on the amount of Greenhouse Gas emitted by the Generating Facility for which Buyer shall reimburse Seller for with respect to GHG Compliance Costs for any such calendar year; *provided, however*, that the Annual Facility Emissions Cap will be pro rated if it comes into effect on any day other than January 1st and if the Agreement terminates before December 31, 2014.

Annual GHG Reports: As defined in Section [].

Base Year Emissions: The average of the annual Greenhouse Gas (expressed in MTs per year) emitted by the Generating Facility for Energy generated by the Generating Facility

and delivered to Buyer under this Agreement for the calendar years 2008 and 2009, as set forth in the Base Year Emissions Notice.

Base Year Emissions Notice: The notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the Base Year Emissions, as allocated by the CARB; *provided, however*, that if the CARB has not make such an allocation, such notice must set forth (a) the Greenhouse Gas emissions of the Generating Facility for each of calendar year 2008 and 2009, as allocated by the CARB in the Greenhouse Gas Emissions Data Report for the Generating Facility to (i) the total electrical energy, and (ii) the total Useful Thermal Energy Output, and (b) the following formula and a calculation thereof, which calculation Buyer shall use in determining the Base Year Emissions:

$$GM_d = G_e * [E_d / (E_{sh} + E_d)]$$

Where:

GM_d = Greenhouse Gas emissions attributed to Energy generated by the Generating Facility and delivered to Buyer for calendar year 2008 or 2009, as applicable;

G_e = Emissions of Greenhouse Gas (in MTs) attributed to the total amount of electrical energy produced by the Generating Facility for calendar year 2008 or 2009, as applicable (as set forth in the applicable annual report (as verified by an independent third party, if applicable) that Seller submits to the CARB or any other authorized Governmental Authority having jurisdiction in California);

E_d = Energy (in MWh) generated by the Generating Facility and delivered to Buyer for calendar year 2008 or 2009, as applicable; and

E_{sh} = Electrical energy (in MWh) generated by the Generating Facility and used to serve the Site Host Load for calendar year 2008 or 2009, as applicable.

Seller shall include in the Base Year Emissions Notice the above calculation for *each* of calendar year 2008 and 2009. Seller shall then add GM_d for each calendar year 2008 and 2009 and then divide such result by two (2), which result equals the Base Year Emissions.

Burner Tip Gas Price or BTGP: As determined in CPUC Decision 07-09-040 and CPUC Resolution E-4246.

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

CAISO: The California Independent System Operator Corporation or successor entity.

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

CAISO Tariff: The CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC, or any successor entity.

California Renewables Portfolio Standard means the California Public Utilities Code Section 399.11, *et seq.*, or any successor thereto.

CEC: The California Energy Commission, or any successor thereto.

CARB: The California Air Resources Board, or any successor entity.

CARB Annual Report: As defined in Section [] .

CARB Mandatory GHG Emissions Annual Report: The mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources.

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

Day-Ahead: As defined and may be modified in the CAISO Tariff.

Delivery Term: The Contract Term.

Eligible Renewable Energy Resources or ERR: Has the same meaning as that term is used in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code section is amended or supplemented from time to time

Estimated Allowance Cost: The cost of one Allowance (in \$/MT of Greenhouse Gas), determined as follows:

- (i) The rolling average of all GHG Auction clearing prices during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, an example of which is shown in the following chart (if there is only one GHG Auction clearing price during the First GHG Year or the calendar quarter following the First GHG Year, as applicable, the Estimated Allowance Cost shall be such clearing price):

GHG Auctions	Per MT GHG Auction Price	Per MT Rolling Average
1	\$15.00	\$15.00
2	\$22.00	\$18.50
3	\$21.00	\$19.33
4	\$13.00	\$17.75

or

- (ii) If no GHG Auctions are held during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, the cost of one Allowance will be based on the average price during the relevant period of all Allowance prices published in the GHG Publication Index; or
- (iii) If no GHG Auctions are held during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, and if a GHG Publication Index is not available for any reason (including, without limitation, the failure of the Parties, or Buyer and the Trade Organizations, to agree upon the proper publication for such Allowance prices), then the cost of one Allowance will be determined as follows:
- (1) The average cost of Allowances actually incurred by Seller during the applicable time-period, as evidenced by Seller's receipts for all Allowance purchases made by Seller (and any other GHG Documentation reasonably requested by Buyer) for all Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; *provided, however*, that Seller shall deliver to Buyer copies of all such Allowance purchase receipts (and any other GHG Documentation reasonably requested by Buyer) within three (3) Business Days of Buyer's request; or
 - (2) If Buyer provides written notice to Seller (which notice must be provided within (90) days of the date that Seller is required to make any payment for GHG Compliance Costs for the applicable time-period and with respect to this Agreement (the "Allowance Due Date")) of Buyer's intention to purchase Allowances for Seller to make such payment on the Allowance Due Date, then subsection (iii)(1) of this definition will not apply, and Buyer shall purchase the necessary number of Allowances for Seller to make its GHG Compliance Costs payment for such time-period and deliver such Allowances to Seller no later than ten (10) Business Days before the Allowance Due Date; *provided, however*, that upon receipt of any such notice from Buyer, Seller shall, within one (1) Business Day, provide Buyer with the Allowance Due Date.

Notwithstanding anything to the contrary set forth in the definition of Estimated Allowance Cost, as set forth in the *Allowance Cost* variable in the GHG Compliance

Costs payment calculation above, Buyer is never obligated to pay more than [\$20.00/MT of Greenhouse Gas] [\$12.50/MT of Greenhouse Gas].

{Instructions: Use \$20.00/MT of Greenhouse Gas if Seller has selected Option C.2., or \$12.50/MT of Greenhouse Gas if Seller has selected Option C.3.}

FERC: The Federal Energy Regulatory Commission, or successor agency.

First Compliance Period: The first period of time for compliance with a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation). There will be no more than a single First Compliance Period.

First GHG Year: The twelve (12) calendar-month period commencing on the first day of the applicable calendar month that there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California).

Floor Test Term: From the date the First Compliance Period commences, for a period of three (3) years.

Forecast: The hourly forecast of (i) the total electric Energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, or (ii) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, in each case net of the Site Host Load and Station Use.

Free Allowance: Any Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority).

Free Allowance Notice: The notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the aggregate quantity of Free Allowances received by Seller during [the First GHG Year or the applicable calendar quarter, as applicable,] [the applicable time-period] and sets forth the allocation of such Free Allowances in accordance with the following:

{Instructions: Use the first bracketed language if Seller selects Option C.2 or C.3, and use the second bracketed language if Seller selects Option A.}

- (i) The allocation of Free Allowances by the CARB (or any other Governmental Authority) to the Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; or
- (ii) If the CARB (or any other Governmental Authority) does not allocate Free Allowances received by Seller as described in subsection (i) above, then Seller shall set forth in the Free Allowance Notice the quantity of Free Allowances allocated to

the Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period (FA_d) utilizing the following formula:

$$FA_d = FA_t * [G_e / (G_e + G_t)] * [E_d / (E_{sh} + E_d)]$$

Where:

FA_t = Total number of Free Allowances received by Seller with respect to the Generating Facility for the applicable time-period;

G_e (in MTs) = Emissions of Greenhouse Gas attributed to the total amount of electric energy produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

G_t (in MTs) = Emissions of Greenhouse Gas attributed to the Useful Thermal Energy Output produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

E_d (in kWh) = Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period; and

E_{sh} (in kWh) = Electric energy generated by the Generating Facility and used to serve the Site Host Load for the applicable time-period;

or

(iii) If the CARB (or any other Governmental Authority) does not allocate the Free Allowances received by Seller, as described in (i) above, and there is no available formula in any applicable rule or regulation for the calculation of G_e and G_t , as described in (ii) above, then Seller shall include in the Free Allowance Notice the total amount of emissions of Greenhouse Gas attributed to the electric energy period (G_e , in MTs) and the Useful Thermal Energy Output (G_t , in MTs) produced by the Generating Facility for the applicable time-period based on the two following formulas:

$$G_e = G * (\text{Useful Power Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

$$G_t = G * (\text{Useful Thermal Energy Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

Where:

G (in MTs) = Total emissions of Greenhouse Gas produced by the Generating Facility for the applicable time-period;

Useful Power Output (in MMBtu) = As defined in 18 CFR §292.202(g), or any successor thereto;

Useful Thermal Energy Output (in MMBtu) = As defined in 18 CFR §292.202(h), or any successor thereto;

Upon determining G_e and G_r in subsection (iii) above, Seller shall then calculate for and provide the quantity of Free Allowances attributed to Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period (FA_d) using the formula set forth in subsection (ii) of this definition.

GHG Auction: Any auction or other sale-by-bid event applicable to California and by an authorized Governmental Authority (or any entity authorized by such Governmental Authority) for the sale of Allowances.

GHG Compliance Costs: The cost of Allowances, as determined in accordance with this Agreement.

GHG Documentation: Documentation of GHG Compliance Costs, including, without limitation, documentation establishing to Buyer's reasonable satisfaction: (a) that Seller is actually liable for the GHG Compliance Costs during the term of the Agreement; (b) that the GHG Compliance Costs were not (i) in effect or (ii) scheduled to become effective and applicable to the Generating Facility as of the Amendment Effective Date; (c) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the Energy delivered to Buyer; (d) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; (e) that the GHG Compliance Costs was imposed on Seller, the Site Host, the Generating Facility or a Related Entity of Seller by an authorized Governmental Authority in whose jurisdiction the Generating Facility is located, or which otherwise has jurisdiction over Seller, the Site Host, a Related Entity of Seller, or the Generating Facility, as applicable; and (f) that Seller took all reasonable steps to mitigate the cost or amount of such GHG Compliance Costs, including utilizing all Allowances or Free Allowances (*provided, however*, that such reasonable steps will not be deemed to require Seller to make capital improvements to the Generating Facility).

GHG Floor Test: As defined in Section [] .

GHG Publication Index: The price per Allowance, as set forth in a single publication published by a recognized publisher in the United States energy industry, as reasonably agreed to by the Parties; *provided, however*, that if the Parties are unable to agree upon a publication within five (5) Business Days after the end of the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on the proper publication to be used for determining the per Allowance price, and if Buyer and

the Trade Organizations have not so agreed on or before the twelfth (12th) Business Day following either the end of the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, then the Estimated Allowance Cost will be determined based on subsection (iii), as described in the definition of "Estimated Allowance Cost" above. Seller hereby agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations as to the designation of a publication for determining per Allowance prices, in accordance with the foregoing.

Governmental Authority: Any governmental authority responsible for the regulation of Greenhouse Gas in California, including (i) any federal, state, local, municipal or other governmental authority, (ii) any governmental, regulatory or administrative agency, commission, lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (iii) any court or governmental tribunal.

Green Attributes: Green Attributes means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹
- (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green 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.

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

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.

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.

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

Heat Rate: The value obtained, in BTU per kWh, when the fuel input (on a Higher Heating Value basis), in BTU is divided by generation, net of Station Use, in kWh.

Higher Heating Value: The high or gross heat content of the fuel with the heat of vaporization included; the water vapor is assumed to be in a liquid state.

Hour-Ahead Scheduling Deadline: Thirty (30) minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

Initial Forecast Month: The first calendar month for which Seller provides to Buyer a 30-day Forecast pursuant to Section 2 of Appendix [REDACTED], which must be the first calendar month commencing no earlier than 30 days after Amendment Effective Date and no later than 60 days after such date.

JAMS: The Judicial Arbitration and Mediation Services, Inc. or any successor entity.

Locational Marginal Price: As defined and may be modified in the CAISO Tariff.

Market Disruption Event: With respect to any MHR Source, any of the following events: (i) the permanent discontinuation or material suspension of trading in the exchange or in the market specified for determining a Market Heat Rate; (ii) the temporary or permanent

discontinuance or unavailability of the MHR Source; or (iii) the temporary or permanent closing of any exchange specified for determining a Market Heat Rate. For purposes of this definition, "temporary" means five (5) or more continuous Trading Days.

Market Heat Rate: The 12-month forward market heat rate, calculated for each calendar pricing month utilizing the methodology set forth in Commission Decision 07-09-040 and Commission Resolution E-4246 for SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor. Unless otherwise agreed to by the Parties, this definition of Market Heat Rate will not be updated by any subsequent decision, ruling or order by the Commission.

MHR Source: The relevant publications used to determine the Market Heat Rate.

MT(s): Metric Ton(s).

PIRP (Participating Intermittent Resource Program): The CAISO's intermittent resource program initially established pursuant to Amendment 42 of the CAISO Tariff in FERC Docket ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.

Project: The Generating Facility.

Real-Time Forced Outage: A Forced Outage which occurs only after 5:00 p.m. California time on the day before a Trading Day impacted by such Forced Outage.

Reference Market-Maker: A leading dealer in the energy market that is not a Related Entity of either Party (or of a Trade Organization) and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

Related Entity: Any individual or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, either Party. For purposes of this Amendment, "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.

RPS Program: The State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code § 399.11, et seq., or any successor thereto.

Schedule: The action of Buyer, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy.

Seller's Quarterly Emissions Notice: The notice, which Seller must provide to Buyer on or before the tenth (10th) Business Day following the end of each calendar quarter during the term of this Agreement, that sets forth for such calendar quarter the total Greenhouse Gas emissions attributable to (i) the Generating Facility, (ii) the Useful Thermal Energy

Output of the Generating Facility, (iii) the electrical generation of the Generating Facility, and (iv) the Energy delivered to Buyer.

Settlement Agreement: : That certain Settlement Agreement, dated October 8, 2010, filed by the Settling Parties in CPUC R.04-04-025 and R.04-04-003, A.08-11-001, R.99-11-022, and R.06-02-013.

Settlement Effective Date: The date on which the Settlement Agreement becomes effective pursuant to the terms and conditions set forth therein.

Site Host: The entity or entities purchasing or otherwise using the Site Host Load or Useful Thermal Energy Output from the Generating Facility.

Site Host Load: The electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (other than Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code § 218(b).

Station Use: The electric energy produced by the Generating Facility that is (i) used within the Generating Facility to power the lights, motors, control system and other electrical loads that are necessary for Operation, (ii) consumed within the Generating Facility's electricity energy distribution system as losses needed to deliver electricity to the Site Host Load, and (iii) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s).

Trade Organizations: The California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association, or successor organizations.

Trading Day: The day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council's Preschedule Calendar (as found on the Western Electricity Coordinating Council's website).

Useful Thermal Energy Output: As defined in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto.

Web Client: A Buyer provided web based system or an email address designated by Buyer.

WREGIS: The Western Renewable Energy Generation Information System.

1.08 Settlement Agreement. Seller agrees to be bound by the terms and conditions set forth in the Settlement Agreement.

1.09 General Provisions.

(a) Except as expressly set forth in this Amendment, the Agreement remains unchanged and, so modified, the Agreement shall remain in full force and effect.

- (b) This Amendment will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) The terms and provisions hereof shall be binding on and inure to the benefit of and be enforceable by the successors and assigns of the Parties, whether so expressed or not.
- (d) If any provision of this Amendment is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Amendment will remain in full force and effect. Any provision of this Amendment held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) THIS AMENDMENT 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 AMENDMENT.
- (f) This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.
- (g) Each Party represents and warrants that the execution, delivery and performance of this Amendment are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that Party has authority to execute this Amendment on behalf of such Party and to bind such Party to this Amendment.
- (h) The term “including” when used in this Amendment is by way of example only and will not be considered in any way to be in limitation. The word “or” when used in this Amendment includes the meaning “and/or” unless the context unambiguously dictates otherwise. The headings used in this Amendment are for convenience and reference purposes only and will not affect its construction or interpretation.

- (i) This Amendment sets forth the entire agreement of the Parties with respect to the subject matter herein, and supersedes all previous understandings, written or oral, with respect thereto.
- (j) This Amendment may not be amended, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (k) Whenever this Amendment specifically refers to any law, tariff, government department or agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

[Signature page follows]

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

[SELLER'S NAME],

**PACIFIC GAS AND ELECTRIC
COMPANY**

a [Seller's business registration]

a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTACHMENT A – EXHIBIT 2

{Instructions: Review this Amendment to ensure that (i) any term with a bracketed asterisk next to it is defined in the Agreement, and (ii) the defined terms and all other provisions in this Amendment, including but not limited to payment provisions, do not duplicate, and are otherwise consistent with the defined terms and other provisions of the Agreement that is the subject of this Amendment. This note, the bracketed asterisks and any other instructions must be deleted before execution of this Amendment.

Buyer is only required to make this Amendment available to Seller as of the Settlement Effective Date (as defined in that certain Settlement Agreement, dated October 8, 2010, which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001). If Seller elects to enter into this Amendment, this Amendment must be fully executed by the Parties on or before the 180th calendar day following the Settlement Effective Date. Further, Buyer is only required to make this Amendment available to Seller if Buyer and Seller are parties to an existing power purchase and sale agreement for Qualifying Facilities that is in full force and effect on the Settlement Effective Date (including any extensions of such existing power purchase and sale agreement, as set forth in D.07-09-040, D.04-01-050 or D.05-12-009), excluding power purchase and sale agreement entered into pursuant to the RPS Program.

AMENDMENT NO. []
TO
[TITLE OF APPLICABLE CONTRACT]

(RAP ID# [])

This Amendment No. [] to [Title of applicable contract] (this "Amendment"), by and between Southern California Edison Company, a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is entered into and effective as of [Date of execution] (the "Amendment Effective Date"). Buyer and Seller are sometimes referred to in this Amendment individually as a "Party" and collectively as the "Parties". Unless the context specifies or requires, any initially capitalized term used but not otherwise defined in this Amendment has the meaning given to such term in the Agreement (as defined in Recital A).

RECITALS

- A.** The Parties entered into that certain [Title of applicable contract] dated [Date of applicable contract], [as amended by [Title and date of earlier amendments, if any]] ([collectively,] the "Agreement").
- B.** On or about September 20, 2007, the Commission[*] issued Decision 07-09-040 (the "Decision") which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to Qualifying Facilities[*] meeting the eligibility criteria set forth in the Decision.
- C.** Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the "Settling Parties") entered into Commission-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.

- D. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the "Settlement Agreement"), which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.
- E. On [Date of Commission Decision], the Commission issued Decision [] approving the Settlement Agreement.
- F. Pursuant to the Settlement Agreement, the Settling Parties developed a form of a power purchase agreement amendment (the "Form Amendment") that certain Qualifying Facilities may elect, at their option and subject to certain restrictions set forth in the Settlement Agreement, to enter into with the applicable California investor-owned utility. This Amendment is based on the Form Amendment.
- G. Buyer must offer this Amendment to Seller in order to fulfill its obligations under the Settlement Agreement, and Seller desires to accept such offer and enter into this Amendment.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. AMENDMENTS TO THE AGREEMENT

1.01 Pricing. Section [] of the Agreement is deleted and replaced as of the Pricing Effective Date (as defined below) with one of the options ("Options") set forth below in this Section 1.01, which must be checked by Seller in the blank space provided for next to such Option and will be the only Option incorporated into the Agreement; *provided, however,* that if Seller selects Option C.1, Seller must also select one of Option A, Option B, Option C.2 or Option C.3, as further described in Option C.1 below.

For purposes of this Section 1.01, the "Pricing Effective Date" means the later of the following events or dates: (1) the Amendment Effective Date; (2) [], which is the primary expiration date of a currently-effective fixed price period or fixed heat rate period, as provided in that certain [Title of applicable amendment], dated [Date of applicable amendment], between the Parties; and (3) January 1, 2011.

To the extent that the Agreement requires Buyer to purchase and pay for Energy[*] based on the short run avoided cost pricing scheme, and Seller elects Option A, Option A will replace such short run avoided cost pricing scheme.

{Instructions: The Options set forth below must be modified to account for the termination of the Agreement that is the subject of this Amendment. Specifically, if the Agreement terminates before the commencement of any of the time-periods set forth in an Option, the provisions of this Amendment relating to such time-periods must be deleted, and all section references and any other cross references should be updated as necessary. By way of example only, with respect to Option A, if the Agreement expires in 2011, the final two rows of the first table may need to be deleted, as well as all other references to the calculation of the Energy price on and after January 1, 2012.}

OPTION A. _____

- (a) "Energy Price. Subject to subsections (b) through (e) of this Section, Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price } \$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

Applicable HR = The Heat Rate for the specified time-period, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,225
January 1, 2013 through December 31, 2014	8,125
January 1, 2015 until the termination of this Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

GHG Charges = All taxes, charges or fees assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable HR or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula.

TOU (i.e., time-of-use) = As of the Amendment Effective Date until the termination of this Agreement, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 * # of Summer On-Peak hours in month) - (0.8526 * # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 * # of Winter Mid-Peak hours in month) - (0.7760 * # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{\text{Trading Hub}}$

Where the hourly location adjustment (i.e., *LA*) will be based on the hourly Day-Ahead prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{OF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

(b) Energy Price during the Floor Test Term.

(i) If there is a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), then, during the Floor Test Term, the Energy price will be the higher of the two formulas provided in subsection (b)(i)(1) or (b)(i)(2) of this Section (the "GHG Floor Test"):

(1) Energy Price \$/kWh = ((Market Heat Rate * BTGP/1,000,000) + VOM) * TOU + LA

Where:

Market Heat Rate (Btu/kWh) = As defined in Section [redacted];

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

OR

(2) Energy Price \$/kWh = ((Applicable HR * (BTGP + GHG Allowance Price) /1,000,000) + VOM) * TOU + LA + GHG Charges

Where:

Applicable HR = (A) 8,225 Btu/kWh through December 31, 2012; (B) 8,125 Btu/kWh from January 1, 2013 through December 31, 2014; and (C) Actual HR from January 1, 2015 until the end of the Floor Test Term;

BTGP (\$/MMBtu) = As set forth above;

GHG Allowance Price (\$/MMBtu) = Allowance Cost (\$/MT) * 117lbs of GHG per MMBtu / 2,204.6 lbs per MT

Where:

Allowance Cost (\$/MT) = The cost of one Allowance, determined using the GHG Auction clearing price from the latest GHG Auction that has taken place during the calendar quarter immediately preceding the date that Buyer's payment is due to Seller; *provided, however*, that if there is no GHG Auction held during the applicable time-period, then the Allowance Cost is determined in accordance with subsection (d) of this Section.

VOM (\$/kWh) = As set forth above;

GHG Charges (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (c) Free Allowance Reporting and Allocation. If, at any time, Buyer makes a monthly payment to Seller utilizing the GHG Floor Test formula set forth in subsection (b)(i)(2) of this Section, then Buyer shall deduct from the monthly payment to Seller for the applicable month the value of the Free Allowances disclosed in and based on all Free Allowance Notices that have not already been applied to a prior payment to Seller; *provided, however*, that if Buyer, using reasonable efforts, is unable to process such payment adjustment for the applicable month, then Buyer shall make such payment adjustment to the next monthly payment due to Seller. For any month that Buyer utilizes the formula set forth in subsection (b)(i)(1) of this Section to make a monthly payment to Seller, Buyer shall maintain a record of the value and quantity of all Free Allowances disclosed in the Free Allowance Notices, if any, and shall deduct the value of such Free Allowances to any subsequent monthly payment due to Seller where Buyer calculates such monthly payment utilizing the formula set forth in subsection (b)(i)(2) of this Section until such time that the value of all such Free Allowances are expended.

In order for Buyer to make the payment adjustment set forth in the immediately preceding paragraph, Seller agrees to deliver to Buyer, within twenty (20) calendar days of receiving any Free Allowances, a Free Allowance Notice for the applicable month, which Free Allowance Notice must include all Additional GHG Documentation. Buyer shall value any such Free Allowances using the same methodology Buyer uses in valuing the Allowance Cost, as set forth above.

- (d) Determining Allowance Costs under the GHG Floor Test if there is No GHG Auction. This subsection (d) is applicable if no GHG Auction has been held during the time-period for which the Allowance Cost variable set forth in subsection (b)(i) of this Section is to be determined. In such an instance, publicly available indices will be used to determine the price for the applicable period. If no such indices exist, Buyer will meet with the Trade Organizations to negotiate in good faith to reach an agreement on setting the Allowance Cost variable. If, after negotiating for fifteen (15) Business Days, Buyer and the Trade Organizations have not reached an agreement on setting the Allowance Cost variable, then Buyer and the Trade Organizations shall each select, within fifteen (15) calendar days after such failed negotiations, price quotations from two (2) different Reference Market-Makers, for a total of four (4) price quotations. The Allowance Cost variable for the applicable time-period will be determined by taking the average of the four (4) price quotations so selected by Buyer and the Trade Organizations. Seller agrees and acknowledges that it shall be bound by any agreement as to the Allowance Cost variable between Buyer and the Trade Organizations, in accordance with the foregoing.

- (e) Energy Price from the End of the Floor Test Term. As of the end of the Floor Test Term until the termination of this Agreement, Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price } \$/\text{kWh} = ((\text{Market Heat Rate} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Market Heat Rate (Btu/kWh) = As defined in Section [];

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (f) Seller's Responsibility. Other than Buyer's payment to Seller for GHG Compliance Costs and GHG Charges as set forth in payment formulae in Section [] above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of GHG emissions with respect to Seller or the Generating Facility.

OPTION B. _____

"Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$$/kWh = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Applicable HR = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

TOU (i.e., time-of-use) = As of the Amendment Effective Date until the termination of this Agreement, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 * # of Summer On-Peak hours in month) - (0.8526 * # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 * # of Winter Mid-Peak hours in month) - (0.7760 * # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

and

$$\text{LA (i.e., hourly location adjustment, in } \$/\text{kWh)} = \text{LMP}_{\text{QF}} - \text{LMP}_{\text{Trading Hub}}$$

Where:

LMP_{OF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

{Instructions: Use the above formula if the Qualifying Facility is a "cogeneration facility", as described in 18 CFR §292.203(b), or a non-renewable "small power production facility", as described in 18 CFR §292.203(a). }

LA (i.e., hourly location adjustment, in \$/kWh) = Zero (0).

{Instructions: Use the above formula if the Qualifying Facility is a renewable "small power production facility", as described in 18 CFR §292.203(a). }

As part of calculating the Energy price, the hourly location adjustment (i.e., LA) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

Seller's Responsibility. Notwithstanding anything to the contrary set forth in this Agreement, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

OPTION C.1. ____

"For a period of no more than ninety (90) calendar days following the Amendment Effective Date, Buyer and Seller shall negotiate in good faith so that Buyer and Seller shall, if such negotiations are successful, enter into a mutually agreed upon tolling agreement ("Tolling Agreement"), pursuant to which Seller shall cause the Generating Facility to be dispatchable and Buyer shall purchase electric energy and related attributes from Seller on a dispatchable basis. Until such time that Buyer and Seller have entered into such Tolling Agreement and the payment terms thereof are in effect, or if Buyer and Seller are unable to successfully negotiate and enter into a Tolling Agreement, Seller shall be paid in accordance with the terms of this Agreement, as such Agreement's pricing provision has been amended by Amendment No. [] , pursuant to which Seller selected to receive payment under one of Option A, Option B, Option C.2 or Option C.3 (as further described in Amendment No. [])."

OPTION C.2. ____

"Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\$/kWh = [((\text{Applicable HR} * \text{TOU}) - \text{Applicable BTU}) * \text{BTGP}/1,000,000] + (\text{VOM} * \text{TOU}) + \text{LA}$$

Where:

Applicable HR = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700

2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

TOU (i.e., time-of-use) = As of the Amendment Effective Date until the termination of this Agreement, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 * # of Summer On-Peak hours in month) - (0.8526 * # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 * # of Winter Mid-Peak hours in month) - (0.7760 * # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

Applicable BTU = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Agreement;

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246; and

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Agreement as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Agreement, Buyer shall make payments to Seller for GHG Compliance Costs, if applicable, in accordance with the following formula (and subject to accounting for Free Allowances, as described below), with the first such payment to be made on or before the thirtieth (30th) Business Day after the end of the First GHG Year, and additional GHG Compliance Costs payments to be made on or before the thirtieth (30th) Business Day after at the end of each calendar quarter following the First GHG Year:

$$(\$) = ((E * 936 \text{ lbs/MWh}) \div 2204.6 \text{ lbs/MT of Greenhouse Gas}) * \text{Allowance Cost}$$

Where:

E = Energy (in MWh) generated by the Generating Facility and delivered to Buyer during the applicable time-period; and

Allowance Cost = Zero (0); *provided, however*, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost* equals the lesser of (i) \$20/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Buyer, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Buyer. Buyer shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Buyer shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Buyer the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

OPTION C.3. _____

Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\$/\text{kWh} = [((\text{Applicable HR} * \text{TOU}) - \text{Applicable BTU}) * \text{BTGP}/1,000,000] + (\text{VOM} * \text{TOU}) + \text{LA}$$

Where:

Applicable HR = The Heat Rate applicable to the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

TOU (i.e., time-of-use) = As of the Amendment Effective Date until the termination of this Agreement, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 * # of Summer On-Peak hours in month) - (0.8526 * # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 * # of Winter Mid-Peak hours in month) - (0.7760 * # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

Applicable BTU = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Agreement;

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

LMP_{Trading Hub} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Agreement as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Agreement, Buyer shall, within thirty (30) Business Days of receiving Seller's Quarterly Emissions Notice, make payments for the applicable calendar quarter to Seller for GHG Compliance Costs, if applicable, up to the Annual Facility Emissions Cap, according to the following formula and subject to accounting for Free Allowances, as described below (provided, however, that Seller must also deliver the information required in the Base Year Emissions Notice before Buyer makes any such payments):

(\$) = $G * \text{Allowance Cost}$

Where:

G = Greenhouse Gas emissions (in MTs) attributable to the Generating Facility for Energy generated by the Generating Facility and delivered to Buyer during the applicable quarter and based on Seller's Quarterly Emissions Notice; provided, however, that, once the aggregate quantity of the variable *G* for the applicable calendar year equals or exceeds the Annual Facility Emissions Cap for such calendar year, *G* equals zero (0); provided further that if such Greenhouse Gas

emissions equals or exceeds the Annual Facility Emissions Cap for such calendar year in the middle of the applicable month, Buyer shall make a pro rated payment for Seller's GHG Compliance Costs for the applicable month; and

Allowance Cost = Zero (0); provided, however, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost* equals the lesser of (i) \$12.50/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Buyer, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Buyer. Buyer shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Buyer shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Buyer the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

1.02 Reporting Requirements. The following is added to the Agreement as Section []:

"Reporting Requirements.

- (a) From the Amendment Effective Date through the end of the term of this Agreement (and for any period following the termination of this Agreement to the extent relating back to the term of this Agreement), Seller shall provide to Buyer the following information (together, the "Annual GHG Reports"):
 - (i) On or before the fifth (5th) Business Day following Seller's timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB, detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Report"), Seller shall deliver such CARB Annual Report to Buyer; and
 - (ii) To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site

Host Load, and the Energy delivered to Buyer; [and (5) the number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar year during any period where the Energy price is calculated based on the GHG Floor Test.]

{Instructions: The bracketed and highlighted provision immediately above is only applicable if Seller selected Option A, and should otherwise be deleted.}

- (b) If Buyer requires any other information not delineated in subsection (a) of this Section in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB and/or by any other Governmental Authority and imposed on Buyer (other than the information that Seller must provide in accordance with subsection (c) of this Section), then Buyer shall meet and confer with the Trade Organizations regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations, in accordance with the foregoing.
- (c) Each Party shall deliver to the other Party, or before the tenth (10th) Business Day following receipt of a notice from the other Party, such information as such other Party is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement.

Buyer will review the Annual GHG Reports described in this Section to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under this Agreement, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under this Agreement. If this Agreement terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the thirty- (30) calendar day period after the termination of this Agreement.

To the extent that the information provided by the disclosing Party in accordance with this Section is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Facilities under the existing Qualifying Facilities monitoring compliance program."

1.03 Market Disruption Event. The following is added to the Agreement as Section []:

"Unless this Agreement has terminated, if, on or after the date that the Market Heat Rate applies to and is used in the calculation of the Energy price and until the end of the term of this Agreement, there occurs a Market Disruption Event, then the Market Heat Rate for the affected Trading Day(s) must be determined by reference to the Market Heat Rate for the first Trading Day thereafter on which no Market Disruption Event exists; *provided, however,* that if the Market Heat Rate is not so determined within five (5) Trading Days after the Market Disruption Event occurred or existed, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on a Market Heat Rate (or a method for determining a Market Heat Rate), and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Trading Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Market Heat Rate will be determined in good faith by taking the average of the price quotations for energy and relevant Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by each of Buyer and the Trade Organizations (for a total of four (4) price quotations). Seller hereby agrees and acknowledges that it shall be bound by any agreement as to a Market Heat Rate (or a method for determining a Market Heat Rate) between Buyer and the Trade Organizations, in accordance with the foregoing."

1.04 Addition of Forecasting Appendix. The following is added to the Agreement as Appendix []:

- "1. General Requirements. The Parties shall make good faith efforts to abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to (i) support Buyer's compliance with the CAISO's scheduling requirements related to the Agreement, (ii) accommodate changes to the Parties' respective generation technology and organizational structure, (iii) address changes in the Operating[*] and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions. The Parties agree that the Forecasts generated by, or otherwise resulting from the Forecasting requirements and procedures in this Appendix are non-binding on Seller, the Generating Facility or the Site Host.

2. Seller's Forecasting Submittal Requirements.
 - a. 30-Day Forecast. No later than 30 calendar days before the first calendar day of the Initial Forecast Month, Seller shall provide Buyer with a Forecast for the 30 calendar-day period commencing on the first calendar day of the Initial Forecast Month using the Web Client. If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail at [] or by telephoning Buyer's generation operations center at []. The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall (i) not include any anticipated or expected electric energy losses between the meter(s) used for measuring the Energy sold to Buyer by Seller and the point of delivery of the Energy delivered to Buyer by Seller, and (ii) limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

 - b. Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. California time of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2.a of this Appendix, and on or before 5:00 p.m. California time every Wednesday thereafter for the remainder of the term of the Agreement, Seller shall update the Forecast for the 30 calendar-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer at the e-mail address or telephone number listed in Section 2.a of this Appendix.

 - c. Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates to take into account expected changes in daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Seller's Facility[*] ambient conditions, a Forced Outage[*], or a Real-Time Forced Outage, any of which results or is expected to result in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Appendix must be submitted to Buyer via the Web Client by no later than (i) 5:00 p.m. California time on the calendar day before the calendar day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council Preschedule Calendar (as found on the Western Electricity Coordinating Council's website) is impacted by the change, if the change is known to Seller at that time, (ii) the Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time, (iii) if the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected Energy production change. Seller's updated Forecast must contain the following information: (w) the beginning date and time of the event resulting in a change in the availability of the Generating Facility and expected hourly Energy production in MWh/h; (x) the expected ending date and time of the event; (y) the expected Energy production or available generation capacity, as applicable, in MWh; and (z) any other information required by the CAISO as communicated to Seller by Buyer.

3. Miscellaneous. Buyer is responsible for all CAISO charges and is entitled to receive all CAISO revenues. Except as set forth in this Appendix, there shall be no modification of Seller's existing communication protocols and designated contacts with Buyer, if any, including any requirement to notify Buyer of Generating Facility parallel operation or separation from the electrical system."

1.05 Additional Representations, Warranties, and Covenants Applicable to Renewable Facilities. If the Generating Facility is a small power production facility (as described in 18 Code of Federal Regulations Part 292, Section 292.203(a)) that utilizes a technology referenced in Section 399.12 of the California Public Utilities Code, then the following is added to the Agreement as Section []:

"RPS Eligibility; Conveyance of Green Attributes.

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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."

1.06 Dispute Resolution. [Section [] is deleted in its entirety and replaced with the following:] [The following is added to the Agreement as Section []]:

{Instructions: The following dispute resolution provisions are intended to replace any that are set forth in the Agreement. Select the appropriate highlighted language above.}

"Informal Dispute Resolution. Either Party may at any time notify the other Party of an intention to discuss or dispute any matter connected with this Agreement, including, without limitation, a change to the CARB's authority (or the authority of any other authorized Governmental Authority having jurisdiction in

California), or any other development in the regulation of Greenhouse Gas that makes it impossible to perform or administer any provision of this Agreement, or results, or could reasonably be forecasted to result, in an inability of the Parties to quantify or value GHG Compliance Costs. Within fifteen (15) calendar days of receiving such notification, the Parties shall each appoint a representative knowledgeable on the topic at issue and such representatives shall meet within the following thirty (30) calendar days in an attempt to settle the matter at issue. If the representatives of the Parties are unable to resolve the matter at issue within thirty (30) calendar days of their first meeting, then the Parties shall each appoint a senior officer knowledgeable on the topic at issue and such senior officers shall meet within fifteen (15) calendar days in an attempt to resolve the matter at issue. If the senior officers of the parties are unable to resolve the matter at issue within a further thirty (30) calendar day period following their first meeting, or if either Party fails to appoint a representative or senior officer or if such representatives or senior officers fail to meet with each other in either case within the time-periods specified herein, then either party may refer the matter at issue to binding arbitration in accordance with the paragraph immediately below.

Mediation. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraph, either Party may initiate mediation by delivering to the other Party a written request for mediation, setting forth a description of the dispute and the relief requested. The Parties will cooperate with one another in selecting a mediator (“Mediator”) from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) calendar days after delivery of the written request for mediation. Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one-hundred twenty (120) calendar days from the date of delivery of the written request for mediation. The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party). All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however*, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Binding Arbitration. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraphs, either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with the immediately preceding paragraph by providing notice of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) at any time following the unsuccessful conclusion of the mediation provided for in the immediately preceding paragraph. The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) calendar days after notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) calendar days from the date of notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court. Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator. Upon notice of a Party's demand for binding arbitration, such disagreement or dispute submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws. Except as provided for in this section, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

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

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) calendar days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the dispute or disagreement or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) calendar days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) calendar days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

The Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy. Judgment on the award may be entered in any court having jurisdiction. The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail. Until such award is made, however, the Parties will share equally in paying the costs of the arbitration."

1.07 Addition of Certain Defined Terms. The following defined terms, which are deemed to include any variations thereof, are added to Section [] of the Agreement:

{Instructions: If any of the defined terms set forth below are not applicable to this Amendment due to Seller's election of one of the Options set forth above, such terms must be deleted before its execution.}

"Actual HR: The Heat Rate that must be used in accordance with and subject to the terms set forth in subsection (b)(i)(2) of Section [], which Heat Rate Buyer shall calculate, on the date of the commencement of the First Compliance Period, using the following formula:

Actual HR_n = The average of the Daily HR_n for each delivery or flow date in the two (2) year period immediately preceding the commencement of the First Compliance Period

Where:

$$\text{Daily } HR_n = [EP_n - VOM_n] / [GP_n + GT_n]$$

Where:

EP_n = The average of the Day-Ahead hourly electric energy prices, as determined by the Integrated Forward Market (as defined in the CAISO Tariff) for SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor;

VOM_n = Calendar month avoided variable O&M for the applicable month (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

GP_n = The applicable daily gas price index, which is Platt's Gas Daily (currently SoCalGas gas indices); and

GT_n = The gas transportation rate for the applicable month, per CPUC Resolution E-4246."

"Additional GHG Documentation: Documentation necessary to allocate Free Allowances to Energy delivered by Seller to Buyer, which documentation consists of the following, in each case for the time-period to which the Free Allowances are to apply: (a) the total amount of GHG emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the Energy delivered to Buyer; (b) the Useful Thermal Energy Output of the Generating Facility; (c) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; and (d) total fuel usage of the Generating Facility."

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

"Amendment Effective Date: [Date of execution of this Amendment], which is the date that the Parties entered into Amendment No. []."

"Amendment No. []: That certain Amendment No. [] to [Title of applicable contract], dated as of [Date of execution of this Amendment], by and between Buyer and Seller."

"Annual Facility Emissions Cap: (i) 100% of Base Year Emissions if the Generating Facility is a gas-fired 'cogeneration facility' (as described in 18 CFR §292.203(b)), or (ii) 85% of Base Year Emissions if the Generating Facility is not a gas-fired Generating Facility. The Annual Facility Emissions Cap is a calendar-year cap on the amount of Greenhouse Gas emitted by the Generating Facility for which Buyer shall reimburse Seller for with respect to GHG Compliance Costs for any such calendar year; *provided, however,* that the Annual Facility Emissions Cap will be pro rated if it comes into effect on any calendar day other than January 1st and if the Agreement terminates before December 31, 2014."

"Annual GHG Reports: As defined in Section []."

"Base Year Emissions: The average of the annual Greenhouse Gas (expressed in MTs per year) emitted by the Generating Facility for Energy generated by the Generating Facility and delivered to Buyer under this Agreement for the calendar years 2008 and 2009, as set forth in the Base Year Emissions Notice."

"Base Year Emissions Notice: The notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the Base Year Emissions, as allocated by the CARB; *provided, however*, that if the CARB has not make such an allocation, such notice must set forth (a) the Greenhouse Gas emissions of the Generating Facility for each of calendar year 2008 and 2009, as allocated by the CARB in the Greenhouse Gas Emissions Data Report for the Generating Facility to (i) the total electrical energy, and (ii) the total Useful Thermal Energy Output, and (b) the following formula and a calculation thereof, which calculation Buyer shall use in determining the Base Year Emissions:

$$GM_d = G_e * [E_d / (E_{sh} + E_d)]$$

Where:

GM_d = Greenhouse Gas emissions attributed to Energy generated by the Generating Facility and delivered to Buyer for calendar year 2008 or 2009, as applicable;

G_e = Emissions of Greenhouse Gas (in MTs) attributed to the total amount of electrical energy produced by the Generating Facility for calendar year 2008 or 2009, as applicable (as set forth in the applicable annual report (as verified by an independent third party, if applicable) that Seller submits to the CARB or any other authorized Governmental Authority having jurisdiction in California);

E_d = Energy (in MWh) generated by the Generating Facility and delivered to Buyer for calendar year 2008 or 2009, as applicable; and

E_{sh} = Electrical energy (in MWh) generated by the Generating Facility and used to serve the Site Host Load for calendar year 2008 or 2009, as applicable.

Seller shall include in the Base Year Emissions Notice the above calculation for *each* of calendar year 2008 and 2009. Seller shall then add GM_d for each calendar year 2008 and 2009 and then divide such result by two (2), which result equals the Base Year Emissions."

"Burner Tip Gas Price or BTGP: As determined in CPUC Decision 07-09-040 and CPUC Resolution E-4246."

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

"CAISO: The California Independent System Operator Corporation or successor entity."

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

"CAISO Tariff: The CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC, or any successor entity."

"California Renewables Portfolio Standard" means the California Public Utilities Code Section 399.11, *et seq.*, or any successor thereto"

"CEC: The California Energy Commission, or any successor thereto."

"CARB: The California Air Resources Board, or any successor entity."

"CARB Annual Report: As defined in Section []."

"CARB Mandatory GHG Emissions Annual Report: The mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources."

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

"Day-Ahead: As defined and may be modified in the CAISO Tariff."

"Delivery Term: The Contract Term."[*]

"ERR: As defined in the California Public Utilities Code Section 399.12, or any successor thereto."

"Estimated Allowance Cost: The cost of one Allowance (in \$/MT of Greenhouse Gas), determined as follows:

- (i) The rolling average of all GHG Auction clearing prices during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, an example of which is shown in the following chart (if there is only one GHG Auction clearing price during the First GHG Year or the calendar quarter following the First GHG Year, as applicable, the Estimated Allowance Cost shall be such clearing price):

GHG Auctions	Per MT GHG Auction Price	Per MT Rolling Average
1	\$15.00	\$15.00
2	\$22.00	\$18.50
3	\$21.00	\$19.33
4	\$13.00	\$17.75

or

- (ii) If no GHG Auctions are held during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, the cost of one Allowance will be based on the average price during the relevant period of all Allowance prices published in the GHG Publication Index; or
- (iii) If no GHG Auctions are held during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, and if a GHG Publication Index is not available for any reason (including, without limitation, the failure of the Parties, or Buyer and the Trade Organizations, to agree upon the proper publication for such Allowance prices), then the cost of one Allowance will be determined as follows:
 - (1) The average cost of Allowances actually incurred by Seller during the applicable time-period, as evidenced by Seller's receipts for all Allowance purchases made by Seller (and any other GHG Documentation reasonably requested by Buyer) for all Energy generated by the Generating

Facility and delivered to Buyer during the applicable time-period; *provided, however*, that Seller shall deliver to Buyer copies of all such Allowance purchase receipts (and any other GHG Documentation reasonably requested by Buyer) within three (3) Business Days of Buyer's request; or

- (2) If Buyer provides written notice to Seller (which notice must be provided within (90) calendar days of the date that Seller is required to make any payment for GHG Compliance Costs for the applicable time-period and with respect to this Agreement (the "Allowance Due Date") of Buyer's intention to purchase Allowances for Seller to make such payment on the Allowance Due Date, then subsection (iii)(1) of this definition will not apply, and Buyer shall purchase the necessary number of Allowances for Seller to make its GHG Compliance Costs payment for such time-period and deliver such Allowances to Seller no later than ten (10) Business Days before the Allowance Due Date; *provided, however*, that upon receipt of any such notice from Buyer, Seller shall, within one (1) Business Day, provide Buyer with the Allowance Due Date.

Notwithstanding anything to the contrary set forth in the definition of Estimated Allowance Cost, as set forth in the *Allowance Cost* variable in the GHG Compliance Costs payment calculation above, Buyer is never obligated to pay more than [\$20.00/MT of Greenhouse Gas] [\$12.50/MT of Greenhouse Gas]."

{Instructions: Use \$20.00/MT of Greenhouse Gas if Seller has selected Option C.2., or \$12.50/MT of Greenhouse Gas if Seller has selected Option C.3.}

"FERC: The Federal Energy Regulatory Commission, or successor agency."

"First Compliance Period: The first period of time for compliance with a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation). There will be no more than a single First Compliance Period."

"First GHG Year: The twelve (12) calendar-month period commencing on the first calendar day of the applicable calendar month that there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California)."

"Floor Test Term: From the date the First Compliance Period commences, for a period of three (3) years."

"Forecast: The hourly forecast of (i) the total electric Energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, or (ii) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, in each case net of the Site Host Load and Station Use."

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

"Free Allowance Notice: The notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the aggregate quantity of Free Allowances received by Seller during [the First GHG Year or the applicable calendar quarter, as applicable,] [the applicable time-period] and sets forth the allocation of such Free Allowances in accordance with the following:

{Instructions: Use the first bracketed language if Seller selects Option C.2 or C.3, and use the second bracketed language if Seller selects Option A.}

- (i) The allocation of Free Allowances by the CARB (or any other Governmental Authority) to the Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; or

- (ii) If the CARB (or any other Governmental Authority) does not allocate Free Allowances received by Seller as described in subsection (i) above, then Seller shall set forth in the Free Allowance Notice the quantity of Free Allowances allocated to the Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period (FA_d) utilizing the following formula:

$$FA_d = FA_t * [G_e / (G_e + G_t)] * [E_d / (E_{sh} + E_d)]$$

Where:

FA_t = Total number of Free Allowances received by Seller with respect to the Generating Facility for the applicable time-period;

G_e (in MTs) = Emissions of Greenhouse Gas attributed to the total amount of electric energy produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

G_t (in MTs) = Emissions of Greenhouse Gas attributed to the Useful Thermal Energy Output produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

E_d (in kWh) = Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period; and

E_{sh} (in kWh) = Electric energy generated by the Generating Facility and used to serve the Site Host Load for the applicable time-period;

or

- (iii) If the CARB (or any other Governmental Authority) does not allocate the Free Allowances received by Seller, as described in (i) above, and there is no available formula in any applicable rule or regulation for the calculation of G_e and G_t , as described in (ii) above, then Seller shall include in the Free Allowance Notice the total amount of emissions of Greenhouse Gas attributed to the electric energy period (G_e , in MTs) and the Useful Thermal Energy Output (G_t , in MTs) produced by the Generating Facility for the applicable time-period based on the two following formulas:

$$G_e = G * (\text{Useful Power Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

$$G_t = G * (\text{Useful Thermal Energy Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

Where:

G (in MTs) = Total emissions of Greenhouse Gas produced by the Generating Facility for the applicable time-period;

Useful Power Output (in MMBtu) = As defined in 18 CFR §292.202(g), or any successor thereto;

Useful Thermal Energy Output (in MMBtu) = As defined in 18 CFR §292.202(h), or any successor thereto;

Upon determining G_e and G_t in subsection (iii) above, Seller shall then calculate for and provide the quantity of Free Allowances attributed to Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period (FA_d) using the formula set forth in subsection (ii) of this definition."

"GHG Auction: Any auction or other sale-by-bid event applicable to California and by an authorized Governmental Authority (or any entity authorized by such Governmental Authority) for the sale of Allowances."

"GHG Compliance Costs: The cost of Allowances, as determined in accordance with this Agreement."

"GHG Documentation: Documentation of GHG Compliance Costs, including, without limitation, documentation establishing to Buyer's reasonable satisfaction: (a) that Seller is actually liable for the GHG Compliance Costs during the term of the Agreement; (b) that the GHG Compliance Costs were not (i) in effect or (ii) scheduled to become effective and applicable to the Generating Facility as of the Amendment Effective Date; (c) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the Energy delivered to Buyer; (d) the total electrical energy produced by the Generating Facility, the electrical energy used to the serve the Site Host Load, and the Energy delivered to Buyer; (e) that the GHG Compliance Costs was imposed on Seller, the Site Host, the Generating Facility or a Related Entity of Seller by an authorized Governmental Authority in whose jurisdiction the Generating Facility is located, or which otherwise has jurisdiction over Seller, the Site Host, a Related Entity of Seller, or the Generating Facility, as applicable; and (f) that Seller took all reasonable steps to mitigate the cost or amount of such GHG Compliance Costs, including utilizing all Allowances or Free Allowances (*provided, however,* that such reasonable steps will not be deemed to require Seller to make capital improvements to the Generating Facility)."

"GHG Floor Test: As defined in Section [redacted]."

"GHG Publication Index: The price per Allowance, as set forth in a single publication published by a recognized publisher in the United States energy industry, as reasonably agreed to by the Parties; *provided, however,* that if the Parties are unable to agree upon a publication within five (5) Business Days after the end of the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on the proper publication to be used for determining the per Allowance price, and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Business Day following either the end of the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, then the Estimated Allowance Cost will be determined based on subsection (iii), as described in the definition of "Estimated Allowance Cost" above. Seller hereby agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations as to the designation of a publication for determining per Allowance prices, in accordance with the foregoing."

"Governmental Authority: Any governmental authority responsible for the regulation of Greenhouse Gas in California, including (i) any federal, state, local, municipal or other governmental authority, (ii) any governmental, regulatory or administrative agency, commission, lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (iii) any court or governmental tribunal."

"Green Attributes means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or

otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;[†]

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

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

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

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

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

"Heat Rate: The value obtained, in BTU per kWh, when the fuel input (on a Higher Heating Value basis), in BTU is divided by generation, net of Station Use, in kWh."

"Higher Heating Value: The high or gross heat content of the fuel with the heat of vaporization included; the water vapor is assumed to be in a liquid state."

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

"Initial Forecast Month: The first calendar month for which Seller provides to Buyer a 30 calendar-day Forecast pursuant to Section 2 of Appendix [redacted], which must be the first calendar month commencing no earlier than 30 calendar days after Amendment Effective Date and no later than 60 calendar days after such date."

"JAMS: The Judicial Arbitration and Mediation Services, Inc. or any successor entity."

[†] 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.

"Locational Marginal Price: As defined and may be modified in the CAISO Tariff."

"Market Disruption Event: With respect to any MHR Source, any of the following events: (i) the permanent discontinuation or material suspension of trading in the exchange or in the market specified for determining a Market Heat Rate; (ii) the temporary or permanent discontinuance or unavailability of the MHR Source; or (iii) the temporary or permanent closing of any exchange specified for determining a Market Heat Rate. For purposes of this definition, "temporary" means five (5) or more continuous Trading Days."

"Market Heat Rate: The 12-month forward market heat rate, calculated for each calendar pricing month utilizing the methodology set forth in Commission Decision 07-09-040 and Commission Resolution E-4246 for SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor. Unless otherwise agreed to by the Parties, this definition of Market Heat Rate will not be updated by any subsequent decision, ruling or order by the Commission."

"MHR Source: The relevant publications used to determine the Market Heat Rate."

"MT(s): Metric Ton(s)."

"PIRP (i.e., Participating Intermittent Resource Program): The CAISO's intermittent resource program initially established pursuant to Amendment 42 of the CAISO Tariff in FERC Docket ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose."

"Project: The Generating Facility."

"Real-Time Forced Outage: A Forced Outage which occurs only after 5:00 p.m. California time on the calendar day before a Trading Day impacted by such Forced Outage."

"Reference Market-Maker: A leading dealer in the energy market that is not a Related Entity of either Party (or of a Trade Organization) and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker."

"Related Entity: With respect to either Party, any individual or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this Agreement, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power."

"RPS Program: The State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code § 399.11, et seq., or any successor thereto."

"Schedule: The action of Buyer, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy."

"Seller's Quarterly Emissions Notice: The notice, which Seller must provide to Buyer on or before the tenth (10th) Business Day following the end of each calendar quarter during the term of this Agreement, that sets forth for such calendar quarter the total Greenhouse Gas emissions attributable to (i) the Generating Facility, (ii) the Useful Thermal Energy Output of the Generating Facility, (iii) the electrical generation of the Generating Facility, and (iv) the Energy delivered to Buyer."

"Settlement Agreement: That certain Settlement Agreement, dated October 8, 2010, filed by the Settling Parties in CPUC R.04-04-025 and R.04-04-003, A.08-11-001, R.99-11-022, and R.06-02-013."

"Site Host: The entity or entities purchasing or otherwise using the Site Host Load or Useful Thermal Energy Output from the Generating Facility."

"Site Host Load: The electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (other than Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code § 218(b)."

"Station Use: The electric energy produced by the Generating Facility that is (i) used within the Generating Facility to power the lights, motors, control system and other electrical loads that are necessary for Operation, (ii) consumed within the Generating Facility's electricity energy distribution system as losses needed to deliver electricity to the Site Host Load, and (iii) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s)."

"Trade Organizations: The California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association, or any successor entity."

"Trading Day: The day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council's Preschedule Calendar (as found on the Western Electricity Coordinating Council's website, or any successor thereto)."

"Useful Thermal Energy Output: As defined in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto."

"Web Client: A Buyer provided web based system or an email address designated by Buyer."

1.08 Settlement Agreement. Seller agrees to be bound by the terms and conditions set forth in the Settlement Agreement.

1.09 General Provisions.

- (a) Except as expressly set forth in this Amendment, the Agreement remains unchanged and, so modified, the Agreement shall remain in full force and effect.
- (b) This Amendment will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) The terms and provisions hereof shall be binding on and inure to the benefit of and be enforceable by the successors and assigns of the Parties, whether so expressed or not.
- (d) If any provision of this Amendment is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Amendment will remain in full force and effect. Any provision of this Amendment held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) THIS AMENDMENT 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 AMENDMENT.

- (f) This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.
- (g) Each Party represents and warrants that the execution, delivery and performance of this Amendment are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that Party has authority to execute this Amendment on behalf of such Party and to bind such Party to this Amendment.
- (h) The term “including” when used in this Amendment is by way of example only and will not be considered in any way to be in limitation. The word “or” when used in this Amendment includes the meaning “and/or” unless the context unambiguously dictates otherwise. The headings used in this Amendment are for convenience and reference purposes only and will not affect its construction or interpretation.
- (i) This Amendment sets forth the entire agreement of the Parties with respect to the subject matter herein, and supersedes all previous understandings, written or oral, with respect thereto.
- (j) This Amendment may not be amended, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (k) Whenever this Amendment specifically refers to any law, tariff, government department or agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

[Signature page follows]

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

[SELLER'S NAME],

Southern California Edison Company,

a [Seller's business registration]

a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTACHMENT A – EXHIBIT 3

{Instructions: Review this Amendment to ensure that (i) any term with a bracketed asterisk next to it is defined in the Agreement, and (ii) the defined terms and all other provisions in this Amendment, including but not limited to payment provisions, do not duplicate, and are otherwise consistent with the defined terms and other provisions of the Agreement that is the subject of this Amendment. This note, the bracketed asterisks and any other instructions must be deleted before execution of this Amendment.

Buyer is only required to make this Amendment available to Seller as of the Settlement Effective Date (as defined in that certain Settlement Agreement, dated October 8, 2010, which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001). If Seller elects to enter into this Amendment, this Amendment must be fully executed by the Parties on or before the 180th calendar day following the Settlement Effective Date. Further, Buyer is only required to make this Amendment available to Seller if Buyer and Seller are parties to an existing power purchase and sale agreement for Qualifying Facilities that is in full force and effect on the Settlement Effective Date (including any extensions of such existing power purchase and sale agreement, as set forth in D.07-09-040, D.04-01-050 or D.05-12-009), excluding power purchase and sale agreement entered into pursuant to the RPS Program.

AMENDMENT NO. []
TO
[TITLE OF APPLICABLE CONTRACT]

(ID# [])

This Amendment No. [] to [Title of applicable contract] (this "Amendment"), by and between San Diego Gas & Electric Company, a California corporation ("Buyer"), and [Seller's name], a [Seller's form of business entity and state of registration] ("Seller"), is entered into and effective as of [Date of execution] (the "Amendment Effective Date"). Buyer and Seller are sometimes referred to in this Amendment individually as a "Party" and collectively as the "Parties". Unless the context specifies or requires, any initially capitalized term used but not otherwise defined in this Amendment has the meaning given to such term in the Agreement (as defined in Recital A).

RECITALS

- A.** The Parties entered into that certain [Title of applicable contract] dated [Date of applicable contract], [as amended by [Title and date of earlier amendments, if any]] ([collectively,] the "Agreement").
- B.** On or about September 20, 2007, the Commission[*] issued Decision 07-09-040 (the "Decision") which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to Qualifying Facilities[*] meeting the eligibility criteria set forth in the Decision.
- C.** Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the "Settling Parties") entered into Commission-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.

- D. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the "Settlement Agreement"), which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.
- E. On [Date of Commission Decision], the Commission issued Decision [] approving the Settlement Agreement.
- F. Pursuant to the Settlement Agreement, the Settling Parties developed a form of a power purchase agreement amendment (the "Form Amendment") that certain Qualifying Facilities may elect, at their option and subject to certain restrictions set forth in the Settlement Agreement, to enter into with the applicable California investor-owned utility. This Amendment is based on the Form Amendment.
- G. Buyer must offer this Amendment to Seller in order to fulfill its obligations under the Settlement Agreement, and Seller desires to accept such offer and enter into this Amendment.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

ARTICLE ONE. AMENDMENTS TO THE AGREEMENT

- 1.01 Pricing.** Section [] of the Agreement is deleted and replaced as of the Pricing Effective Date (as defined below) with one of the options ("Options") set forth below in this Section 1.01, which must be checked by Seller in the blank space provided for next to such Option and will be the only Option incorporated into the Agreement; *provided, however,* that if Seller selects Option C.1, Seller must also select one of Option A, Option B, Option C.2 or Option C.3, as further described in Option C.1 below.

For purposes of this Section 1.01, the "Pricing Effective Date" means the later of the following events or dates: (1) the Amendment Effective Date; (2) [], which is the primary expiration date of a currently-effective fixed price period or fixed heat rate period, as provided in that certain [Title of applicable amendment], dated [Date of applicable amendment], between the Parties; and (3) January 1, 2011.

To the extent that the Agreement requires Buyer to purchase and pay for Energy[*] based on the short run avoided cost pricing scheme, and Seller elects Option A, Option A will replace such short run avoided cost pricing scheme.

{Instructions: The Options set forth below must be modified to account for the termination of the Agreement that is the subject of this Amendment. Specifically, if the Agreement terminates before the commencement of any of the time-periods set forth in an Option, the provisions of this Amendment relating to such time-periods must be deleted, and all section references and any other cross references should be updated as necessary. By way of example only, with respect to Option A, if the Agreement expires in 2011, the final two rows of the first table may need to be deleted, as well as all other references to the calculation of the Energy price on and after January 1, 2012.}

OPTION A. _____

- (a) "Energy Price. Subject to subsections (b) through (e) of this Section, Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price } \$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

Applicable HR = The Heat Rate for the specified time-period, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,225
January 1, 2013 through December 31, 2014	8,125
January 1, 2015 until the termination of this Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

GHG Charges = All taxes, charges or fees assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable HR or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula.

TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the energy only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where the hourly location adjustment (i.e., *LA*) will be based on the hourly Day-Ahead prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{OF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

(b) Energy Price during the Floor Test Term.

(i) If there is a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), then, during the Floor Test Term, the Energy price will be the higher of the two formulas provided in subsection (b)(i)(1) or (b)(i)(2) of this Section (the "GHG Floor Test"):

(1) Energy Price \$/kWh = ((Market Heat Rate * BTGP/1,000,000) + VOM) * TOU + LA

Where:

Market Heat Rate (Btu/kWh) = As defined in Section [];

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

OR

(2) Energy Price \$/kWh = ((Applicable HR * (BTGP + GHG Allowance Price) /1,000,000) + VOM) * TOU + LA + GHG Charges

Where:

Applicable HR = (A) 8,225 Btu/kWh through December 31, 2012; (B) 8,125 Btu/kWh from January 1, 2013 through December 31, 2014; and (C) Actual HR from January 1, 2015 until the end of the Floor Test Term;

BTGP (\$/MMBtu) = As set forth above;

GHG Allowance Price (\$/MMBtu) = Allowance Cost (\$/MT) * 117lbs of GHG per MMBtu / 2,204.6 lbs per MT

Where:

Allowance Cost (\$/MT) = The cost of one Allowance, determined using the GHG Auction clearing price from the latest GHG Auction that has taken place during the calendar quarter immediately preceding the date that Buyer's payment is due to Seller; *provided, however*, that if there is no GHG Auction held during the applicable time-period, then the Allowance Cost is determined in accordance with subsection (d) of this Section.

VOM (\$/kWh) = As set forth above;

GHG Charges (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (c) Free Allowance Reporting and Allocation. If, at any time, Buyer makes a monthly payment to Seller utilizing the GHG Floor Test formula set forth in subsection (b)(i)(2) of this Section, then Buyer shall deduct from the monthly payment to Seller for the applicable month the value of the Free Allowances disclosed in and based on all Free Allowance Notices that have not already been applied to a prior payment to Seller; *provided, however*, that if Buyer, using reasonable efforts, is unable to process such payment adjustment for the applicable month, then Buyer shall make such payment adjustment to the next monthly payment due to Seller. For any month that Buyer utilizes the formula set forth in subsection (b)(i)(1) of this Section to make a monthly payment to Seller, Buyer shall maintain a record of the value and quantity of all Free Allowances disclosed in the Free Allowance Notices, if any, and shall deduct the value of such Free Allowances to any subsequent monthly payment due to Seller where Buyer calculates such monthly payment utilizing the formula set forth in subsection (b)(i)(2) of this Section until such time that the value of all such Free Allowances are expended.

In order for Buyer to make the payment adjustment set forth in the immediately preceding paragraph, Seller agrees to deliver to Buyer, within twenty (20) calendar days of receiving any Free Allowances, a Free Allowance Notice for the applicable month, which Free Allowance Notice must include all Additional GHG Documentation. Buyer shall value any such Free Allowances using the same methodology Buyer uses in valuing the Allowance Cost, as set forth above.

- (d) Determining Allowance Costs under the GHG Floor Test if there is No GHG Auction. This subsection (d) is applicable if no GHG Auction has been held during the time-period for which the Allowance Cost variable set forth in subsection (b)(i) of this Section is to be determined. In such an instance, publicly available indices will be used to determine the price for the applicable period. If no such indices exist, Buyer will meet with the Trade Organizations to negotiate in good faith to reach an agreement on setting the Allowance Cost variable. If, after negotiating for fifteen (15) Business Days, Buyer and the Trade Organizations have not reached an agreement on setting the Allowance Cost variable, then Buyer and the Trade Organizations shall each select, within fifteen (15) calendar days after such failed negotiations, price quotations from two (2) different Reference Market-Makers, for a total of four (4) price quotations. The Allowance Cost variable for the applicable time-period will be determined by taking the average of the four (4) price quotations so selected by Buyer and the Trade Organizations. Seller agrees and acknowledges that it shall be bound by any agreement as to the Allowance Cost variable between Buyer and the Trade Organizations, in accordance with the foregoing.

- (e) Energy Price from the End of the Floor Test Term. As of the end of the Floor Test Term until the termination of this Agreement, Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price } \$/\text{kWh} = ((\text{Market Heat Rate} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Market Heat Rate (Btu/kWh) = As defined in Section [];

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (f) Seller's Responsibility. Other than Buyer's payment to Seller for GHG Compliance Costs and GHG Charges as set forth in payment formulae in Section [] above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of GHG emissions with respect to Seller or the Generating Facility.

OPTION B. _____

Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$$/kWh = ((Applicable HR * BTGP/1,000,000) + VOM) * TOU + LA$$

Where:

Applicable HR = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the energy only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

and

$$LA \text{ (i.e., hourly location adjustment, in \$/kWh)} = LMP_{OF} - LMP_{Trading \text{ Hub}}$$

Where:

LMP_{OF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

{Instructions: Use the above formula if the Qualifying Facility is a "cogeneration facility", as described in 18 CFR §292.203(b), or a non-renewable "small power production facility", as described in 18 CFR §292.203(a).}

LA (i.e., hourly location adjustment, in \$/kWh) = Zero (0).

{Instructions: Use the above formula if the Qualifying Facility is a renewable "small power production facility", as described in 18 CFR §292.203(a).}

As part of calculating the Energy price, the hourly location adjustment (i.e., LA) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

Seller's Responsibility. Notwithstanding anything to the contrary set forth in this Agreement, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

OPTION C.1. _____

"For a period of no more than ninety (90) calendar days following the Amendment Effective Date, Buyer and Seller shall negotiate in good faith so that Buyer and Seller shall, if such negotiations are successful, enter into a mutually agreed upon tolling agreement ("Tolling Agreement"), pursuant to which Seller shall cause the Generating Facility to be dispatchable and Buyer shall purchase electric energy and related attributes from Seller on a dispatchable basis. Until such time that Buyer and Seller have entered into such Tolling Agreement and the payment terms thereof are in effect, or if Buyer and Seller are unable to successfully negotiate and enter into a Tolling Agreement, Seller shall be paid in accordance with the terms of this Agreement, as such Agreement's pricing provision has been amended by Amendment No. [], pursuant to which Seller selected to receive payment under one of Option A, Option B, Option C.2 or Option C.3 (as further described in Amendment No. [])."

OPTION C.2. _____

"Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\$/\text{kWh} = [((\text{Applicable HR} * \text{TOU}) - \text{Applicable BTU}) * \text{BTGP}/1,000,000] + (\text{VOM} * \text{TOU}) + \text{LA}$$

Where:

Applicable HR = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500

2015 through the termination of the Agreement	Market Heat Rate
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TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the energy only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer’s CPUC approved time-of-use periods) set forth in Buyer’s most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer’s 2011 RPS Program solicitation).

Applicable BTU = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Agreement;

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246; and

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., LA) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Agreement as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Agreement, Buyer shall make payments to Seller for GHG Compliance Costs, if applicable, in accordance with the following formula (and subject to accounting for Free Allowances, as described below), with the first such payment to be made on or before the thirtieth (30th) Business Day after the end of the First GHG Year, and additional GHG Compliance Costs payments to be made on or before the thirtieth (30th) Business Day after at the end of each calendar quarter following the First GHG Year:

$$(\$) = ((E * 936 \text{ lbs/MWh}) \div 2204.6 \text{ lbs/MT of Greenhouse Gas}) * \text{Allowance Cost}$$

Where:

E = Energy (in MWh) generated by the Generating Facility and delivered to Buyer during the applicable time-period; and

Allowance Cost = Zero (0); provided, however, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then Allowance Cost equals the lesser of (i) \$20/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Buyer, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Buyer. Buyer shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Buyer shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Buyer the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

OPTION C.3. _____

Energy Price. Buyer shall calculate the Energy price for Energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$$/kWh = [((Applicable HR * TOU) - Applicable BTU) * BTGP/1,000,000] + (VOM * TOU) + LA$$

Where:

Applicable HR = The Heat Rate applicable to the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Agreement	Market Heat Rate

TOU (i.e., time-of-use) =The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the energy only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC approved time-of-use periods) set forth in Buyer's

most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

Applicable BTU = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Agreement;

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

LA (i.e., hourly location adjustment, in \$/kWh) = $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

LMP_{Trading Hub} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Buyer.

GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Agreement as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Agreement, Buyer shall, within thirty (30) Business Days of receiving Seller's Quarterly Emissions Notice, make payments for the applicable calendar quarter to Seller for GHG Compliance Costs, if applicable, up to the Annual Facility Emissions Cap, according to the following formula and subject to accounting for Free Allowances, as described below (*provided, however*, that Seller must also deliver the information required in the Base Year Emissions Notice before Buyer makes any such payments):

$(\$) = G * \text{Allowance Cost}$

Where:

G = Greenhouse Gas emissions (in MTs) attributable to the Generating Facility for Energy generated by the Generating Facility and delivered to Buyer during the applicable quarter and based on Seller's Quarterly Emissions Notice; *provided, however*, that, once the aggregate quantity of the variable *G* for the applicable calendar year equals or exceeds the Annual Facility Emissions Cap for such calendar year, *G* equals zero (0); *provided further* that if such Greenhouse Gas emissions equals or exceeds the Annual Facility Emissions Cap for such calendar year in the middle of the applicable month, Buyer shall make a pro rated payment for Seller's GHG Compliance Costs for the applicable month; and

Allowance Cost = Zero (0); *provided, however*, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost* equals the lesser of (i) \$12.50/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Buyer, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following

the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Buyer. Buyer shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Buyer shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Buyer the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

1.02 Reporting Requirements. The following is added to the Agreement as Section []:

"Reporting Requirements.

(a) From the Amendment Effective Date through the end of the term of this Agreement (and for any period following the termination of this Agreement to the extent relating back to the term of this Agreement), Seller shall provide to Buyer the following information (together, the "Annual GHG Reports"):

(i) On or before the fifth (5th) Business Day following Seller's timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB, detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Report"), Seller shall deliver such CARB Annual Report to Buyer; and

(ii) To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; [and (5) the number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar year during any period where the Energy price is calculated based on the GHG Floor Test.]

{Instructions: The bracketed and highlighted provision immediately above is only applicable if Seller selected Option A, and should otherwise be deleted.}

(b) If Buyer requires any other information not delineated in subsection (a) of this Section in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB and/or by any other Governmental Authority and imposed on Buyer (other than the information that

Seller must provide in accordance with subsection (c) of this Section), then Buyer shall meet and confer with the Trade Organizations regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations, in accordance with the foregoing.

- (c) Each Party shall deliver to the other Party, or before the tenth (10th) Business Day following receipt of a notice from the other Party, such information as such other Party is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement."

Buyer will review the Annual GHG Reports described in this Section to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under this Agreement, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under this Agreement. If this Agreement terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the thirty- (30) calendar day period after the termination of this Agreement.

To the extent that the information provided by the disclosing Party in accordance with this Section is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Facilities under the existing Qualifying Facilities monitoring compliance program.

1.03 Market Disruption Event. The following is added to the Agreement as Section []:

"Unless this Agreement has terminated, if, on or after the date that the Market Heat Rate applies to and is used in the calculation of the Energy price and until the end of the term of this Agreement, there occurs a Market Disruption Event, then the Market Heat Rate for the affected Trading Day(s) must be determined by reference to the Market Heat Rate for the first Trading Day thereafter on which no Market Disruption Event exists; *provided, however,* that if the Market Heat Rate is not so determined within five (5) Trading Days after the Market Disruption Event occurred or existed, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on a Market Heat Rate (or a method for determining a Market Heat Rate), and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Trading Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Market Heat Rate will be determined in good faith by taking the average of the price quotations for energy and relevant Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by each of Buyer and the Trade Organizations (for a total of four (4) price quotations). Seller hereby agrees and acknowledges that it shall be bound by any agreement as to a Market Heat Rate (or a method for determining a Market Heat Rate) between Buyer and the Trade Organizations, in accordance with the foregoing."

1.04 Addition of Forecasting Appendix. The following is added to the Agreement as Appendix []:

"1. General Requirements. The Parties shall make good faith efforts to abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to (i) support Buyer's compliance with the CAISO's scheduling requirements related to the Agreement, (ii) accommodate changes to the Parties' respective generation technology and organizational structure, (iii) address changes in the Operating[*] and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions. The Parties agree that the Forecasts generated by, or otherwise resulting from the

Forecasting requirements and procedures in this Appendix are non-binding on Seller, the Generating Facility or the Site Host.

2. Seller's Forecasting Submittal Requirements.

- a. 30-Day Forecast. No later than 30 calendar days before the first calendar day of the Initial Forecast Month, Seller shall provide Buyer with a Forecast for the 30 calendar-day period commencing on the first calendar day of the Initial Forecast Month using the Web Client. If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail at [] or by telephoning Buyer's generation operations center at []. The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall (i) not include any anticipated or expected electric energy losses between the meter(s) used for measuring the Energy sold to Buyer by Seller and the point of delivery of the Energy delivered to Buyer by Seller, and (ii) limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.
 - b. Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. California time of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2.a of this Appendix, and on or before 5:00 p.m. California time every Wednesday thereafter for the remainder of the term of the Agreement, Seller shall update the Forecast for the 30 calendar-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer at the e-mail address or telephone number listed in Section 2.a of this Appendix.
 - c. Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates to take into account expected changes in daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Seller's Facility[*] ambient conditions, a Forced Outage[*], or a Real-Time Forced Outage, any of which results or is expected to result in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Appendix must be submitted to Buyer via the Web Client by no later than (i) 5:00 p.m. California time on the calendar day before the calendar day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council Preschedule Calendar (as found on the Western Electricity Coordinating Council's website) is impacted by the change, if the change is known to Seller at that time, (ii) the Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time, (iii) if the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected Energy production change. Seller's updated Forecast must contain the following information: (w) the beginning date and time of the event resulting in a change in the availability of the Generating Facility and expected hourly Energy production in MWh/h; (x) the expected ending date and time of the event; (y) the expected Energy production or available generation capacity, as applicable, in MWh; and (z) any other information required by the CAISO as communicated to Seller by Buyer.
3. Miscellaneous. Buyer is responsible for all CAISO charges and is entitled to receive all CAISO revenues. Except as set forth in this Appendix, there shall be no modification of Seller's existing communication protocols and designated contacts with Buyer, if any, including any requirement to notify Buyer of Generating Facility parallel operation or separation from the electrical system."

1.05 Additional Representations, Warranties, and Covenants Applicable to Renewable Facilities. If the Generating Facility is a small power production facility (as described in 18 Code of Federal Regulations Part 292, Section 292.203(a)) that utilizes a technology

referenced in Section 399.12 of the California Public Utilities Code, then the following is added to the Agreement as Section []:

"RPS Eligibility; Conveyance of Green Attributes.

- (a) 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.

- (b) 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.
- (c) 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.
- (d) 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."

1.06 Dispute Resolution. [Section [] is deleted in its entirety and replaced with the following:] [The following is added to the Agreement as Section []]:

{Instructions: The following dispute resolution provisions are intended to replace any that are set forth in the Agreement. Select the appropriate highlighted language above. }

"Informal Dispute Resolution. Either Party may at any time notify the other Party of an intention to discuss or dispute any matter connected with this Agreement, including, without limitation, a change to the CARB's authority (or the authority of any other authorized Governmental Authority having jurisdiction in California), or any other development in the regulation of Greenhouse Gas that makes it impossible to perform or administer any provision of this Agreement, or results, or could reasonably be forecasted to result, in an inability of the Parties to quantify or value GHG Compliance Costs. Within fifteen (15) calendar days of receiving such notification, the Parties shall each appoint a representative knowledgeable on the topic at issue and such representatives shall meet within the following thirty (30) calendar days in an attempt to settle the matter at issue. If the representatives of the Parties are unable to resolve the matter at issue within thirty (30) calendar days of their first meeting, then the Parties shall each appoint a senior officer knowledgeable on the topic at issue and such senior officers shall meet within fifteen (15) calendar days in an attempt to resolve the matter at issue. If the senior officers of the parties are unable to resolve the

matter at issue within a further thirty (30) calendar day period following their first meeting, or if either Party fails to appoint a representative or senior officer or if such representatives or senior officers fail to meet with each other in either case within the time-periods specified herein, then either party may refer the matter at issue to binding arbitration in accordance with the paragraph immediately below.

Mediation. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraph, either Party may initiate mediation by delivering to the other Party a written request for mediation, setting forth a description of the dispute and the relief requested. The Parties will cooperate with one another in selecting a mediator (“Mediator”) from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) calendar days after delivery of the written request for mediation. Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one-hundred twenty (120) calendar days from the date of delivery of the written request for mediation. The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party). All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however*, that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Binding Arbitration. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraphs, either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with the immediately preceding paragraph by providing notice of a demand for binding arbitration before a single, neutral arbitrator (the “Arbitrator”) at any time following the unsuccessful conclusion of the mediation provided for in the immediately preceding paragraph. The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) calendar days after notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) calendar days from the date of notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court. Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator. Upon notice of a Party's demand for binding arbitration, such disagreement or dispute submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws. Except as provided for in this section, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

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

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

- (b) The initial disclosure will occur within thirty (30) calendar days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the dispute or disagreement or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) calendar days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within thirty (30) calendar days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

The Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy. Judgment on the award may be entered in any court having jurisdiction. The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail. Until such award is made, however, the Parties will share equally in paying the costs of the arbitration."

1.07 Seller Financial Information.

- (a) The Parties shall determine, through consultation and review with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then:

- (i) Within 20 days following the end of each year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist.

If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

- (ii) Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period.

The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance GAAP, the International Financial Reporting Standards ("IFRS"), or any successor to either of the foregoing ("Successor"), the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.

- (c) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered public accounting firm can conduct financial statement audits in accordance with the

standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer.

If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 1.07 (c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; *provided, however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 1.07 in strict confidence and, accordingly:
 - (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified herein; and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 1.07, (2) use such information solely for purposes of conducting the audits described in this Section 1.07, and (3) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by

Section 1.07(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default. If Buyer's independent audit firm, after the review by the third independent audit firm still determines that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided, however*, that in addition to the protections in Section 1.07(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

1.08 Addition of Certain Defined Terms. The following defined terms, which are deemed to include any variations thereof, are added to Section [] of the Agreement:

{Instructions: If any of the defined terms set forth below are not applicable to this Amendment due to Seller's election of one of the Options set forth above, such terms must be deleted before its execution.}

"Actual HR: The Heat Rate that must be used in accordance with and subject to the terms set forth in subsection (b)(i)(2) of Section [], which Heat Rate Buyer shall calculate, on the date of the commencement of the First Compliance Period, using the following formula:

Actual HR_n = The average of the Daily HR_n for each delivery or flow date in the two (2) year period immediately preceding the commencement of the First Compliance Period

Where:

$$\text{Daily } HR_n = [EP_n - VOM_n] / [GP_n + GT_n]$$

Where:

EP_n = The average of the Day-Ahead hourly electric energy prices, as determined by the Integrated Forward Market (as defined in the CAISO Tariff) for SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor;

VOM_n = Calendar month avoided variable O&M for the applicable month (\$/kWh), per D.07-09-040 and CPUC Resolution E-4246;

GP_n = The applicable daily gas price index, which is Platt's Gas Daily (currently SoCalGas gas indices); and

GT_n = The gas transportation rate for the applicable month, per CPUC Resolution E-4246."

"Additional GHG Documentation: Documentation necessary to allocate Free Allowances to Energy delivered by Seller to Buyer, which documentation consists of the following, in each case for the time-period to which the Free Allowances are to apply: (a) the total amount of GHG emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the Energy delivered to Buyer; (b) the Useful Thermal Energy Output of the Generating Facility; (c) the total electrical energy produced by the Generating Facility, the

electrical energy used to the serve the Site Host Load, and the Energy delivered to Buyer; and (d) total fuel usage of the Generating Facility."

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

"Amendment Effective Date: [Date of execution of this Amendment], which is the date that the Parties entered into Amendment No. []."

"Amendment No. []: That certain Amendment No. [] to [Title of applicable contract], dated as of [Date of execution of this Amendment], by and between Buyer and Seller."

"Annual Facility Emissions Cap: (i) 100% of Base Year Emissions if the Generating Facility is a gas-fired 'cogeneration facility' (as described in 18 CFR §292.203(b)), or (ii) 85% of Base Year Emissions if the Generating Facility is not a gas-fired Generating Facility. The Annual Facility Emissions Cap is a calendar-year cap on the amount of Greenhouse Gas emitted by the Generating Facility for which Buyer shall reimburse Seller for with respect to GHG Compliance Costs for any such calendar year; *provided, however*, that the Annual Facility Emissions Cap will be pro rated if it comes into effect on any calendar day other than January 1st and if the Agreement terminates before December 31, 2014."

"Annual GHG Reports: As defined in Section []."

"Base Year Emissions: The average of the annual Greenhouse Gas (expressed in MTs per year) emitted by the Generating Facility for Energy generated by the Generating Facility and delivered to Buyer under this Agreement for the calendar years 2008 and 2009, as set forth in the Base Year Emissions Notice."

"Base Year Emissions Notice: The notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the Base Year Emissions, as allocated by the CARB; *provided, however*, that if the CARB has not make such an allocation, such notice must set forth (a) the Greenhouse Gas emissions of the Generating Facility for each of calendar year 2008 and 2009, as allocated by the CARB in the Greenhouse Gas Emissions Data Report for the Generating Facility to (i) the total electrical energy, and (ii) the total Useful Thermal Energy Output, and (b) the following formula and a calculation thereof, which calculation Buyer shall use in determining the Base Year Emissions:

$$GM_d = G_e * [E_d / (E_{sh} + E_d)]$$

Where:

GM_d = Greenhouse Gas emissions attributed to Energy generated by the Generating Facility and delivered to Buyer for calendar year 2008 or 2009, as applicable;

G_e = Emissions of Greenhouse Gas (in MTs) attributed to the total amount of electrical energy produced by the Generating Facility for calendar year 2008 or 2009, as applicable (as set forth in the applicable annual report (as verified by an independent third party, if applicable) that Seller submits to the CARB or any other authorized Governmental Authority having jurisdiction in California);

E_d = Energy (in MWh) generated by the Generating Facility and delivered to Buyer for calendar year 2008 or 2009, as applicable; and

E_{sh} = Electrical energy (in MWh) generated by the Generating Facility and used to serve the Site Host Load for calendar year 2008 or 2009, as applicable.

Seller shall include in the Base Year Emissions Notice the above calculation for *each* of calendar year 2008 and 2009. Seller shall then add GM_d for each calendar year 2008 and 2009 and then divide such result by two (2), which result equals the Base Year Emissions."

"Burner Tip Gas Price or BTGP: As determined in CPUC Decision 07-09-040 and CPUC Resolution E-4246."

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

"CAISO: The California Independent System Operator Corporation or successor entity."

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

"CAISO Tariff: The CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC, or any successor entity."

"California Renewables Portfolio Standard" means the California Public Utilities Code Section 399.11, *et seq.*, or any successor thereto"

"CEC: The California Energy Commission, or any successor thereto."

"CARB: The California Air Resources Board, or any successor entity."

"CARB Annual Report: As defined in Section []."

"CARB Mandatory GHG Emissions Annual Report: The mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources."

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

"Day-Ahead: As defined and may be modified in the CAISO Tariff."

"Delivery Term: The Contract Term."[*]

"ERR: As defined in the California Public Utilities Code Section 399.12, or any successor thereto."

"Estimated Allowance Cost: The cost of one Allowance (in \$/MT of Greenhouse Gas), determined as follows:

- (i) The rolling average of all GHG Auction clearing prices during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, an example of which is

shown in the following chart (if there is only one GHG Auction clearing price during the First GHG Year or the calendar quarter following the First GHG Year, as applicable, the Estimated Allowance Cost shall be such clearing price):

GHG Auctions	Per MT GHG Auction Price	Per MT Rolling Average
1	\$15.00	\$15.00
2	\$22.00	\$18.50
3	\$21.00	\$19.33
4	\$13.00	\$17.75

or

(ii) If no GHG Auctions are held during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, the cost of one Allowance will be based on the average price during the relevant period of all Allowance prices published in the GHG Publication Index; or

(iii) If no GHG Auctions are held during the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, and if a GHG Publication Index is not available for any reason (including, without limitation, the failure of the Parties, or Buyer and the Trade Organizations, to agree upon the proper publication for such Allowance prices), then the cost of one Allowance will be determined as follows:

(1) The average cost of Allowances actually incurred by Seller during the applicable time-period, as evidenced by Seller's receipts for all Allowance purchases made by Seller (and any other GHG Documentation reasonably requested by Buyer) for all Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; *provided, however*, that Seller shall deliver to Buyer copies of all such Allowance purchase receipts (and any other GHG Documentation reasonably requested by Buyer) within three (3) Business Days of Buyer's request; or

(2) If Buyer provides written notice to Seller (which notice must be provided within (90) calendar days of the date that Seller is required to make any payment for GHG Compliance Costs for the applicable time-period and with respect to this Agreement (the "Allowance Due Date")) of Buyer's intention to purchase Allowances for Seller to make such payment on the Allowance Due Date, then subsection (iii)(1) of this definition will not apply, and Buyer shall purchase the necessary number of Allowances for Seller to make its GHG Compliance Costs payment for such time-period and deliver such Allowances to Seller no later than ten (10) Business Days before the Allowance Due Date; *provided, however*, that upon receipt of any such notice from Buyer, Seller shall, within one (1) Business Day, provide Buyer with the Allowance Due Date.

Notwithstanding anything to the contrary set forth in the definition of Estimated Allowance Cost, as set forth in the *Allowance Cost* variable in the GHG Compliance Costs payment calculation above, Buyer is never obligated to pay more than **[\$20.00/MT of Greenhouse Gas] [\$12.50/MT of Greenhouse Gas].**"

{Instructions: Use \$20.00/MT of Greenhouse Gas if Seller has selected Option C.2., or \$12.50/MT of Greenhouse Gas if Seller has selected Option C.3.}

"FERC: The Federal Energy Regulatory Commission, or successor agency."

"First Compliance Period: The first period of time for compliance with a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation). There will be no more than a single First Compliance Period."

"First GHG Year: The twelve (12) calendar-month period commencing on the first calendar day of the applicable calendar month that there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California)."

"Floor Test Term: From the date the First Compliance Period commences, for a period of three (3) years."

"Forecast: The hourly forecast of (i) the total electric Energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, or (ii) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, in each case net of the Site Host Load and Station Use."

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

"Free Allowance Notice: The notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the aggregate quantity of Free Allowances received by Seller during [the First GHG Year or the applicable calendar quarter, as applicable,] [the applicable time-period] and sets forth the allocation of such Free Allowances in accordance with the following:

{Instructions: Use the first bracketed language if Seller selects Option C.2 or C.3, and use the second bracketed language if Seller selects Option A. }

- (i) The allocation of Free Allowances by the CARB (or any other Governmental Authority) to the Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; or
- (ii) If the CARB (or any other Governmental Authority) does not allocate Free Allowances received by Seller as described in subsection (i) above, then Seller shall set forth in the Free Allowance Notice the quantity of Free Allowances allocated to the Energy generated by the Generating Facility and delivered to Buyer during the applicable time-period (FA_d) utilizing the following formula:

$$FA_d = FA_t * [G_e / (G_e + G_t)] * [E_d / (E_{sh} + E_d)]$$

Where:

FA_t = Total number of Free Allowances received by Seller with respect to the Generating Facility for the applicable time-period;

G_e (in MTs) = Emissions of Greenhouse Gas attributed to the total amount of electric energy produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

G_t (in MTs) = Emissions of Greenhouse Gas attributed to the Useful Thermal Energy Output produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

E_d (in kWh) = Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period; and

E_{sh} (in kWh) = Electric energy generated by the Generating Facility and used to serve the Site Host Load for the applicable time-period;

or

(iii) If the CARB (or any other Governmental Authority) does not allocate the Free Allowances received by Seller, as described in (i) above, and there is no available formula in any applicable rule or regulation for the calculation of G_e and G_t , as described in (ii) above, then Seller shall include in the Free Allowance Notice the total amount of emissions of Greenhouse Gas attributed to the electric energy period (G_e , in MTs) and the Useful Thermal Energy Output (G_t , in MTs) produced by the Generating Facility for the applicable time-period based on the two following formulas:

$$G_e = G * (\text{Useful Power Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

$$G_t = G * (\text{Useful Thermal Energy Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

Where:

G (in MTs) = Total emissions of Greenhouse Gas produced by the Generating Facility for the applicable time-period;

Useful Power Output (in MMBtu) = As defined in 18 CFR §292.202(g), or any successor thereto;

Useful Thermal Energy Output (in MMBtu) = As defined in 18 CFR §292.202(h), or any successor thereto;

Upon determining G_e and G_t in subsection (iii) above, Seller shall then calculate for and provide the quantity of Free Allowances attributed to Energy generated by the Generating Facility and delivered to Buyer for the applicable time-period (FA_d) using the formula set forth in subsection (ii) of this definition."

"GHG Auction: Any auction or other sale-by-bid event applicable to California and by an authorized Governmental Authority (or any entity authorized by such Governmental Authority) for the sale of Allowances."

"GHG Compliance Costs: The cost of Allowances, as determined in accordance with this Agreement."

"GHG Documentation: Documentation of GHG Compliance Costs, including, without limitation, documentation establishing to Buyer's reasonable satisfaction: (a) that Seller is actually liable for the GHG Compliance Costs during the term of the Agreement; (b) that the GHG Compliance Costs were not (i) in effect or (ii) scheduled to become effective and applicable to the Generating Facility as of the Amendment Effective Date; (c) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the Energy delivered to Buyer; (d) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Buyer; (e) that the GHG Compliance Costs was imposed on Seller, the Site Host, the Generating Facility or a Related Entity of Seller by an authorized Governmental Authority in whose jurisdiction the Generating Facility is located, or which otherwise has jurisdiction over Seller, the Site Host, a Related Entity of Seller, or the Generating Facility, as applicable; and (f) that Seller took all reasonable steps to mitigate the cost or amount of such GHG Compliance Costs, including utilizing all Allowances or Free Allowances (*provided, however,* that such reasonable steps will not be deemed to require Seller to make capital improvements to the Generating Facility)."

"GHG Floor Test: As defined in Section [redacted]."

"GHG Publication Index: The price per Allowance, as set forth in a single publication published by a recognized publisher in the United States energy industry, as reasonably agreed to by the Parties; *provided, however,* that if the Parties are unable to agree upon a publication within five (5) Business Days after the end of the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on the proper publication to be used for determining the per Allowance price, and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Business Day following either the end of

the First GHG Year or the applicable calendar quarter following the First GHG Year, as applicable, then the Estimated Allowance Cost will be determined based on subsection (iii), as described in the definition of "Estimated Allowance Cost" above. Seller hereby agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations as to the designation of a publication for determining per Allowance prices, in accordance with the foregoing."

"Governmental Authority: Any governmental authority responsible for the regulation of Greenhouse Gas in California, including (i) any federal, state, local, municipal or other governmental authority, (ii) any governmental, regulatory or administrative agency, commission, lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (iii) any court or governmental tribunal."

"Green Attributes means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;[†]
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

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

"Greenhouse Gas or **GHG:** Emissions released into the atmosphere of carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur

[†] 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.

hexafluoride (SF₆), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a MT of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment; *provided, however*, that the definition of the term 'Greenhouse Gas', as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB and/or any other Governmental Authority."

"Heat Rate: The value obtained, in BTU per kWh, when the fuel input (on a Higher Heating Value basis), in BTU is divided by generation, net of Station Use, in kWh."

"Higher Heating Value: The high or gross heat content of the fuel with the heat of vaporization included; the water vapor is assumed to be in a liquid state."

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

"Initial Forecast Month: The first calendar month for which Seller provides to Buyer a 30 calendar-day Forecast pursuant to Section 2 of Appendix [redacted], which must be the first calendar month commencing no earlier than 30 calendar days after Amendment Effective Date and no later than 60 calendar days after such date."

"JAMS: The Judicial Arbitration and Mediation Services, Inc. or any successor entity."

"Locational Marginal Price: As defined and may be modified in the CAISO Tariff."

"Market Disruption Event: With respect to any MHR Source, any of the following events: (i) the permanent discontinuation or material suspension of trading in the exchange or in the market specified for determining a Market Heat Rate; (ii) the temporary or permanent discontinuance or unavailability of the MHR Source; or (iii) the temporary or permanent closing of any exchange specified for determining a Market Heat Rate. For purposes of this definition, "temporary" means five (5) or more continuous Trading Days."

"Market Heat Rate: The 12-month forward market heat rate, calculated for each calendar pricing month utilizing the methodology set forth in Commission Decision 07-09-040 and Commission Resolution E-4246 for SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor. Unless otherwise agreed to by the Parties, this definition of Market Heat Rate will not be updated by any subsequent decision, ruling or order by the Commission."

"MHR Source: The relevant publications used to determine the Market Heat Rate."

"MT(s): Metric Ton(s)."

"PIRP (i.e., Participating Intermittent Resource Program): The CAISO's intermittent resource program initially established pursuant to Amendment 42 of the CAISO Tariff in FERC Docket ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose."

"Project: The Generating Facility."

"Real-Time Forced Outage: A Forced Outage which occurs only after 5:00 p.m. California time on the calendar day before a Trading Day impacted by such Forced Outage."

"Reference Market-Maker: A leading dealer in the energy market that is not a Related Entity of either Party (or of a Trade Organization) and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker."

"Related Entity: With respect to either Party, any individual or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For

purposes of this Agreement, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power."

"RPS Program: The State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code § 399.11, et seq., or any successor thereto."

"Schedule: The action of Buyer, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy."

"Seller's Quarterly Emissions Notice: The notice, which Seller must provide to Buyer on or before the tenth (10th) Business Day following the end of each calendar quarter during the term of this Agreement, that sets forth for such calendar quarter the total Greenhouse Gas emissions attributable to (i) the Generating Facility, (ii) the Useful Thermal Energy Output of the Generating Facility, (iii) the electrical generation of the Generating Facility, and (iv) the Energy delivered to Buyer."

"Settlement Agreement : That certain Settlement Agreement, dated October 8, 2010, filed by the Settling Parties in CPUC R.04-04-025 and R.04-04-003, A.08-11-001, R.99-11-022, and R.06-02-013.

"Site Host: The entity or entities purchasing or otherwise using the Site Host Load or Useful Thermal Energy Output from the Generating Facility."

"Site Host Load: The electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (other than Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code § 218(b)."

"Station Use: The electric energy produced by the Generating Facility that is (i) used within the Generating Facility to power the lights, motors, control system and other electrical loads that are necessary for Operation, (ii) consumed within the Generating Facility's electricity energy distribution system as losses needed to deliver electricity to the Site Host Load, and (iii) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s)."

"Trade Organizations: The California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association, or any successor entity."

"Trading Day: The day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council's Preschedule Calendar (as found on the Western Electricity Coordinating Council's website, or any successor thereto)."

"Useful Thermal Energy Output: As defined in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto."

"Web Client: A Buyer provided web based system or an email address designated by Buyer."

1.09 Settlement Agreement. Seller agrees to be bound by the terms and conditions set forth in the Settlement Agreement.

1.10 General Provisions.

(a) Except as expressly set forth in this Amendment, the Agreement remains unchanged and, so modified, the Agreement shall remain in full force and effect.

- (b) This Amendment will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) The terms and provisions hereof shall be binding on and inure to the benefit of and be enforceable by the successors and assigns of the Parties, whether so expressed or not.
- (d) If any provision of this Amendment is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Amendment will remain in full force and effect. Any provision of this Amendment held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) THIS AMENDMENT 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 AMENDMENT.
- (f) This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.
- (g) Each Party represents and warrants that the execution, delivery and performance of this Amendment are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that Party has authority to execute this Amendment on behalf of such Party and to bind such Party to this Amendment.
- (h) The term “including” when used in this Amendment is by way of example only and will not be considered in any way to be in limitation. The word “or” when used in this Amendment includes the meaning “and/or” unless the context unambiguously dictates otherwise. The headings used in this Amendment are for convenience and reference purposes only and will not affect its construction or interpretation.

- (i) This Amendment sets forth the entire agreement of the Parties with respect to the subject matter herein, and supersedes all previous understandings, written or oral, with respect thereto.
- (j) This Amendment may not be amended, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (k) Whenever this Amendment specifically refers to any law, tariff, government department or agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

[Signature page follows]

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

[SELLER'S NAME],

San Diego Gas & Electric Company,

a [Seller's business registration]

a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ATTACHMENT A – EXHIBIT 4

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Transition Standard Contract for Existing Qualifying Cogeneration Facilities

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

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POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

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

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

RECITALS

- A. On or about September 20, 2007, the CPUC issued Decision ("D.") 07-09-040 (the "Decision") which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to qualifying facilities meeting the eligibility criteria set forth in the Decision.
- B. Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the "Settling Parties") entered into CPUC-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.
- C. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the "Settlement Agreement"), which

resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.

- D. The Settlement Agreement became effective on [] (the “Settlement Effective Date”).
- E. Buyer is offering this Agreement to Seller in accordance with the requirements set forth in the Settlement Agreement, and Seller desires to enter into such Agreement.

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

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Term. The term of this Agreement (the “Term”) commences on [Date] (the “Term Start Date”) (subject to any extension of the Term Start Date pursuant to Section 11.2.1 of the Settlement Agreement or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03)), and ends [Date] (the “Term End Date”). The Term Start Date must occur on the first day following the termination of [insert title and date of the existing power purchase agreement between Buyer and Seller, including any amendments, as well as any extension agreements entered into pursuant D.07-09-040] (the “Existing PPA”).

{Buyer Comment: Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must end on or before July 1, 2015. This Agreement may only be entered into with the California investor-owned utility with which Seller has an existing power purchase agreement (or an extension thereof as ordered by the CPUC in D.07-09-040).}

1.02 Generating Facility.

- (a) Name; Designation. The name of the Generating Facility is [Generating Facility name], which is an Existing Qualifying Cogeneration Facility.
- (b) Location; Site. The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B.
- (c) Qualifying Cogeneration Facility Type. As of the Effective Date, the Generating Facility is a [“topping-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(d)] [“bottoming-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(e)].
- (d) Contract Capacity. As set forth in the following table, Seller may elect (i) only Firm Contract Capacity, (ii) only As-Available Contract Capacity, or (iii) both Firm Contract Capacity and As-Available Contract Capacity:

Month	Monthly Firm Contract Capacity (kW)	As-Available Contract Capacity (kW/)	Net Contract Capacity (kW)
January	[]	[]	[]
February	[]	[]	[]
March	[]	[]	[]
April	[]	[]	[]
May	[]	[]	[]
June	[]	[]	[]
July	[]	[]	[]
August	[]	[]	[]
September	[]	[]	[]
October	[]	[]	[]

November	[]	[]	[]
December	[]	[]	[]

{ Buyer Comment: The Net Contract Capacity must equal the sum of Firm Contract Capacity and As-Available Contract Capacity, and cannot exceed PMax. }

Firm Contract Capacity, As-Available Contract Capacity and Net Contract Capacity are subject to adjustment in accordance with Section 3.07(c).

Subject to adjustment in accordance with Section 3.07(c), the Firm Contract Capacity for all months of the year must be less than or equal to [] kW, and the As-Available Contract Capacity for all months of the year must be less than or equal to [] kW.

{ Buyer Comment: Insert the amount of firm capacity and/or as-available capacity, as applicable, historically made available to Buyer by Seller under the Parties' existing power purchase agreement (or an extension thereof as ordered by the CPUC in D.07-09-040). }

(e) Expected Term Year Energy Production.

- (i) The Expected Term Year Energy Production for each Term Year equals [] kWh.

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

- (ii) The Expected Term Year Energy Production may be revised in accordance with Section 3.07(c), or based on changes in the Site Host Load or the Site Host thermal requirements; *provided, however*, that such revision must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on (i) actual modifications to the Generating Facility performed or to be performed by Seller in accordance with and subject to Section 3.07(c), or (ii) changes in the Site Host Load or the Site Host thermal requirements. Such certification must include all data relied on to support the revised Expected Term Year Energy Production.
- (iii) Subject to adjustments in accordance with Section 1.02(e)(ii), the Expected Term Year Energy Production may never exceed [] kWh in any Term Year.

{ Buyer Comment: Insert the amount of electric energy historically delivered to Buyer by Seller under the Parties' existing power purchase agreement (or an extension thereof as ordered by the CPUC in D.07-09-040). }

1.03 Delivery Point. The delivery point is the point of delivery of the Power Product to the CAISO Controlled Grid (the "Delivery Point"). Seller shall provide and convey to Buyer

the Power Product from the Generating Facility at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point.

1.04 Capacity Performance Requirements. As further described in Exhibit D, if the Generating Facility elects to provide Firm Contract Capacity, then the Generating Facility must have a minimum Firm Contract Capacity performance requirement of 95% to earn the Maximum Firm Capacity Payment and a minimum Capacity Performance Requirement of 60% to earn any portion of the Maximum Firm Capacity Payment.

1.05 Maintenance Outages; Major Overhaul.

- (a) The total Maintenance Debit Value for Maintenance Outages, as determined in accordance with Exhibit E, may not exceed 550 hours in the first Term Year. At the end of each Term Year following the first Term Year, up to a maximum of 50 unused hours may be carried over to the following Term Year. For each of the Term Years after the first Term Year, the total Maintenance Debit Value for Maintenance Outages may not exceed 550 hours plus hours carried over from prior Term Years; *provided, however*, that such Maintenance Debit Value may not exceed 600 hours in any Term Year.
- (b) Seller may (i) request one Major Overhaul Allowance (in accordance with Exhibit E) of up to 750 total hours, (ii) schedule no more than one Major Overhaul; *provided, however*, that the Maintenance Debit Value for such Major Overhaul may not exceed 750 hours.
- (c) If Seller utilizes all of its Major Overhaul Allowance during a Major Overhaul, the remaining portion of the Major Overhaul may be converted to a Maintenance Outage as far as Maintenance Credit Value and Maintenance Debit Value are concerned; *provided, however*, that Seller submits a Notice to Buyer of such conversion within 60 days of the end of such Major Overhaul.
- (d) During the Peak Months, Seller may only schedule Maintenance Outages during the non-peak hours of such Peak Months, and the monthly Maintenance Debit Value for Maintenance Outages during the Peak Months may not exceed 12 non-peak hours per Peak Month. Such limitation is part of, and not in addition to, the annual limits as set forth in Section 1.05(a).

1.06 Power Product Prices.

- (a) Firm Capacity Price. The Firm Capacity Price equals \$91.97 per kW-year.
- (b) As-Available Capacity Price. The As-Available Capacity Price is set forth in Section 3 of Exhibit D.

(c) TOD Period Energy Price. The TOD Period Energy Price is set forth in Section 2 of Exhibit D.

1.07 [Intentionally omitted.]

1.08 Scheduling Coordinator Election. [Buyer][Seller][_____, an agent of Seller] is the Scheduling Coordinator under this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, Buyer must be the Scheduling Coordinator under this Agreement if Seller intends to utilize the exemptions set forth in, and subject to, Sections 3.06(b) or 3.09(b).

*** End of Article One ***

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

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

- (a) The Generating Facility is a Qualifying Cogeneration Facility, subject to Section 3.17(c);
- (b) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:
 - (i) Operate the Generating Facility;
 - (ii) Deliver electric energy from the Generating Facility to the Delivery Point; and
 - (iii) Schedule, or arrange for a third party or Buyer to Schedule, the electric energy produced by the Generating Facility with the CAISO;
- (c) Seller's Scheduling Coordinator, as set forth in Section 1.08, is authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
- (d) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in this Agreement;
- (e) Seller furnishes to Buyer the insurance documents required under Section 9.10(c);
- (f) Seller is in compliance with the CAISO Tariff as set forth in this Agreement;
- (g) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;
- (h) Seller furnishes to Buyer the documents required under Section 3.05; and
- (i) If Buyer is Scheduling Coordinator and the Generating Facility is PIRP-eligible, then the Generating Facility is certified as a PIRP resource by the CAISO.

2.02 Termination Rights of the Parties.

- (a) [Intentionally omitted.]
- (b) Termination Right of Seller.
 - (i) Seller has the right to terminate this Agreement if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. In such an instance, the termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any electric energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation.
 - (ii) Seller has the right to terminate this Agreement upon providing to Buyer at least 180 days advance Notice if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected in a competitive solicitation by a California investor-owned utility (other than Buyer) that is a party to the Settlement Agreement.
 - (iii) Seller has the right to terminate this Agreement upon providing to Buyer at least 180 days advance Notice if Seller (or any venture in which Seller is a participant) and the Generating Facility jointly enter into an agreement for the sale of electric energy, capacity or attributes with a California investor-owned utility (other than Buyer) that is a party to the Settlement Agreement.
- (c) Event of Default. In the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have to enter into any new mandatory must-purchase contract (including the Transition PPA, the QF PPA, or the Optional As-Available PPA, as such terms are defined in the Settlement Agreement) to sell electric energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(c), “control” means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.
- (d) End of Term. This Agreement automatically terminates at 11:59 p.m. PPT on the Term End Date.

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

- (a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;
- (b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;
- (c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within 30 days of Seller's receipt of such invoice;
- (d) The obligation of Buyer or Seller, as applicable, to make payments, if any, after the termination of this Agreement, as set forth in Section 3(c) of Exhibit S;
- (e) The obligation to make a Termination Payment, as set forth in Section 6.03;
- (f) The indemnity obligations, as set forth in Section 9.03;
- (g) The obligation of confidentiality, as set forth in Section 9.09;
- (h) The right to pursue remedies under Section 6.02(c); and
- (i) The limitation of damages under Article Seven.

*** End of Article Two ***

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product; Retained Benefits.

- (a) Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of the Product.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (c) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:
 - (i) Cooperating with the Governmental Authority responsible for resource adequacy administration to certify the Generating Facility for resource adequacy purposes;
 - (ii) Testing the Generating Facility as may be required to certify the Generating Facility for resource adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties;
 - (iii) Committing to Buyer the Net Contract Capacity; and
 - (iv) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in WREGIS or other process recognized under Applicable Laws. With respect to WREGIS, at Buyer's option, Seller shall cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as these two terms are defined by WREGIS) for the Generating Facility;
 - (v) Complying with all CAISO Tariff requirements applicable to a Resource Adequacy Resource; and

(vi) If Buyer is not the Scheduling Coordinator:

- 1) Timely submitting, or causing Seller's Scheduling Coordinator to timely submit, Supply Plans to identify and confirm the Net Qualifying Capacity of the Generating Facility sold to Buyer as a Resource Adequacy Resource; and
- 2) Causing the Generating Facility's Scheduling Coordinator to certify to Buyer, within 15 Business Days before the relevant deadline for any applicable RAR Showing or LAR Showing, that Buyer will be credited with the Net Qualifying Capacity of the Generating Facility for such RAR Showing or LAR Showing in the Generating Facility's Scheduling Coordinator's Supply Plan.

(d) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products. Subject to Seller's compliance with the applicable FERC rules and regulations, Seller may use, provide and convey any electric energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term Start Date.

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

- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;
- (b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and
- (c) Shall take all reasonable actions (including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings) and execute all documents that are reasonable and necessary to effect the use of the generating capacity of the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

- 3.03 Site Control. Seller shall have Site Control as of the earlier of: (a) the Term Start Date and (b) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term. Seller shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.
- 3.04 Permits. Seller shall obtain and maintain any and all Permits necessary for the Operation of the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.
- 3.05 Transmission.
- (a) Interconnection Studies. Seller has provided Buyer with true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is 24 months before the Effective Date.
- (b) Seller's Responsibility. Seller shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

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

- (i) All required Interconnection Studies, facilities upgrades, and agreements;
- (ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;
- (iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and
- (iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.
- (c) Acknowledgement. The Parties acknowledge and agree that any other agreement between Seller and Buyer, including any interconnection agreements, is separate and apart from this Agreement and does not modify or add to the Parties' obligations under this Agreement, and that any Party's breach under such other agreement does not excuse such Party's nonperformance under this Agreement,

except to the extent that such breach constitutes a Force Majeure under this Agreement.

3.06 CAISO Relationship.

- (a) Throughout the Term, Seller shall comply with all applicable provisions of the CAISO Tariff (including complying with any exemption obtained from the CAISO pursuant to the CAISO Tariff), as determined by the CAISO, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the applicable provisions of the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.06(a), if (i) Buyer is the Scheduling Coordinator under this Agreement, and (ii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not installed one or more CAISO-Approved Meters for the Generating Facility on or before the Term Start Date, Seller will not be in breach of this Agreement with respect to such requirement to install CAISO-Approved Meter(s) if Seller installs such CAISO-Approved Meter(s) within 180 calendar days after the Effective Date; *provided, however*, that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement to install CAISO-Approved Meter(s) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to Seller's requirement that the CAISO-Approved Meters for the Generating Facility be installed on or before the Term Start Date, which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.
- (c) Buyer agrees that, subject to the limitation set forth in Section 3.06(b) and upon the CAISO's request, pending the installation of the CAISO-Approved Meter(s) by Seller for the Generating Facility, Buyer shall provide to the CAISO any settlement quality meter data reasonably requested by the CAISO for settlement purposes.

3.07 Generating Facility Modifications.

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

- (b) Seller shall provide 30 days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:
 - (i) Electric energy output by five percent of Expected Term Year Energy Production; or
 - (ii) The type of Primary Fuel consumed by the Generating Facility.
- (c) Seller may not materially modify or repower the Generating Facility without prior written consent of Buyer; *provided, however*, that modifications or repowering will not be deemed material and is permitted under this Agreement without further consideration, other than Notices required under Section 3.07(b), if:
 - (i) Capacity added as a result of such modification or repower (including the addition of a steam turbine) over the Term is within the applicable MW limits set forth in the following table (for a Generating Facility with multiple turbines, the limits below are limits per turbine):

Current Turbine Name Plate on the Effective Date	Increase to Turbine Name Plate Over the Term
10MW or Less	5MW
Greater than 10MW but less than 20MW	10MW
Greater than or equal to 20MW but less than 25MW	15MW
Greater than or equal to 25MW but less than 50MW	20MW
Greater than or equal to 50MW but less than 100MW	25MW
Greater than or equal to 100 but less than 200MW	35MW
Greater than or equal to 200 but less than 350MW	45MW
Greater than or equal 350MW	50MW

Or,

- (ii) Such modification or repower is reasonably necessary to respond to a Force Majeure or a change in law or regulation, and a qualified California-licensed professional engineer verifies that such modification or repower is not oversized relative to other equipment on the market. Seller shall bear the cost of such professional engineer and Seller shall secure all studies and upgrades necessitated by or associated with such modification or repower.

- (d) Seller acknowledges that nothing in this Section 3.07 excuses Seller from any requirements of the CAISO's interconnection process or any other applicable interconnection process.
- (e) Seller is solely responsible for all GHG Compliance Costs and all other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification or repowering of the Generating Facility in accordance with this Section 3.07.

3.08 Metering.

- (a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements.
- (b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Generating Facility at a location designated by Seller or any other location mutually agreeable to the Parties. The Check Meter location must allow for the Check Meter to be interconnected with Buyer's communication network to permit:
 - (i) Periodic, remote collection of revenue quality meter data; and
 - (ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.09; *provided, however*, that the transmission of such meter data through the Telemetry System is permitted by the CAISO.

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

- (c) Use of Check Meter for Back-Up Purposes.
 - (i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.
 - (ii) If the deviation between the CAISO-Approved Meter data (after adjusting (1) for all appropriate compensation and correction factors applied, if applicable, by the CAISO to the CAISO-Approved Meter, or (2) for any deviation that may result due to the CAISO-Approved Meter and Check

Meter being physically situated in different locations) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.

- (iii) Each Party shall bear its own costs for any meter check or recertification.
- (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.
- (v) The Check Meter is intended to be used (1) for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and (2) in the event Seller has not installed the CAISO-Approved Meter, as further described in Section 3.06(b). Data from the Check Meter will only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, or in accordance with and subject to Section 3.06(b), in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is certified.

3.09 Telemetry System.

- (a) Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff provisions applicable to the Generating Facility. Seller has the right to request any exemption from such requirements from the CAISO so long as it is obtained pursuant to the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.09(a), if (i) Buyer is the Scheduling Coordinator under this Agreement, and (ii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not complied with Section 3.09(a) on or before the Term Start Date, Seller will not be in breach of this Agreement if Seller fully complies with Section 3.09(a) within 180 calendar days after the Effective Date; *provided, however*, that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement set forth in Section 3.09(a) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to the requirement set forth in Section 3.09(a), which

extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.

- (c) Buyer agrees that, subject to the limitation set forth in Section 3.09(b) and upon the CAISO's request, pending Seller compliance with Section 3.09(a), Buyer shall provide to the CAISO any telemetry data reasonably requested by the CAISO for operating information purposes.

3.10 Provision of Information.

- (a) Within 30 days after the Effective Date, Seller shall provide to Buyer (to the extent not already in Buyer's possession), subject to Section 9.09:
 - (i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
 - (ii) Any currently operative filings at FERC, including any rulings, orders or other pleadings or papers filed by FERC, concerning the qualification of the Generating Facility as a Qualifying Cogeneration Facility;
 - (iii) Any Permits reasonably requested by Buyer concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;
 - (iv) Each of the following engineering documents for the Generating Facility:
 - 1) Site plan drawings;
 - 2) Electrical one-line diagrams;
 - 3) Control and data acquisition details and configuration documents;
 - 4) Major electrical equipment specifications;
 - 5) Process flow diagrams;
 - 6) Piping and instrumentation diagrams;
 - 7) General arrangement drawings; and
 - 8) Aerial photographs of the Site, if any; and
 - (v) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer.

- (b) If applicable and subject to Section 9.09, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.
 - (c) Subject to Section 9.09 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, which commercially reasonable efforts shall, at a minimum, include providing Buyer with all documentation regarding the operational characteristics or past performance of the Generating Facility if such documentation is requested by the CPUC.
- 3.11 [Intentionally omitted.]
- 3.12 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing or demonstration of the Generating Facility.
- 3.13 Demonstrations. Seller shall comply with any demonstration required for Resource Adequacy Rulings; *provided, however*, if such demonstrations could interfere with the operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, compliance shall be required pending resolution of the challenge.
- 3.14 Operation and Record Keeping. Seller shall:
- (a) Operate the Generating Facility in accordance with Prudent Electrical Practices;
 - (b) Comply with the Forecasting requirements, as set forth in Exhibit I;
 - (c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit I;
 - (d) Pay all CAISO Charges, as set forth in Exhibit J;
 - (e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit K;
 - (f) Comply with the Maintenance Outage scheduling procedures, as set forth in Exhibit E;
 - (g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit R;

- (h) Use reasonable efforts to deliver the maximum possible quantity of As-Available Contract Capacity and associated electric energy during an Emergency Condition or a System Emergency;
- (i) Use reasonable efforts to reschedule any outage that occurs during an Emergency Condition or a System Emergency;
- (j) Keep a daily Operating log for the Generating Facility that includes information on availability, outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including:
 - (i) Real and reactive power production;
 - (ii) Changes in Operating status;
 - (iii) Protective apparatus operations; and
 - (iv) Any unusual conditions found during inspections;
- (k) Keep all Operating records required of a Qualifying Cogeneration Facility by any applicable CPUC order as well as any additional information that may be required of a Qualifying Cogeneration Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;
- (l) Provide copies of all daily Operating logs and Operating records to Buyer within 20 days of a Notice from Buyer;
- (m) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;
- (n) Pay all Scheduling Fees, as set forth in Exhibit G;
- (o) [Intentionally omitted]
- (p) Register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register by the NERC;
- (q) Maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply

with the NERC Reliability Standards applicable to protection systems for electric generators if Seller is required to maintain such documentation by the NERC;

- (r) If Buyer is Scheduling Coordinator, then at least 30 days before the Term End Date, or in accordance with Section 7(a) of Exhibit G, or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and
- (s) If Buyer is not Scheduling Coordinator:
 - (i) Cause its Scheduling Coordinator to submit a Self-Schedule of Seller's Day-Ahead Forecast associated with the Generating Facility through the IFM; Seller shall then submit the quantity associated with the Self-Schedule of Seller's Day-Ahead Forecast as a Physical Trade to Buyer in the IFM, specifying the generating resource identifier and all other CAISO-required Inter-SC Trade attributes;
 - (ii) Cause its Scheduling Coordinator to submit the IFM Day-Ahead Schedule quantity associated with the Generating Facility as an Inter-SC Trade of IFM Load Uplift Obligation to Buyer to be cleared through the Real-Time Market, specifying all CAISO-required Inter-SC Trade attributes; and
 - (iii) Make available to Buyer all CAISO settlement data with respect to the Generating Facility required to validate payments made under this Agreement.

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

- (a) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the CAISO, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when the CAISO orders curtailment and the Scheduling Coordinator implements such curtailment in compliance with the CAISO Tariff or applicable orders to avoid or address a declared System Emergency.
- (b) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when curtailment of the Power Product is required to comply with:
 - (i) A CAISO curtailment declared pursuant to Section 3.15(a) or Transmission Provider declared Emergency Condition, subject to the

interconnection agreement between Seller and the Transmission Provider;
or

- (ii) Transmission Provider's maintenance requirements, subject to the interconnection agreement between Seller and the Transmission Provider.
 - (c) Notwithstanding the above, except as may be required in order to respond to any Emergency Condition or System Emergency, Buyer shall, consistent with FERC Order 888 and the interconnection agreement between Seller and the Transmission Provider and with the applicable provisions of the CAISO Tariff:
 - (i) Use reasonable good faith efforts to coordinate Transmission Provider's curtailment needs with Seller to the extent it can influence such needs; or
 - (ii) Request the Transmission Provider and CAISO limit the curtailment duration.
 - (d) If Seller has entered into a QF PGA or PGA with the CAISO, or an interconnection agreement, the terms of the applicable QF PGA or PGA and the applicable interconnection agreement with respect to CAISO or Transmission Provider curtailments, shall govern the rights and obligations of Buyer and Seller to the extent any provision of this Section 3.15 is inconsistent with such applicable QF PGA or PGA, and interconnection agreement.
 - (e) In the event Seller interconnects with a Person other than the CAISO, Seller shall adhere to any reliability curtailment order by such Person pursuant to the applicable tariff provisions of such Person.
- 3.16 Report of Lost Output. To the extent the conditions set forth in Sections 3.16(a) through (e) occur, Seller shall prepare and provide to Buyer, by the fifth Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Energy Forecast due to:
- (a) Maintenance Outages;
 - (b) Major Overhauls;
 - (c) CAISO or Transmission Provider-ordered curtailments;
 - (d) Force Majeure; or
 - (e) Forced Outages.

3.17 FERC Qualifying Cogeneration Facility Status.

- (a) Subject to Section 9.09, within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, Seller shall provide to Buyer:
 - (i) A completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit T, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and
 - (ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such FERC order.
- (b) [Intentionally omitted.]
- (c) Seller shall take all necessary steps, including making or supporting timely filings with the FERC in order to maintain, or obtain a FERC waiver of, the Qualifying Cogeneration Facility status of the Generating Facility throughout the Term; *provided, however*, that this obligation does not apply to the extent Seller is unable to maintain Qualifying Cogeneration Facility status using commercially reasonable efforts because of (i) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting the Qualifying Cogeneration Facility status of the Generating Facility occurring after the Effective Date.

The term "commercially reasonable efforts" in this Section 3.17(c) does not require Seller to pay or incur more than \$20,000 multiplied by the number of Term Years in the Term.

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

- (a) Interconnect with the Transmission Provider's electric system;
- (b) Transmit and deliver electric energy to the Delivery Point; or
- (c) Own and operate any CAISO-Approved Meter.

3.19 Buyer's Access Rights.

- (a) Upon providing at least one Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to escorted access to the Generating Facility during regular business hours for:
 - (i) Any purpose reasonably connected with this Agreement;
 - (ii) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or
 - (iii) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.
- (b) Seller shall promptly provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request. Seller shall promptly inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.20 Seller Financial Information.

- (a) The Parties shall determine, through consultation and review with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then:
 - (i) Within 20 days following the end of each year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior month's estimates with

true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist.

If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

- (ii) Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period.

The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance GAAP, the International Financial Reporting Standards ("IFRS"), or any successor to either of the foregoing ("Successor"), the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.

- (c) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered

public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer.

If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; *provided, however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:
- (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(vi) and 9.09(a)(vii); and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20, (2) use such information solely for purposes of conducting the audits described in this Section 3.20, and (3) disclose any information received only to personnel responsible for conducting the audits.

- (e) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 3.20(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 6.01. If Buyer's independent audit firm, after the review by the third independent audit firm still determines that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided, however*, that in addition to the protections in Section 3.20(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

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

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

If Buyer is Seller's Scheduling Coordinator, Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and

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

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges.

- (a) If Buyer is the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Buyer and for Buyer's account and any Non-Availability Charges will be the responsibility of Buyer and for Buyer's account.
- (b) If Buyer is not the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

3.23 Seller's Reporting Requirements.

- (a) Seller shall comply with the reporting requirements set forth in Section 3 of Exhibit S.
- (b) Seller shall deliver to Buyer, on or before the 10th Business Day following receipt of a Notice from Buyer, such information that Buyer is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Buyer otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Three ***

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit D.

4.02 Payment Adjustments.

- (a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:
 - (i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit G;
 - (ii) Any SDD Adjustment, as set forth in Exhibit K;
 - (iii) Any Forecast penalties owed by Seller to Buyer, as set forth in Exhibit I;
 - (iv) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit J;
 - (v) Any Physical Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit L;
 - (vi) Any SC Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit M;
 - (vii) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;
 - (viii) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02;
 - (ix) The agreement of the Parties that Buyer shall have no liability to make any energy payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed 120% of Expected Term Year Energy Production; and
 - (x) Any payment adjustments provided for to determine Buyer's payment to Seller for GHG Compliance Costs and GHG Charges, as set forth in Exhibit S.
- (b) Unless otherwise required in Exhibit S, during the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate payment adjustments.

- (c) Unless otherwise required in Exhibit S, after the Term End Date, Buyer shall invoice Seller for all payment adjustments within 60 days of Buyer's receipt of all of the information required in order to calculate payment adjustments.

4.03 Payment Statement and Payment.

- (a) No later than 30 days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:
- (i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:
- 1) Seller's Energy Forecast;
 - 2) Seller's Day-Ahead Forecast;
 - 3) Metered Energy;
 - 4) Metered Amounts;
 - 5) The final Buyer Energy Schedule; and
 - 6) The final Buyer Parent Energy Schedule.
- (ii) A statement showing:
- 1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);
 - 2) A calculation of the Monthly Contract Payment, as set forth in Exhibit D;
 - 3) A calculation of any payment adjustments pursuant to Section 4.02;
 - 4) A calculation of any payment adjustments pursuant to Exhibit S; and
 - 5) A calculation of the net dollar amount due for the month.
- (iii) Buyer's payment to Seller, in accordance with Section 9.15, in the net dollar amount owed to Seller for the month (less any overpayments by Buyer of Seller's GHG Compliance Costs or GHG Charges under Section 4.04 in any calendar month); *provided, however*, in the event the statement

shows a net amount owed to Buyer, Seller shall pay such amount within 20 days of the statement date or, if Seller fails to make such payment, Buyer may offset this amount from a subsequent Monthly Contract Payment.

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

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

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

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

- (c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:
- (i) Under this Agreement; or
 - (ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.
- (d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within 45 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 45-day period, Seller shall have an additional 90 days from the date on which it receives the

information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

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

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

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

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

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

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

- 4.04 GHG Compliance Costs. Buyer shall pay for Seller's GHG Compliance Costs and GHG Charges in accordance with Exhibit S; *provided, however*, that notwithstanding anything to the contrary set forth in this Agreement (including Exhibit S), in no event will Buyer pay for any of Seller's GHG Compliance Costs or GHG Charges to the extent that such GHG Compliance Costs or GHG Charges are associated with deliveries of the Power Product that are in excess of 120% of the Expected Term Year Net Energy Production in any Term Year.
- 4.05 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:
- (a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;

- (b) The Generating Facility complies with any Applicable Laws; or
- (c) The Generating Facility will be able to meet the terms of this Agreement.

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

- 4.06 Buyer's Responsibility. Buyer shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point.
- 4.07 Buyer's Reporting Requirements. Buyer shall deliver to Seller, on or before the 10th Business Day following receipt of a Notice from Seller, such information as Seller is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Seller otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Four ***

ARTICLE FIVE. FORCE MAJEURE

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

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

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

- (a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

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

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

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

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

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

*** End of Article Five ***

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

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

- (a) With respect to either Party (a “Defaulting Party”):
 - (i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not:
 - 1) Remedied within 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or
 - 2) Capable of a cure, but the Non-Defaulting Party’s damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within 10 Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;
 - (ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;
 - (iv) A Party becomes Bankrupt; or
 - (v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations

of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

- (b) [Intentionally omitted.]
- (c) With respect to Seller:
 - (i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.03, and Seller has not cured a failure with respect to Section 3.03 within 30 days after providing Notice to Buyer in accordance with Section 3.03;
 - (ii) If Seller abandons the Generating Facility (for purposes of this Section 6.01(c)(ii), Seller will be deemed to have abandoned the Generating Facility if Seller has ceased work on the Generating Facility or the Generating Facility has ceased production and delivery of the Product for a consecutive thirty (30) day period and such cessation is not a result of an event of Force Majeure);
 - (iii) Except as provided for in Section 3.01(d), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);
 - (iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;
 - (v) Seller removes from the Site equipment upon which the Net Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five Business Days after Notice from Buyer to Seller;
 - (vi) Subject to Section 3.17(c), the Generating Facility fails to maintain its status as a Qualifying Cogeneration Facility;
 - (vii) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric

energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

- (viii) Seller fails to make all reasonable efforts to increase the Power Output from the Generating Facility to the Firm Contract Capacity during an Emergency Condition or a System Emergency;
- (ix) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Sections 3.20(b)(i) and (ii), and such failure is not remedied within 10 days after Notice from Buyer to Seller;
- (x) Seller fails to remediate any material weakness or significant deficiency in internal controls over financial reporting in accordance with Section 3.20(c), and such failure is not remedied within 90 days after Notice from Buyer to Seller;
- (xi) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within 10 days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;
- (xii) [Intentionally omitted]
- (xiii) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within 30 days after Notice from Buyer to Seller;
- (xiv) If Seller materially modifies or repowers the Generating Facility (except as provided in Section 3.07(c)) without Buyer's prior written consent; or
- (xv) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller.

6.02 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Collateral Assignment Agreement agreed upon by Buyer, Seller and Lender in accordance with Section 9.05. The Party taking the default (the “Non-Defaulting Party”) will have the right to:

- (a) Designate by Notice to the Defaulting Party a date, no later than 20 days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”);
- (b) Immediately suspend performance under this Agreement; and
- (c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement, including any Forward Settlement Amount (the “Termination Payment”). The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, including the Forward Settlement Amount, together with appropriate supporting documentation.

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

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

*** End of Article Six ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

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

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

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE

ID #[Number], [Seller's Name]

DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

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

ARTICLE EIGHT. GOVERNMENTAL CHARGES

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

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

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

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

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

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

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

Nothing stated in this Section 8.02 relieves Buyer of its obligation to pay Seller for Seller’s GHG Compliance Costs and GHG Charges in accordance with and subject to this Agreement (including Exhibit S).

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

*** End of Article Eight ***

ARTICLE NINE. MISCELLANEOUS

9.01 Representations, Warranties and Covenants.

- (a) On the Effective 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) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;
 - (iii) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
 - (iv) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Related Entities, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;
 - (v) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;
 - (vi) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
 - (vii) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and
 - (viii) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.
- (b) On the Effective Date, each Party covenants to the other Party that, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.

- (c) On the Effective Date, Seller represents and warrants to Buyer that the Generating Facility is an Existing Qualifying Cogeneration Facility.

9.02 Additional Covenants by Seller. Seller covenants to Buyer that:

- (a) It will have Site Control as of the earlier of (i) the Term Start Date and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;
- (b) Throughout the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;
- (c) Throughout the Term, it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person;
- (d) Throughout the Term, it will hold the rights to all of the Product, subject to the terms of this Agreement;
- (e) From the Effective Date until the Term End Date, the Generating Facility will maintain its status as a Qualifying Cogeneration Facility, subject to Section 3.17(c);
- (f) Throughout the Term, it will not (1) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except, if Buyer is not Scheduling Coordinator, as may relate to transactions in the Real-Time Market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws); and
- (g) Seller shall comply with all (i) applicable cap-and-trade programs for the regulation of Greenhouse Gas, as established by any Governmental Authority pursuant to federal or state legislation, and (ii) other applicable programs regulating Greenhouse Gas emissions.

9.03 Indemnity.

- (a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for

injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

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

- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.
- (c) The provisions of this Section 9.03 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 9.10.

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

- (e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.
- (f) Seller shall defend, save harmless and indemnify Buyer against any increase in GHG Compliance Costs and other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification or repowering of the Generating Facility in accordance with Section 3.07.

- (g) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02, with the exception of the obligations set forth in Section 3.01(c)(vi).
- (h) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.
- (i) All indemnity rights will survive the termination of this Agreement for 12 months.

9.04 Assignment.

- (a) With Consent. Subject to Section 9.04(b), Seller may not transfer or assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent will not be unreasonably withheld. For purposes of this Section 9.04, Buyer will not withhold its consent to an indirect change of control of Seller if Seller demonstrates to Buyer's reasonable satisfaction that Seller shall continue to perform its obligations under this Agreement as if no such indirect change of control had occurred.
- (b) Without Consent. Notwithstanding anything to the contrary set forth in Section 9.04(a):
 - (i) Seller may, without the consent of Buyer (and without relieving itself from liability hereunder): (1) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with

Section 9.05; or (2) transfer or assign this Agreement to an Related Entity of Seller, which Related Entity's creditworthiness is equal to or higher than that of Seller; and

- (ii) Seller does not need to obtain Buyer's consent to any change of control described in this Section 9.04 if such change of control results from a purchase of the outstanding shares of a publicly traded company.

9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller may (but is not obligated to) assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

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

- (a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable cure period specified in Article VI, constitute an Event of Default (an "Incipient Event of Default");
- (b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;
- (c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.05(g)) provide to Buyer a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

- (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;
- (d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;
- (e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.05(a). In addition, such cure period may, in Buyer's reasonable discretion, be extended by no more than an additional 180 days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Lender has commenced foreclosure proceedings within 60 days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed 180 days after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;
- (f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;
- (g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;
- (h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the

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

- (i) If Lender has assumed this Agreement as provided in Section 9.05(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Related Entity of Lender or an Related Entity of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is Lender, Seller, an Related Entity of Lender or an Related Entity of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer; and
- (j) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either Buyer or Lender, Buyer and Lender (or its designee or representative) shall promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's) liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor Buyer shall have any personal liability to the other for any amounts owing and neither Buyer nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

9.06 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

- (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;
- (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;
- (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date;
- (d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;
- (e) A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith; and
- (f) All Notices for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

- (a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

- (c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.
- (d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.
- (f) The term “including” when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.
- (g) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to “Articles”, “Sections” and “Exhibits” refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to “Articles” or “Sections” in Exhibits A through T refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.
- (i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.
- (j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties or between or among Seller, the CAISO and the Transmission Provider, covering transmission, distribution, metering, scheduling or interconnection of electric energy (including the PGA and QF PGA). In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.
- (m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.
- (n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

9.09 Confidentiality.

- (a) Neither Party may disclose any Confidential Information to a third party, other than:
 - (i) To such Party’s employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
 - (ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however*, that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further*, that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;
 - (iii) To Buyer’s Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer’s Procurement Review Group;

- (iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, to the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;
 - (v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);
 - (vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC;
 - (vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement; and
 - (viii) As may reasonably be required to participate in WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Related Products.
- (b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.09(a)(vi) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may not be (x) prohibited from complying with a Disclosure Order, or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of any terms or conditions of this Agreement which are the subject of such Disclosure Order.
- (c) Except as provided in clause (y) of Section 9.09(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

9.10 Insurance.

(a) As of the Effective Date and throughout the Term (and for such additional periods as may be specified in this Section 9.10), Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified in this Section 9.10, and such additional coverage as may be required by Applicable Law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-:VII. The minimum insurance requirements specified in this Section 9.10 do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller's defense and indemnity obligations.

- (i) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;
- (ii) Employer's Liability Insurance with limits of not less than:
 - 1) Bodily injury by accident – One Million dollars (\$1,000,000) each accident;
 - 2) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit; and
 - 3) Bodily injury by disease – One Million dollars (\$1,000,000) each employee; and
- (iii) Commercial General Liability Insurance, (which, except with the prior written consent of Buyer and subject to Sections 9.10(a)(ii)(1) and (2), shall be written on an "occurrence," not a "claims-made" basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than one million dollars (\$1,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.

If Seller elects, with Buyer's written concurrence, to use a "claims made" form of Commercial General Liability Insurance, then the following additional requirements apply:

- 1) The retroactive date of the policy must be prior to the Effective Date; and
- 2) Either the coverage must be maintained for a period of not less than four years after the Agreement terminates, or the policy

must provide for a supplemental extended reporting period of not less than four years after the Agreement terminates.

- (iv) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.
 - (v) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than \$10,000,000 per occurrence and in the annual aggregate. The insurance requirements of this Section 9.10 can be provided by any combination of Seller's primary and excess liability policies.
- (b) The insurance required in Section 9.10(a) apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Applicable Law, Seller and its insurers are required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, ownership or Operation of the Generating Facility.
- (c) At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required in this Section 9.10, written on forms and with deductibles reasonably acceptable to Buyer. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide Buyer with at least 30 days' prior written notice in the event of cancellation of coverage. Buyer's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, does not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 9.10 and does not constitute a waiver of any of the requirements in this Section 9.10.

- (d) If Seller fails to comply with any of the provisions of this Section 9.10, Seller, among other things and without restricting Buyer's remedies under the Applicable Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
- (e) Seller has the right to self-insure to comply with Seller's obligations under this Section 9.10. The insurance carrier or carriers and form of policy (including any deductible amount), or any plan for self-insurance shall be subject to review and approval by Buyer, which approval may not be unreasonably withheld, conditioned or delayed.
- 9.11 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.
- 9.12 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party will seek, nor will they support any third party in seeking, to prospectively or retroactively revise the rates, terms, or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.
- Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).
- 9.13 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set

forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

- 9.14 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.
- 9.15 Payments. Payments to be made under this Agreement shall be made, at Seller's option, by check or electronic wire funds transfer.
- 9.16 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.03, or 9.09 in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

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

*** End of Article Nine ***

ARTICLE TEN. DISPUTE RESOLUTION

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

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

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

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

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

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

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

The Parties will cooperate with one another in selecting the Arbitrator within 60 days after Notice of the demand for arbitration and will further cooperate in scheduling the

arbitration to commence no later than 180 days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

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

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

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

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

{Buyer Comment: For PG&E, insert San Francisco; for SDG&E, insert San Diego; and for SCE, insert Los Angeles.}

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within 30 days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;

- (e) Discovery will be limited to 25 document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;
- (g) Within 60 days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within 30 days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.03 or 9.09.

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

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

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

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

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

[SELLER'S NAME],

[BUYER'S NAME],

a [Seller's business registration]

a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
Definitions

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

“Actual HR” means the Heat Rate that must be used in accordance with and subject to the terms set forth in Section 2(a)(ii) of Exhibit S, which Heat Rate Buyer shall calculate, on the date of the commencement of the First Compliance Period, using the following formula:

Actual HR_n = The average of the Daily HR_n for each delivery or flow date in the two (2) year period immediately preceding the commencement of the First Compliance Period

Where:

$$\text{Daily } HR_n = [EP_n - VOM_n] / [GP_n + GT_n]$$

Where:

EP_n = The average of the Day-Ahead hourly electric energy prices, as determined by the Integrated Forward Market (as defined in the CAISO Tariff) for (i) SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor, if Buyer is SCE or SDG&E, and (ii) NP15 Existing Zone Generation Trading Hub (formerly known as NP15), or its successor, if Buyer is PG&E;

VOM_n = Calendar month avoided variable O&M for the applicable month (\$/kWh), per the Decision and CPUC Resolution E-4246;

GP_n = The applicable daily gas price index, which is (i) Platt's Gas Daily (currently SoCalGas gas indices), if Buyer is SCE or SDG&E, or (ii) Platt's Gas Daily (currently SoCalGas and PG&E Malin gas indices), if Buyer is PG&E; and

GT_n = The gas transportation rate for the applicable month, per CPUC Resolution E-4246.

“Additional GHG Documentation” means the documentation necessary to allocate Free Allowances to electric energy delivered by Seller to Buyer, which documentation consists of the following, in each case for the time-period to which the Free Allowances are to apply: (a) the total amount of GHG emissions attributable to the Generating Facility, the electric energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the electric energy delivered to Buyer; (b) the Useful Thermal Energy Output of the Generating Facility; (c) the total electric energy produced by the Generating Facility, the electric energy used to the serve the Site Host Load, and the electric energy delivered to Buyer; and (d) total fuel usage of the Generating Facility.

“Agreement” has the meaning set forth in the Preamble.

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

“Allowance Cost” has the meaning set forth in Section 2(a)(ii) of Exhibit S.

“Allowed Firm Energy” is determined in Section 3(l) of Exhibit D.

“Allowed Hourly Energy”, or “E”, is determined in Section 3(f) of Exhibit D.

“Allowed Payment Energy”, or “APE”, is determined in Section 2(c) of Exhibit D.

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

“Annual GHG Reports” has the meaning set forth in Section 3(a) of Exhibit S.

“Applicable HR” has the meaning set forth in Section 1 of Exhibit S.

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

“Arbitrator” has the meaning set forth in Section 10.03.

“As-Available Capacity”, or “AAC”, is determined in Section 3(c) of Exhibit D.

“As-Available Capacity Payment”, or “ACP”, is determined in Section 3(b) of Exhibit D.

“As-Available Capacity Price” means the price adopted by the CPUC in the Decision and in subsequent rulings of the CPUC implementing the Decision, or pursuant to any such other formula as the CPUC may adopt from time to time for As-Available Capacity Payments to be made to Buyer’s Qualifying Cogeneration Facilities for the applicable year, as set forth in Section 3(b) of Exhibit D, in dollars per kW-year.

“As-Available Contract Capacity” means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(d), as may be adjusted in accordance with Section 3.07(c).

“Availability Credit Factor”, or “ACF”, is determined in Section 3(i) of Exhibit D.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Penalty Factor”, or “APF”, is determined in Section 3(n) of Exhibit D.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“Bankrupt” means with respect to any Person, such Person:

- (a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (which petition is not dismissed within 90 days);
- (b) Makes an assignment or any general arrangement for the benefit of creditors;
- (c) Otherwise becomes bankrupt or insolvent (however evidenced);
- (d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or
- (e) Is generally unable to pay its debts as they fall due.

“Benchmark Capacity” is determined, as applicable, in Section 3(a) of Exhibit D-1, Section 3(a) of Exhibit D-2, and Section 9(a) of Exhibit E.

“Burner Tip Gas Price” or “BTGP” has the meaning set forth in Section 1 of Exhibit S.

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

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

“Buyer Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy produced by the Generating Facility.

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

“Buyer Projected Energy Forecast” has the meaning set forth in Section 2(a) of Exhibit G.

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

transferred to the CAISO or its successor entity operational control of such facilities or entitlements.

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

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

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

“CAISO Charges Invoice” has the meaning set forth in Section 5 of Exhibit G.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

“Capacity Credit Hours”, or “CCH”, is determined in Section 3(m) of Exhibit D.

“Capacity Credit Period” is determined in Section 3(b)(iv) of Exhibit E.

“Capacity Payment Allocation Factors”, or “CAF”, means the TOD Period factors which are used to calculate the TOD Period Capacity Payment, as set forth in the table in Section 3(a) of Exhibit D.

“Capacity Performance Requirement”, or “CR”, means the values set forth in Section 1.04.

“CARB” means California Air Resources Board, or any successor entity.

“CARB Annual Report” has the meaning set forth in Section 3(a)(i) of Exhibit S.

“CARB Mandatory GHG Emissions Annual Report” means the mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources.

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

“CFR” means the Code of Federal Regulations, as may be amended from time to time.

“Check Meter” means the Buyer revenue-quality meter section or meter(s), which Buyer may require at its discretion, as set forth in Section 3.08(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility Electric Service Requirements.

“Claiming Party” has the meaning set forth in Section 5.02.

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed before or after the termination of this Agreement.

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

“Confidential Information” means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller’s compliance with operating and efficiency standards applicable to a “qualifying cogeneration facility” (as contemplated in 18 CFR Part 292, Section 292.205). Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii)

information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

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

“Converted Physical Trade”, or “CPT”, means the quantity from Physical Trades, in MWh, that did not pass CAISO’s physical validation of the IFM.

“Converted Physical Trade Price” means the price, in dollars per MWh, used by the CAISO to settle the quantity, in MWh, associated with the Converted Physical Trade.

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

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

“Curtailment Period” means a time period for which Seller is requested by CAISO or a Transmission Provider to curtail its Power Product for Force Majeure or otherwise.

“D.” has the meaning set forth in Recital A.

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

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Price” means the LMP_{QF}, as set forth in Section 1 of Exhibit S.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Decision” has the meaning set forth in Recital A.

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

“Delivery Point” has the meaning set forth in Section 1.03.

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

“Dispute” has the meaning set forth in Section 10.01.

“Early Termination Date” has the meaning set forth in Section 6.02(a).

“Earned Capacity Hours”, or “ECH”, means the number of firm capacity equivalent available hours determined by dividing the Firm TOD Energy by the Firm Contract Capacity, as set forth in Section 3(j) of Exhibit D.

“Effective Date” has the meaning set forth in the Preamble.

“Emergency Condition” has the meaning set forth in the Transmission Provider’s LGIA or SGIA with Seller, or the distribution-level FERC-jurisdictional interconnection agreement with Seller, as applicable; *provided, however*, that if Seller interconnects pursuant to Tariff Rule 21, “Emergency Condition” means “Emergency”, as defined in such Tariff Rule 21.

“Equitable Defense” means any Bankruptcy or other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

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

“Event of Default” has the meaning set forth in Section 6.01.

“Existing PPA” has the meaning set forth in Section 1.01.

“Existing Qualifying Cogeneration Facility” means a Generating Facility that commenced Parallel Operation before the Settlement Effective Date, and that, as of the Settlement Effective Date, (a) is a Qualifying Cogeneration Facility, and (b) is the generating facility under the Existing PPA.

“Expected Term Year Energy Production” means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(e).

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

“FERC” means the Federal Energy Regulatory Commission, or any successor entity.

“Financial Consolidation Requirement” has the meaning set forth in Section 3.20(a).

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

“Firm Capacity Payment”, or “FCP”, has the meaning set forth in Section 3(g) of Exhibit D.

“Firm Capacity Price” or “CP” is set forth in Section 1.06(a), in dollars per kW-year.

“Firm Contract Capacity”, or “FCC”, means the monthly generating capacity that Seller commits to have available at the Site for the Power Product, as set forth in Section 1.02(d), as may be adjusted in accordance with Section 3.07(c).

“Firm TOD Energy”, or “FE”, has the meaning set forth in Section 3(k) of Exhibit D.

“First Compliance Period” means the first period of time for compliance with a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or by a different Governmental Authority pursuant to federal or state legislation). There will be no more than a single First Compliance Period.

“First Penalty Month” has the meaning set forth in Section 3(b) of Exhibit I.

“Floor Test Term” means the date that the First Compliance Period commences, for a period of three years.

“Forced Outage” has the meaning set forth in the CAISO Tariff.

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

- (a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;
- (b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;
- (c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or

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

“Force Majeure Credit Value”, or “FCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Force Majeure curtailment requested by Buyer, determined in accordance with Section 3 of Exhibit D-1.

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

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

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

“Free Allowance Notice” means the Notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the aggregate quantity of Free Allowances received by Seller during the applicable time-period and sets forth the allocation of such Free Allowances in accordance with the following:

- (i) The allocation of Free Allowances by the CARB (or any other Governmental Authority) to the electric energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; or
- (ii) If the CARB (or any other Governmental Authority) does not allocate Free Allowances received by Seller as described in subsection (i) above, then Seller shall set forth in the Free Allowance Notice the quantity of Free Allowances allocated to the electric energy generated by the Generating Facility and delivered to Buyer during the applicable time-period (FA_d) utilizing the following formula:

$$FA_d = FA_t * [G_e / (G_e + G_t)] * [E_d / (E_{sh} + E_d)]$$

Where:

FA_t = Total number of Free Allowances received by Seller with respect to the Generating Facility for the applicable time-period;

G_e (in MTs) = Emissions of Greenhouse Gas attributed to the total amount of electric energy produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

G_t (in MTs) = Emissions of Greenhouse Gas attributed to the Useful Thermal Energy Output produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

E_d (in kWh) = Electric energy generated by the Generating Facility and delivered to Buyer for the applicable time-period; and

E_{sh} (in kWh) = Electric energy generated by the Generating Facility and used to serve the Site Host Load for the applicable time-period;

or

- (iii) If the CARB (or any other Governmental Authority) does not allocate the Free Allowances received by Seller, as described in (i) above, and there is no available formula in any applicable rule or regulation for the calculation of G_e and G_t , as described in (ii) above, then Seller shall include in the Free Allowance Notice the total amount of emissions of Greenhouse Gas attributed to the electric energy period (G_e , in MTs) and the Useful Thermal Energy Output (G_t , in MTs) produced by the Generating Facility for the applicable time-period based on the two following formulas:

$$G_e = G * (\text{Useful Power Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

$$G_t = G * (\text{Useful Thermal Energy Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

Where:

G (in MTs) = Total emissions of Greenhouse Gas produced by the Generating Facility for the applicable time-period;

Useful Power Output (in MMBtu) = As defined in 18 CFR §292.202(g), or any successor thereto;

Useful Thermal Energy Output (in MMBtu) = As defined in 18 CFR §292.202(h), or any successor thereto;

Upon determining G_e and G_t in subsection (iii) above, Seller shall then calculate for and provide the quantity of Free Allowances attributed to electric energy generated by the Generating Facility and delivered to Buyer for the applicable time-period (FA_d) using the formula set forth in subsection (ii) of this definition.

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

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the gain of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Comparable transactions;
- (c) Forward price curves based on economic analysis of the relevant markets; and
- (d) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remaining Term and shall include the value of Related Products.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, then the Non-Defaulting Party may use information available to it internally.

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

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

“Generation Operations Center” means the location of Buyer’s real-time operations personnel.

“Generator Operator” means the Person that Operates the Generating Facility and performs the functions of supplying electric energy and interconnected operations services within the meaning of the NERC Reliability Standards.

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

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

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

“GHG Allowance Price” has the meaning set forth in Section 2(a)(ii) of Exhibit S.

“GHG Auction” means any auction or other sale-by-bid event applicable to California and by an authorized Governmental Authority (or any entity authorized by such Governmental Authority) for the sale of Allowances.

“GHG Charges” has the meaning set forth in Section 1 of Exhibit S.

“GHG Compliance Costs” means the cost of Allowances, as determined in accordance with Exhibit S.

“GHG Floor Test” has the meaning set forth in Section 2(a) of Exhibit S.

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

“Governmental Charges” has the meaning as set forth in Section 8.02.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to

the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹

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

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

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

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

"Greenhouse Gas" or "GHG" means emissions released into the atmosphere of carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a MT of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment; *provided, however*, that the definition of the term "Greenhouse Gas", as set forth in

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.

the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB or any other Governmental Authority.

“Heat Rate” means, for purposes of this Agreement, the value obtained, in BTU per kWh, when the fuel input, on a Higher Heating Value basis, in BTU is divided by generation, net of Station Use, in kWh.

“Higher Heating Value” means the high or gross heat content of the fuel with the heat of vaporization included (the water vapor is assumed to be in a liquid state).

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

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

“Hourly Credit Value” is determined, as applicable, in Section 3(b) of Exhibit D-1, Section 3(b) of Exhibit D-2 and Section 9(b)(i) of Exhibit E.

“Hourly Debit Value” is determined in Section 9(b)(ii) of Exhibit E.

“Hourly Location Adjustment”, or “LA”, has the meaning set forth in Section 1 of Exhibit S.

“Hourly Power Output” means an hourly rate of electric energy delivery, in kWh per hour, that is equal to the Metered Energy for one hour, in kWh, divided by one hour.

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

“IFM Load Uplift Obligation” means the obligation of a Scheduling Coordinator to pay its share of unrecovered IFM Bid Costs (as defined in the CAISO Tariff) paid to resources through Bid Cost Recovery (as defined in the CAISO Tariff).

“IFRS” has the meaning set forth in Section 3.20(b)(iii).

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

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

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

“Inter-SC Trade” means a trade between Scheduling Coordinators of electric energy, Ancillary Service (as defined in the CAISO Tariff), or IFM Load Uplift Obligation in accordance with the CAISO Tariff.

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

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

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

“LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by another Local Regulatory Authority having jurisdiction over the load serving entity. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

“LAR Showings” means the LAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction over the load serving entity.

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

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

“LGIA” (i.e., Large Generator Interconnection Agreement or Standard Large Generator Interconnection Agreement) has the meaning set forth in the CAISO Tariff.

“Limited TOD Energy”, or “LE”, has the meaning set forth in Section 3(e) of Exhibit D.

“LMP_{QF}” has the meaning set forth in Section 1 of Exhibit S.

“LMP_{Trading Hub}” has meaning set forth in Section 1 of Exhibit S.

“Local Regulatory Authority” has the meaning set forth in the CAISO Tariff.

“Locational Marginal Price” has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it if any (exclusive of Costs), as of the Early Termination Date, resulting from the

termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Comparable transactions;
- (c) Forward price curves based on economic analysis of the relevant markets; and
- (d) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remainder of the Term and must include the value of Related Products. Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“MAE_m” has the meaning set forth in Section 3(a) of Exhibit I.

“MAE Failure” has the meaning set forth in Section 3(b) of Exhibit I.

“Maintenance Credit Value”, or “MCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Maintenance Outage or a Major Overhaul which has been properly scheduled in accordance with Exhibit E.

“Maintenance Debit Value” is a value indicating how much allowance is used when Seller requests credit for a Maintenance Outage or a Major Overhaul in accordance with Exhibit E.

“Maintenance Outage” means a time period during which Seller plans to reduce the Power Output of the Power Product, in full or in part, in order to facilitate maintenance work on the Generating Facility, other than a Major Overhaul.

“Major Overhaul” means a time period during which Seller plans to remove the Generating Facility from Operation in order to dismantle the Generating Facility’s equipment for inspections, repairs or replacement, with the goal that such equipment will be reassembled and made available for Operation.

“Major Overhaul Allowance” is a value indicating a Term-Year maximum allowance with which Seller can request credit for a Major Overhaul in accordance with Exhibit E.

“Market Disruption Event” means, with respect to any MHR Source, any of the following events: (i) the permanent discontinuation or material suspension of trading in the exchange or in

the market specified for determining a Market Heat Rate; (ii) the temporary or permanent discontinuance or unavailability of the MHR Source; or (iii) the temporary or permanent closing of any exchange specified for determining a Market Heat Rate. For purposes of this definition, “temporary” means five (5) or more continuous Trading Days.

“Market Heat Rate” means the 12-month forward market heat rate, calculated for each calendar pricing month utilizing the methodology set forth in Commission Decision 07-09-040 and Commission Resolution E-4246 for [*For SCE and SDG&E: SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor*] [*For PG&E: NP15 Existing Zone Generation Trading Hub (formerly known as NP15), or its successor*]. Unless otherwise agreed to by the Parties, this definition of Market Heat Rate will not be updated by any subsequent decision, ruling or order by the CPUC.

“Maximum Allowed Capacity”, or “MAC”, is determined in Section 3(d) of Exhibit D.

“Maximum Firm Capacity Payment”, or “MFCP”, means the maximum payment that Seller can earn during a year for the delivery of Firm Contract Capacity that is calculated in accordance with the procedure set forth in Section 3(h) of Exhibit D.

“Mediator” has the meaning set forth in Section 10.02.

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

“Metered Energy” means the quantity of electric energy, expressed in kWh, as measured by (i) the CAISO-Approved Meter(s), which quantity will be adjusted so as not to include compensation factors, if any, introduced by the CAISO into the CAISO-Approved Meter(s) other than (x) electric energy consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s) and, (y) if applicable, the Generating Facility’s radial line losses, or (ii) Check Meters, as applicable, in each case for the specified Metering Interval.

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

“MHR Source” the relevant publications used to determine the Market Heat Rate.

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

“Monthly Scheduling Fee” is described in Section 4(b) of Exhibit G.

“MT” means metric ton(s).

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

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

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

“NERC Reliability Standards” means the most recent version of those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available at

http://www.nerc.com/files/Reliability_Standards_Complete_Set.pdf, or any successor thereto.

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

“Net Contract Capacity”, or “NCC”, means the sum of Firm Contract Capacity and As-Available Contract Capacity, as set forth in Section 1.02(d), as may be adjusted in accordance with Section 3.07(c). Net Contract Capacity may not exceed PMax.

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

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

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

“Notice” means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit N.

“OMAR” means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data, or any successor thereto.

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

“Outage” has the meaning set forth in the CAISO Tariff.

“Outage Schedule” has the meaning set forth in Section 2(a) of Exhibit R.

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

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

“Party” has the meaning set forth in the Preamble.

“Peak Months” means [___].

{ Buyer Comment: For SCE and PG&E, the Peak Months are June, July, August and September. For SDG&E, the Peak Months are May, June, July, August and September. }

“Penalized As-Available Contract Capacity” has the meaning set forth in Section 3(b)(ii) of Exhibit I.

“Penalized Firm Contract Capacity” has the meaning set forth in Section 3(b)(i) of Exhibit I.

“Performance Tolerance Band Lower Limit” is determined in Section 1 of Exhibit K.

“Performance Tolerance Band Upper Limit” is determined in Section 1 of Exhibit K.

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

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

“PGA” (i.e., Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

“Physical Trade” has the meaning set forth in the CAISO Tariff.

“Physical Trade Settlement Amount” means the dollar amount calculated in accordance with Exhibit L.

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

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

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

“Power Output” means the average rate of electric energy delivery during one Metering Interval, converted to an hourly rate of electric energy delivery, in kWh per hour, that is equal to the product of Metered Energy for one Metering Interval, in kWh per Metering Interval, times the number of Metering Intervals in a one-hour period.

“Power Product” means (a) the Net Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

“PPT” means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Primary Fuel” means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

“Product” means the Power Product and the Related Products.

“Project” means the Generating Facility.

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

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

- (a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility’s needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;

- (c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
- (f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“PTSA_i” has the meaning set forth in Section 2 of Exhibit L.

“PURPA” means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, as amended from time to time.

“QF PGA” (i.e., Qualifying Facility Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

“Qualifying Cogeneration Facility” means an electric energy generating facility that:

- (a) Complies with the “qualifying cogeneration facility” definition and other requirements (including the requirements set forth in 18 CFR Part 292, Section 292.205) established by PURPA and any FERC rules as amended from time to time implementing PURPA, as set forth in 18 CFR Part 292, Section 292.203 et seq.; and
- (b) Has filed with the FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which the FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

“RAR” means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by a Local Regulatory Authority or other Governmental Authority having jurisdiction.

“RAR Showings” means the RAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction.

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

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

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

“Reference Market-Maker” means a leading dealer in the electric energy market that is not an Related Entity of either Party (or of a Trade Organization) and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

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

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

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

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

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

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

“RPS Program” means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.

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

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

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

“Scheduled Power Offline” is described in Section 3(b)(v) of Exhibit E.

“Scheduling Coordinator” means a Person certified by the CAISO for the purposes of undertaking the functions specified in Exhibit G.

“Scheduling Fee” means the Monthly Scheduling Fee and the SC Set-Up Fee.

“SC Replacement Date” has the meaning set forth in Section 7(b) of Exhibit G.

“SC Set-Up Fee” is described in Section 4(a) of Exhibit G.

“SC Trade Settlement Amount” means the amount(s) determined in accordance with Exhibit M.

“SC Trade Tolerance Band” means the greater of (a) three percent of the Scheduled Amount or (b) one MW.

“SDD Administrative Charge” has the meaning set forth in Section 2 of Exhibit K.

“SDD Adjustment” means the adjustment, if any, to the Monthly Contract Payment, as determined in accordance with Exhibit K.

“SDD Energy Adjustment” has the meaning set forth in Section 1 of Exhibit K.

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

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

“Seller” has the meaning set forth in the Preamble.

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

“Seller's Energy Forecast” means Seller's most recently updated Forecast submitted in accordance with Exhibit I.

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

“Settlement Agreement” has the meaning set forth in Recital C.

“Settlement Effective Date” has the meaning set forth in Recital D.

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

“Settling Parties” has the meaning set forth in Recital B.

“SGIA” (i.e., Small Generator Interconnection Agreement) means the form of Interconnection Request (as defined in the CAISO Tariff) pertaining to a Small Generating Facility (as defined in the CAISO Tariff), which is attached to the CAISO Tariff as Appendix T.

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

- (a) Dollar amount on which the Simple Interest Payment is based; by
- (b) Federal Funds Effective Rate or Interest Rate as applicable; by
- (c) The result of dividing the number of days in the calculation period by 360.

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

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

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

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

“SLIC” means Scheduling and Logging system for the CAISO.

“Station Use” means the electric energy produced by the Generating Facility that is (a) used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, and (b) consumed within the Generating Facility’s electric energy distribution system as losses needed to deliver electric energy to the Site Host Load, and (c) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s).

“Successor” has the meaning set forth in Section 3.20(b)(iii).

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

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

“Tariff Rule 21” means the interconnection standards of the Transmission Provider for distributed generation adopted by the CPUC in Decisions 00-11-001 and 00-12-037, as modified by the CPUC.

“Telemetry System” means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO’s applicable requirements as set forth in Section 3.09.

“Term” has the meaning set forth in Section 1.01.

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

“Termination Payment” has the meaning set forth in Section 6.03.

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

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

“TOD Period” means the time of delivery period used to calculate the Monthly Contract Payment set forth in Section 4 of Exhibit D.

“TOD Period Capacity Payment” means the monthly payment to be calculated and made by Buyer to Seller for Power Product capacity during each TOD Period for the month for which a calculation is being performed, as set forth in Section 3(a) of Exhibit D, in dollars.

“TOD Period Energy Payment” means the monthly payment to be calculated and made by Buyer to Seller for the Metered Energy during each TOD Period for the month for which a calculation is being performed, as set forth in Section 2(a) of Exhibit D, in dollars.

“TOD Period Energy Price” means the price used to calculate the TOD Period Energy Payment, as set forth in Exhibit S and referenced in Section 2(b) of Exhibit D, in dollars per kWh.

“TOU” has the meaning set forth in Section 1 of Exhibit S.

“Trade Organizations” means the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association.

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

“Transmission Curtailment Credit Value” or “TCV” is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, as determined in accordance with Section 3 of Exhibit D-2.

“Transmission Provider” means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility’s electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Seller from the Generating Facility to the Delivery Point.

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

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

“Useful Thermal Energy Output” has the meaning set forth in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto.

“VOM” has the meaning set forth in Section 1 of Exhibit S.

“Web Client” has the meaning set forth in Section 2(a) of Exhibit R.

“Web Scheduler” has the meaning set forth in Section 2 of Exhibit E.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

“WREGIS” means the Western Renewable Energy Generation Information System, or any successor thereto.

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

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, electric metering and the Seller's measurement of the Useful Thermal Energy Output, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s). }

2. Site Description.

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

*** End of Exhibit B ***

EXHIBIT C

[Intentionally omitted.]

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

EXHIBIT D
Monthly Contract Payment Calculation

1. Introduction. Each Monthly Contract Payment is calculated on a calendar month basis as follows:

MONTHLY CONTRACT PAYMENT, in dollars =

TOD Period Energy Payment_{1st TOD Period} +
TOD Period Energy Payment_{2nd TOD Period} +
TOD Period Energy Payment_{3rd TOD Period} +
TOD Period Energy Payment_{4th TOD Period} +
TOD Period Capacity Payment_{1st TOD Period} +
TOD Period Capacity Payment_{2nd TOD Period} +
TOD Period Capacity Payment_{3rd TOD Period} +
TOD Period Capacity Payment_{4th TOD Period}

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit D.

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit D.

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

2. TOD Period Energy Payment Calculation.

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

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

Where:

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

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

LA = Hourly Location Addjustment price, as set forth in Section 1 of Exhibit S.

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

LA = Hourly Location Aadjustment price, as set forth in Section 1 of Exhibit S.

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

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

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

- (b) Factor “EP” in Section 2(a) of this Exhibit D. The TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated pursuant to and as determined by the methodology set forth in Exhibit S.
- (c) Factor “APE” in Section 2(a) of this Exhibit D. The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

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

3. TOD Period Capacity Payment Calculation.

- (a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = (ACP + FCP) x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit D, in dollars per year.

FCP = Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(g) of this Exhibit D, in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 [and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the

proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision]:

Capacity Payment Allocation Factors		
<i>Season</i>	<i>TOD Period</i>	<i>Factor</i>
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is PG&E. Additionally, the bracketed text is only applicable if Buyer is PG&E, and should otherwise be deleted.}

Capacity Payment Allocation Factors		
<i>Season</i>	<i>TOD Period</i>	<i>Factor</i>
Summer	On-Peak Period	0.1792
	Mid-Peak	0.0310
	Off-Peak	0.0006
Winter	Mid-Peak	0.0178
	Off-Peak	0.0011
	Super-Off-Peak	0.0007

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is SCE.}

Capacity Payment Allocation Factors		
<i>Season</i>	<i>TOD Period</i>	<i>Factor</i>
Summer	On-Peak	0.098096
	Semi-Peak	0.006146
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002088
Winter	On-Peak	0.013237
	Semi-Peak	0.008118
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002008

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth set forth in the table immediately above if Buyer is SDG&E.}

- (b) Factor “ACP” in Section 3(a) of this Exhibit D. The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars = AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit D, in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	Price \$/kW-yr
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98

- (c) Factor “AAC” in Section 3(b) of this Exhibit D. The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC – FCC (but not less than zero)

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit D, in kWh per hour.

FCC = The Firm Contract Capacity for all TOD Periods during a month.

- (d) Factor “MAC” in Section 3(c) of this Exhibit D. The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit D, in kWh.

PH = The total number of hours in the TOD Period (period hours).

- (e) Factor “LE” in Section 3(d) of this Exhibit D. The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

- (f) Factor “E” in Section 3(e) of this Exhibit D. The Allowed Hourly Energy is calculated as follows:

$$\text{ALLOWED HOURLY ENERGY in kWh} = 1 \text{ hour} \times \text{NCC}$$

Where:

NCC = The Net Contract Capacity, as set forth in Section 1.02(d), in kW.

- (g) Factor “FCP” in Section 3(a) of this Exhibit D. Each monthly Firm Capacity Payment is calculated as follows:

$$\text{FIRM CAPACITY PAYMENT in dollars} = \text{MFCP} \times \text{AF}$$

Where:

MFCP = Maximum Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(h) of this Exhibit D, in dollars.

- AF = (i) One (1), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is greater than or equal to 95%; or
(ii) Zero (0), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is less than 60%; or
(iii) If neither (i) nor (ii) are true, then AF is the Availability Penalty Factor, as calculated in Section 3(n) of this Exhibit D.

- (h) Factor “MFCP” in Section 3(g) of this Exhibit D. The Maximum Firm Capacity Payment for each TOD Period of each month is calculated as follows:

$$\text{MAXIMUM FIRM CAPACITY PAYMENT, in dollars} = \text{FCC} \times \text{CP}$$

Where:

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d), in kWh per hour.

CP = Firm Capacity Price, as set forth in Section 1.06(a), in \$/kW-year.

- (i) Factor “ACF” in Section 3(g) of this Exhibit D. The Availability Credit Factor for each monthly TOD Period is calculated as follows:

$$\text{AVAILABILITY CREDIT FACTOR} = (\text{ECH} + \text{CCH}) / \text{PH}$$

Where:

ECH = The total number of Earned Capacity Hours, determined in accordance with Section 3(j) of this Exhibit D.

CCH = The total number of Capacity Credit Hours, determined in accordance with Section 3(m) of this Exhibit D.

PH = The total number of hours in the TOD Period (period hours).

- (j) Factor “ECH” in Section 3(i) of this Exhibit D. The Earned Capacity Hours for each monthly TOD Period is calculated as follows:

$$\text{EARNED CAPACITY HOURS} = \text{FE} / \text{FCC}$$

Where:

FE = The sum of the Firm TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(k) of this Exhibit D, in kWh.

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d) in kWh per hour.

- (k) Factor “FE” in Section 3(j) of this Exhibit D. The Firm TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{FIRM TOD ENERGY in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (\text{E})_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour in kWh; and
(ii) Allowed Firm Energy, as determined in Section 3(l) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

- (l) Factor “E” in Section 3(k) of this Exhibit D. The Allowed Firm Energy is calculated as follows:

ALLOWED FIRM ENERGY in kWh = 1 hour x FCC

Where:

FCC = The Firm Contract Capacity set forth in Section 1.02(d).

- (m) Factor “CCH” in Section 3(i) of this Exhibit D. The total number of Capacity Credit Hours for each monthly TOD Period is determined as follows:

CAPACITY CREDIT HOURS = TCV + FCV + MCV

Where:

TCV = The total Transmission Curtailment Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-2, when the Metered Energy was curtailed by either the CAISO or the Transmission Provider.

FCV = The total Force Majeure Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-1, when the Metered Energy was curtailed by a Force Majeure event claimed by Buyer to the extent the Generating Facility is otherwise available.

MCV = The total Maintenance Credit Value during the TOD Period, determined in accordance with Section 9 of Exhibit E.

- (n) Factor “APF” in Section 3(g) of this Exhibit D. The Availability Penalty Factor for each monthly TOD Period is calculated as follows:

AVAILABILITY PENALTY FACTOR = 1.0 – 2.0 x (CR – ACF)

Where:

APF = The greater of: (i) zero; and (ii) the result of the above equation for APF.

CR = 95%, the minimum Capacity Performance Requirement.

ACF = The Availability Credit Factor determined in accordance with Section 3(i) of this Exhibit D.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	Period A - Summer	Period B - Winter	Applicable Days
	May 1 - October 31	November 1 - April 30	
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. - Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

{Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is PG&E. }

TOD Period	Summer Jun 1 st – Sep 30 th	Winter Oct 1 st – May 31 st	Applicable Days
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Mid-Peak	8:00 a.m. – Noon	8:00 a.m. - 9:00 p.m.	Weekdays except Holidays.
	6:00 p.m. – 11:00 p.m.		Weekdays except Holidays.
Off-Peak	11:00 p.m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays.
		9:00 p.m. – Midnight	Weekdays except Holidays.
	Midnight – Midnight	6:00 a.m. – Midnight	Weekends and Holidays.
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends and Holidays.

{Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SCE. }

	Summer	Winter	
Time Period	MAY 1 - SEPTEMBER 30	OCTOBER 1 - APRIL 30	
ON-PEAK	11:00 a.m. - 6:00 p.m.	5:00 p.m. - 8:00 p.m.	Weekdays
SEMI-PEAK	6:00 a.m. - 11:00 a.m.	6:00 a.m. - 5:00 p.m.	Weekdays
	6:00 p.m. - 10:00 p.m.	8:00 p.m. - 10:00 p.m.	Weekdays
OFF-PEAK	10:00p.m. - 12:00 mid.	10:00 p.m. - 12:00 mid.	Weekdays
	5:00 a.m. - 6:00 a.m.	5:00 a.m. - 6:00 a.m.	Weekdays

ID #[Number], [Seller's Name]

	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Weekends
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Holidays
Super Off-Peak	12:00 mid. - 5:00 a.m.	12:00 mid. - 5:00 a.m.	All Days

{Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SDG&E.}

“Holiday”, as used in the above table, means New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When a Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

*** End of Exhibit D ***

EXHIBIT D-1
Force Majeure Credit Value

1. **Overview.** This Exhibit D-1 describes the methodology for computing Force Majeure Credit Value.
2. **Scheduling.** Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. **Calculation of Force Majeure Credit Value.** For every period of Force Majeure curtailment requested by Buyer, Buyer shall compute the Force Majeure Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-1, "**Benchmark Capacity**" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the Force Majeure event and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Force Majeure Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.
- (d) After all the Hourly Credit Values have been applied, the final monthly Force Majeure Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-1 ***

EXHIBIT D-2
Transmission Curtailment Credit Value

1. **Overview.** This Exhibit D-2 describes the methodology for computing Transmission Curtailment Credit Value.
2. **Scheduling.** Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. **Calculation of Transmission Curtailment Credit Value.** For every period of curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, Buyer shall compute the Transmission Curtailment Credit Value following these steps:

- (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-2, "**Benchmark Capacity**" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the curtailment notification and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of:

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Transmission Curtailment Credit Value, by TOD Period, to the Capacity Credit

Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.

- (d) After all the Hourly Credit Values have been applied, the final monthly Transmission Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

**** End of Exhibit D-2 ****

EXHIBIT E

Scheduling and Calculation of Maintenance Outage and Major Overhaul Credits

1. **Overview.** Seller shall follow the protocols established in this Exhibit E for the scheduling of Maintenance Outages and Major Overhauls, and for any subsequent notification that may be required to update a previously scheduled Maintenance Outage or Major Overhaul for which Seller wishes to obtain Maintenance Credit Value. This Exhibit E also describes the methodology for computing Maintenance Credit Value and Maintenance Debit Value.
2. **Notification.** Seller shall direct all Maintenance Outage and Major Overhaul notifications to Buyer's web-based outage scheduling system or an e-mail address designated by Buyer (the "Web Scheduler") and to the Generation Operations Center, whose URL and telephone number(s) can be found in Exhibit N.
3. **Scheduling.**
 - (a) Seller shall schedule all Maintenance Outages and Major Overhauls with Buyer in advance. Seller's failure to schedule an unplanned outage in advance is not a default under this Agreement. The notice requirements for Maintenance Outages and Major Overhauls are as follows:

<i>Outage Duration</i>	<i>Minimum Advance Notice</i>
Maintenance Outage, Less than 1 day	24 Hours
Maintenance Outage, 1 day or more	168 Hours
Major Overhaul	6 Months

- (b) Seller shall provide the following information when scheduling a Maintenance Outage or a Major Overhaul via the Web Scheduler:
 - (i) The identification number set forth on the cover page of this Agreement;
 - (ii) Password (supplied by Buyer);
 - (iii) Generating Unit Number*;
 - (iv) Capacity Credit Period, including:
 - (1) The date and time when Seller expects the Capacity Credit Period to begin, and
 - (2) The date and time when Seller expects the Capacity Credit Period to end.

(v) “Scheduled Power Offline”**, in kW, is the Hourly Power Output that is expected to be offline during each hour of the outage period, as such may be updated as set forth in this Exhibit E; and

(vi) Reason for the requested Maintenance Outage or Major Overhaul.

**Unit designation is applicable only when the contract calls for separate tracking of outage allowance for each Generating Unit.*

***If unit designation is applicable, Seller must provide the expected Scheduled Power Offline of the Generating Unit scheduled for maintenance; otherwise, Seller must provide the expected Scheduled Power Offline of the Generating Facility.*

4. Rescheduling.

- (a) A Maintenance Outage and the associated Capacity Credit Period may be rescheduled if Seller’s request to reschedule is received by Buyer no later than 5:00 p.m. PPT on the day before the Maintenance Outage was previously scheduled to begin.
- (b) A Major Overhaul and the associated Capacity Credit Period may be rescheduled provided:
 - (i) The rescheduled Major Overhaul begins six months or more after the first outage notification date and time;
 - (ii) The notification to reschedule is made at least one week before the Major Overhaul was previously scheduled to begin; and
 - (iii) There is at least a one-month period between the notification to reschedule and the commencement of the rescheduled Major Overhaul.
- (c) Maintenance Outages and Major Overhauls may be rescheduled more than once.

5. Extension.

- (a) Seller may extend a Maintenance Outage or a Major Overhaul and the associated Capacity Credit Period by notifying Buyer of the extension no later than 5:00 p.m. PPT on the day before the outage was previously scheduled to end. Seller’s failure to provide such notice, to the extent resulting from unexpected circumstances, is not a default under this Agreement.
- (b) Maintenance Outages and Major Overhauls and the associated Capacity Credit Periods may be extended more than once.

- (c) For a Maintenance Outage and the associated Capacity Credit Period which is less than 24 hours in duration, the extension cannot result in a total outage duration greater than 23 hours.
- 6. Cancellation. If Seller cancels a scheduled Maintenance Outage, Major Overhaul or the associated Capacity Credit Period, a cancellation notice must be received by Buyer no later than 5:00 p.m. PPT on the day before such Maintenance Outage or Major Overhaul was scheduled to begin.
- 7. Updating Scheduled Power Offline.
 - (a) If a change in the Hourly Power Output is anticipated or occurs during a Maintenance Outage or a Major Overhaul, the Scheduled Power Offline must be updated on a prospective basis as soon as possible via the Web Scheduler. Scheduled Power Offline cannot be updated once the Maintenance Outage or Major Overhaul is over.
 - (b) Multiple updates to the Scheduled Power Offline can be submitted if necessary on a prospective basis.
 - (c) If a Maintenance Outage or a Major Overhaul is completed ahead of schedule and Seller's Hourly Power Output has returned to normal output levels earlier than expected, Seller shall advise Buyer of the situation by providing an update to the Scheduled Power Offline as described in Section 7(a) of this Exhibit E.
- 8. Restrictions.
 - (a) Seller shall make reasonable efforts not to schedule a Maintenance Outage or Major Overhaul during the Peak Months. Should an outage be required during the said period, Seller shall abide by the limit as set forth in Section 1.05(d) for minor maintenance work during peak months.
 - (b) Each Capacity Credit Period must be scheduled to start and stop at the beginning of an hour. Also, when scheduling an outage, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
 - (c) Seller may not schedule a Maintenance Outage or a Major Overhaul that overlaps another Maintenance Outage, Major Overhaul, or Curtailment Period already scheduled on the Generating Facility. If unit designation is applicable in Section 3(b)(iii) of this Exhibit E, this restriction applies to the Generating Unit.
- 9. Maintenance Credit Calculation. For every properly scheduled Maintenance Outage and Major Overhaul, to the extent there is an associated Capacity Credit Period, Buyer shall

compute and apply the associated Maintenance Credit Value and the Maintenance Debit Value following these steps:

- (a) A Benchmark Capacity shall be determined for every scheduled Maintenance Outage and Major Overhaul. For purposes of this Exhibit E, “Benchmark Capacity” is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, at or after the time of outage notification, and before the start of the outage. If the outage is rescheduled, the most recent notification time shall be used in defining Benchmark Capacity. If the outage is extended, or its Scheduled Power Offline is updated, the original notification time shall be used in defining Benchmark Capacity, unless the outage has been rescheduled before the extension, in which case the most recent rescheduling notification time shall be used in defining Benchmark Capacity.

In the special case of a less-than-one-day Maintenance Outage that directly follows another less-than-one-day Maintenance Outage, Benchmark Capacity of the outage that follows is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, between these two outage time periods. In the event of back-to-back, less-than-one-day Maintenance Outages, Benchmark Capacity for the second outage shall be zero.

Notwithstanding this Section 9(a), upon Seller’s request, if and to the extent Seller is able to demonstrate to Buyer’s reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Capacity Credit Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during such Capacity Credit Period.

- (b) For each hour in the Capacity Credit Period of the Maintenance Outage or the Major Overhaul, an Hourly Credit Value and Hourly Debit Value shall be calculated using following formulas:

(i) $\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

where *Delta* is the lesser of

Benchmark Capacity minus Hourly Power Output, or
Scheduled Power Offline.

However, in all cases, *Delta* shall never be less than zero.

(ii) $\text{Hourly Debit Value} = (\text{Scheduled Power Offline} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

- (c) For each hour in the Capacity Credit Period, the Hourly Credit Value shall be applied as Maintenance Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Capacity Credit Period have been applied, or until the condition described in Section 9(d) of this Exhibit E is met, whichever comes first.
- (d) Simultaneous to Section 9(c) of this Exhibit E, for each hour in the Capacity Credit Period, the Hourly Debit Value shall be accumulated as Maintenance Debit Value in a Term-Year-to-date account whose increasing total is to be compared to the appropriate limit set forth in Sections 1.05(a) or (b). Once the Term-Year-to-date total reaches or exceeds the limit, no more Hourly Credit Values shall be applied.
- (e) After all the Hourly Credit Values have been applied and the Hourly Debit Values accounted for, the final monthly Maintenance Credit Value and the Term-Year-to-date cumulative Maintenance Debit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

The above description of the evaluation process assumes that the outage was properly scheduled with sufficient advance notice pursuant to this Exhibit E and was approved by Buyer (or the CAISO, if applicable). Any deviation from the proper scheduling protocol can result in reduced Maintenance Credit Value or increased Maintenance Debit Value.

*** End of Exhibit E ***

EXHIBIT F

[Intentionally omitted.]

**** End of Exhibit F ****

EXHIBIT G
Scheduling Coordinator Services

This Exhibit G is only applicable when Buyer is Scheduling Coordinator.

1. Designation of Buyer as Scheduling Coordinator.
 - (a) At least 30 days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.
 - (b) During the Term, unless Seller terminates Buyer as Scheduling Coordinator in accordance with Section 7 of this Exhibit G, Seller may not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller may not revoke Buyer's authorization to act as Scheduling Coordinator unless agreed to by Buyer.
 - (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and Seller's QF PGA or PGA, as applicable.
 - (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.
 - (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *provided, however*, that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.

2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:
 - (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit I, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;
 - (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;
 - (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and
 - (d) Receiving notification of the final schedules from the CAISO.

3. **Notices.** As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, CAISO Forced Outage Reports, or must offer waiver forms.
4. **Scheduling Fees.** In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:
 - (a) **SC Set-Up Fee.** The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal \$[___].
 - (b) **Monthly Scheduling Fee.** The Monthly Scheduling Fee will be as forth in the following table.

Net Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	\$2,500
10,000 – 100,000	\$5,000
Greater than 100,000	\$7,500

5. **CAISO Settlements.** As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

Buyer shall render a separate invoice to Seller for all CAISO Charges for which Seller is responsible under this Agreement (“CAISO Charges Invoice”) as described in Sections 1 through 4 of Exhibit J, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff.

CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental or supporting documentation provided by the CAISO to Buyer in the settlement process.

Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit G with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of 365 days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.
7. Terminating Buyer's Designation as Scheduling Coordinator.
 - (a) Seller may terminate Buyer as Scheduling Coordinator:
 - (i) In accordance with Section 7(b) of this Exhibit G; or
 - (ii) If Buyer materially fails to fulfill its obligations as Scheduling Coordinator and:
 - (1) Seller provides advance Notice to Buyer setting forth in reasonable detail the nature of such failure and such failure is not remedied within 30 days after such Notice; *provided, however*, that if such failure is not reasonably capable of being remedied within such 30-day period, Buyer shall have such additional time (not to exceed 120 days) as is reasonably necessary to remedy such failure, so long as Buyer promptly commences and diligently pursues such remedy;
 - (2) Seller (A) submits to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the date of

Buyer's termination as Scheduling Coordinator, and (B) causes its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and

- (3) The Parties will take any other action necessary to terminate the designation of Buyer as Scheduling Coordinator, including amending this Agreement; or
- (iii) If Seller is required to elect Buyer as Scheduling Coordinator in accordance with Section 1.08, then, subject to Section 3.06(b) or 3.09(b), as applicable, by (1) providing a Notice to Buyer on or before the 60th day after Seller meets the requirements of Section 3.06(a) and 3.09(a), and (2) at least 30 days before the replacement Buyer as the Scheduling Coordinator, complying with the requirements for designating a different Scheduling Coordinator by taking all necessary actions to terminate the designation of Buyer as Scheduling Coordinator, including those actions set forth in Sections 7(b)(i) and (b)(ii) of this Exhibit G. Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.
- (b) At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. PPT on the Term End Date ("SC Replacement Date"). Such actions include the following:
 - (i) Seller shall:
 - (1) Submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date; and
 - (2) Cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and
 - (ii) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.
- (c) Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.

*** End of Exhibit G ***

EXHIBIT H

[Intentionally omitted.]

**** End of Exhibit H ****

EXHIBIT I

Seller's Forecasting Submittal and Accuracy Requirements

1. **General Requirements.** The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:
 - (a) Comply with the CAISO Tariff;
 - (b) Accommodate changes to their respective generation technology and organizational structure; and
 - (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. **Seller's Forecasting Submittal Requirements for all Generating Facilities.**

- (a) **30-Day Forecast.**

No later than 30 days before the Term Start Date, Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term using the Web Client.

If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.

The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

- (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and
 - (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

 - (b) **Weekly Update to 30-Day Forecast.** Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit I, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.

- (c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, or a Real-Time Forced Outage, any of which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit I must be submitted to Buyer via the Web Client by no later than:
- (i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;
 - (ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or
 - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected electric energy production change.

Seller's updated Forecast must contain the following information:

- (w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected electric energy production change;
 - (x) The expected ending date and time of the event;
 - (y) The expected electric energy production, in MWh; and
 - (z) Any other information required by the CAISO as communicated to Seller by Buyer.
3. Seller's Forecasting Accuracy Requirements. If a (non-zero) Firm Contract Capacity quantity is applicable to this Agreement, then this Section 3 applies to Seller.
- (a) Accuracy Metric. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate and report to Seller the monthly mean absolute error (" MAE_m ") between Seller's Day-Ahead Forecasts and the respective daily summations of Metered Energy:

$$MAE_m = \frac{\text{Forecast Error}}{\text{Total Forecast}}$$

$$\text{Forecast Error} = \sum_i^n |f_i - a_i|$$

$$\text{Total Forecast} = \sum_i^n f_i$$

where:

- n = the total number of hours in calendar month “m”
- i = an hour within month “m”
- f_i = Seller’s Day-Ahead Forecast for hour “i”
- a_i = the quantity of (i) Metered Energy for hour “i” plus the quantity of electric energy not delivered as a result of a Real-Time Forced Outage for hour “i” (in MWh) when the Generating Facility is not PIRP-eligible, or when Buyer is not Scheduling Coordinator; or (ii) the actual available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible and Buyer is Scheduling Coordinator.

Buyer shall report each MAE_m to Seller and, upon Seller’s request, Buyer shall furnish all supporting calculations within a reasonable timeframe.

Notwithstanding anything to the contrary set forth in this Section 3(a), for hour “i” for which the absolute difference between variable “f_i” and variable “a_i” is a number greater than zero, to the extent that such difference results from the fault or negligence of Buyer in its role as Scheduling Coordinator the value “| f_i – a_i |” for that hour shall be deemed to be zero.

- (b) Forecasting Penalty. If the MAE_m for a particular month “m” is greater than 15% or if the average Forecast error for all hours of the month is greater than three MW, then an “MAE Failure” will be deemed to have occurred. An MAE Failure will be waived if Seller demonstrates to Buyer’s reasonable satisfaction that the MAE Failure was the result of unexpected changes in either electrical or steam demand associated with the Site Host Load. If such MAE Failure has been waived, then that month does not count as a month in which there was an MAE Failure.

For each month in which an MAE Failure has occurred, Seller shall pay a fee equal to the applicable Monthly Scheduling Fee in addition to any otherwise applicable Monthly Scheduling Fee.

During each month an MAE Failure occurs, subject to the limitations of the following paragraph, Seller will continue to receive Monthly Capacity Payments for the Firm Contract Capacity based on the Firm Capacity Price and capacity payment calculations for firm capacity as set forth in Section 3 of Exhibit D.

If, however, an MAE Failure occurs three times in any rolling 12-month period, then starting on the first day of the calendar month immediately following the third such occurrence (such month, the “First Penalty Month”):

- (i) The quantity of Firm Contract Capacity specified in Section 1.02(d) will be deemed to be zero ("Penalized Firm Contract Capacity"); and
- (ii) The quantity of As-Available Contract Capacity specified in Section 1.02(d) will be deemed increased by the quantity of Firm Contract Capacity as such quantity existed before the First Penalty Month ("Penalized As-Available Contract Capacity").

The Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall continue to be in effect during every subsequent calendar month until there are two consecutive calendar months without an MAE Failure (including a month in which an MAE Failure has been waived).

Upon such event, starting on the first day of the calendar month immediately following the second consecutive month during which Buyer does not have an MAE Failure, the Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall revert to the Firm Contract Capacity and As-Available Contract Capacity quantities existing before the First Penalty Month.

*** *End of Exhibit I* ***

EXHIBIT J
CAISO Charges

If at any time after the Term Start Date Buyer is not Scheduling Coordinator for the Generating Facility, then Buyer will not be responsible for any CAISO Charges. If at any time after the Term Start Date Buyer is Scheduling Coordinator for the Generating Facility, then Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;
2. Seller or any third party dispatches any portion of the Net Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator);
3. Seller does not comply with:
 - (a) The requirements set forth in Section 3.15; or
 - (b) Seller's obligation associated with any CAISO or Transmission Provider notice or instruction (as may be communicated by Buyer as Scheduling Coordinator) to (i) increase output to the Firm Contract Capacity during a System Emergency or an Emergency Condition, or (ii) reschedule a planned outage set to occur during a System Emergency or an Emergency Condition, then

Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with any failure set forth in Sections 3(a) or 3(b) of this Exhibit J (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator); or

4. If the Generating Facility is PIRP-eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the electric energy generated and delivered from the Generating Facility.

If any of Sections 1 through 4 of this Exhibit J apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

*** End of Exhibit J ***

EXHIBIT K
Scheduling and Delivery Deviation Adjustments

If Buyer is Scheduling Coordinator for the Generating Facility and if the Generating Facility is not PIRP-eligible, then Seller or Buyer, as the case may be, shall be responsible for the following SDD Adjustments with respect to the Generating Facility:

1. **SDD Energy Adjustment.** An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

$$\text{If } A < D, \text{ then SDD Energy Adjustment} = (D - A) \times (EP - P)$$

or

$$\text{If } A > E, \text{ then SDD Energy Adjustment} = (A - E) \times (P - EP)$$

Otherwise, the SDD Energy Adjustment = 0

where:

A = Metered Energy for the Settlement Interval;

B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to Exhibit I corresponding to the Settlement Interval;

C = Performance Tolerance Band =

The greater of (a) three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour or (b) one (1) MWh divided by the number of Settlement Intervals in such hour;

D = Performance Tolerance Band Lower Limit = (B - C);

E = Performance Tolerance Band Upper Limit = (B + C);

EP = TOD Period Energy Price applicable to the Settlement Interval specified in Section 2(b) of Exhibit D; and

P = Real-Time Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. SDD Administrative Charge. Seller shall make a payment to Buyer (the “SDD Administrative Charge”) for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

If $A > (B + C)$ or $A < (B - C)$, then:

SDD Administrative Charge = $(\text{Absolute Value } (B - A) - C) \times$
Uninstructed Deviation GMC Rate.

Otherwise, the SDD Administrative Charge = 0.

*** End of Exhibit K ***

EXHIBIT L
Physical Trade Settlement Amount

This Exhibit L is only applicable when Buyer is not Scheduling Coordinator.

1. Physical Trades Cleared in the IFM. The CAISO Revenue credited to Buyer's account by CAISO as a result of a Physical Trade having cleared in the IFM shall be for Buyer's account.
2. Physical Trades not Cleared in the IFM. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate the Physical Trade Settlement Amount ("PTSA_i") for each hour as follows:

$$PTSA_i = CPT_i \times (CPTP_i - PNode_i)$$

Where:

- i = an hour within month "m"
- CPT = Converted Physical Trade, in MWh
- CPTP = Converted Physical Trade Price, and
- PNode = the Generating Facility's PNode price, in dollars per MWh.

If the PTSA_i is positive *and* Seller submitted the original Physical Trade in accordance with Section 3.14(s)(ii) and Exhibit L, then Buyer shall owe Seller the PTSA_m for month m. In any event the PTSA_i is negative, however, then Seller shall owe Buyer the PTSA_i.

*** End of Exhibit L ***

EXHIBIT M
SC Trade Settlement Amount

This Exhibit M is only applicable when Buyer is not Scheduling Coordinator.

If, in any Settlement Interval, a Generating Facility's Scheduled Amount differs from the Generating Facility's Metered Energy by more than the SC Trade Tolerance Band, then Seller shall be subject to a payment adjustment calculated by Buyer in accordance with the procedures and formulas set forth below.

(1) Under-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy, and the Real-Time Price is greater than the Day-Ahead Price payable during the Settlement Interval, then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy if, during such Settlement Interval, the Real-Time Price is equal to or less than the Day-Ahead Price payable during the Settlement Interval.

(2) Over-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy, and the Real-Time Price is less than the Day-Ahead Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy if, during such Settlement Interval, the Real-Time Price is greater than or equal to the Day-Ahead Price payable during the Settlement Interval.

*** End of Exhibit M ***

EXHIBIT N
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	

Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

*** End of Exhibit N ***

EXHIBIT O

[Intentionally omitted.]

**** End of Exhibit O ****

EXHIBIT P

[Intentionally omitted.]

**** End of Exhibit P ****

EXHIBIT Q

[Intentionally omitted.]

*** *End of Exhibit Q* ***

EXHIBIT R
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

- (a) Comply with the CAISO Tariff;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

- (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client").
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.
- (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.
- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned

ID #[Number], [Seller's Name]

outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

- (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code, the CAISO Tariff or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

**** End of Exhibit R ****

EXHIBIT S

TOD Period Energy Price Calculation; Greenhouse Gas Reporting Requirements

Introduction. Subject to Section 4.04 and Exhibit D, this Exhibit S sets forth the formulas and methodology that Buyer will use in order to calculate the TOD Period Energy Price, and also sets forth Seller's Greenhouse Gas emissions reporting requirements.

1. TOD Period Energy Price. Subject to Section 2 of this Exhibit S, Buyer shall calculate the TOD Period Energy Price for electric energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{TOD Period Energy Price } \$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

Applicable HR = The Heat Rate for the specified time-period, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,225
January 1, 2013 through December 31, 2014	8,125
January 1, 2015 until the termination of this Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per the Decision and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per the Decision and CPUC Resolution E-4246;

GHG Charges = All taxes, charges or fees assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable HR or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula;

TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
Peak	1.2564	N/A
Partial-Peak	1.1535	1.1395
Off-Peak	0.9155	0.9628

Super Off-Peak	0.7439	0.8216
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Buyer may update the TOU factors set forth above at the beginning of each calendar year using the electric energy-only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC-approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

Off-Peak TOU factors will be calculated as a residual – similar to the current method – to preserve the correctness of the monthly hourly weighting. An example for Period A – Summer is: [Number of hours in month - (1.2564 * Number of Summer Peak hours in Month) - (1.1535 * Number of Summer Partial-Peak hours in Month) - (0.7439 * Number of Summer Super Off-Peak hours in Month)] / Number of Summer Off-Peak hours in Month

{Buyer Comment: These TOU factors are only applicable if Buyer is PG&E, in which case, the TOU variable and factors for SCE and SDG&E (below) must be deleted.}

TOU (i.e., time-of-use) = Throughout the Term, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 * # of Summer On-Peak hours in month) - (0.8526 * # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 * # of Winter Mid-Peak hours in month) - (0.7760 * # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

{Buyer Comment: These TOU factors are only applicable if Buyer is SCE, in which case, the TOU variable and factors for PG&E (above) and SDG&E (below) must be deleted.}

TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933
Super Off-Peak	0.645	0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the electric energy-only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC-approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

{*Buyer Comment: These TOU factors are only applicable if Buyer is SDG&E, in which case, the TOU variable and factors for SCE and PG&E (above) should be deleted.*}

LA (i.e., hourly location adjustment, in \$/kWh) = LMP_{QF} - $LMP_{Trading\ Hub}$

Where the hourly location adjustment (i.e., LA) will be based on the hourly Day-Ahead prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO Controlled Grid associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

2. TOD Period Energy Price during the Floor Test Term.

(a) If there is a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or by a different Governmental Authority pursuant to federal or state legislation), then, during the Floor Test Term, the TOD Period Energy Price will be the higher of the following two formulas (the "GHG Floor Test"):

(i) TOD Period Energy Price \$/kWh = ((Market Heat Rate * BTGP/1,000,000) + VOM) * TOU + LA

Where:

Market Heat Rate (Btu/kWh) = As defined in Exhibit A;

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

OR

- (ii) TOD Period Energy Price \$/kWh = ((Applicable HR * (BTGP + GHG Allowance Price) / 1,000,000) + VOM) * TOU + LA + GHG Charges

Where:

Applicable HR = (A) 8,225 Btu/kWh through December 31, 2012; (B) 8,125 Btu/kWh from January 1, 2013 through December 31, 2014; and (C) Actual HR from January 1, 2015 until the end of the Floor Test Term;

BTGP (\$/MMBtu) = As set forth above;

GHG Allowance Price (\$/MMBtu) = Allowance Cost (\$/MT) * 117lbs of Greenhouse Gas per MMBtu / 2,204.6 lbs per MT

Where:

Allowance Cost (\$/MT) = The cost of one Allowance, determined using the GHG Auction clearing price from the latest GHG Auction that has taken place during the calendar quarter immediately preceding the date that Buyer's payment is due to Seller; *provided, however*, that if there is no GHG Auction held during the applicable time-period, then the Allowance Cost is determined in accordance with Section 2(c) of this Exhibit S;

VOM (\$/kWh) = As set forth above;

GHG Charges (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (b) Free Allowance Reporting and Allocation. If, at any time, Buyer makes a monthly payment to Seller utilizing the GHG Floor Test formula set forth in Section 2(a)(ii) of this Exhibit S, then Buyer shall deduct from the monthly payment to Seller for the applicable month the value of the Free Allowances disclosed in and based on all Free Allowance Notices that have not already been applied to a prior payment to Seller; *provided, however*, that if Buyer, using reasonable efforts, is unable to process such payment adjustment for the applicable month, then Buyer shall make such payment adjustment to the next monthly payment due to Seller. For any month that Buyer utilizes the formula set forth in Section 2(a)(ii) of this Exhibit S to make a monthly payment to Seller, Buyer

shall maintain a record of the value and quantity of all Free Allowances disclosed in the Free Allowance Notices, if any, and shall deduct the value of such Free Allowances to any subsequent monthly payment due to Seller where Buyer calculates such monthly payment utilizing the formula set forth in Section (2)(a)(ii) of this Exhibit S until such time that the value of all such Free Allowances are expended.

In order for Buyer to make the payment adjustment set forth in the immediately preceding paragraph, Seller agrees to deliver to Buyer, within twenty (20) days of receiving any Free Allowances, a Free Allowance Notice for the applicable month, which Free Allowance Notice must include all Additional GHG Documentation. Buyer shall value any such Free Allowances using the same methodology Buyer uses in valuing the Allowance Cost, as set forth above.

(c) Determining Allowance Costs under the GHG Floor Test if there is No GHG Auction.

This Section 2(c) is applicable if no GHG Auction has been held during the time-period for which the Allowance Cost variable set forth in Section 2(a) of this Exhibit S is to be determined. In such an instance, publicly available indices will be used to determine the price for the applicable period. If no such indices exist, Buyer will meet with the Trade Organizations to negotiate in good faith to reach an agreement on setting the Allowance Cost variable. If, after negotiating for fifteen (15) Business Days, Buyer and the Trade Organizations have not reached an agreement on setting the Allowance Cost variable, then Buyer and the Trade Organizations shall each select, within fifteen (15) days after such failed negotiations, price quotations for the cost of one Allowance, as set forth in two (2) different Reference Market-Makers, for a total of four (4) price quotations. The Allowance Cost variable for the applicable time-period will be determined by taking the average of the four (4) price quotations so selected by Buyer and the Trade Organizations. Seller agrees and acknowledges that it shall be bound by any agreement as to the Allowance Cost variable between Buyer and the Trade Organizations, in accordance with the foregoing.

(d) TOD Period Energy Price from the end of the Floor Test Term. As of end of the Floor Test Term until the termination of this Agreement, Buyer shall calculate the TOD Period Energy Price for electric energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{TOD Period Energy Price } \$/\text{kWh} = ((\text{Market Heat Rate} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Market Heat Rate (Btu/kWh) = As defined in Exhibit A;

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (e) Seller's Responsibility. Other than Buyer's payment to Seller for GHG Compliance Costs and GHG Charges as set forth in payment formulas above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of GHG emissions with respect to Seller or the Generating Facility.

3. Reporting Requirements.

- (a) From the Effective Date through the Term End Date (and for any period following the termination of this Agreement to the extent relating back to the Term), Seller shall provide to Buyer the following information (together, the "Annual GHG Reports"):
- (i) On or before the fifth (5th) Business Day following Seller's timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB, detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Report"), Seller shall deliver such CARB Annual Report to Buyer; and
- (ii) To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electric energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electric energy produced by the Generating Facility, the electric energy used to serve the Site Host Load, and the electric energy delivered to Buyer; and (5) the number of Allowances (including Free Allowances) held or surrendered by Seller for such calendar year during any period where the TOD Period Energy Price is calculated based on the GHG Floor Test.
- (b) If Buyer requires any other information not delineated in Section 3(a) of this Exhibit S in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB or by any other Governmental Authority and imposed on Buyer (other than the information that Seller must provide in accordance with Section 3(c) of this Exhibit S),

then Buyer shall promptly meet and confer with the Trade Organizations regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations, in accordance with the foregoing.

- (c) Buyer will review the Annual GHG Reports described in this Section 3 to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under this Agreement, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under this Agreement. If this Agreement terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the thirty- (30) day period after the termination of this Agreement.
- (d) To the extent that the information provided by the disclosing Party in accordance with this Section 3 is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Cogeneration Facilities under the existing Qualifying Cogeneration Facilities monitoring compliance program.

4. Market Disruption Event. Unless this Agreement has terminated, if, on or after the date that the Market Heat Rate applies to and is used in the calculation of the TOD Period Energy Price and until the termination of this Agreement, there occurs a Market Disruption Event, then the Market Heat Rate for the affected Trading Day(s) must be determined by reference to the Market Heat Rate for the first Trading Day thereafter on which no Market Disruption Event exists; *provided, however*, that if the Market Heat Rate is not so determined within five (5) Trading Days after the Market Disruption Event occurred or existed, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on a Market Heat Rate (or a method for determining a Market Heat Rate), and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Trading Day after which the Market Disruption Event occurred or existed, then the Market Heat Rate will be determined in good faith by taking the average of the price quotations for electric energy and relevant Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by each of Buyer and the Trade Organizations (for a total of four (4) price quotations). Seller hereby agrees and acknowledges that it shall be bound by any agreement as to a Market Heat Rate (or a method for determining a Market Heat Rate) between Buyer and the Trade Organizations, in accordance with the foregoing.

*** End of Exhibit S ***

EXHIBIT T
QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
 Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name: _____
 Street: _____
 City: _____ State: _____ Zip Code: _____

ID No.: _____ Generation Nameplate (KW): _____

II. In Operation: Yes No

III. Can your facility dump your thermal output directly to the environment? Yes No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1	_____	_____	_____	Y N
2	_____	_____	_____	Y N
3	_____	_____	_____	Y N
4	_____	_____	_____	Y N
5	_____	_____	_____	Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
 BTUs _____ Therms _____ mmBTUs _____
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

*** End of Exhibit T ***

ATTACHMENT A – EXHIBIT 5

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Pro Forma Agreement for CHP Facilities Request for Offers Program

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

THIS FORM OF AGREEMENT IS BUYER'S PRO FORMA FOR THIS CHP RFO.

SELLER MAY, AT ITS OPTION, REVISE THIS AGREEMENT, WHICH REVISIONS ARE SUBJECT TO FURTHER NEGOTIATION AND BUYER'S ACCEPTANCE. BUYER ENCOURAGES SELLER TO MAKE REVISIONS TO THE TERMS OF THIS AGREEMENT TO THE EXTENT IT ADDS VALUE (INCLUDING ALTERNATIVE METHODS TO THOSE IN SECTION 1.02(f) THAT PROVIDE GHG SAVINGS FOR BUYER) TO SELLER'S OFFER.

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POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

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

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

RECITALS

- A. On or about September 20, 2007, the CPUC issued Decision ("D.") 07-09-040 (the "Decision") which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to qualifying facilities meeting the eligibility criteria set forth in the Decision.
- B. Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the "Settling Parties") entered into CPUC-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.
- C. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the "Settlement Agreement"), which

resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.

- D. The Settlement Agreement became effective on [] (the “Settlement Effective Date”).
- E. The Settling Parties, pursuant to the Settlement Agreement, established a request for offers program for eligible CHP Facilities and developed a pro forma agreement to be made available to such CHP Facilities as part of such request for offers program (the “CHP RFO Pro Forma”).

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

ARTICLE ONE. SPECIAL CONDITIONS

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

In accordance with Sections 7 and 8 of the Settlement Agreement, before executing this Agreement, Seller must provide to Buyer anticipated Generating Facility operations estimates in order for Buyer to count this Agreement towards Buyer's GHG Emissions Reduction Target (as defined in the Settlement Agreement), which include reasonable estimates of (i) the total expected Useful Thermal Energy Output of the Generating Facility per Term Year, and (ii) the total expected electricity generation of the Generating Facility per Term Year. Buyer shall use such information as specified in Section 7 of the Settlement Agreement. }

1.01 Term.

- (a) The term of this Agreement (the "Term") commences on, or within 120 days before [Date]; *provided, however*, that Seller may change the date set forth in this Section 1.01(a) by providing Notice to Buyer at least one year before such date;
- (b) Seller shall provide Buyer with 30 days advance Notice confirming the exact date on which the Term commences, which date must be within the 120-day period set forth in Section 1.01(a) (the "Term Start Date");
- (c) The Term Start Date must occur on the first day of a calendar month;
- (d) The Term ends [Number of months] months after the Term Start Date (the "Term End Date"); and
- (e) Notwithstanding the proviso set forth in Section 1.01(a), the Term Start Date must occur within 60 months of CPUC Approval, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit F.

{ Buyer Comment: Select this Section 1.01 if the Generating Facility is a New CHP Facility or a Repowered CHP Facility. Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must be no more than 12 years. }

- (a) The term of this Agreement (the "Term") commences on, or within 120 days before [Date]; *provided, however*, that Seller may change the date set forth in this Section 1.01(a) by providing Notice to Buyer at least one year before such date;

- (b) Seller shall provide Buyer with 30 days advance Notice confirming the exact date on which the Term commences, which date must be within the 120-day period set forth in Section 1.01(a) (the “Term Start Date”);
- (c) The Term Start Date must occur on the first day of a calendar month;
- (d) The Term ends [Number of months] months after the Term Start Date (the “Term End Date”); and
- (e) Notwithstanding the proviso set forth in Section 1.01(a), the Term Start Date must occur within 36 months of CPUC Approval, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit F.

{Buyer Comment: Select this Section 1.01 if the Generating Facility is an Expanded CHP Facility. Seller designates the Term Start Date and the Term End Date; provided, however, (a) the Term must be no more than seven years if Seller has elected in Section 1.02(a) not to comply with the credit and collateral obligations set forth in this Agreement with respect to such Expanded CHP Facility, and (b) no more than 12 years if the Generating Facility is an Expanded CHP Facility, and Seller has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement with respect to such Expanded CHP Facility.}

- (a) The term of this Agreement (the “Term”) commences on [Date] (the “Term Start Date”);
- (b) The Term ends [Number of months] months after the Term Start Date (the “Term End Date”);
- (c) Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least one year before such Term Start Date; and
- (d) Notwithstanding Section 1.01(c), the Term Start Date must occur within 24 months of the Effective Date, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03).

{Buyer Comment: Select this Section 1.01 if the Generating Facility is an Existing CHP Facility. Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must be no more than seven years.}

1.02 Generating Facility.

- (a) Name; Designation. The name of the Generating Facility is [Generating Facility name], which:

_____ is a New CHP Facility;

_____ is an Existing CHP Facility;

_____ is or will be a Repowered CHP Facility on or before the Term Start Date;

_____ is or will be an Expanded CHP Facility on or before the Term Start Date, which elects to comply with the credit and collateral requirements set forth in this Agreement; or

_____ is or will be an Expanded CHP Facility on or before the Term Start Date, which elects not to comply with the credit and collateral requirements set forth in this Agreement.

- (b) **Location; Site.** The Generating Facility is located at [\[Generating Facility address\]](#), and is further described in [Exhibit B](#).
- (c) **CHP Facility Type.** As of the Effective Date, the Generating Facility is a [\[“topping-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202\(d\)\]](#) [\[“bottoming-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202\(e\)\]](#).
- (d) **Contract Capacity.** As set forth in the following table, Seller may elect (i) only Firm Contract Capacity, (ii) only As-Available Contract Capacity, or (iii) both Firm Contract Capacity and As-Available Contract Capacity:

Month	Monthly Firm Contract Capacity (kW)	As-Available Contract Capacity (kW)	Net Contract Capacity (kW)
January	[]	[]	[]
February	[]	[]	[]
March	[]	[]	[]
April	[]	[]	[]
May	[]	[]	[]
June	[]	[]	[]
July	[]	[]	[]
August	[]	[]	[]
September	[]	[]	[]
October	[]	[]	[]
November	[]	[]	[]
December	[]	[]	[]

Firm Contract Capacity, As-Available Contract Capacity and Net Contract Capacity are subject to adjustment in accordance with Section 3.07(c) and, if the Generating Facility is (w) a New CHP Facility, (x) an Expanded CHP Facility, (y) a Repowered CHP Facility, or (z) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then, in each case, the Firm

Contract Capacity, As-Available Contract Capacity and Net Contract Capacity are subject to adjustment in accordance with Section 3.13(b) and Exhibit C, as applicable.

{Buyer Comment: The Net Contract Capacity must equal the sum of Firm Contract Capacity and As-Available Contract Capacity, and cannot exceed PMax. }

- (e) Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [] kWh. The Expected Term Year Energy Production may be revised in accordance with Section 3.07(c), or based on changes in the Site Host Load or the Site Host thermal requirements; *provided, however*, that such revision must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on (i) actual modifications to the Generating Facility performed or to be performed by Seller in accordance with and subject to Section 3.07(c), or (ii) changes in the Site Host Load or the Site Host thermal requirements. Such certification must include all data relied on to support the revised Expected Term Year Energy Production.

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

- (f) Efficiency.
- (i) The Generating Facility has an Efficiency Rating of []% (the “Expected ER”).
- (ii) If, at any time during the Term, the Efficiency Rating of the Generating Facility falls below the Expected ER (an “Efficiency Rating Deficiency”), Buyer shall send a Notice to Seller, which Notice shall require Seller, within 90 days after Seller’s receipt of Buyer’s Notice, to provide a written plan and schedule (the “Efficiency Rating Cure Plan”) for correcting the Efficiency Rating Deficiency. Within 30 days after Buyer’s timely receipt of the Efficiency Rating Cure Plan from Seller, Buyer shall provide a Notice to Seller either accepting or rejecting such Efficiency Rating Cure Plan. If Buyer rejects the Efficiency Rating Cure Plan, Buyer and Seller shall negotiate in good faith to rectify any deficiency in the Efficiency Rating Cure Plan. Upon Buyer’s acceptance of the Efficiency Rating Cure Plan, Buyer shall send a Notice to Seller, which Notice shall provide Seller with 180 days from the date of such Notice (the “Efficiency Rating Cure Period”) to rectify the Efficiency Rating Deficiency. On or before the last day of the Efficiency Rating Cure Period (the “Efficiency Rating Cure Date”), Seller must demonstrate to Buyer’s reasonable satisfaction that Seller has cured the Efficiency Rating Deficiency by establishing that (1) Seller has satisfied its obligations under the Efficiency Rating Cure Plan, and (2) the Efficiency Rating of the Generating Facility

is equal to or greater than the Expected ER (such demonstration may include, at Buyer's election, the delivery by Seller to Buyer of certification, including all supporting data, from a qualified independent California-licensed professional engineer, which certification makes the representations set forth in Sections 1.02(f)(ii)(1) and (2)).

- (iii) Notwithstanding anything to the contrary set forth in Section 1.02(f)(ii), Seller shall only have the right to cure an Efficiency Rating Deficiency, in accordance with Section 1.02(f)(ii), two times during the Term, such that any subsequent Efficiency Rating Deficiency is an Event of Default under Section 6.01(c)(xix).
- (iv) Seller is solely liable for any costs, fees or penalties assessed upon Seller or Buyer by any Governmental Authority resulting from any Efficiency Rating Deficiency.

1.03 Delivery Point. The delivery point is the point of delivery of the Power Product to the CAISO Controlled Grid (the "Delivery Point"). Seller shall provide and convey to Buyer the Power Product from the Generating Facility at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point.

1.04 Capacity Performance Requirements. As further described in Exhibit D, if the Generating Facility elects to provide Firm Contract Capacity, then the Generating Facility must have a minimum Firm Contract Capacity performance requirement of 95% to earn the Maximum Firm Capacity Payment and a minimum Capacity Performance Requirement of 60% to earn any portion of the Maximum Firm Capacity Payment.

1.05 Maintenance Outages; Major Overhaul.

- (a) The total Maintenance Debit Value for Maintenance Outages, as determined in accordance with Exhibit E, may not exceed 550 hours in the first Term Year. At the end of each Term Year following the first Term Year, up to a maximum of 50 unused hours may be carried over to the following Term Year. For each of the Term Years after the first Term Year, the total Maintenance Debit Value for Maintenance Outages may not exceed 550 hours plus hours carried over from prior Term Years; *provided, however*, that such Maintenance Debit Value may not exceed 600 hours in any Term Year.
- (b) If the Term is greater than or equal to five years, Seller may (i) request up to two Major Overhaul Allowances (in accordance with Exhibit E) of up to 750 total hours for each Major Overhaul, and (ii) schedule up to two Major Overhauls; *provided, however*, that the second Major Overhaul may not occur within 48 months after the completion of the first Major Overhaul and the Maintenance Debit Value for each Major Overhaul may not exceed 750 hours.

- (c) If Seller utilizes all of its Major Overhaul Allowance during a Major Overhaul, the remaining portion of the Major Overhaul may be converted to a Maintenance Outage as far as Maintenance Credit Value and Maintenance Debit Value are concerned; *provided, however*, that Seller submits a Notice to Buyer of such conversion within 60 days of the end of such Major Overhaul.
- (d) During the Peak Months, Seller may only schedule Maintenance Outages during the non-peak hours of such Peak Months, and the monthly Maintenance Debit Value for Maintenance Outages during the Peak Months may not exceed 12 non-peak hours per Peak Month. Such limitation is part of, and not in addition to, the annual limits as set forth in Section 1.05(a).

1.06 Power Product Prices; GHG Compliance Costs.

- (a) Firm Capacity Price. The Firm Capacity Price equals \$[_____] per kW-year.
- (b) As-Available Capacity Price. The As-Available Capacity Price equals \$[_____] per kW-year.

{Buyer Comment: In accordance with the requirements of this CHP-only RFO program, Seller must provide as part of its offer package (i) a pricing option whereby Seller assumes GHG Compliance Cost, and (ii) a pricing option whereby Seller elects to pass-through GHG Compliance Costs to Buyer. Seller may, at its election, also offer a third hybrid pricing option whereby Seller and Buyer allocate GHG Compliance Costs between the Parties. The Seller provided pricing options may, at Seller's election, be reflected in the capacity price or the energy price or both capacity and energy price. Buyer may select, in its sole discretion, which of these pricing options, if any, Buyer chooses as part of this CHP-only RFO program. }

- (c) TOD Period Energy Price. The TOD Period Energy Price is set forth in Section 2 of Exhibit D.
- (d) Allocation of GHG Compliance Costs.

_____ Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility.

_____ Buyer is solely responsible for all GHG Compliance Costs in accordance with this Agreement. Other than as set forth in this Agreement, Seller is solely responsible for all costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility. The Parties agree to comply with their respective obligations as set forth in Exhibit S.

_____ The Parties agree to allocate GHG Compliance Costs as follows: *[Seller may, at its option, provide an alternative to the two options set forth immediately above]*. Other than as set forth in this Agreement, Seller is solely responsible for

all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility. The Parties agree to comply with their respective obligations as set forth in Exhibit S.

{Buyer Comment: If Buyer selects Seller's offer as part of this CHP-only RFO, Buyer may select, in its sole discretion, one of the options set forth in Section 1.06(d), subject to the restrictions set forth in Buyer's Comment immediately above and the requirements of the Settlement Agreement. Section 4.2.7 of the Settlement Agreement provides that that Seller must offer one option whereby Seller assumes GHG Compliance Costs and one option whereby Seller elects to pass-through GHG Compliance Costs to Buyer. As set forth in Section 4.2.7.3 of the Settlement Agreement, "Seller and Buyer may elect a hybrid approach for GHG cost recovery. For example, Buyer covers GHG costs up to a certain Heat Rate and Seller assumes additional costs above that Heat Rate. This hybrid approach may create an efficiency incentive for the Seller to provide additional reductions of GHG emissions."}

1.07 Requirements Applicable Solely to New CHP Facilities, Repowered CHP Facilities, and Certain Expanded CHP Facilities. If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement, the provisions of this Section 1.07 also apply to Seller.

(a) Credit and Collateral Requirements.

- (i) Seller shall post and thereafter maintain the Development Security in accordance with Section 4(b) of Exhibit F.
- (ii) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 2(a) of Exhibit F, in an amount equal to [Option 1: 12 months of expected total Net Contract Capacity revenues] [Option 2: 12 months of expected total revenues] [Option 3: five percent of the expected total revenues] [Option 4: [As proposed by Seller, subject to further negotiations between the Parties]] of the Generating Facility under this Agreement (the "Performance Assurance Amount") The initial Performance Assurance Amount equals \$[____]. The Performance Assurance Amount will be revised upon any change to the Expected Term Year Energy Production.

{Buyer Comment: Select one of the three options for posting Performance Assurance listed above. Alternatively, Seller may provide, at its option, an alternative to the options listed above for posting Performance Assurance, which option shall be subject to further negotiations between the Parties.}

- (iii) Seller shall comply with all of the provisions of Exhibit F.

(b) Seller's Guarantor; Guaranty Amount; Guarantor Cross Default Amount.

- (i) Seller's Guarantor, if any, is [Name of Guarantor]. Unless otherwise set forth in the immediately preceding sentence, the Guarantor set forth in this Section 1.07(b)(i) does not include any parent, subsidiary or Related Entity of Seller.
- (ii) Guarantor shall guarantee \$[Performance Assurance Amount x 1.25].
- (iii) The Guarantor Cross Default Amount, if any, equals \$[_____].

{Buyer Comment: Guarantor Cross Default Amount must equal two percent of Guarantor's tangible net worth.}

- 1.08 Scheduling Coordinator Election. [Buyer][Seller][_____, an agent of Seller] is the Scheduling Coordinator under this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, Buyer must be the Scheduling Coordinator under this Agreement if the Generating Facility is an Existing CHP Facility and Seller intends to utilize the exemptions set forth in, and subject to, Sections 3.06(b) or 3.09(b).
- 1.09 Economic Curtailment Option. Buyer [has][does not have] the right to request that Seller curtail the Generating Facility's production of the Power Product in accordance with Exhibit U.
- 1.10 Power Rating. If the Generating Facility is an Existing CHP Facility, on the Effective Date, the Power Rating of the Generating Facility equals [_____] MW. Notwithstanding anything to the contrary set forth in this Agreement, the Power Rating of the Generating Facility (whether such Generating Facility is a New CHP Facility, an Existing CHP Facility, a Repowered CHP Facility or an Expanded CHP Facility) must always exceed 5 MW.

*** End of Article One ***

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

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

- (a) The Generating Facility is a CHP Facility, subject to Section 3.17(c);
- (b) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:
 - (i) Operate the Generating Facility;
 - (ii) Deliver electric energy from the Generating Facility to the Delivery Point; and
 - (iii) Schedule, or arrange for a third party or Buyer to Schedule, the electric energy produced by the Generating Facility with the CAISO;
- (c) Seller's Scheduling Coordinator, as set forth in Section 1.08, is authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
- (d) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in this Agreement;
- (e) Seller furnishes to Buyer the insurance documents required under Section 9.10(c);
- (f) Seller is in compliance with the CAISO Tariff as set forth in this Agreement;
- (g) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;
- (h) Seller furnishes to Buyer the documents required under Section 3.05;
- (i) If Buyer is Scheduling Coordinator and the Generating Facility is PIRP-eligible, then the Generating Facility is certified as a PIRP resource by the CAISO;
- (j) If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement, Seller has posted

with Buyer the Performance Assurance Amount in accordance with Section 1.07 and Exhibit F; and

- (k) If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility, Seller shall provide the Power Rating Notice to Buyer.

2.02 Termination Rights of the Parties.

- (a) [Intentionally omitted.]
- (b) [Intentionally omitted.]
- (c) Event of Default. In the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have under PURPA, or otherwise, to enter into any new mandatory must-purchase contract (including the Transition PPA, the QF PPA or the Optional As-Available PPA, as such terms are defined in the Settlement Agreement) to sell electric energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(c), “control” means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.
- (d) End of Term. This Agreement automatically terminates at 11:59 p.m. PPT on the Term End Date.
- (e) Failure to Obtain CPUC Approval. Either Party has the right to terminate this Agreement on Notice, which will be effective five Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within [180] [365] days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the [210th] [395th] day after Buyer files the request for CPUC Approval.

{Buyer Comment: Select “180” and “210th” if this Agreement will be filed as a Tier 2 advice letter with the CPUC. Select “365” and “395th” if this Agreement will be filed as a Tier 3 advice letter with the CPUC.}

- 2.03 Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties’ covenants, agreements,

representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement, including:

- (a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;
- (b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;
- (c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within 30 days of Seller's receipt of such invoice;
- (d) The obligation to make a Termination Payment, as set forth in Section 6.03;
- (e) The indemnity obligations, as set forth in Section 9.03;
- (f) The obligation of confidentiality, as set forth in Section 9.09;
- (g) The right to pursue remedies under Section 6.02(c);
- (h) The limitation of damages under Article Seven;
- (i) If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement, the obligation of Seller to post Performance Assurance in accordance with Section 1.07 and Exhibit E; and
- (j) If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, the obligation of Buyer or Seller, as applicable, to make payments, if any, after the termination of this Agreement, as set forth in Section 2(c) of Exhibit S.

2.04 CPUC Filing and Approval of this Agreement.

- (a) Within 60 days after the Effective Date, Buyer shall file with the CPUC the appropriate request for CPUC Approval. Buyer shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. Buyer has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.

- (b) Before the Term Start Date, Buyer must have obtained or waived CPUC Approval.

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

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product; Retained Benefits.

- (a) Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of the Product.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (c) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:
 - (i) Cooperating with the Governmental Authority responsible for resource adequacy administration to certify the Generating Facility for resource adequacy purposes;
 - (ii) Testing the Generating Facility as may be required to certify the Generating Facility for resource adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties;
 - (iii) Committing to Buyer the Net Contract Capacity; and
 - (iv) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in WREGIS or other process recognized under Applicable Laws. With respect to WREGIS, at Buyer's option, Seller shall cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as these two terms are defined by WREGIS) for the Generating Facility;
 - (v) Complying with all CAISO Tariff requirements applicable to a Resource Adequacy Resource; and

- (vi) If Buyer is not the Scheduling Coordinator:
 - 1) Timely submitting, or causing Seller's Scheduling Coordinator to timely submit, Supply Plans to identify and confirm the Net Qualifying Capacity of the Generating Facility sold to Buyer as a Resource Adequacy Resource; and
 - 2) Causing the Generating Facility's Scheduling Coordinator to certify to Buyer, within 15 Business Days before the relevant deadline for any applicable RAR Showing or LAR Showing, that Buyer will be credited with the Net Qualifying Capacity of the Generating Facility for such RAR Showing or LAR Showing in the Generating Facility's Scheduling Coordinator's Supply Plan.
- (d) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products. Subject to Seller's compliance with the applicable FERC rules and regulations, Seller may use, provide and convey any electric energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term Start Date.

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

- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;
- (b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and
- (c) Shall take all reasonable actions (including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings) and execute all documents that are reasonable and necessary to effect the use of the generating capacity of the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

3.03 Site Control.

- (a) Seller shall have Site Control as of the earlier of: (i) the Term Start Date, and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term. Seller shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.
- (b) If the Generating Facility is a New CHP Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

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

3.05 Transmission.

- (a) Interconnection Studies. Seller has provided Buyer with true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is 24 months before the Effective Date.
- (b) Seller's Responsibility. Seller shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

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

- (i) All required Interconnection Studies, facilities upgrades, and agreements;
- (ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;
- (iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and
- (iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.

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

3.06 CAISO Relationship.

- (a) Throughout the Term, Seller shall comply with all applicable provisions of the CAISO Tariff (including complying with any exemption obtained from the CAISO pursuant to the CAISO Tariff), as determined by the CAISO, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the applicable provisions of the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.06(a), if (i) the Generating Facility is an Existing CHP Facility, (ii) Buyer is the Scheduling Coordinator under this Agreement, and (iii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not installed one or more CAISO-Approved Meters for the Generating Facility on or before the Term Start Date, Seller will not be in breach of this Agreement with respect to such requirement to install CAISO-Approved Meter(s) if Seller installs such CAISO-Approved Meter(s) within 180 calendar days after the Effective Date; *provided, however*, that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement to install CAISO-Approved Meter(s) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to Seller's requirement that the CAISO-Approved Meters for the Generating Facility be installed on or before the Term Start Date, which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.
- (c) Buyer agrees that, subject to the limitation set forth in Section 3.06(b) and upon the CAISO's request, pending the installation of the CAISO-Approved Meter(s) by Seller for the Generating Facility, Buyer shall provide to the CAISO any settlement quality meter data reasonably requested by the CAISO for settlement purposes.

3.07 Generating Facility Modifications.

- (a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.
- (b) Subject to Section 3.07(c), Seller shall provide 30 days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:
 - (i) Electric energy output by five percent of Expected Term Year Energy Production; or
 - (ii) The type of Primary Fuel consumed by the Generating Facility.
- (c) Seller shall only materially modify the Generating Facility if:
 - (i) Such modification is necessary because of (1) an imminent or actual mechanical failure of the Generating Facility, or (2) a mechanical defect of the Generating Facility that affects 30% of comparable equipment, in each case that is not a result of Seller's negligence or failure to maintain the Generating Facility in accordance with Prudent Electrical Practices; and
 - (ii) Seller provides Notice to Buyer as soon as possible after (1) such actual mechanical failure of the Generating Facility, or (2) Seller determines in its reasonable discretion that a mechanical failure of the Generating Facility is imminent; and
 - (iii) A qualified California-licensed professional engineer verifies that the equipment that will be used to modify the Generating Facility is not oversized relative to other equipment on the market; and
 - (iv) Results in capacity added to the Generating Facility over the Term that is within the applicable MW limits set forth in the following table (for a Generating Facility with multiple turbines, the limits below are limits per turbine):

Current Turbine Name Plate on the Effective Date	Increase to Turbine Name Plate Over the Term
10MW or Less	5MW
Greater than 10MW but less than 20MW	10MW
Greater than or equal to 20MW but less than 25MW	15MW

Greater than or equal to 25MW but less than 50MW	20MW
Greater than or equal to 50MW but less than 100MW	25MW
Greater than or equal to 100 but less than 200MW	35MW
Greater than or equal to 200 but less than 350MW	45MW
Greater than or equal 350MW	50MW

Or,

- (v) Such modification is reasonably necessary to respond to a Force Majeure or a change in law or regulation, and a qualified California-licensed professional engineer verifies that such modification is not oversized relative to other equipment on the market.
- (d) Separate and distinct from Seller's rights under Section 3.07(c), Seller in its sole discretion may modify the Generating Facility if such modification does not increase the Power Rating of the Generating Facility by more than 10 percent. Such 10 percent increase shall be based upon the Power Rating of the Generating Facility on (i) the Effective Date (as set forth in Section 1.10), if the Generating Facility is an Existing CHP Facility, or (ii) the Term Start Date (as set forth in the Power Rating Notice), if the Generating Facility is a New CHP Facility, an Expanded CHP Facility or a Repowered CHP Facility.
- (e) With respect to Section 3.07(c), Seller shall bear the cost of the professional engineer and Seller shall secure all studies and upgrades necessitated by or associated with the modification of the Generating Facility.
- (f) Seller acknowledges that nothing in this Section 3.07 excuses Seller from any requirements of the CAISO's interconnection process or any other applicable interconnection process.
- (g) Seller is solely responsible for all GHG Compliance Costs and all other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification of the Generating Facility in accordance with this Section 3.07.

3.08 Metering.

- (a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements.
- (b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Generating Facility at a location

designated by Seller or any other location mutually agreeable to the Parties. The Check Meter location must allow for the Check Meter to be interconnected with Buyer's communication network to permit:

- (i) Periodic, remote collection of revenue quality meter data; and
- (ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.09; *provided, however*, that the transmission of such meter data through the Telemetry System is permitted by the CAISO.

If the Generating Facility provides Firm Contract Capacity and is a New CHP Facility, an Expanded CHP Facility or a Repowered CHP Facility, before commencement of the Capacity Demonstration Test, Buyer shall provide a Notice to Seller providing Seller with access to all Check Meters for all meter data through a secure internet website.

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

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

- (i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.
- (ii) If the deviation between the CAISO-Approved Meter data (after adjusting (1) for all appropriate compensation and correction factors applied, if applicable, by the CAISO to the CAISO-Approved Meter, or (2) for any deviation that may result due to the CAISO-Approved Meter and Check Meter being physically situated in different locations) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.
- (iii) Each Party shall bear its own costs for any meter check or recertification.
- (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.

- (v) The Check Meter is intended to be used (1) for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and (2) in the event Seller has not installed the CAISO-Approved Meter, as further described in Section 3.06(b). Data from the Check Meter will only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, or in accordance with and subject to Section 3.06(b), in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is certified.

3.09 Telemetry System.

- (a) Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff provisions applicable to the Generating Facility. Seller has the right to request any exemption from such requirements from the CAISO so long as it is obtained pursuant to the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.09(a), if (i) the Generating Facility is an Existing CHP Facility, (ii) Buyer is the Scheduling Coordinator under this Agreement, and (iii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not complied with Section 3.09(a) on or before the Term Start Date, Seller will not be in breach of this Agreement if Seller fully complies with Section 3.09(a) within 180 calendar days after the Effective Date; *provided, however,* that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement set forth in Section 3.09(a) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to the requirement set forth in Section 3.09(a), which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.
- (c) Buyer agrees that, subject to the limitation set forth in Section 3.09(b) and upon the CAISO's request, pending Seller compliance with Section 3.09(a), Buyer shall provide to the CAISO any telemetry data reasonably requested by the CAISO for operating information purposes.

3.10 Provision of Information.

- (a) Within 30 days after the Effective Date, Seller shall provide to Buyer (to the extent not already in Buyer's possession), subject to Section 9.09:

- (i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
 - (ii) Any currently operative filings at FERC, including any rulings, orders or other pleadings or papers filed by FERC, concerning the qualification of the Generating Facility as a Qualifying Cogeneration Facility;
 - (iii) Any Permits reasonably requested by Buyer concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;
 - (iv) Each of the following engineering documents for the Generating Facility:
 - 1) Site plan drawings;
 - 2) Electrical one-line diagrams;
 - 3) Control and data acquisition details and configuration documents;
 - 4) Major electrical equipment specifications;
 - 5) Process flow diagrams;
 - 6) Piping and instrumentation diagrams;
 - 7) General arrangement drawings; and
 - 8) Aerial photographs of the Site, if any; and
 - (v) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer.
- (b) If applicable and subject to Section 9.09, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.
- (c) Subject to Section 9.09 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, which commercially reasonable efforts shall, at a minimum, include providing Buyer with all documentation regarding the operational characteristics or past performance of the Generating Facility if such documentation is requested by the CPUC.

- 3.11 Progress Reporting. If the Generating Facility is a New CHP Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule.

No later than the 10th day of each month while Seller has not yet met one or more milestones set forth in the Milestone Schedule, and within five days of Buyer's request, Seller shall, in accordance with Exhibit H, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule.

Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (and the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.

- 3.12 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing or demonstration of the Generating Facility.

- 3.13 Capacity Demonstration Tests; Resource Adequacy Demonstrations.

(a) If the Generating Facility provides only Firm Contract Capacity and is (i) a New CHP Facility, (ii) a Repowered CHP Facility, (iii) an Expanded CHP Facility, or (iv) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall complete the Capacity Demonstration Test in accordance with Exhibit C. To the extent the Firm Contract Capacity set forth in Section 1.02(d) on the Effective Date and the Firm Contract Capacity demonstrated in accordance with Exhibit C are different, Section 1.02(d) will be adjusted to reflect the Firm Contract Capacity demonstrated in accordance with and subject to the limitations set forth in Exhibit C. The Reportable Capacity determined pursuant to Section 10 of Exhibit C will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.

(b) If the Generating Facility provides only As-Available Contract Capacity and is (i) a New CHP Facility, (ii) a Repowered CHP Facility, (iii) an Expanded CHP Facility, or (iv) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall, on or before the Firm Operation Date, satisfy the Capacity Demonstration Test by delivering to Buyer a certificate, including all supporting data, from a qualified independent California-licensed professional engineer (the "As-Available Contract Capacity Confirmation Certificate"), which As-Available Contract Capacity Confirmation

Certificate must set forth (x) the As-Available Contract Capacity, and (y) the Reportable Capacity, in each case as demonstrated to and determined by such engineer. To the extent the As-Available Contract Capacity set forth in Section 1.02(d) on the Effective Date and the As-Available Contract Capacity set forth in the As-Available Contract Capacity Confirmation Certificate are different, Section 1.02(d) will be adjusted to reflect the As-Available Contract Capacity set forth in the As-Available Contract Capacity Confirmation Certificate. The Reportable Capacity set forth in the As-Available Contract Capacity Confirmation Certificate will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.

- (c) If the Generating Facility provides both Firm Contract Capacity and As-Available Contract Capacity and (i) is a New CHP Facility, (ii) a Repowered CHP Facility, (iii) an Expanded CHP Facility, or (iv) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall comply with each of the requirements set forth in Sections 3.13(a) and 3.13(b). The Firm Contract Capacity, the As-Available Contract Capacity and the Net Contract Capacity are subject to adjustment in accordance with Exhibit C. The Reportable Capacity determined pursuant to Section 3.13(b) above and Section 10 of Exhibit C will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.
- (d) Seller shall comply with any demonstration required for Resource Adequacy Rulings; *provided, however*, if such demonstrations could interfere with the operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, compliance shall be required pending resolution of the challenge.

3.14 Operation and Record Keeping. Seller shall:

- (a) Operate the Generating Facility in accordance with Prudent Electrical Practices;
- (b) Comply with the Forecasting requirements, as set forth in Exhibit I;
- (c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit I;
- (d) Pay all CAISO Charges, as set forth in Exhibit J;
- (e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit K;

- (f) Comply with the Maintenance Outage scheduling procedures, as set forth in Exhibit E;
- (g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit R;
- (h) Use reasonable efforts to deliver the maximum possible quantity of As-Available Contract Capacity and associated electric energy during an Emergency Condition or a System Emergency;
- (i) Use reasonable efforts to reschedule any outage that occurs during an Emergency Condition or a System Emergency;
- (j) Keep a daily Operating log for the Generating Facility that includes information on availability, outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including:
 - (i) Real and reactive power production;
 - (ii) Changes in Operating status;
 - (iii) Protective apparatus operations; and
 - (iv) Any unusual conditions found during inspections;
- (k) Keep all Operating records required of a CHP Facility by any applicable CPUC order as well as any additional information that may be required of a CHP Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;
- (l) Provide copies of all daily Operating logs and Operating records to Buyer within 20 days of a Notice from Buyer;
- (m) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;
- (n) Pay all Scheduling Fees, as set forth in Exhibit G;
- (o) [Intentionally omitted]
- (p) Register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register by the NERC;

- (q) Maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with the NERC Reliability Standards applicable to protection systems for electric generators if Seller is required to maintain such documentation by the NERC;
- (r) If Buyer is Scheduling Coordinator, then at least 30 days before the Term End Date, or in accordance with Section 7(a) of Exhibit G, or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and
- (s) If Buyer is not Scheduling Coordinator:
 - (i) Cause its Scheduling Coordinator to submit a Self-Schedule of Seller's Day-Ahead Forecast associated with the Generating Facility through the IFM; Seller shall then submit the quantity associated with the Self-Schedule of Seller's Day-Ahead Forecast as a Physical Trade to Buyer in the IFM, specifying the generating resource identifier and all other CAISO-required Inter-SC Trade attributes;
 - (ii) Cause its Scheduling Coordinator to submit the IFM Day-Ahead Schedule quantity associated with the Generating Facility as an Inter-SC Trade of IFM Load Uplift Obligation to Buyer to be cleared through the Real-Time Market, specifying all CAISO-required Inter-SC Trade attributes; and
 - (iii) Make available to Buyer all CAISO settlement data with respect to the Generating Facility required to validate payments made under this Agreement.

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

- (a) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the CAISO, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when the CAISO orders curtailment and the Scheduling Coordinator implements such curtailment in compliance with the CAISO Tariff or applicable orders to avoid or address a declared System Emergency.
- (b) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when curtailment of the Power Product is required to comply with:

- (i) A CAISO curtailment declared pursuant to Section 3.15(a) or Transmission Provider declared Emergency Condition, subject to the interconnection agreement between Seller and the Transmission Provider; or
 - (ii) Transmission Provider's maintenance requirements, subject to the interconnection agreement between Seller and the Transmission Provider.
 - (c) Notwithstanding the above, except as may be required in order to respond to any Emergency Condition or System Emergency, Buyer shall, consistent with FERC Order 888 and the interconnection agreement between Seller and the Transmission Provider and with the applicable provisions of the CAISO Tariff:
 - (i) Use reasonable good faith efforts to coordinate Transmission Provider's curtailment needs with Seller to the extent it can influence such needs; or
 - (ii) Request the Transmission Provider and CAISO limit the curtailment duration.
 - (d) If Seller has entered into a QF PGA or PGA with the CAISO, or an interconnection agreement, the terms of the applicable QF PGA or PGA and the applicable interconnection agreement with respect to CAISO or Transmission Provider curtailments, shall govern the rights and obligations of Buyer and Seller to the extent any provision of Sections 3.15(a) through (d) are inconsistent with such applicable QF PGA or PGA, and interconnection agreement.
 - (e) In the event Seller interconnects with a Person other than the CAISO, Seller shall adhere to any reliability curtailment order by such Person pursuant to the applicable tariff provisions of such Person.
 - (f) If Section 1.09 provides that Buyer has the right to request that Seller curtail the Generating Facility's production of the Power Product, Buyer may instruct Seller to curtail the Generating Facility's production of the Power Product in accordance with Exhibit U.
- 3.16 Report of Lost Output. To the extent the conditions set forth in Sections 3.16(a) through (e) occur, Seller shall prepare and provide to Buyer, by the fifth Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Energy Forecast due to:
- (a) Maintenance Outages;
 - (b) Major Overhauls;
 - (c) CAISO or Transmission Provider-ordered curtailments;

- (d) Force Majeure; or
- (e) Forced Outages.

3.17 FERC Qualifying Cogeneration Facility Status.

- (a) Within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, Seller shall provide to Buyer:
 - (i) A completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit T, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and
 - (ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.
- (b) [Intentionally omitted.]
- (c) Seller shall take all necessary steps, including making or supporting timely filings with the FERC in order to maintain, or obtain a FERC waiver of, the Qualifying Cogeneration Facility status of the Generating Facility throughout the Term; *provided, however*, that this obligation does not apply to the extent Seller is unable to maintain Qualifying Cogeneration Facility status using commercially reasonable efforts because of (i) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting the Qualifying Cogeneration Facility status of the Generating Facility occurring after the Effective Date.

The term "commercially reasonable efforts" in this Section 3.17(c) does not require Seller to pay or incur more than \$20,000 multiplied by the number of Term Years in the Term.

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

- (a) Interconnect with the Transmission Provider's electric system;
- (b) Transmit and deliver electric energy to the Delivery Point; or

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

3.19 Buyer's Access Rights.

- (a) Upon providing at least one Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to escorted access to the Generating Facility during regular business hours for:
 - (i) Any purpose reasonably connected with this Agreement;
 - (ii) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or
 - (iii) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.
- (b) Seller shall promptly provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request. Seller shall promptly inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.20 Seller Financial Information.

- (a) The Parties shall determine, through consultation and review with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then:
 - (i) Within 20 days following the end of each year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is

permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist.

If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

- (ii) Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period.

The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance GAAP, the International Financial Reporting Standards ("IFRS"), or any successor to either of the foregoing ("Successor"), the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.

- (c) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered

public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer.

If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; *provided, however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:
- (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(vi) and 9.09(a)(vii); and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20, (2) use such information solely for purposes of conducting the audits described in this Section 3.20, and (3) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any

event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.

- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 3.20(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 6.01. If Buyer's independent audit firm, after the review by the third independent audit firm still determines that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided, however*, that in addition to the protections in Section 3.20(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

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

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

If Buyer is Seller's Scheduling Coordinator, Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC Reliability Standards referenced above. Buyer's cooperation will include providing to Seller, or such other

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

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges.

- (a) If Buyer is the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Buyer and for Buyer's account and any Non-Availability Charges will be the responsibility of Buyer and for Buyer's account.
- (b) If Buyer is not the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

3.23 Seller's Reporting Requirements.

- (a) Seller shall comply with the reporting requirements set forth in Section 2 of Exhibit S.
- (b) Seller shall deliver to Buyer, on or before the 10th Business Day following receipt of a Notice from Buyer, such information that Buyer is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Buyer otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Three ***

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit D.

4.02 Payment Adjustments.

- (a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:
 - (i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit G;
 - (ii) Any SDD Adjustment, as set forth in Exhibit K;
 - (iii) Any Forecast penalties owed by Seller to Buyer, as set forth in Exhibit I;
 - (iv) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit J;
 - (v) Any Physical Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit L;
 - (vi) Any SC Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit M;
 - (vii) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;
 - (viii) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02;
 - (ix) The agreement of the Parties that Buyer shall have no liability to make any energy payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed 120% of Expected Term Year Energy Production;
 - (x) If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, any payment adjustments provided for under Exhibit S; and
 - (xi) Any payment adjustments resulting from Buyer-instructed curtailments, as set forth in Exhibit U.
- (b) During the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate payment adjustments (unless

otherwise provided for in Exhibit S, if Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement).

- (c) After the Term End Date, Buyer shall invoice Seller for all payment adjustments within 60 days of Buyer's receipt of all of the information required in order to calculate payment adjustments (unless otherwise provided for in Exhibit S, if Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement).

4.03 Payment Statement and Payment.

- (a) No later than 30 days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:
- (i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:
- 1) Seller's Energy Forecast;
 - 2) Seller's Day-Ahead Forecast;
 - 3) Metered Energy;
 - 4) Metered Amounts;
 - 5) The final Buyer Energy Schedule; and
 - 6) The final Buyer Parent Energy Schedule.
- (ii) A statement showing:
- 1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);
 - 2) A calculation of the Monthly Contract Payment, as set forth in Exhibit D;
 - 3) A calculation of any payment adjustments pursuant to Section 4.02;
 - 4) If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, a calculation of any payment adjustments pursuant to Exhibit S; and

- 5) A calculation of the net dollar amount due for the month.
- (iii) Buyer's payment to Seller, in accordance with Section 9.15, in the net dollar amount owed to Seller for the month (less any overpayments by Buyer of Seller's GHG Compliance Costs, if any, under Section 4.04 in any calendar month); *provided, however*, in the event the statement shows a net amount owed to Buyer, Seller shall pay such amount within 20 days of the statement date or, if Seller fails to make such payment, Buyer may offset this amount from a subsequent Monthly Contract Payment.
- (b) If Buyer determines that a calculation of Metered Energy or Metered Amounts is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO in the CAISO's meter-data acquisition and processing system, Buyer shall promptly recompute the Metered Energy or Metered Amounts quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading in accordance with the CAISO Tariff.

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

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

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

- (c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:
- (i) Under this Agreement; or
- (ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.
- (d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within 45 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall

be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 45-day period, Seller shall have an additional 90 days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

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

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

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

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

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

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

- 4.04 GHG Compliance Costs. If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, then Buyer shall pay for Seller's GHG Compliance Costs in accordance with Exhibit S; *provided, however*, that notwithstanding anything to the contrary set forth in this Agreement (including Exhibit S), in no event will Buyer pay for any of Seller's GHG Compliance Costs to the extent that such GHG Compliance Costs are associated with deliveries of the Power Product that are in excess of 120% of the Expected Term Year Net Energy Production in any Term Year.

- 4.05 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:
- (a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;
 - (b) The Generating Facility complies with any Applicable Laws; or
 - (c) The Generating Facility will be able to meet the terms of this Agreement.

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

- 4.06 Buyer's Responsibility. Buyer shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point.
- 4.07 Buyer's Reporting Requirements. Buyer shall deliver to Seller, on or before the 10th Business Day following receipt of a Notice from Seller, such information as Seller is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Seller otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Four ***

ARTICLE FIVE. FORCE MAJEURE

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

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

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

- (a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

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

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

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

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

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

*** End of Article Five ***

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

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

- (a) With respect to either Party (a “Defaulting Party”):
 - (i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not:
 - 1) Remedied within 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or
 - 2) Capable of a cure, but the Non-Defaulting Party’s damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within 10 Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;
 - (ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;
 - (iv) A Party becomes Bankrupt; or
 - (v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations

of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

- (b) With respect to Seller's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):
- (i) Any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within 10 Business Days after Notice from Buyer to Seller;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure is not remedied within five Business Days after Notice from Buyer to Seller;
 - (iii) A Guarantor becomes Bankrupt and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Guarantor Cross Default Amount, which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (v) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (vi) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller; or
 - (vii) If the Guarantor fails to maintain a Credit Rating of at least (1) BBB- from S&P, Baa3 from Moody's, and BBB- from Fitch, if Guarantor is rated by all three ratings agencies, (2) the lower of BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch if Guarantor is rated by only two of the three ratings agencies, or (3) BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch if Guarantor is rated by only one of the ratings agency, and

replacement credit support is not provided within 10 Business Days after Notice from Buyer to Seller.

- (c) With respect to Seller:
- (i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.03(a), and Seller has not cured a failure with respect to Section 3.03(a) within 30 days after providing Notice to Buyer in accordance with Section 3.03(a);
 - (ii) If Seller abandons the Generating Facility (for purposes of this Section 6.01(c)(ii), Seller will be deemed to have abandoned the Generating Facility if Seller has ceased work on the Generating Facility or the Generating Facility has ceased production and delivery of the Product for a consecutive 30-day period and such cessation is not a result of an event of Force Majeure);
 - (iii) Except as provided for in Section 3.01(d), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);
 - (iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;
 - (v) Seller removes from the Site equipment upon which the Net Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five Business Days after Notice from Buyer to Seller;
 - (vi) [Intentionally omitted]
 - (vii) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative

- arrangements implemented, within 120 days after such termination or cessation;
- (viii) Seller fails to make all reasonable efforts to increase the Power Output from the Generating Facility to the Firm Contract Capacity during an Emergency Condition or a System Emergency;
 - (ix) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Sections 3.20(b)(i) and (ii), and such failure is not remedied within 10 days after Notice from Buyer to Seller;
 - (x) Seller fails to remediate any material weakness or significant deficiency in internal controls over financial reporting in accordance with Section 3.20(c), and such failure is not remedied within 90 days after Notice from Buyer to Seller;
 - (xi) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within 10 days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;
 - (xii) [Intentionally omitted]
 - (xiii) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within 30 days after Notice from Buyer to Seller;
 - (xiv) If Seller materially modifies the Generating Facility (except as provided in Section 3.07(c)) without Buyer's prior written consent;
 - (xv) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller;
 - (xvi) If the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a)

to comply with the credit and collateral requirements set forth in this Agreement:

- 1) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit F and such failure is not cured within five Business Days after Notice is provided by Buyer to Seller;
- 2) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender without Buyer's consent, which consent may not be unreasonably withheld, delayed or conditioned;
- 3) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit F and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller;
- 4) Seller fails to post and maintain the Performance Assurance Amount pursuant to Section 2 of Exhibit F and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller;
- 5) The occurrence and continuation of a default, event of default or other similar condition or event under any loan agreement with any Lender, or any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness under those agreements or instruments becoming immediately due and payable; *provided, however*, if Seller, Buyer and a Lender have entered into a Collateral Assignment Agreement with substantially the provisions set forth in Section 9.05, and the terms of such Collateral Assignment Agreement conflict or are inconsistent with this Section 6.01(c)(xvi)(5), the provisions of the Collateral Assignment Agreement control;
- 6) The occurrence and continuation of a default, event of default or other similar condition or event under any power purchase agreement between Buyer and Seller (other than this Agreement) or under any other related agreement or instrument with or for the benefit of Buyer; or
- 7) Subject to Section 3.17(c), the Generating Facility (A) is not designed and constructed so as to satisfy all of the requirements applicable to a CHP Facility, (B) fails to maintain its status as a Qualifying Cogeneration Facility during the Term, or (C)

otherwise fails to meet the requirements of a CHP Facility during the Term;

- (xvii) If the Generating Facility is an Existing CHP Facility, then at any time on or, subject to Section 3.17(c), the Generating Facility (1) fails to maintain its status as a Qualifying Cogeneration Facility, or (2) otherwise fails to meet the requirements of a CHP Facility;
- (xviii) If the Generating Facility is an Expanded CHP Facility or a Repowered CHP Facility, then, at anytime on or, subject to Section 3.17(c), after (1) the Effective Date, the Generating Facility fails to maintain its status as a Qualifying Cogeneration Facility, or (2) the Term Start Date, the Generating Facility otherwise fails to meet the requirements of a CHP Facility;
- (xix) If there occurs more than two Efficiency Rating Deficiencies during the Term; or
- (xx) If Seller:
 - 1) Does not cure an Efficiency Rating Deficiency, in accordance with Section 1.02(f)(ii), on or before the Efficiency Rating Cure Date for such Efficiency Rating Deficiency; or
 - 2) Otherwise fails to satisfy its obligations under Section 1.02(f)(ii), and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller.

6.02 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Collateral Assignment Agreement agreed upon by Buyer, Seller and Lender in accordance with Section 9.05. The Party taking the default (the "Non-Defaulting Party") will have the right to:

- (a) Designate by Notice to the Defaulting Party a date, no later than 20 days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) Immediately suspend performance under this Agreement; and
- (c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the

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

If the Termination Payment is positive, the Defaulting Party shall pay such amount to the Non-Defaulting Party within 10 Business Days after the Notice is provided. If the Termination Payment is negative (i.e., the Non-Defaulting Party owes the Defaulting Party more than the Defaulting Party owes the Non-Defaulting Party), then the Non-Defaulting Party shall pay such amount to the Defaulting Party within 10 Business Days after the Notice is provided; *provided, however*, that if Seller is the Defaulting Party as a result of an Efficiency Rating Deficiency pursuant to Section 1.02(f)(ii) and the Termination Payment is negative, then, notwithstanding any provision to the contrary in the foregoing, Buyer, as the Non-Defaulting Party, shall make no payment to Seller.

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

*** End of Article Six ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

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

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

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE

ID #[Number], [Seller's Name]

DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

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

ARTICLE EIGHT. GOVERNMENTAL CHARGES

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

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

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

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

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

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

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

If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, nothing stated in this Section 8.02 relieves Buyer of its obligation to pay Seller for Seller’s GHG Compliance in accordance with and subject to this Agreement (including Exhibit S).

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

*** End of Article Eight ***

ARTICLE NINE. MISCELLANEOUS

9.01 Representations, Warranties and Covenants.

- (a) On the Effective 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) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;
 - (iii) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
 - (iv) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Related Entities, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;
 - (v) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;
 - (vi) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
 - (vii) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and
 - (viii) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.
- (b) On the Effective Date:
- (i) Each Party covenants to the other Party that, except for CPUC Approval in the case of Buyer, it has or will timely acquire all regulatory

authorizations necessary for it to legally perform its obligations under this Agreement;

- (ii) If Section 1.02(a) provides that the Generating Facility will be an Expanded CHP Facility or a Repowered CHP Facility, then, Seller represents and warrants to Buyer that the Generating Facility is a Qualifying Cogeneration Facility;
- (iii) If Section 1.02(a) provides that the Generating Facility is an Existing CHP Facility, then, Seller represents and warrants to Buyer that the Generating Facility qualifies as a Qualifying Cogeneration Facility and otherwise meets the requirements of a CHP Facility; and
- (iv) If the Generating Facility is an Existing CHP Facility, the Seller represents and warrants to Buyer that the Power Rating of the Generating Facility equals the value set forth in Section 1.10.

9.02 Additional Covenants by Seller. Seller covenants to Buyer that:

- (a) It will have Site Control as of the earlier of (i) the Term Start Date and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;
- (b) Throughout the Term, it will hold the rights to all of the Product, subject to the terms of this Agreement;
- (c) Throughout the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;
- (d) Throughout the Term, it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person;
- (e) If Section 1.02(a) provides that the Generating Facility is a New CHP Facility, then, subject to Section 3.17(c), (i) the Generating Facility will be designed and constructed so as to satisfy all of the requirements applicable to a CHP Facility, and (ii) throughout the Term, the Generating Facility will maintain its status as a Qualifying Cogeneration Facility and will otherwise meet the requirements of a CHP Facility;
- (f) If Section 1.02(a) provides that the Generating Facility is an Existing CHP Facility, then, subject to Section 3.17(c), from the Effective Date until the Term End Date, the Generating Facility will maintain its status as a Qualifying

Cogeneration Facility and will otherwise meet the requirements of a CHP Facility;

- (g) If Section 1.02(a) provides that the Generating Facility is an Expanded CHP Facility or a Repowered CHP Facility, then, subject to Section 3.17(c), (i) from the Effective Date until the Term End Date, the Generating Facility will maintain its status as a Qualifying Cogeneration Facility, and (ii) throughout the Term, the Generating Facility will otherwise meet the requirements of an Expanded CHP Facility or Repowered CHP Facility;
- (h) Throughout the Term, it will not (1) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except, if Buyer is not Scheduling Coordinator, as may relate to transactions in the Real-Time Market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);
- (i) Upon Buyer's request, Seller shall provide to Buyer documentation evidencing the Generating Facility's contribution to Buyer's compliance with the GHG EPS;
- (j) Seller shall comply with all (i) applicable cap-and-trade programs for the regulation of Greenhouse Gas, as established by any Governmental Authority pursuant to federal or state legislation, and (ii) other applicable programs regulating Greenhouse Gas emissions;
- (k) Subject to Section 1.02(f)(ii), throughout the Term, the Efficiency Rating of the Generating Facility must be equal to or greater than the Efficiency Rating set forth in Section 1.02(f)(i); and
- (l) If the Generating Facility is a New CHP Facility, an Expanded CHP Facility or a Repowered CHP Facility, Seller covenants that before the Term Start Date it shall provide a Notice to Buyer setting forth the Power Rating ("Power Rating Notice") of the Generating Facility on the Term Start Date.

9.03 Indemnity.

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

connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement.

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

- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.
- (c) The provisions of this Section 9.03 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 9.10.

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

- (e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.
- (f) Seller shall defend, save harmless and indemnify Buyer against any increase in GHG Compliance Costs and other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification of the Generating Facility in accordance with Section 3.07.
- (g) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations

regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02, with the exception of the obligations set forth in Section 3.01(c)(vi).

- (h) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.
- (i) All indemnity rights will survive the termination of this Agreement for 12 months.

9.04 Assignment.

- (a) With Consent. Subject to Section 9.04(b), Seller may not transfer or assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent will not be unreasonably withheld. For purposes of this Section 9.04, Buyer will not withhold its consent to an indirect change of control of Seller if Seller demonstrates to Buyer's reasonable satisfaction that Seller shall continue to perform its obligations under this Agreement as if no such indirect change of control had occurred.
- (b) Without Consent. Notwithstanding anything to the contrary set forth in Section 9.04(a):
 - (i) Seller may, without the consent of Buyer (and without relieving itself from liability hereunder): (1) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with Section 9.05; or (2) transfer or assign this Agreement to an Related Entity

of Seller, which Related Entity's creditworthiness is equal to or higher than that of Seller; and

- (ii) Seller does not need to obtain Buyer's consent to any change of control described in this Section 9.04 if such change of control results from a purchase of the outstanding shares of a publicly traded company.

9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller may (but is not obligated to) assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

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

- (a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable cure period specified in Article VI, constitute an Event of Default (an "Incipient Event of Default");
- (b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;
- (c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.05(g)) provide to Buyer a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

- (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;
- (d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;
- (e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.05(a). In addition, such cure period may, in Buyer's reasonable discretion, be extended by no more than an additional 180 days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Lender has commenced foreclosure proceedings within 60 days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed 180 days after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;
- (f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;
- (g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;
- (h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the

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

- (i) If Lender has assumed this Agreement as provided in Section 9.05(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Related Entity of Lender or an Related Entity of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is Lender, Seller, an Related Entity of Lender or an Related Entity of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer; and
- (j) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either Buyer or Lender, Buyer and Lender (or its designee or representative) shall promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's) liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor Buyer shall have any personal liability to the other for any amounts owing and neither Buyer nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

9.06 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

- (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;
- (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;
- (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date;
- (d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;
- (e) A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith; and
- (f) All Notices for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

- (a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

- (c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.
- (d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.
- (f) The term “including” when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.
- (g) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to “Articles”, “Sections” and “Exhibits” refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to “Articles” or “Sections” in Exhibits A through U refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.
- (i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.
- (j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties or between or among Seller, the CAISO and the Transmission Provider, covering transmission, distribution, metering, scheduling or interconnection of electric energy (including the PGA and QF PGA). In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.
- (m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.
- (n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

9.09 Confidentiality.

- (a) Neither Party may disclose any Confidential Information to a third party, other than:
 - (i) To such Party’s employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
 - (ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however,* that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further,* that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;
 - (iii) To Buyer’s Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer’s Procurement Review Group;

- (iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, to the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;
 - (v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);
 - (vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC;
 - (vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement; and
 - (viii) As may reasonably be required to participate in the WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Related Products.
- (b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.09(a)(vi) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may not be (x) prohibited from complying with a Disclosure Order, or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of any terms or conditions of this Agreement which are the subject of such Disclosure Order.
- (c) Except as provided in clause (y) of Section 9.09(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

9.10 Insurance.

(a) As of the Effective Date and throughout the Term (and for such additional periods as may be specified in this Section 9.10), Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified in this Section 9.10, and such additional coverage as may be required by Applicable Law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-:VII. The minimum insurance requirements specified in this Section 9.10 do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller's defense and indemnity obligations.

- (i) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;
- (ii) Employer's Liability Insurance with limits of not less than:
 - 1) Bodily injury by accident – One Million dollars (\$1,000,000) each accident;
 - 2) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit; and
 - 3) Bodily injury by disease – One Million dollars (\$1,000,000) each employee; and
- (iii) Commercial General Liability Insurance, (which, except with the prior written consent of Buyer and subject to Sections 9.10(a)(ii)(1) and (2), shall be written on an "occurrence," not a "claims-made" basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than one million dollars (\$1,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.

If Seller elects, with Buyer's written concurrence, to use a "claims made" form of Commercial General Liability Insurance, then the following additional requirements apply:

- 1) The retroactive date of the policy must be prior to the Effective Date; and
- 2) Either the coverage must be maintained for a period of not less than four years after the Agreement terminates, or the policy must

provide for a supplemental extended reporting period of not less than four years after the Agreement terminates.

- (iv) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.
 - (v) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than \$10,000,000 per occurrence and in the annual aggregate. The insurance requirements of this Section 9.10 can be provided by any combination of Seller's primary and excess liability policies.
- (b) The insurance required in Section 9.10(a) apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Applicable Law, Seller and its insurers are required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, ownership or Operation of the Generating Facility.
- (c) At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required in this Section 9.10, written on forms and with deductibles reasonably acceptable to Buyer. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide Buyer with at least 30 days' prior written notice in the event of cancellation of coverage. Buyer's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, does not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 9.10 and does not constitute a waiver of any of the requirements in this Section 9.10.

- (d) If Seller fails to comply with any of the provisions of this Section 9.10, Seller, among other things and without restricting Buyer's remedies under the Applicable Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
- (e) Seller has the right to self-insure to comply with Seller's obligations under this Section 9.10. The insurance carrier or carriers and form of policy (including any deductible amount), or any plan for self-insurance shall be subject to review and approval by Buyer, which approval may not be unreasonably withheld, conditioned or delayed.
- 9.11 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.
- 9.12 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party will seek, nor will they support any third party in seeking, to prospectively or retroactively revise the rates, terms, or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.
- Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).
- 9.13 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set

forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

- 9.14 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.
- 9.15 Payments. Payments to be made under this Agreement shall be made, at Seller's option, by check or electronic wire funds transfer.
- 9.16 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.03, or 9.09 (and, if applicable, Section 4(e) of Exhibit F) in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

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

*** End of Article Nine ***

ARTICLE TEN. DISPUTE RESOLUTION

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

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

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

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

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

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

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

The Parties will cooperate with one another in selecting the Arbitrator within 60 days after Notice of the demand for arbitration and will further cooperate in scheduling the

arbitration to commence no later than 180 days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

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

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

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

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

{Buyer Comment: For PG&E, insert San Francisco; for SDG&E, insert San Diego; and for SCE, insert Los Angeles. }

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within 30 days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to 25 document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator

holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);

- (f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;
- (g) Within 60 days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within 30 days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.03 or 9.09 (and, if applicable, Section 4(e) of Exhibit F).

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

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

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

*** End of Article Ten ***

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

[SELLER'S NAME],

[BUYER'S NAME],

a [Seller's business registration]

a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
Definitions

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

“20-Day Demonstration” has the meaning set forth in Section 2 of Exhibit C.

“Agreement” has the meaning set forth in the Preamble.

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

“Allowed Firm Energy” is determined in Section 3(l) of Exhibit D.

“Allowed Hourly Energy”, or “E”, is determined in Section 3(f) of Exhibit D.

“Allowed Payment Energy”, or “APE”, is determined in Section 2(e) of Exhibit D.

“Ambient Factors” mean those particular corrections for actual ambient conditions being different from specified ambient conditions that are to be applied to the Demonstrated Rate of Metered Energy or Power Output during a Capacity Demonstration Test pursuant to Exhibit C, as defined in a written agreement between the Parties and as further explained in Section 9 of Exhibit C.

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

“Annual GHG Reports” has the meaning set forth in Section 2(a) of Exhibit S.

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

“Arbitrator” has the meaning set forth in Section 10.03.

“As-Available Capacity”, or “AAC”, is determined in Section 3(c) of Exhibit D.

“As-Available Capacity Payment”, or “ACP”, is determined in Section 3(b) of Exhibit D.

“As-Available Capacity Price” is set forth in Section 1.06(b), in dollars per kW-year.

“As-Available Contract Capacity” means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(d), and as may be adjusted in accordance with Section 3.07(c), Section 3.13(b) or Exhibit C, as applicable.

“As-Available Contract Capacity Confirmation Certificate” has the meaning set forth in Section 3.13(b).

“Availability Credit Factor”, or “ACF”, is determined in Section 3(i) of Exhibit D.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Penalty Factor”, or “APF”, is determined in Section 3(n) of Exhibit D.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“Bankrupt” means with respect to any Person, such Person:

- (a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (which petition is not dismissed within 90 days);
- (b) Makes an assignment or any general arrangement for the benefit of creditors;
- (c) Otherwise becomes bankrupt or insolvent (however evidenced);
- (d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or
- (e) Is generally unable to pay its debts as they fall due.

“Benchmark Capacity” is determined, as applicable, in Section 3(a) of Exhibit D-1, Section 3(a) of Exhibit D-2, Section 3(a) of Exhibit D-3, and Section 9(a) of Exhibit E.

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

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

“Buyer Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy produced by the Generating Facility.

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

“Buyer Projected Energy Forecast” has the meaning set forth in Section 2(a) of Exhibit G.

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

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

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

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

“CAISO Charges Invoice” has the meaning set forth in Section 5 of Exhibit G.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

“Capacity Credit Hours”, or “CCH”, is determined in Section 3(m) of Exhibit D.

“Capacity Credit Period” is determined in Section 3(b)(iv) of Exhibit E.

“Capacity Demonstration Test” means the procedures for testing or otherwise determining the Power Product and the Reportable Capacity, as set forth in Exhibit C or Section 3.13(b), as applicable.

“Capacity Demonstration Factor” is determined in Section 3 of Exhibit C.

“Capacity Measurement Interval” means each 15-minute time period, beginning on the hour (e.g. 12:00 to 12:15, 12:30, 12:45, etc.), for which the Power Output is measured.

“Capacity Payment Allocation Factors”, or “CAF”, means the TOD Period factors which are used to calculate the TOD Period Capacity Payment, as set forth in the table in Section 3(a) of Exhibit D.

“Capacity Performance Requirement”, or “CR”, means the values set forth in Section 1.04.

“CARB” means California Air Resources Board, or any successor entity.

“CARB Annual Report” has the meaning set forth in Section 2(a)(i) of Exhibit S.

“CARB Mandatory GHG Emissions Annual Report” means the mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources.

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

“CFR” means the Code of Federal Regulations, as may be amended from time to time.

“Check Meter” means the Buyer revenue-quality meter section or meter(s), which Buyer may require at its discretion, as set forth in Section 3.08(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility Electric Service Requirements.

“CHP Facility” means a Generating Facility that (a) is a Qualifying Cogeneration Facility, (b) meets the definition of “cogeneration” under CPUC Code Section 216.6, and (c) satisfies the Greenhouse Gas emissions performance standards set forth in CPUC Code Section 8341 (California Senate Bill 1368).

“CHP RFO Pro Forma” has the meaning set forth in Recital E.

“Claiming Party” has the meaning set forth in Section 5.02.

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed before or after the termination of this Agreement.

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

“Commissioning Test” means tests applied to the Generating Facility, after completion of the construction of the Generating Facility, in order to verify that the Generating Facility may be released for Operation.

“Confidential Information” means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller’s compliance with operating and efficiency standards applicable to a “qualifying cogeneration facility” (as contemplated in 18 CFR Part 292, Section 292.205). Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

“Contract Heat Rate” or “CHR” means the values set forth by season and TOD Period in Table 1 of Section 2(b) of Exhibit D, in BTU per kWh, Higher Heating Value basis.

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

“Converted Physical Trade”, or “CPT”, means the quantity from Physical Trades, in MWh, that did not pass CAISO’s physical validation of the IFM.

“Converted Physical Trade Price” means the price, in dollars per MWh, used by the CAISO to settle the quantity, in MWh, associated with the Converted Physical Trade.

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

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

“CPUC Approval” means either (1) a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, or (2) a final and non-appealable disposition of the CPUC’s Energy Division, without conditions or modifications unacceptable to the Parties, or either of them, which deems approved an advice letter requesting approval of this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer’s administration of this Agreement. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

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

“Curtailed Notice” has the meaning set forth in Section 3(a) of Exhibit U.

“Curtailed Period” means a time period for which Seller is requested by Buyer, the CAISO or a Transmission Provider to curtail its Power Product for Force Majeure or otherwise, as set forth in Exhibits D-1, D-2 and D-3.

“Curtailed Period Cap” has the meaning set forth in Section 1 of Exhibit U.

“D.” has the meaning set forth in Recital A.

“Daily Delay Liquidated Damages” has the meaning set forth in Section 4(c)(ii) of Exhibit F.

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

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Price” means the LMP_{QF}, as set forth in Section 2(a) of Exhibit D.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Decision” has the meaning set forth in Recital A.

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

“Delivery Point” has the meaning set forth in Section 1.03.

“Demonstrated Firm Contract Capacity” means the rate of electric energy delivery that the Generating Facility is able to demonstrate as a result of the Capacity Demonstration Test of the Firm Contract Capacity, as set forth in Exhibit C.

“Demonstration Rate of Metered Energy” means the quantity, in kWh per hour, calculated by multiplying the Metered Energy amount, within a Metering Interval in kWh per interval, times the number of Metering Intervals in a one-hour period.

“Development Security” has the meaning set forth in Section 4(b)(i) of Exhibit F.

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

“Dispute” has the meaning set forth in Section 10.01.

“Early Termination Date” has the meaning set forth in Section 6.02(a).

“Earned Capacity Hours”, or “ECH”, means the number of firm capacity equivalent available hours determined by dividing the Firm TOD Energy by the Firm Contract Capacity, as set forth in Section 3(j) of Exhibit D.

“Economic Curtailment Limit Schedule” means the schedule that Seller must provide to Buyer, in accordance with Exhibit U, which schedule must be submitted to Buyer by 5:00 p.m. PPT on the day before the Trading Day, and which must set forth the number of MWhs of the Power Product that Buyer may not economically curtail pursuant to a Curtailment Notice.

“Economic Curtailment Credit Value” or “ECV” is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a curtailment of Power Product requested by Buyer, as determined in accordance with Section 3 of Exhibit D-3.

“Effective Date” has the meaning set forth in the Preamble.

“Efficiency Rating” means the sum for the Term Year of Useful Thermal Energy Output, Metered Energy and Site Host Load energy, all in BTUs, divided by the Term Year amount of fuel consumed by the CHP Facility, in BTUs on a Higher Heating Value basis for the applicable Term Year, times one hundred percent. The foregoing values will be taken from (a) Seller’s Annual GHG Report, (b) Seller’s “QF Efficiency Monitoring Program – Cogeneration Data Reporting Form”, the form of which is attached hereto as Exhibit T, or (c) any other information available to Buyer, such as the loss of the Site Host.

“Efficiency Rating Cure Date” has the meaning set forth in Section 1.02(f)(ii).

“Efficiency Rating Cure Period” has the meaning set forth in Section 1.02(f)(ii).

“Efficiency Rating Cure Plan” has the meaning set forth in Section 1.02(f)(ii).

“Efficiency Rating Deficiency” has the meaning set forth in Section 1.02(f)(ii).

“Emergency Condition” has the meaning set forth in the Transmission Provider’s LGIA or SGIA with Seller, or the distribution-level FERC-jurisdictional interconnection agreement with Seller, as applicable; *provided, however*, that if Seller interconnects pursuant to Tariff Rule 21, “Emergency Condition” means “Emergency”, as defined in such Tariff Rule 21.

“Equitable Defense” means any Bankruptcy or other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

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

“Event of Default” has the meaning set forth in Section 6.01.

“Existing CHP Facility” means a CHP Facility that commenced Parallel Operation before the Settlement Effective Date, but is not an Expanded CHP Facility or a Repowered CHP Facility.

“Existing PPA” means [insert title and date of the existing power purchase agreement between Buyer and Seller, including any amendments, as well as any extension agreements entered into pursuant D.07-09-040].

The definition of Existing PPA above is necessary for purposes of Sections 3.06(b) and 3.09(b). If Buyer and Seller are not parties to an existing power purchase agreement (including any extension agreements entered into pursuant to D.07-09-40), the above definition should be removed or revised as necessary.

“Expanded CHP Facility” means (i) an existing topping-cycle CHP Facility that, on or after the Settlement Effective Date, has added at least one new combustion turbine and increased the Power Rating of the Generating Facility by not less than 90% of the Power Rating of the largest existing combustion turbine at the Generating Facility, or (ii) an existing bottoming-cycle CHP Facility that has increased its total Power Rating by at least 30% as compared to the Power Rating before such expansion.

“Expected ER” has the meaning set forth in Section 1.02(f)(i).

“Expected Term Year Energy Production” means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(e).

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

“FERC” means the Federal Energy Regulatory Commission, or any successor entity.

“Financial Consolidation Requirement” has the meaning set forth in Section 3.20(a).

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

“Firm Capacity Payment”, or “FCP”, has the meaning set forth in Section 3(g) of Exhibit D.

“Firm Capacity Price” or “CP” is set forth in Section 1.06(a), in dollars per kW-year.

“Firm Contract Capacity”, or “FCC”, means the monthly generating capacity that Seller commits to have available at the Site for the Power Product, as set forth in Section 1.02(d) and as may be adjusted in accordance with Section 3.07(c) and Exhibit C if the Generating Facility is a New CHP Facility, an Expanded CHP Facility, a Repowered CHP Facility, or, as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility.Exhibit C.

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

“Firm TOD Energy”, or “FE”, has the meaning set forth in Section 3(k) of Exhibit D.

“First Penalty Month” has the meaning set forth in Section 3(b) of Exhibit I.

“Fitch” means Fitch Ratings Ltd.

“Forced Outage” has the meaning set forth in the CAISO Tariff.

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

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

- (b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;
- (c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or
- (d) A lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

“Force Majeure Credit Value”, or “FCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Force Majeure curtailment requested by Buyer, determined in accordance with Section 3 of Exhibit D-1.

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

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

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

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

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the gain of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Comparable transactions;

- (c) Forward price curves based on economic analysis of the relevant markets; and
- (d) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remaining Term and shall include the value of Related Products.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“Gas Index” or “GI” has the meaning set forth in Section 2(c) of Exhibit D.

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

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

“Generation Operations Center” means the location of Buyer’s real-time operations personnel.

“Generator Operator” means the Person that Operates the Generating Facility and performs the functions of supplying electric energy and interconnected operations services within the meaning of the NERC Reliability Standards.

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

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

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

“GHG Compliance Costs” means [____], as determined in accordance with Exhibit S.

{Buyer Comment: To be completed by Seller as part of its offer in this CHP-only RFO.}

“GHG EPS” means the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and any subsequent CPUC-established precondition to the execution of this Agreement (including any precondition set forth the Settlement Agreement), in each case as in effect as of the Effective Date.

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

“Governmental Charges” has the meaning as set forth in Section 8.02.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain

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.

- 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.

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

“Guarantor” is that certain guarantor of Seller set forth in Section 1.07(b)(i).

“Guarantor Cross Default Amount” is the dollar amount set forth in Section 1.07(b)(iii).

“Guaranty Agreement” means a guaranty agreement substantially in the form of Exhibit O.

“Heat Rate” means, for purposes of this Agreement, the value obtained, in BTU per kWh, when the fuel input, on a Higher Heating Value basis, in BTU is divided by generation, net of Station Use, in kWh.

“Higher Heating Value” means the high or gross heat content of the fuel with the heat of vaporization included (the water vapor is assumed to be in a liquid state).

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

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

“Hourly Credit Value” is determined, as applicable, in Section 3(b) of Exhibit D-1, Section 3(b) of Exhibit D-2, Section 3(b) of Exhibit D-3, and Section 9(b)(i) of Exhibit E.

“Hourly Debit Value” is determined in Section 9(b)(ii) of Exhibit E.

“Hourly Location Adjustment”, or “LA”, has the meaning set forth in Section 2(a) of Exhibit D.

“Hourly Power Output” means an hourly rate of electric energy delivery, in kWh per hour, that is equal to the Metered Energy for one hour, in kWh, divided by one hour.

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

“IFM Load Uplift Obligation” means the obligation of a Scheduling Coordinator to pay its share of unrecovered IFM Bid Costs (as defined in the CAISO Tariff) paid to resources through Bid Cost Recovery (as defined in the CAISO Tariff).

“IFRS” has the meaning set forth in Section 3.20(b)(iii).

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

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

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

“Inter-SC Trade” means a trade between Scheduling Coordinators of electric energy, Ancillary Service (as defined in the CAISO Tariff), or IFM Load Uplift Obligation in accordance with the CAISO Tariff.

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

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

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

“LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by another Local Regulatory Authority having jurisdiction over the load serving entity. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

“LAR Showings” means the LAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction over the load serving entity.

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

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

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least (a) “A-” from S&P and Fitch, and “A3” from Moody’s, if such entity is rated by all three rating agencies, or (b) “A-” from S&P or Fitch, or “A3” from Moody’s, if such entity is rated by only one or two of the ratings agencies, in each case, substantially in the form of Exhibit P. All costs to establish and maintain the Letter of Credit shall be borne by Seller.

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

- (a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and Fitch, and “A3” by Moody’s;
- (b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
- (c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
- (d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
- (e) Seller fails to provide an extended or replacement Letter of Credit within 30 days before such Letter of Credit expires or terminates; or
- (f) The issuer of such Letter of Credit becomes Bankrupt;

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

“LGIA” (i.e., Large Generator Interconnection Agreement or Standard Large Generator Interconnection Agreement) has the meaning set forth in the CAISO Tariff.

“Limited TOD Energy”, or “LE”, has the meaning set forth in Section 3(e) of Exhibit D.

“LMP_{QF}” has the meaning set forth in Section 2(a) of Exhibit D.

“LMP_{Trading Hub}” has meaning set forth in Section 2(a) of Exhibit D.

“Local Regulatory Authority” has the meaning set forth in the CAISO Tariff.

“Locational Marginal Price” has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it if any (exclusive of Costs), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Comparable transactions;
- (c) Forward price curves based on economic analysis of the relevant markets; and
- (d) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remainder of the Term and must include the value of Related Products. Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“MAE_m” has the meaning set forth in Section 3(a) of Exhibit I.

“MAE Failure” has the meaning set forth in Section 3(b) of Exhibit I.

“Maintenance Credit Value”, or “MCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Maintenance Outage or a Major Overhaul which has been properly scheduled in accordance with Exhibit E.

“Maintenance Debit Value” is a value indicating how much allowance is used when Seller requests credit for a Maintenance Outage or a Major Overhaul in accordance with Exhibit E.

“Maintenance Outage” means a time period during which Seller plans to reduce the Power Output of the Power Product, in full or in part, in order to facilitate maintenance work on the Generating Facility, other than a Major Overhaul.

“Major Overhaul” means a time period during which Seller plans to remove the Generating Facility from Operation in order to dismantle the Generating Facility’s equipment for inspections, repairs or replacement, with the goal that such equipment will be reassembled and made available for Operation.

“Major Overhaul Allowance” is a value indicating a Term-Year maximum allowance with which Seller can request credit for a Major Overhaul in accordance with Exhibit E.

“Maximum Allowed Capacity”, or “MAC”, is determined in Section 3(d) of Exhibit D.

“Maximum Firm Capacity Payment”, or “MFCP”, means the maximum payment that Seller can earn during a year for the delivery of Firm Contract Capacity that is calculated in accordance with the procedure set forth in Section 3(h) of Exhibit D.

“Mediator” has the meaning set forth in Section 10.02.

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

“Metered Energy” means the quantity of electric energy, expressed in kWh, as measured by (i) the CAISO-Approved Meter(s), which quantity will be adjusted so as not to include compensation factors, if any, introduced by the CAISO into the CAISO-Approved Meter(s) other than (x) electric energy consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s) and, (y) if applicable, the Generating Facility’s radial line losses, or (ii) Check Meters, as applicable, in each case for the specified Metering Interval.

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

“Milestone Schedule” means Seller’s milestone schedule, the form of which is attached to this Agreement as Exhibit Q.

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

“Monthly Scheduling Fee” is described in Section 4(b) of Exhibit G.

“Moody’s” means Moody’s Investor Services, Inc.

“MT” means metric ton(s).

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

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

“MW Target” means the number of MWs that Buyer must procure as part of meeting its obligations under the Settlement Agreement, pursuant to and as further described in the Settlement Agreement.

“Negative Pricing Hours” has the meaning set forth in Section 3(a) of Exhibit U.

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

“NERC Reliability Standards” means the most recent version of those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available at http://www.nerc.com/files/Reliability_Standards_Complete_Set.pdf, or any successor thereto.

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

“Net Contract Capacity”, or “NCC”, means the sum of Firm Contract Capacity and As-Available Contract Capacity, as set forth in Section 1.02(d), as may be adjusted in accordance with Section 3.07(c), Section 3.13(b) and Exhibit C, as applicable. Net Contract Capacity may not exceed PMax.

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

“New CHP Facility” means a CHP Facility that commenced Parallel Operation for the first time on or after the Settlement Effective Date.

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

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

“Notice” means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit N.

“OMAR” means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data, or any successor thereto.

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

“Outage” has the meaning set forth in the CAISO Tariff.

“Outage Schedule” has the meaning set forth in Section 2(a) of Exhibit R.

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

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

“Party” has the meaning set forth in the Preamble.

“Peak Months” means [___].

{ Buyer Comment: For SCE and PG&E, the Peak Months are June, July, August and September. For SDG&E, the Peak Months are May, June, July, August and September. }

“Penalized As-Available Contract Capacity” has the meaning set forth in Section 3(b)(ii) of Exhibit I.

“Penalized Firm Contract Capacity” has the meaning set forth in Section 3(b)(i) of Exhibit I.

“Performance Assurance” means collateral (in the amount of the Performance Assurance Amount) for Seller’s performance under this Agreement in the form of cash, Letter(s) of Credit, or the Guaranty Agreement. Performance Assurance is only required to be posted by Seller if the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement.

“Performance Assurance Amount” has the meaning set forth in Section 1.07(a)(ii).

“Performance Tolerance Band Lower Limit” is determined in Section 1 of Exhibit K.

“Performance Tolerance Band Upper Limit” is determined in Section 1 of Exhibit K.

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

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

“PGA” (i.e., Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

“Physical Trade” has the meaning set forth in the CAISO Tariff.

“Physical Trade Settlement Amount” means the dollar amount calculated in accordance with Exhibit L.

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

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

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

“Power Output” means the average rate of electric energy delivery during one Metering Interval, converted to an hourly rate of electric energy delivery, in kWh per hour, that is equal to the product of Metered Energy for one Metering Interval, in kWh per Metering Interval, times the number of Metering Intervals in a one-hour period.

“Power Product” means (a) the Net Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

“Power Rating” means the electrical power output value indicated on the generating equipment nameplate.

“Power Rating Notice” has the meaning set forth in Section 9.03(1).

“PPT” means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Primary Fuel” means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

“Product” means the Power Product and the Related Products.

“Project” means the Generating Facility.

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

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

- (a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;
- (c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
- (f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PTSA," has the meaning set forth in Section 2 of Exhibit L.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, as amended from time to time.

"QF PGA" (i.e., Qualifying Facility Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

"Qualifying Cogeneration Facility" means an electric energy generating facility that:

- (a) Complies with the “qualifying cogeneration facility” definition and other requirements (including the requirements set forth in 18 CFR Part 292, Section 292.205) established by PURPA and any FERC rules as amended from time to time implementing PURPA, as set forth in 18 CFR Part 292, Section 292.203 et seq.; and
- (b) Has filed with the FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which the FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

“RAR” means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by a Local Regulatory Authority or other Governmental Authority having jurisdiction.

“RAR Showings” means the RAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction.

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

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

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

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

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

“Related Products” means (i) with respect to Resource Adequacy Benefits (a) that portion of the Resource Adequacy Benefits that are associated with the Firm Contract Capacity, and (b) to the extent that there are Resource Adequacy Benefits associated with the generating capacity of the Generating Facility other than the Firm Contract Capacity, that portion of the Resource Adequacy Benefits that are not associated with the Firm Contract Capacity and that are in excess of those Resource Adequacy Benefits used by Seller or by a Site Host, both in connection with the Host Site, to meet a known and established resource adequacy obligation under any Resource

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

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

“Reportable Capacity” means the Power Rating, in MW, minus Station Use, in MW.

“Repowered CHP Facility” means a CHP Facility that, on or after the Settlement Effective Date, has had its prime mover(s) replaced or refurbished, as follows:

- (a) If the CHP Facility contains combustion turbines, then each combustion turbine must be replaced with:
 - (i) A new combustion turbine that has been sold and certified as new by the original manufacturer; *provided, however*, that the CHP Facility that has replaced its combustion turbines with a substantially identical engine (e.g., as is common during major overhauls of aeroderivative combustion turbines or as part of a spare engine program), does not qualify as a Repowered CHP Facility; or
 - (ii) A refurbished combustion turbine, so long as such refurbished combustion turbine has been certified by the entity that refurbished such combustion turbine (which may be the original manufacturer) to achieve Heat Rate and total power output performance guarantees comparable to a new combustion turbine, prior to operational degradation; or
- (b) If the CHP Facility contains only steam turbines, then each steam turbine must be replaced with a refurbished steam turbine, which refurbishment must have been accomplished with new or near-new condition parts, and which include (i) a replacement of all stop and throttle control valves, seals, bearings, rotors, and turbine blades of each steam turbine, and (ii) a replacement or rebuilding of the stationary part of each steam turbine back to new condition, including seal system, lube oil system and all associated piping and auxiliary equipment.

In addition to the above requirements, (1) the repowering of the Generating Facility as described in this definition must be completed before the Term Start Date, (2) Section 1.02(a) must provide that the Generating Facility will be a Repowered CHP Facility on the Term Start Date, and (3) Seller must provide to Buyer a written certification, including all supporting data, from a qualified independent engineer, which certification must provide that the total useful life of the CHP Facility (including, as applicable, the combustion turbine(s), the steam turbine(s), the

electrical generator(s) and the heat recovery steam generator) will operate for at least the Term, subject to industry standard maintenance practices.

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

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

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

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

“S&P” means the Standard & Poor’s Rating Group.

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

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

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

“Scheduled Power Offline” is described in Section 3(b)(v) of Exhibit E.

“Scheduling Coordinator” means a Person certified by the CAISO for the purposes of undertaking the functions specified in Exhibit G.

“Scheduling Fee” means the Monthly Scheduling Fee and the SC Set-Up Fee.

“SC Replacement Date” has the meaning set forth in Section 7(b) of Exhibit G.

“SC Set-Up Fee” is described in Section 4(a) of Exhibit G.

“SC Trade Settlement Amount” means the amount(s) determined in accordance with Exhibit M.

“SC Trade Tolerance Band” means the greater of (a) three percent of the Scheduled Amount or (b) one MW.

“SDD Administrative Charge” has the meaning set forth in Section 2 of Exhibit K.

“SDD Adjustment” means the adjustment, if any, to the Monthly Contract Payment, as determined in accordance with Exhibit K.

“SDD Energy Adjustment” has the meaning set forth in Section 1 of Exhibit K.

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

“Security Interest” has the meaning set forth in Section 3 of Exhibit F.

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

“Seller” has the meaning set forth in the Preamble.

“Seller's Curtailment Election Notice” has the meaning set forth in Section 3(b) of Exhibit U.

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

“Seller's Energy Forecast” means Seller's most recently updated Forecast submitted in accordance with Exhibit I.

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

“Settlement Agreement” has the meaning set forth in Recital C.

“Settlement Effective Date” has the meaning set forth in the Recital D.

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

“Settling Parties” has the meaning set forth in Recital B.

“SGIA” (i.e., Small Generator Interconnection Agreement) means the form of Interconnection Request (as defined in the CAISO Tariff) pertaining to a Small Generating Facility (as defined in the CAISO Tariff), which is attached to the CAISO Tariff as Appendix T.

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

- (a) Dollar amount on which the Simple Interest Payment is based; by
- (b) Federal Funds Effective Rate or Interest Rate as applicable; by
- (c) The result of dividing the number of days in the calculation period by 360.

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

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

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

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

“Six-Hour Demonstration” has the meaning set forth in Section 4 of Exhibit C.

“SLIC” means Scheduling and Logging system for the CAISO.

“Station Use” means the electric energy produced by the Generating Facility that is (a) used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, and (b) consumed within the Generating Facility’s electric energy distribution system as losses needed to deliver electric energy to the Site Host Load, and (c) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s).

“Successor” has meaning set forth in Section 3.20(b)(iii).

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

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

“System Marginal Energy Cost” has the meaning set forth in the CAISO Tariff.

“Tariff Rule 21” means the interconnection standards of the Transmission Provider for distributed generation adopted by the CPUC in Decisions 00-11-001 and 00-12-037, as modified by the CPUC.

“Telemetry System” means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO’s applicable requirements as set forth in Section 3.09.

“Term” has the meaning set forth in Section 1.01.

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

“Termination Payment” has the meaning set forth in Section 6.03.

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

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

“TOD Period” means the time of delivery period used to calculate the Monthly Contract Payment set forth in Section 4 of Exhibit D.

“TOD Period Capacity Payment” means the monthly payment to be calculated and made by Buyer to Seller for Power Product capacity during each TOD Period for the month for which a calculation is being performed, as set forth in Section 3(a) of Exhibit D, in dollars.

“TOD Period Energy Payment” means the monthly payment to be calculated and made by Buyer to Seller for the Metered Energy during each TOD Period for the month for which a calculation is being performed, as set forth in Section 2(a) of Exhibit D, in dollars.

“TOD Period Energy Price” means the price used to calculate the TOD Period Energy Payment, as set forth in Section 2(b) of Exhibit D, in dollars per kWh.

“Trade Organizations” means the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association.

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

“Transmission Curtailment Credit Value” or “TCV” is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, as determined in accordance with Section 3 of Exhibit D-2.

“Transmission Provider” means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility’s electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Seller from the Generating Facility to the Delivery Point.

“Transportation Service Rate” or “TSR” has the meaning set forth in Section 2(d) of Exhibit D.

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

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

“Useful Thermal Energy Output” has the meaning set forth in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto.

“Variable Charge” or “VC” has the meaning set forth in Section 2(b) of Exhibit D.

“Web Client” has the meaning set forth in Section 2(a) of Exhibit R.

“Web Scheduler” has the meaning set forth in Section 2 of Exhibit E.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

“WREGIS” means the Western Renewable Energy Generation Information System, or any successor thereto.

*** End of Exhibit A ***

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, electric metering and the Seller's measurement of the Useful Thermal Energy Output, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

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

*** End of Exhibit B ***

EXHIBIT C
Capacity Demonstration Test for Firm Contract Capacity

1. **Introduction.** This Exhibit C only applies if the Generating Facility provides Firm Contract Capacity and is a New CHP Facility, an Expanded CHP Facility, a Repowered CHP Facility, or, as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility. The results of the Capacity Demonstration Test set forth in this Exhibit C will be used (i) to verify and adjust as necessary the Firm Contract Capacity set forth in Section 1.02(d), and (ii) to determine the Reportable Capacity, as further described in Section 10 of Exhibit C. If this Exhibit C is applicable, then Seller shall:
 - (a) Perform the 20-Day and Six Hour Demonstration; or
 - (b) Elect to perform one of the following Capacity Demonstration Tests: (i) the 20-Day Demonstration and Six Hour Demonstration adjusted utilizing the Ambient Factors (1) employed in the Commissioning Test, so long as Buyer is informed of and permitted to attend the Commissioning Test and subject to Buyer's reasonable satisfaction that such Ambient Factors are applicable to the Capacity Demonstration Test, or (2) obtained pursuant to the Performance Test Code on Overall Plant Performance (PTC 46-1996) established by the American Society of Mechanical Engineers, or any successor thereto, or (ii) the Commissioning Test, subject to Buyer's reasonable satisfaction that the Commissioning Test accurately demonstrates the Firm Contract Capacity.
2. **Capacity Demonstration Test Dates.** The 20-Day Demonstration shall commence at noon on a mutually agreed upon date which follows or is coincident with the Term Start Date and shall be completed no later than the Firm Operation Date, and shall extend for a total period of 20 consecutive non-holiday weekdays (the "20-Day Demonstration"). The Six-Hour Demonstration must be scheduled for a non-holiday weekday within the 20-Day Demonstration period.

Concurrently with the selection of the commencement date for the 20-Day Demonstration, Seller shall select which Generating Units will be the Generating Units for the Capacity Demonstration Test, if applicable. This selection may not be changed for any reason during the Capacity Demonstration Test or the Capacity Demonstration Test will be repeated in its entirety.

Buyer and Seller may each, upon three Business Days advance Notice, make up to two requests to reschedule the commencement date for either the 20-Day Demonstration or the Six-Hour Demonstration.

The commencement date for the Six-Hour Demonstration may only be rescheduled to a

different date within the 20-Day Demonstration, if applicable.

Neither the 20-Day Demonstration nor a Six-Hour Demonstration may be rescheduled once it has commenced, except as set forth under Section 5 of this Exhibit C.

3. 20-Day Demonstration. In order to pass the 20-Day Demonstration, the Generating Facility must achieve a Capacity Demonstration Factor of *greater than or equal* to 0.95. The Capacity Demonstration Factor is calculated as follows:

$$\text{CAPACITY DEMONSTRATION FACTOR} = A / (B \times C)$$

Where A = The number of Capacity Measurement Intervals during the test period when the Demonstration Rate of Metered Energy equals or exceeds the Firm Contract Capacity specified in Section 1.02(d).

B = The total number of hours during the 20 consecutive non-holiday weekday test period that begin at noon and end at 6:00 p.m. (i.e., 120 hours).

C = The number of Capacity Measurement Intervals within each hour.

4. Six-Hour Demonstration. For the Six-Hour Demonstration, Seller shall demonstrate the ability of the Generating Facility to Operate for a six consecutive hour period, starting at noon and ending at 6:00 p.m. (the "Six-Hour Demonstration"). The Generating Facility shall be deemed to have satisfied the Six-Hour Demonstration if the Power Output in each and every Metering Interval during the six-hour period equals or exceeds the Firm Contract Capacity set forth in Section 1.02(d).

5. Remedial Action for Seller's Failing a Capacity Demonstration Test.

- (a) If, during the initial Capacity Demonstration Test, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration, Seller may request one additional 20-Day Demonstration or one additional Six-Hour Demonstration within the first 20-Day Demonstration upon providing three Business Days advance Notice sent by facsimile transmission or e-mail.

Any new 20-Day Demonstration must include another Six-Hour Demonstration.

- (b) If, during the second Capacity Demonstration Test, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration due to an abnormal and unforeseeable operating condition, as verified and determined in Buyer's sole judgment, one additional and final Capacity Demonstration Test may be scheduled.

6. Demonstrated Firm Contract Capacity.

- (a) If the Generating Facility passes both the 20-Day Demonstration and the Six-Hour Demonstration, the Demonstrated Firm Contract Capacity shall be deemed to be equal to the Firm Contract Capacity in Section 1.02(d).
- (b) If the Generating Facility fails to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration during the initial Capacity Demonstration Test and, if one or two additional Capacity Demonstration Tests are conducted at Seller's request pursuant to the procedure described above and Seller fails in both of these additional Capacity Demonstration Tests to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration, *then* the Demonstrated Firm Contract Capacity shall be deemed to be the lowest of:
 - (i) The lowest Power Output achieved in 95% of the Capacity Measurement Intervals during the 20-Day Demonstration;
 - (ii) The lowest Power Output in any Capacity Measurement Interval during the Six-Hour Demonstration; and
 - (iii) A Firm Contract Capacity amount, designated by Seller and approved by Buyer, that represents a Power Output that the Generating Facility can achieve during all hours of the entire Term while conforming with Prudent Electrical Practices.

In all instances, the Firm Contract Capacity for Seller shall either (1) be reduced pursuant to the applicable Capacity Demonstration Test(s), or (2) increased pursuant to the applicable Capacity Demonstration Test(s), provided that such increase may not exceed the limits for Firm Contract Capacity set forth in Section 1.02(d). The Net Contract Capacity and As-Available Contract Capacity may also be adjusted by Buyer based on the results of the Capacity Demonstration Test and the circumstances under which a Capacity Demonstration Test was required.

7. Representation and Access. Buyer representatives may attend the Capacity Demonstration Test and, if Seller relies upon the Commissioning Test for the purposes of this Exhibit C, the Commissioning Test or any portion thereof, including the setup, start-up, ramp-up, ramp-down and shutdown of the Generating Facility related to the Capacity Demonstration Test and, if applicable, the Commissioning Test. Buyer's representatives may, as part of their observation of the Capacity Demonstration Test and the Commissioning Test, conduct a site visual inspection of the Generating Facility and the Site; *provided, however*, that Buyer's representatives follow the requirements set forth in Section 3.19.

Seller shall provide Buyer access to and copies of control room logs, control system display screens, and instrumentation data during and after any Capacity Demonstration Test or, if Seller relies upon the Commissioning Test for the purposes of this Exhibit C, Commissioning Test.

8. Cost of Capacity Demonstration Test. Buyer is responsible for all costs associated with witnessing the Capacity Demonstration Test. Buyer shall pay for the electric energy and electric capacity produced during the Capacity Demonstration Test using the Firm Contract Capacity existing at the time of the Capacity Demonstration Test pursuant to Exhibit D.
9. Ambient Factors. Seller may elect to apply corrections to the Demonstrated Rate of Metered Energy or Power Output to adjust for Ambient Factors. The corrections to be applied (including, if requested by Seller, any adjustments to the Demonstrated Firm Contract Capacity for each monthly Firm Contract Capacity number set forth in Section 1.02(d), other than the Firm Contract Capacity number for the month in which the Capacity Demonstration Test is completed) shall be agreed upon in writing in advance of any Capacity Demonstration Test during technical discussions between representatives of Buyer and Seller that are professional engineers registered in California. Corrections shall be based on Prudent Electrical Practices and obtained pursuant to the applicable Performance Test Code established by the American Society of Mechanical Engineers, or any successor thereto, for the equipment under the Capacity Demonstration Test.
10. Determination of Reportable Capacity. In addition to the other procedures set forth in this Exhibit C, Buyer shall, as part of the Capacity Demonstration Test, determine the Reportable Capacity of the Generating Facility. Seller shall provide Buyer with reasonable access to the Generating Facility and to records, reports and other applicable data in order for Buyer to determine the Reportable Capacity during the Capacity Demonstration Test.

*** End of Exhibit C ***

EXHIBIT D
Monthly Contract Payment Calculation

1. Introduction. Each Monthly Contract Payment is calculated on a calendar month basis as follows:

MONTHLY CONTRACT PAYMENT, in dollars =

TOD Period Energy Payment_{1st TOD Period} +
TOD Period Energy Payment_{2nd TOD Period} +
TOD Period Energy Payment_{3rd TOD Period} +
TOD Period Energy Payment_{4th TOD Period} +
TOD Period Capacity Payment_{1st TOD Period} +
TOD Period Capacity Payment_{2nd TOD Period} +
TOD Period Capacity Payment_{3rd TOD Period} +
TOD Period Capacity Payment_{4th TOD Period}

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit D.

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit D.

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

2. TOD Period Energy Payment Calculation.

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

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

Where:

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

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

LA (i.e., Hourly Location Aadjustment) = $LMP_{QF} - LMP_{\text{Trading Hub}}$

Where the Hourly Location Adjustment will be based on the hourly Day-Ahead Prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{QF} = The hourly Day-Ahead Locational Marginal Price, in dollars

per kWh, at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ = The hourly Day-Ahead Locational Marginal Price, in dollars per kWh, of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

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

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

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

- (b) Factor “EP” in Section 2(a) of this Exhibit D. For each day during the Term, the TOD Period Energy Price, in dollars per kWh, for any TOD Period shall be calculated as follows:

$$\text{TOD PERIOD ENERGY PRICE, in dollars} = \text{CHR} \times (\text{GI} + \text{TSR})/10^6 + \text{VC}$$

Where:

CHR = Contract Heat Rate per Table 1 below for the TOD Period, in BTU per kWh.

GI = Gas Index as stated in Section 2(c) of this Exhibit D, in dollars per million BTU.

TSR = Transportation Service Rate as stated in Section 2(d) of this Exhibit D, in dollars per million BTU.

VC = Variable Charge, if any, in dollars per kWh.

Table 1 Contract Heat Rate

Contract Heat Rate, BTU per kWh		
<i>Season</i>	<i>TOD Period</i>	<i>Heat Rate</i>
Summer	On-Peak Period	[]
	Mid-Peak	[]
	Off-Peak	[]
Winter	Mid-Peak	[]
	Off-Peak	[]
	Super-Off-Peak	[]

(c) Factor “GI” in Section 2(a) of this Exhibit D. Means:

The index price (expressed in dollars per million BTU) for the applicable flow date published by Platts Gas Daily (in the internet publication currently accessed through www.platts.com) in the table entitled “Daily Price Survey” under the subsection heading “Citygates” for the “SoCal Gas, city-gate” listing in the “Midpoint” index column. If any determination, ruling or decision by the CPUC significantly affects the SoCalGas system, and the Gas Index ceases to be published, or either Party reasonably believes that the Gas Index is substantially changed so that it does not adequately reflect the balance of economic benefits and burdens that the Parties agreed to, then either Party may provide the other with notice to such effect and the Parties shall negotiate in good faith to determine an alternative method or methods for determining the Gas Index in order to maintain the balance of economic benefits and burdens that the Parties agreed to with respect to the Gas Index as of the Effective Date. Any substitute index or indices must be recognized in the industry as a measure of average daily prices for gas delivered to the various receipt points on the SoCalGas system. If the Parties are unable to agree on a successor market, index, or methodology within 30 days of the date of the notice, the dispute resolution procedures of Article Ten of this Agreement shall apply.

(d) Factor “TSR” in Section 2(a) of this Exhibit D. Means:

The Transportation Service Rate, in dollars per million BTU, within the SoCalGas system applicable for delivering natural gas to the Generating Facility.

{Buyer Comment: References to “SoCalGas” throughout this Section may be modified if the applicable natural gas transporter is other than SoCalGas and should be replaced with references to PG&E Citygate for PG&E service area}

(e) Factor “APE” in Section 2(a) of this Exhibit D. The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

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

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

$$\text{TOD PERIOD CAPACITY PAYMENT in dollars} = (\text{ACP} + \text{FCP}) \times \text{CAF}$$

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit D, in dollars per year.

FCP = Firm Capacity Payment for the TOD Period, as determined in

accordance with Section 3(g) of this Exhibit D, in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 [and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision]:

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is PG&E. Additionally, the bracketed text is only applicable if Buyer is PG&E, and should otherwise be deleted.}

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak Period	0.1792
	Mid-Peak	0.0310
	Off-Peak	0.0006
Winter	Mid-Peak	0.0178
	Off-Peak	0.0011
	Super-Off-Peak	0.0007

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is SCE.}

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak	0.098096
	Semi-Peak	0.006146
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002088
Winter	On-Peak	0.013237
	Semi-Peak	0.008118
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002008

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth set forth in the table immediately above if Buyer is SDG&E.}

- (b) Factor “ACP” in Section 3(a) of this Exhibit D. The As-Available Capacity Payment shall be calculated pursuant to the following formula:

AS-AVAILABLE CAPACITY PAYMENT, in dollars = AAC x AACP

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit D, in kWh per hour.

AACP= The As-Available Capacity Price is set forth in Section 1.06(b), in dollars per kW-year

- (c) Factor “AAC” in Section 3(b) of this Exhibit D. The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC – FCC (but not less than zero)

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit D, in kWh per hour.

FCC = The Firm Contract Capacity for all TOD Periods during a month.

- (d) Factor “MAC” in Section 3(c) of this Exhibit D. The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this

Exhibit D, in kWh.

PH = The total number of hours in the TOD Period (period hours).

- (e) Factor “LE” in Section 3(d) of this Exhibit D. The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

- (f) Factor “E” in Section 3(e) of this Exhibit D. The Allowed Hourly Energy is calculated as follows:

$$\text{ALLOWED HOURLY ENERGY in kWh} = 1 \text{ hour} \times \text{NCC}$$

Where:

NCC = The Net Contract Capacity, as set forth in Section 1.02(d), in kW.

- (g) Factor “FCP” in Section 3(a) of this Exhibit D. Each monthly Firm Capacity Payment is calculated as follows:

$$\text{FIRM CAPACITY PAYMENT in dollars} = \text{MFCP} \times \text{AF}$$

Where:

MFCP = Maximum Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(h) of this Exhibit D, in dollars.

AF = (i) One (1), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is greater than or equal to 95%; or

(ii) Zero (0), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is less than 60%; or

(iii) If neither (i) nor (ii) are true, then AF is the Availability Penalty Factor, as calculated in Section 3(n) of this Exhibit D.

- (h) Factor “MFCP” in Section 3(g) of this Exhibit D. The Maximum Firm Capacity Payment for each TOD Period of each month is calculated as follows:

MAXIMUM FIRM CAPACITY PAYMENT, in dollars = FCC x CP

Where:

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d), in kWh per hour.

CP = Firm Capacity Price, as set forth in Section 1.06(a), in \$/kW-year.

- (i) Factor “ACF” in Section 3(g) of this Exhibit D. The Availability Credit Factor for each monthly TOD Period is calculated as follows:

$$\text{AVAILABILITY CREDIT FACTOR} = (\text{ECH} + \text{CCH}) / \text{PH}$$

Where:

ECH = The total number of Earned Capacity Hours, determined in accordance with Section 3(j) of this Exhibit D.

CCH = The total number of Capacity Credit Hours, determined in accordance with Section 3(m) of this Exhibit D.

PH = The total number of hours in the TOD Period (period hours).

- (j) Factor “ECH” in Section 3(i) of this Exhibit D. The Earned Capacity Hours for each monthly TOD Period is calculated as follows:

$$\text{EARNED CAPACITY HOURS} = \text{FE} / \text{FCC}$$

Where:

FE = The sum of the Firm TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(k) of this Exhibit D, in kWh.

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d) in kWh per hour.

- (k) Factor “FE” in Section 3(j) of this Exhibit D. The Firm TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{FIRM TOD ENERGY in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (\text{E})_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour in kWh; and (ii) Allowed Firm Energy, as determined in Section 3(l) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

- (l) Factor “E” in Section 3(k) of this Exhibit D. The Allowed Firm Energy is calculated as follows:

$$\text{ALLOWED FIRM ENERGY in kWh} = 1 \text{ hour} \times \text{FCC}$$

Where:

FCC = The Firm Contract Capacity set forth in Section 1.02(d).

- (m) Factor “CCH” in Section 3(i) of this Exhibit D. The total number of Capacity Credit Hours for each monthly TOD Period is determined as follows:

$$\text{CAPACITY CREDIT HOURS} = \text{TCV} + \text{FCV} + \text{MCV} + \text{ECV}$$

Where:

TCV = The total Transmission Curtailment Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-2, when the Metered Energy was curtailed by either the CAISO or the Transmission Provider.

FCV = The total Force Majeure Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-1, when the Metered Energy was curtailed by a Force Majeure event claimed by Buyer to the extent the Generating Facility is otherwise available.

MCV = The total Maintenance Credit Value during the TOD Period, determined in accordance with Section 9 of Exhibit E.

ECV = The total Economic Curtailment Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-3, when the Metered Energy was curtailed by Buyer in accordance with Exhibit U.

- (n) Factor “APF” in Section 3(g) of this Exhibit D. The Availability Penalty Factor for each monthly TOD Period is calculated as follows:

$$\text{AVAILABILITY PENALTY FACTOR} = 1.0 - 2.0 \times (\text{CR} - \text{ACF})$$

Where:

APF = The greater of: (i) zero; and (ii) the result of the above equation for APF.

CR = 95%, the minimum Capacity Performance Requirement.

ACF = The Availability Credit Factor determined in accordance with Section 3(i) of this Exhibit D.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
Time Period	Period A - Summer	Period B - Winter	Applicable Days
	May 1 - October 31	November 1 - April 30	
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. - Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

{ Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is PG&E. }

TOD Period	Summer Jun 1 st – Sep 30 th	Winter Oct 1 st – May 31 st	Applicable Days
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Mid-Peak	8:00 a.m. – Noon	8:00 a.m. - 9:00 p.m.	Weekdays except Holidays.
	6:00 p.m. – 11:00 p.m.		Weekdays except Holidays.
Off-Peak	11:00 p.m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays.
		9:00 p.m. – Midnight	Weekdays except Holidays.
	Midnight – Midnight	6:00 a.m. – Midnight	Weekends and Holidays.
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends and Holidays.

{ Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SCE. }

	Summer	Winter	
Time Period	MAY 1 - SEPTEMBER 30	OCTOBER 1 - APRIL 30	
ON-PEAK	11:00 a.m. - 6:00 p.m.	5:00 p.m. - 8:00 p.m.	Weekdays
SEMI-PEAK	6:00 a.m. - 11:00 a.m.	6:00 a.m. - 5:00 p.m.	Weekdays
	6:00 p.m. - 10:00 p.m.		Weekdays
OFF-PEAK	10:00p.m. - 12:00 mid.	10:00 p.m. - 12:00 mid.	Weekdays
	5:00 a.m. - 6:00 a.m.	5:00 a.m. - 6:00 a.m.	Weekdays
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Weekends
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Holidays
Super Off-Peak	12:00 mid. - 5:00 a.m.	12:00 mid. - 5:00 a.m.	All Days

{ Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SDG&E. }

ID #[Number], [Seller's Name]

“Holiday”, as used in the above table, means New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When a Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

**** End of Exhibit D ****

EXHIBIT D-1
Force Majeure Credit Value

1. **Overview.** This Exhibit D-1 describes the methodology for computing Force Majeure Credit Value.
2. **Scheduling.** Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. **Calculation of Force Majeure Credit Value.** For every period of Force Majeure curtailment requested by Buyer, Buyer shall compute the Force Majeure Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-1, "**Benchmark Capacity**" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the Force Majeure event and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Force Majeure Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.
- (d) After all the Hourly Credit Values have been applied, the final monthly Force Majeure Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-1 ***

EXHIBIT D-2
Transmission Curtailment Credit Value

1. **Overview.** This Exhibit D-2 describes the methodology for computing Transmission Curtailment Credit Value.
2. **Scheduling.** Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. **Calculation of Transmission Curtailment Credit Value.** For every period of curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, Buyer shall compute the Transmission Curtailment Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-2, "Benchmark Capacity" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the curtailment notification and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of:

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Transmission Curtailment Credit Value, by TOD Period, to the Capacity Credit

Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.

- (d) After all the Hourly Credit Values have been applied, the final monthly Transmission Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-2 ***

EXHIBIT D-3
Economic Curtailment Credit Value

1. **Overview.** This Exhibit D-3 describes the methodology for computing Economic Curtailment Credit Value.
2. **Scheduling.** Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. **Calculation of Economic Curtailment Credit Value.** For every period of curtailment of Power Product requested by Buyer and where Seller curtailed to its Economic Curtailment Limit Schedule, as set forth in Exhibit U, Buyer shall compute the Economic Curtailment Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-3, "Benchmark Capacity" is defined as the Seller's Day-Ahead Forecast for that hour.
 - (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of:

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Economic Curtailment Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.
- (d) After all the Hourly Credit Values have been applied, the final monthly Economic Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-3 ***

EXHIBIT E

Scheduling and Calculation of Maintenance Outage and Major Overhaul Credits

1. **Overview.** Seller shall follow the protocols established in this Exhibit E for the scheduling of Maintenance Outages and Major Overhauls, and for any subsequent notification that may be required to update a previously scheduled Maintenance Outage or Major Overhaul for which Seller wishes to obtain Maintenance Credit Value. This Exhibit E also describes the methodology for computing Maintenance Credit Value and Maintenance Debit Value.
2. **Notification.** Seller shall direct all Maintenance Outage and Major Overhaul notifications to Buyer's web-based outage scheduling system or an e-mail address designated by Buyer (the "Web Scheduler") and to the Generation Operations Center, whose URL and telephone number(s) can be found in Exhibit N.
3. **Scheduling.**
 - (a) Seller shall schedule all Maintenance Outages and Major Overhauls with Buyer in advance. Seller's failure to schedule an unplanned outage in advance is not a default under this Agreement. The notice requirements for Maintenance Outages and Major Overhauls are as follows:

<i>Outage Duration</i>	<i>Minimum Advance Notice</i>
Maintenance Outage, Less than 1 day	24 Hours
Maintenance Outage, 1 day or more	168 Hours
Major Overhaul	6 Months

- (b) Seller shall provide the following information when scheduling a Maintenance Outage or a Major Overhaul via the Web Scheduler:
 - (i) The identification number set forth on the cover page of this Agreement;
 - (ii) Password (supplied by Buyer);
 - (iii) Generating Unit number*;
 - (iv) Capacity Credit Period, including:
 - (1) The date and time when Seller expects the Capacity Credit Period to begin, and
 - (2) The date and time when Seller expects the Capacity Credit Period to end.

(v) “Scheduled Power Offline”**, in kW, is the Hourly Power Output that is expected to be offline during each hour of the outage period, as such may be updated as set forth in this Exhibit E; and

(vi) Reason for the requested Maintenance Outage or Major Overhaul.

**Unit designation is applicable only when the contract calls for separate tracking of outage allowance for each Generating Unit.*

***If unit designation is applicable, Seller must provide the expected Scheduled Power Offline of the Generating Unit scheduled for maintenance; otherwise, Seller must provide the expected Scheduled Power Offline of the Generating Facility.*

4. Rescheduling.

(a) A Maintenance Outage and the associated Capacity Credit Period may be rescheduled if Seller’s request to reschedule is received by Buyer no later than 5:00 p.m. PPT on the day before the Maintenance Outage was previously scheduled to begin.

(b) A Major Overhaul and the associated Capacity Credit Period may be rescheduled provided:

(i) The rescheduled Major Overhaul begins six months or more after the first outage notification date and time;

(ii) The notification to reschedule is made at least one week before the Major Overhaul was previously scheduled to begin; and

(iii) There is at least a one-month period between the notification to reschedule and the commencement of the rescheduled Major Overhaul.

(c) Maintenance Outages and Major Overhauls may be rescheduled more than once.

5. Extension.

(a) Seller may extend a Maintenance Outage or a Major Overhaul and the associated Capacity Credit Period by notifying Buyer of the extension no later than 5:00 p.m. PPT on the day before the outage was previously scheduled to end. Seller’s failure to provide such notice, to the extent resulting from unexpected circumstances, is not a default under this Agreement.

(b) Maintenance Outages and Major Overhauls and the associated Capacity Credit Periods may be extended more than once.

- (c) For a Maintenance Outage and the associated Capacity Credit Period which is less than 24 hours in duration, the extension cannot result in a total outage duration greater than 23 hours.
6. Cancellation. If Seller cancels a scheduled Maintenance Outage, Major Overhaul or the associated Capacity Credit Period, a cancellation notice must be received by Buyer no later than 5:00 p.m. PPT on the day before such Maintenance Outage or Major Overhaul was scheduled to begin.
7. Updating Scheduled Power Offline.
- (a) If a change in the Hourly Power Output is anticipated or occurs during a Maintenance Outage or a Major Overhaul, the Scheduled Power Offline must be updated on a prospective basis as soon as possible via the Web Scheduler. Scheduled Power Offline cannot be updated once the Maintenance Outage or Major Overhaul is over.
- (b) Multiple updates to the Scheduled Power Offline can be submitted if necessary on a prospective basis.
- (c) If a Maintenance Outage or a Major Overhaul is completed ahead of schedule and Seller's Hourly Power Output has returned to normal output levels earlier than expected, Seller shall advise Buyer of the situation by providing an update to the Scheduled Power Offline as described in Section 7(a) of this Exhibit E.
8. Restrictions.
- (a) Seller shall make reasonable efforts not to schedule a Maintenance Outage or Major Overhaul during the Peak Months. Should an outage be required during the said period, Seller shall abide by the limit as set forth in Section 1.05(d) for minor maintenance work during peak months.
- (b) Each Capacity Credit Period must be scheduled to start and stop at the beginning of an hour. Also, when scheduling an outage, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
- (c) Seller may not schedule a Maintenance Outage or a Major Overhaul that overlaps another Maintenance Outage, Major Overhaul, or Curtailment Period already scheduled on the Generating Facility. If unit designation is applicable in Section 3(b)(iii) of this Exhibit E, this restriction applies to the Generating Unit.
9. Maintenance Credit Calculation. For every properly scheduled Maintenance Outage and Major Overhaul, to the extent there is an associated Capacity Credit Period, Buyer shall

compute and apply the associated Maintenance Credit Value and the Maintenance Debit Value following these steps:

- (a) A Benchmark Capacity shall be determined for every scheduled Maintenance Outage and Major Overhaul. For purposes of this Exhibit E, “Benchmark Capacity” is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, at or after the time of outage notification, and before the start of the outage. If the outage is rescheduled, the most recent notification time shall be used in defining Benchmark Capacity. If the outage is extended, or its Scheduled Power Offline is updated, the original notification time shall be used in defining Benchmark Capacity, unless the outage has been rescheduled before the extension, in which case the most recent rescheduling notification time shall be used in defining Benchmark Capacity.

In the special case of a less-than-one-day Maintenance Outage that directly follows another less-than-one-day Maintenance Outage, Benchmark Capacity of the outage that follows is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, between these two outage time periods. In the event of back-to-back, less-than-one-day Maintenance Outages, Benchmark Capacity for the second outage shall be zero.

Notwithstanding this Section 9(a), upon Seller’s request, if and to the extent Seller is able to demonstrate to Buyer’s reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Capacity Credit Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during such Capacity Credit Period.

- (b) For each hour in the Capacity Credit Period of the Maintenance Outage or the Major Overhaul, an Hourly Credit Value and Hourly Debit Value shall be calculated using following formulas:

(i) $\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

where *Delta* is the lesser of

Benchmark Capacity minus Hourly Power Output, or
Scheduled Power Offline.

However, in all cases, *Delta* shall never be less than zero.

(ii) $\text{Hourly Debit Value} = (\text{Scheduled Power Offline} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

- (c) For each hour in the Capacity Credit Period, the Hourly Credit Value shall be applied as Maintenance Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Capacity Credit Period have been applied, or until the condition described in Section 9(d) of this Exhibit E is met, whichever comes first.
- (d) Simultaneous to Section 9(c) of this Exhibit E, for each hour in the Capacity Credit Period, the Hourly Debit Value shall be accumulated as Maintenance Debit Value in a Term-Year-to-date account whose increasing total is to be compared to the appropriate limit set forth in Sections 1.05(a) or (b). Once the Term-Year-to-date total reaches or exceeds the limit, no more Hourly Credit Values shall be applied.
- (e) After all the Hourly Credit Values have been applied and the Hourly Debit Values accounted for, the final monthly Maintenance Credit Value and the Term-Year-to-date cumulative Maintenance Debit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

The above description of the evaluation process assumes that the outage was properly scheduled with sufficient advance notice pursuant to this Exhibit E and was approved by Buyer (or the CAISO, if applicable). Any deviation from the proper scheduling protocol can result in reduced Maintenance Credit Value or increased Maintenance Debit Value.

*** End of Exhibit E ***

EXHIBIT F
***Requirements Applicable Solely to New CHP Facilities,
Repowered CHP Facilities and Certain Expanded CHP Facilities***

This Exhibit F is only applicable if the Generating Facility is a New CHP Facility, a Repowered CHP Facility, or an Expanded CHP Facility that has elected in Section 1.02(a) to comply with the credit and collateral requirements set forth in this Agreement.

1. Financial Information.

- (a) If requested by Buyer, Seller shall deliver to Buyer the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:
 - (i) Within 120 days following the end of each fiscal year, a copy of Seller's and its Guarantor's annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year; and
 - (ii) Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's and its Guarantor's quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous fiscal year;

provided, however, that if Seller is not an SEC reporting company or if the financial statements required under Sections 1(a)(i) or (ii) of this Exhibit F are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year-end audit adjustments for the quarterly financial statements); *provided further*, that such information must be provided only to those employees of Buyer that need to know such information for financial risk management purposes and may not be disclosed to third parties except as permitted under Section 9.09.

- (b) For purposes of the requirement set forth in Section 1(a) of this Exhibit F:
 - (i) If Seller or its Guarantor's financial statements are publicly available electronically on the website of Seller, its Guarantor or the SEC, then Seller is deemed to have met this requirement; and

- (ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay is not an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

2. Performance Assurance.

- (a) Posting Performance Assurance. On or before the Term Start Date, Seller shall post Performance Assurance with Buyer and shall maintain the Performance Assurance Amount at all times on and after the Term Start Date until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed 365 days following the Term End Date.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that if, as of the Term Start Date, Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit F, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 4(c) or (e) of this Exhibit F, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 2(c) of this Exhibit F, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:
 - (i) Each Letter of Credit must be maintained for the benefit of Buyer;
 - (ii) Seller shall:
 - (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least 30 days before the expiration of the outstanding Letter of Credit or within five

Business Days of such indication by the Bank, whichever is later;
and

- (3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within three Business Day after such refusal;
- (iii) Upon, or at any time after, the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the 10th Business Day after the occurrence thereof; and
- (iv) Upon the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit by submitting to the bank issuing such Letter of Credit one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 3 of this Exhibit F with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit O executed by the Guarantor identified in Section 1.07(b)(i) or other party, in each case acceptable to Buyer and meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:
 - (i) "BBB-" from S&P, "Baa3" from Moody's, and "BBB-" from Fitch, if Guarantor is rated by all three ratings agencies;

- (ii) The lower of “BBB-” by S&P, “Baa3” by Moody’s, or “BBB-” by Fitch if Guarantor is rated by only two of the three ratings agencies; or
 - (iii) “BBB-” by S&P, “Baa3” by Moody’s, or “BBB-” by Fitch if Guarantor is rated by only one of the ratings agency.
3. First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 2 and 4 of this Exhibit F and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit; and
- (c) Liquidate all Development Security and Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller shall remain liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full. Buyer may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available, and from all such forms, and in any sequence Buyer may select; *provided, however*, that to the extent multiple instruments of credit support are provided by or on behalf of Seller, Buyer shall draw on each such instrument of credit support proportionately based on the maximum aggregate liability under each such instrument, such that, for the avoidance of doubt, Buyer must draw proportionately on all of such outstanding instruments in order to obtain its full claim for payment.

4. Development Security.

- (a) Introduction. If Seller is required to post Development Security, such Development Security shall be held by Buyer as security for Seller meeting the Term Start Date and: (i) if Seller designates only Firm Contract Capacity, successful completion of the Capacity Demonstration Test as set forth in Exhibit C; (ii) if Seller designates only As-Available Contract Capacity, Seller delivers to Buyer the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b), which As-Available Contract Capacity Confirmation Certificate must provide that Seller has installed the equipment sufficient to provide the As-Available Contract Capacity designated by Seller in Section 1.02(d) on the Effective Date; or (iii) if Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (i) and (ii) of this Section 4(a) are required.
- (b) Development Security. If Seller is required to post Development Security, Seller shall post such Development Security in accordance with the following terms and conditions:
- (i) Seller shall post a development fee (the "Development Security") in the amount of \$20 per kW of Net Contract Capacity on or before the 30th day following the Effective Date. Seller shall post additional Development Security in the amount of \$40 per kW of Net Contract Capacity (for a total posted amount of \$60 per kW of Development Security) at the end of the 18th month following the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and
- (ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit P.
- (c) Forfeiture of Development Security for Failure to Commence Term by the Term Start Date; Extension of the Term Start Date.
- (i) Failure to Meet the Term Start Date. Subject to Seller's right to extend the Term Start Date as provided in Section 4(c)(ii) of this Exhibit F or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), if the Term does not commence on or before the Term Start Date, Buyer may retain the entire Development Security (if applicable) and, if not already terminated, terminate this Agreement, and neither Party shall have liability for damages for failure to deliver or purchase the Product after the effective date of such termination.
- (ii) Daily Delay Liquidated Damages to Extend Term Start Date. Subject to limitations set forth in Section 1.01(a), Seller may elect to delay the Term

Start Date by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the original Term Start Date to and excluding the actual Term Start Date (“Daily Delay Liquidated Damages”).

To extend the Term Start Date, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Term Start Date along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Term Start Date extension period.

Seller may further extend the Term Start Date beyond the original Term Start Date extension period subject to the same terms applicable to the original Term Start Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Term Start Date extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Term Start Date was actually extended.

In no event may Seller extend the Term Start Date for more than a total of [] days by the payment of Daily Delay Liquidated Damages.

{Buyer Comment: To be completed by Seller, and subject to Buyer's acceptance. }

- (d) Full Return of Development Security. The Development Security shall be returned to Seller in accordance with the following procedure:
- (i) Subject to Seller commencing the Term by the Term Start Date, as the Term Start Date may have been extended in accordance with Section 4(c)(ii) of this Exhibit F as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), Seller demonstrates the Net Contract Capacity on or before the Firm Operation Date as follows:
 - (1) If Seller designates only Firm Contract Capacity, successful completion of the Capacity Demonstration Test as set forth in Exhibit C;
 - (2) If Seller designates only As-Available Contract Capacity, Seller delivers to Buyer the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b),

which As-Available Contract Capacity Confirmation Certificate must provide that Seller has installed the equipment sufficient to provide the entire As-Available Contract Capacity designated by Seller in Section 1.02(d) on the Effective Date; or

- (3) If Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (1) and (2) of this Section 4(d)(i) are required.
- (e) Deficient Installation of Net Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller does not demonstrate any portion of the Net Contract Capacity or only demonstrates a portion of the Net Contract Capacity:
- (i) If Seller designates only Firm Contract Capacity, based on the Capacity Demonstration Test, if any, as set forth in Exhibit C;
 - (ii) If Seller designates only As-Available Contract Capacity, based on Seller's delivery of the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b); or
 - (iii) If Seller designates both Firm Contract Capacity and As-Available Contract Capacity, based on both (i) and (ii) of this Section 4(e),

then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of either (1) \$20 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs after the 18th month following the Effective Date.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 2 of this Exhibit F shall be calculated using the adjusted Net Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Net Contract Capacity shall be returned to Seller.

- (f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

- (a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.
- (b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof on or before the third Business Day of the first month after the last month to which the invoice relates, so long as such date is after the day on which such invoice is received; *provided, however*, that:
 - (i) No Event of Default has occurred and is continuing with respect to Seller; and
 - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:
 - (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
 - (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

*** End of Exhibit F ***

EXHIBIT G
Scheduling Coordinator Services

This Exhibit G is only applicable when Buyer is Scheduling Coordinator.

1. Designation of Buyer as Scheduling Coordinator.
 - (a) At least 30 days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.
 - (b) During the Term, unless Seller terminates Buyer as Scheduling Coordinator in accordance with Section 7 of this Exhibit G, Seller may not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller may not revoke Buyer's authorization to act as Scheduling Coordinator unless agreed to by Buyer.
 - (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and Seller's QF PGA or PGA, as applicable.
 - (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.
 - (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *provided, however*, that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.

2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:
 - (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit I, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;
 - (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;
 - (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and
 - (d) Receiving notification of the final schedules from the CAISO.

3. **Notices.** As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, CAISO Forced Outage Reports, or must offer waiver forms.
4. **Scheduling Fees.** In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:
 - (a) **SC Set-Up Fee.** The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal \$[___].
 - (b) **Monthly Scheduling Fee.** The Monthly Scheduling Fee will be as forth in the following table.

Net Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	\$2,500
10,000 – 100,000	\$5,000
Greater than 100,000	\$7,500

5. **CAISO Settlements.** As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

Buyer shall render a separate invoice to Seller for all CAISO Charges for which Seller is responsible under this Agreement (“CAISO Charges Invoice”) as described in Sections 1 through 4 of Exhibit J, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff.

CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental or supporting documentation provided by the CAISO to Buyer in the settlement process.

Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit G with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of 365 days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.
7. Terminating Buyer's Designation as Scheduling Coordinator.
 - (a) Seller may terminate Buyer as Scheduling Coordinator:
 - (i) In accordance with Section 7(b) of this Exhibit G; or
 - (ii) If Buyer materially fails to fulfill its obligations as Scheduling Coordinator and:
 - (1) Seller provides advance Notice to Buyer setting forth in reasonable detail the nature of such failure and such failure is not remedied within 30 days after such Notice; *provided, however*, that if such failure is not reasonably capable of being remedied within such 30-day period, Buyer shall have such additional time (not to exceed 120 days) as is reasonably necessary to remedy such failure, so long as Buyer promptly commences and diligently pursues such remedy;
 - (2) Seller (A) submits to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the date of

Buyer's termination as Scheduling Coordinator, and (B) causes its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and

- (3) The Parties will take any other action necessary to terminate the designation of Buyer as Scheduling Coordinator, including amending this Agreement; or
- (iii) If Seller is required to elect Buyer as Scheduling Coordinator in accordance with Section 1.08, then, subject to Section 3.06(b) or 3.09(b), as applicable, by (1) providing a Notice to Buyer on or before the 60th day after Seller meets the requirements of Section 3.06(a) and 3.09(a), and (2) at least 30 days before the replacement Buyer as the Scheduling Coordinator, complying with the requirements for designating a different Scheduling Coordinator by taking all necessary actions to terminate the designation of Buyer as Scheduling Coordinator, including those actions set forth in Sections 7(b)(i) and (b)(ii) of this Exhibit G. Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.
- (b) At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. PPT on the Term End Date ("SC Replacement Date"). Such actions include the following:
 - (i) Seller shall:
 - (1) Submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date; and
 - (2) Cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and
 - (ii) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.
- (c) Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.

*** End of Exhibit G ***

EXHIBIT H
Milestone Progress Reporting Form

1. **Introduction.** This Exhibit H is only applicable if the Generating Facility is a New CHP Facility.

Seller shall prepare a written milestone progress report as set forth in Section 3.11 on its progress relative to the:

- (a) Installation of the CAISO-Approved Meters and Telemetry System;
- (b) Installation of the Telemetry System as required by the CAISO Tariff; and
- (c) Work on other agreements with the CAISO and the Transmission Provider.

2. **Format.** The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit N, on the fifth Business Day of each month. Each such milestone progress report must include the following items:

- (a) Cover page;
- (b) Brief Generating Facility description;
- (c) Site plan of the Generation Facility;
- (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;
- (e) Bar chart schedule showing progress on achieving the Milestone Schedule;
- (f) PERT or GANT chart showing critical path schedule of major items and activities;
- (g) Summary of activities during the previous month;
- (h) Forecast of activities scheduled for the current month;
- (i) Written description about the progress relative to the Milestone Schedule;
- (j) List of issues that could potentially impact the Milestone Schedule;
- (k) Enumeration and schedule of any support or actions requested of Buyer;
- (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and
- (m) List of items required under Section 3.11.

*** End of Exhibit H ***

EXHIBIT I

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:
 - (a) Comply with the CAISO Tariff;
 - (b) Accommodate changes to their respective generation technology and organizational structure; and
 - (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements for all Generating Facilities.
 - (a) 30-Day Forecast.

No later than 30 days before the Term Start Date (or, in the case of a New CHP Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

In the case of a New CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.

The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

- (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and
- (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

- (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit I, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.
- (c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, or a Real-Time Forced Outage, any of which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit I must be submitted to Buyer via the Web Client by no later than:
- (i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;
 - (ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or
 - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected electric energy production change.

Seller's updated Forecast must contain the following information:

- (w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected electric energy production change;
 - (x) The expected ending date and time of the event;
 - (y) The expected electric energy production, in MWh; and
 - (z) Any other information required by the CAISO as communicated to Seller by Buyer.
3. Seller's Forecasting Accuracy Requirements. If a (non-zero) Firm Contract Capacity quantity is applicable to this Agreement, then this Section 3 applies to Seller.

- (a) Accuracy Metric. With respect to each calendar month “m”, as soon as practicable after the end of such month, Buyer shall calculate and report to Seller the monthly mean absolute error (“MAE_m”) between Seller’s Day-Ahead Forecasts and the respective daily summations of Metered Energy:

$$\text{MAE}_m = \frac{\text{Forecast Error}}{\text{Total Forecast}}$$

$$\text{Forecast Error} = \sum_i^n |f_i - a_i|$$

$$\text{Total Forecast} = \sum_i^n f_i$$

where:

- n = the total number of hours in calendar month “m”
- i = an hour within month “m”
- f_i = Seller’s Day-Ahead Forecast for hour “i”
- a_i = the quantity of (i) Metered Energy for hour “i” plus the quantity of electric energy not delivered as a result of a Real-Time Forced Outage or Seller’s actual curtailment of production of the Power Product in accordance with Exhibit U for hour “i” (in MWh) when the Generating Facility is not PIRP-eligible, or when Buyer is not Scheduling Coordinator; or (ii) the actual available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible and Buyer is Scheduling Coordinator.

Buyer shall report each MAE_m to Seller and, upon Seller’s request, Buyer shall furnish all supporting calculations within a reasonable timeframe.

Notwithstanding anything to the contrary set forth in this Section 3(a), for hour “i” for which the absolute difference between variable “f_i” and variable “a_i” is a number greater than zero, to the extent that such difference results from the fault or negligence of Buyer in its role as Scheduling Coordinator the value “| f_i – a_i |” for that hour shall be deemed to be zero.

- (b) Forecasting Penalty. If the MAE_m for a particular month “m” is greater than 15% or if the average Forecast error for all hours of the month is greater than three MW, then an “MAE Failure” will be deemed to have occurred. An MAE Failure will be waived if Seller demonstrates to Buyer’s reasonable satisfaction that the MAE Failure was the result of unexpected changes in either electrical or steam demand associated with the Site Host Load. If such MAE Failure has been waived, then that month does not count as a month in which there was an MAE Failure.

For each month in which an MAE Failure has occurred, Seller shall pay a fee equal to the applicable Monthly Scheduling Fee in addition to any otherwise applicable Monthly Scheduling Fee.

During each month an MAE Failure occurs, subject to the limitations of the following paragraph, Seller will continue to receive Monthly Capacity Payments for the Firm Contract Capacity based on the Firm Capacity Price and capacity payment calculations for firm capacity as set forth in Section 3 of Exhibit D.

If, however, an MAE Failure occurs three times in any rolling 12-month period, then starting on the first day of the calendar month immediately following the third such occurrence (such month, the “First Penalty Month”):

- (i) The quantity of Firm Contract Capacity specified in Section 1.02(d) will be deemed to be zero (“Penalized Firm Contract Capacity”); and
- (ii) The quantity of As-Available Contract Capacity specified in Section 1.02(d) will be deemed increased by the quantity of Firm Contract Capacity as such quantity existed before the First Penalty Month (“Penalized As-Available Contract Capacity”).

The Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall continue to be in effect during every subsequent calendar month until there are two consecutive calendar months without an MAE Failure (including a month in which an MAE Failure has been waived).

Upon such event, starting on the first day of the calendar month immediately following the second consecutive month during which Buyer does not have an MAE Failure, the Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall revert to the Firm Contract Capacity and As-Available Contract Capacity quantities existing before the First Penalty Month.

*** End of Exhibit I ***

EXHIBIT J
CAISO Charges

If at any time after the Term Start Date Buyer is not Scheduling Coordinator for the Generating Facility, then Buyer will not be responsible for any CAISO Charges. If at any time after the Term Start Date Buyer is Scheduling Coordinator for the Generating Facility, then Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;
2. Seller or any third party dispatches any portion of the Net Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator);
3. Seller does not comply with:
 - (a) The requirements set forth in Section 3.15; or
 - (b) Seller's obligation associated with any CAISO or Transmission Provider notice or instruction (as may be communicated by Buyer as Scheduling Coordinator) to (i) increase output to the Firm Contract Capacity during a System Emergency or an Emergency Condition, or (ii) reschedule a planned outage set to occur during a System Emergency or an Emergency Condition, then

Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with any failure set forth in Sections 3(a) or 3(b) of this Exhibit J (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator); or

4. If the Generating Facility is PIRP-eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the electric energy generated and delivered from the Generating Facility.

If any of Sections 1 through 4 of this Exhibit J apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

*** End of Exhibit J ***

EXHIBIT K
Scheduling and Delivery Deviation Adjustments

If Buyer is Scheduling Coordinator for the Generating Facility and if the Generating Facility is not PIRP-eligible, then Seller or Buyer, as the case may be, shall be responsible for the following SDD Adjustments with respect to the Generating Facility:

1. **SDD Energy Adjustment.** An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

If $A < D$, then SDD Energy Adjustment = $(D - A) \times (EP - P)$

or

If $A > E$, then SDD Energy Adjustment = $(A - E) \times (P - EP)$

Otherwise, the SDD Energy Adjustment = 0

where:

A = Metered Energy for the Settlement Interval;

B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to Exhibit I corresponding to the Settlement Interval;

C = Performance Tolerance Band =

The greater of (a) three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour or (b) one (1) MWh divided by the number of Settlement Intervals in such hour;

D = Performance Tolerance Band Lower Limit = $(B - C)$;

E = Performance Tolerance Band Upper Limit = $(B + C)$;

EP = TOD Period Energy Price applicable to the Settlement Interval specified in Section 2(b) of Exhibit D; and

P = Real-Time Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. SDD Administrative Charge. Seller shall make a payment to Buyer (the “SDD Administrative Charge”) for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

If $A > (B + C)$ or $A < (B - C)$, then:

$$\text{SDD Administrative Charge} = (\text{Absolute Value } (B - A) - C) \times \text{Uninstructed Deviation GMC Rate.}$$

Otherwise, the SDD Administrative Charge = 0.

*** End of Exhibit K ***

EXHIBIT L
Physical Trade Settlement Amount

This Exhibit L is only applicable when Buyer is not Scheduling Coordinator.

1. Physical Trades Cleared in the IFM. The CAISO Revenue credited to Buyer's account by CAISO as a result of a Physical Trade having cleared in the IFM shall be for Buyer's account.
2. Physical Trades not Cleared in the IFM. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate the Physical Trade Settlement Amount ("PTSA_i") for each hour as follows:

$$PTSA_i = CPT_i \times (CPTP_i - PNode_i)$$

Where:

- i = an hour within month "m"
- CPT = Converted Physical Trade, in MWh
- CPTP = Converted Physical Trade Price, and
- PNode = the Generating Facility's PNode price, in dollars per MWh.

If the PTSA_i is positive *and* Seller submitted the original Physical Trade in accordance with Section 3.14(s)(ii) and Exhibit L, then Buyer shall owe Seller the PTSA_m for month m. In any event the PTSA_i is negative, however, then Seller shall owe Buyer the PTSA_i.

*** End of Exhibit L ***

EXHIBIT M
SC Trade Settlement Amount

This Exhibit M is only applicable when Buyer is not Scheduling Coordinator.

If, in any Settlement Interval, a Generating Facility's Scheduled Amount differs from the Generating Facility's Metered Energy by more than the SC Trade Tolerance Band, then Seller shall be subject to a payment adjustment calculated by Buyer in accordance with the procedures and formulas set forth below.

(1) Under-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy, and the Real-Time Price is greater than the Day-Ahead Price payable during the Settlement Interval, then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy if, during such Settlement Interval, the Real-Time Price is equal to or less than the Day-Ahead Price payable during the Settlement Interval.

(2) Over-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy, and the Real-Time Price is less than the Day-Ahead Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy if, during such Settlement Interval, the Real-Time Price is greater than or equal to the Day-Ahead Price payable during the Settlement Interval.

*** End of Exhibit M ***

EXHIBIT N
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	

Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

*** End of Exhibit N ***

EXHIBIT O
Form of Guaranty Agreement

1. **Guaranty.** For valuable consideration, _____ [Guarantor's legal name] _____, _____ [legal status] (“Guarantor”) guarantees payment to _____ [Buyer's legal name] _____, a California corporation (“Beneficiary”), its successors and assigns, of all amounts owed to Beneficiary by _____ [Seller's legal name] _____, _____ [legal status] (“Principal”) under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated _____ [date] _____, as amended from time to time (“Agreement”) (said amounts are hereinafter referred to as the “Obligations”).

Initially capitalized words that are used but not otherwise defined in this agreement (“Guaranty”) shall have the meanings given them in the Agreement.

Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, that all cure periods have expired, and with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

The obligations of Guarantor hereunder is not subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. **Guaranty Limit.** Subject to Paragraph 13, the liability of Guarantor hereunder may not exceed \$_____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.
3. **Guaranty Absolute.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:
- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
 - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
 - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
 - (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
 - (vii) Beneficiary's exercise of any other rights available to it under the Agreement;

- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
 - (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
 - (x) [Intentionally omitted;] and
 - (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.
- (f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the Term End Date, provided however, the termination of this Guaranty shall not release Guarantor from liability for any Obligations arising prior to the Term End Date.
- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.
6. Subrogation. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones the exercise of such rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

7. [Intentionally omitted.]

8. Waivers of Guarantor.

- (a) [Intentionally omitted.]
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:
 - (i) The Guarantor waives all rights and defenses that the Guarantor may have because the Principal's Obligations are secured by real property.

This means, among other things:

- a. The Beneficiary may collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Principal.
- b. If the Beneficiary forecloses on any real property collateral

pledged by the Principal:

- (1) The amount of the Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
- (2) The Beneficiary may collect from the Guarantor even if the Beneficiary, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Principal.

This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Principal's Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

- (ii) The Guarantor waives all rights and defenses arising out of an election of remedies by the Principal, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for an Obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the Principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;
- (f) [Intentionally omitted]
- (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (h) Guarantor waives any other circumstances that limit the liability of or exonerate guarantors generally or provide any legal or equitable discharge of Guarantor's obligations hereunder;
- (i) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices

with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and

- (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. No Waiver of Rights by Beneficiary. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.
10. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors and assigns. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided, however,* that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor. Guarantor represents and warrants that:
- (a) It is a corporation duly organized, validly existing and in good standing in the jurisdiction of its formation and has full power and authority to execute, deliver and perform this Guaranty;
 - (b) It has taken all necessary corporate actions to execute, deliver and perform this Guaranty;
 - (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;
 - (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and

- (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.
12. Financial Statements. If requested by Beneficiary and if Guarantor is otherwise required to prepare the following, Guarantor shall deliver financial statements as describe below, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:
- (a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.
- (c) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.
13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other reasonable costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 is not subject to, and does not count toward, the Guaranty limit set forth in Paragraph 2 above.
14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

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

16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, is not in any way be affected or impaired thereby.

17. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary: [Buyer]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

with a copy to: [Name]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Guarantor: [Guarantor]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Principal: *[Principal]*
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

[signature page follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, ____.

_____ *[legal name]*

By: _____
Name: _____
Title: _____

*** End of Exhibit O ***

EXHIBIT P
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Ladies and Gentlemen:

_____ (the "Bank") establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on _____ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations may not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference may not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

Name: _____

Title: _____

ATTACHMENT A
Drawing Certificate

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____, an authorized representative of _____ (the "Beneficiary"), certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { _____ }, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 - [A]. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 - [B]. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.
 - [C]. The Letter of Credit will expire in fewer than 30 days from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - [D]. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the

Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.

- []E. The Beneficiary is entitled to retain the entire Development Security (i) as a result of Applicant's failure to commence the Term by the Term Start Date, or (ii) the Agreement has terminated due to an Event of Default by Applicant before the Term Start Date.
 - []F. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of either (1) \$20 per kW of Net Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs after the 18th month following the Effective Date.
2. Based upon the foregoing, the Beneficiary makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
 3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: [BENEFICIARY NAME]

By: _____

Name: _____

Title: _____

*** End of Exhibit P ***

EXHIBIT R
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

- (a) Comply with the CAISO Tariff;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

- (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client").
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.
- (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

- (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code, the CAISO Tariff or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

*** End of Exhibit R ***

EXHIBIT S
***Payment Adjustments if Buyer Assumes GHG Compliance Costs;
GHG Reporting Requirements***

Section 1 of this Exhibit S is only applicable if Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement. Section 2 of this Exhibit S is applicable whether or not Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement.

1. [As bid by Seller.]

{Buyer Comment: Seller must propose the methodology for allocating GHG Compliance Costs. Seller's proposal is subject to review and acceptance by Buyer. See also the Buyer Comments in Section 1.06.}

2. Reporting Requirements.

- (a) From the Effective Date through the Term End Date (and for any period following the termination of this Agreement to the extent relating back to the Term), Seller shall provide to Buyer the following information (together, the “Annual GHG Reports”):
- (i) On or before the fifth Business Day following Seller’s timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the “CARB Annual Report”), Seller shall deliver such CARB Annual Report to Buyer; and
- (ii) To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the electric energy delivered to Buyer; and (5) the number of Allowances (including Free Allowances) held or surrendered by Seller for such calendar year.

- (b) If Buyer requires any other information not delineated in Section 2(a) of this Exhibit S in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB or by any other Governmental Authority and imposed on Buyer (other than the information that Seller must provide in accordance with Section 2(c) of this Exhibit S), then Buyer shall promptly meet and confer with the Trade Organizations regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations, in accordance with the foregoing.
- (c) If Section 1.06(d) provides that Buyer has assumed some or all of the GHG Compliance Costs under this Agreement, Buyer will review the Annual GHG Reports described in this Section 2 to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under this Agreement, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under this Agreement. If this Agreement terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the 30-day period after the termination of this Agreement.
- (d) To the extent that the information provided by the disclosing Party in accordance with this Section 2 is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Cogeneration Facilities under the existing Qualifying Cogeneration Facilities monitoring compliance program.

*** End of Exhibit S ***

EXHIBIT T
QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
 Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name: _____
 Street: _____
 City: _____ State: _____ Zip Code: _____

ID No.: _____ Generation Nameplate (KW): _____

II. In Operation: Yes No

III. Can your facility dump your thermal output directly to the environment? Yes No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1	_____	_____	_____	Y N
2	_____	_____	_____	Y N
3	_____	_____	_____	Y N
4	_____	_____	_____	Y N
5	_____	_____	_____	Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
 BTUs _____ Therms _____ mmBTUs _____
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Energy Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

*** End of Exhibit T ***

EXHIBIT U

Economic Curtailment Option for Negative Pricing in the Day-Ahead Market

This Exhibit U only applies if Section 1.09 provides that Buyer has the right to request that Seller curtail the Generating Facility's production the Power Product in accordance with this Exhibit U.

1. **Introduction.** Buyer has the right, but not the obligation, to request that Seller curtail the Generating Facility's production of the Power Product, in accordance with Section 3 of this Exhibit U, during each calendar quarter of the Term for an amount that is up to and including (but not in excess of) the number of MWhs set forth in the following table for such calendar quarter (each such amount, the "Curtailment Period Cap") (*provided, however*, that upon reaching the Curtailment Period Cap for either the "On-Peak" TOD Period or the "Off-Peak" TOD Period for the applicable calendar quarter, Buyer shall no longer have the right to request that Seller curtail the Generating Facility's production of the Power Product in accordance with this Exhibit U for such calendar quarter with respect to such "On-Peak" TOD Period or "Off-Peak" TOD Period):

Curtailment Period Cap			
Calendar Quarter	On-Peak (MWhs)	Off-Peak (MWhs)	Total (MWhs)
January-March	[]	[]	[]
April-June	[]	[]	[]
July-September	[]	[]	[]
October-December	[]	[]	[]
Total (MWhs)	[]	[]	[]

{Buyer Comment: Seller may elect, in its sole discretion, to allow Buyer to curtail Seller's production of the Power Product, as set forth in Section 1.09. If Seller has elected to allow such curtailment, Seller must insert the number of MWhs during each calendar quarter whereby Buyer may request such curtailment. If Seller has elected not to allow such curtailment, insert "N/A" in each row.}

(For purposes of this Exhibit U, the "On-Peak" TOD Period includes Buyer's "Peak" and "Partial Peak" TOD Periods, and the "Off-Peak" TOD Period includes Buyer's "Off-Peak" and "Super Off-Peak" TOD Periods.) *{Buyer Comment: Select this sentence if Buyer is PG&E.}*

(For purposes of this Exhibit U, the "On-Peak" TOD Period includes Buyer's "On-Peak" and "Mid-Peak" TOD Periods, and the "Off-Peak" TOD Period includes the "Off-Peak" and "Super Off-Peak" TOD Periods.) *{Buyer Comment: Select this sentence if Buyer is SCE.}*

(For purposes of this Exhibit U, the "On-Peak" TOD Period includes Buyer's "On-Peak" and "Semi-Peak" TOD Periods, and the "Off-Peak" TOD Period includes Buyer's "Off-Peak" and "Super Off-Peak" TOD Periods.) *{Buyer Comment: Select this sentence if Buyer is SDG&E.}*

Buyer may not carry over from any calendar quarter to any other calendar quarter any of the MWhs set forth in the Curtailment Period Cap table above. Subject to Section 4 of this Exhibit U, for each Negative Pricing Hour where Buyer has provided Seller with a Curtailment Notice, the difference (in MWhs) between the Seller's Day-Ahead Forecast and the Economic Curtailment Limit Schedule will count toward the Curtailment Period Cap for the applicable calendar quarter whether or not Seller chooses to curtail the Generating Facility's production of the Power Product for such Negative Pricing Hour.

2. Seller's Forecasting Submittal Requirements. In addition to complying with the forecasting requirements set forth in Exhibit I, Seller must provide to Buyer the Economic Curtailment Limit Schedule using the Web Client. If the Web Client becomes unavailable, Seller shall provide Buyer with the Economic Curtailment Limit Schedule by e-mail or by telephoning Buyer's Generation Operation Center, at the e-mail address or telephone number(s) listed in Exhibit N.
3. Procedure for Curtailment of the Power Product.
 - (a) If Buyer elects to curtail Seller's production of the Power Product on a date certain, then Buyer shall, by the later of (i) 2 p.m. PPT on the day prior to such date, and (ii) one hour after Buyer's receipt of the published IFM results for such date, provide a notice to Seller (the "Curtailment Notice") instructing Seller to curtail the production of the Power Product to the number of MWhs set forth in the Economic Curtailment Limit Schedule for each hour of such date; *provided, however*, that Buyer shall only provide the Curtailment Notice to Seller with respect to the hour(s) when the published IFM results indicate that (x) the hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto) is negative, or (y) the System Marginal Energy Cost for such hour(s) is negative (individually or collectively, the "Negative Pricing Hours").
 - (b) No later than one hour after Seller's receipt of the Curtailment Notice, Seller must provide a notice to Buyer (the "Seller's Curtailment Election Notice") informing Buyer that Seller shall either (i) curtail the Generating Facility's production of the Power Product to the number of MWhs for each hour set forth in the Curtailment Notice, or (ii) comply with the Seller's Day-Ahead Forecast during the Negative Pricing Hours. If Seller elects to comply with the Seller's Day-Ahead Forecast during the Negative Pricing Hours, the Seller's Curtailment Election Notice must also include Seller's pricing election, as further described in Section 4(b) of this Exhibit U.
4. Payment Obligations.
 - (a) If Seller elects in the Seller's Curtailment Election Notice to curtail Seller's production of the Power Product in accordance with Section 3(b)(i) of this Exhibit U,

and actually curtails the Generating Facility's production of the Power Product to the Economic Curtailment Limit Schedule, then Buyer shall pay the TOD Period Energy Payment for the quantity of MWhs of the Power Product in the Seller's Day-Ahead Forecast for the applicable Negative Pricing Hours.

- (b) If Seller elects in the Seller's Curtailment Election Notice to comply with the Seller's Day-Ahead Forecast during the Negative Pricing Hours in accordance with Section 3(b)(ii) of this Exhibit U, or to curtail the production of the Power Product for only a portion of the MWhs set forth in the Economic Curtailment Limit Schedule, then, for all deliveries of the Power Product by Seller in excess of the MWhs set forth in the Economic Curtailment Limit Schedule, Seller will not receive the TOD Period Energy Payment and shall select in the Seller's Curtailment Election Notice one of the two payment mechanisms set forth in Section 4(b)(i) or 4(b)(ii) of this Exhibit U for MWh produced in excess of the Economic Curtailment Limit Schedule, as follows:
- (i) If, during the Negative Pricing Hours:
- (A) The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto) is negative, then Seller shall be liable to Buyer for, and Buyer shall deduct from a subsequent Monthly Contract Payment, such negative hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto) for such Negative Pricing Hours; or
 - (B) The System Marginal Energy Cost is negative, then Seller shall be liable to Buyer for, and Buyer shall deduct from a subsequent Monthly Contract Payment, such negative System Marginal Energy Cost for such Negative Pricing Hours; or
 - (C) Sections 4(b)(i)(A) and 4(b)(i)(B) are both applicable, then Seller shall be liable to Buyer for, and Buyer shall deduct from a subsequent Monthly Contract Payment, the average of such negative System Marginal Energy Cost and such hourly negative Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as

applicable, or any successor thereto) for such Negative Pricing Hours;
or

- (ii) Buyer shall pay Seller for the Real-Time System Marginal Energy Cost for the number of MWhs of the Power Product delivered by Seller that is above the number of MWhs set forth in the applicable Economic Curtailment Limit Schedule for the applicable Negative Pricing Hours; *provided, however*, that Buyer's obligation to make such payment is capped at, and will not exceed the TOD Period Energy Price; *provided further*, that if such Real-Time System Marginal Energy Cost is negative, then Seller shall be liable to Buyer for, and Buyer shall deduct from a subsequent Monthly Contract Payment, such negative Real-Time System Marginal Energy Cost up to an amount equal to \$50.00 per MWh of the Power Product delivered by Seller that is above the number of MWhs set forth in the applicable Economic Curtailment Limit Schedule for the applicable Negative Pricing Hours.
- (c) If Seller does not make any pricing election in the Seller's Curtailment Election Notice, as set forth in Section 4(b) of this Exhibit U, then Seller shall receive the lower of the prices (including being liable to Buyer for any negative prices) determined pursuant to Sections 4(b)(i) or 4(b)(ii) of this Exhibit U.
- (d) If, after the completion of a calendar quarter, Buyer determines that Seller has not offered to curtail, pursuant to all Economic Curtailment Limit Schedules and corresponding Seller's Day-Ahead Forecasts provided by Seller for such calendar quarter, the total number of MWhs set forth in the Curtailment Period Cap table for the "On-Peak Period" or "Off-Peak Period", as applicable, in Section 1 of this Exhibit U for such calendar quarter, then Buyer shall multiply by \$50.00 the difference between (i) the number of MWhs that Seller has offered to curtail during such calendar quarter pursuant to all Economic Curtailment Limit Schedules and corresponding Seller's Day-Ahead Forecasts provided by Seller for such TOD Period in such calendar quarter, and (ii) the Curtailment Period Cap for such TOD Period in such calendar quarter, and Buyer shall deduct the resulting dollar amount from a subsequent Monthly Contract Payment.

*** End of Exhibit U ***

ATTACHMENT A – EXHIBIT 6

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

**Standard Contract for Qualifying Facilities with
a Power Rating that is Less than or Equal to 20MW**

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

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POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

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

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

RECITALS

- A. On or about September 20, 2007, the CPUC issued Decision (“D.”) 07-09-040 (the “Decision”) which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to Qualifying Facilities meeting the eligibility criteria set forth in the Decision.
- B. Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the “Settling Parties”) entered into CPUC-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.
- C. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the “Settlement Agreement”), which

resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.

- D. The Settlement Agreement became effective on [] (the “Settlement Effective Date”).
- E. The Settling Parties, pursuant to the Settlement Agreement, developed a form of standard contract for Qualifying Facilities having a Power Rating that is less than or equal to 20MW (the “PURPA Contract”).
- F. This Agreement is based upon the form of PURPA Contract developed by the Settling Parties in accordance with the Settlement Agreement.

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

ARTICLE ONE. SPECIAL CONDITIONS

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

In accordance with Sections 7 and 8 of the Settlement Agreement, before executing this Agreement, Seller must provide to Buyer anticipated Generating Facility operations estimates in order for Buyer to count this Agreement towards Buyer's GHG Emissions Reduction Target (as defined in the Settlement Agreement), which include reasonable estimates of (i) the total expected Useful Thermal Energy Output of the Generating Facility per Term Year, and (ii) the total expected electricity generation of the Generating Facility per Term Year. Buyer shall use such information as specified in Section 7 of the Settlement Agreement. }

1.01 Term.

- (a) The term of this Agreement (the "Term") commences on, or within 120 days before [Date]; *provided, however,* that Seller may change the date set forth in this Section 1.01(a) by providing Notice to Buyer at least one year before such date;
- (b) Seller shall provide Buyer with 30 days advance Notice confirming the exact date on which the Term commences, which date must be within the 120-day period set forth in Section 1.01(a) (the "Term Start Date");
- (c) The Term Start Date must occur on the first day of a calendar month;
- (d) The Term ends [Number of months] months after the Term Start Date (the "Term End Date"); and
- (e) Notwithstanding the proviso set forth in Section 1.01(a), the Term Start Date must occur within 60 months of the Effective Date, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit F.

{Buyer Comment: Select this Section 1.01 if Seller is a New Qualifying Facility. Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must be no more than 12 years. }

- (a) Subject to any extension of the Term Start Date pursuant to Section 11.2.1 of the Settlement Agreement, the term of this Agreement (the "Term") commences on [Date] (the "Term Start Date");

- (b) The Term ends [Number of months] months after the Term Start Date (the “Term End Date”);
- (c) The Term Start Date must occur on the first day of a calendar month;
- (d) Subject to any extension of the Term Start Date pursuant to Section 11.2.1 of the Settlement Agreement, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least one year before such Term Start Date; and
- (e) Notwithstanding Section 1.01(d), the Term Start Date must occur within 24 months of the Effective Date, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03).

{Buyer Comment: Select this Section 1.01 if Seller is an Existing Qualifying Facility. Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must be no more than 7 years. }

1.02 Generating Facility.

- (a) Name; Designation. The name of the Generating Facility is [Generating Facility name], which is [a New Qualifying Facility] [an Existing Qualifying Facility].
- (b) Location; Site. The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B.
- (c) Qualifying Facility Type. As of the Effective Date, the Generating Facility is a [“small power production facility”, as described in 18 CFR Part 292, Section 292.203(a)] [“topping-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(d)] [“bottoming-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(e)].
- (d) Contract Capacity. As set forth in the following table, Seller may elect (i) only Firm Contract Capacity, (ii) only As-Available Contract Capacity, or (iii) both Firm Contract Capacity and As-Available Contract Capacity:

Month	Monthly Firm Contract Capacity (kW)	As-Available Contract Capacity (kW/)	Net Contract Capacity (kW)
January	[]	[]	[]
February	[]	[]	[]
March	[]	[]	[]
April	[]	[]	[]
May	[]	[]	[]
June	[]	[]	[]

July	<input type="text"/>	<input type="text"/>	<input type="text"/>
August	<input type="text"/>	<input type="text"/>	<input type="text"/>
September	<input type="text"/>	<input type="text"/>	<input type="text"/>
October	<input type="text"/>	<input type="text"/>	<input type="text"/>
November	<input type="text"/>	<input type="text"/>	<input type="text"/>
December	<input type="text"/>	<input type="text"/>	<input type="text"/>

Firm Contract Capacity, As-Available Contract Capacity and Net Contract Capacity are subject to adjustment in accordance with Section 3.07(c) and, if the Generating Facility is a New Qualifying Facility or, as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing Qualifying Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, Section 3.13(b) and Exhibit C, as applicable.

Notwithstanding anything to the contrary set forth in this Agreement (including Section 3.07(c)), the Power Rating of the Generating Facility must not, from the Effective Date until the termination of this Agreement, exceed 20MW.

{ Buyer Comment: The Net Contract Capacity must equal the sum of Firm Contract Capacity and As-Available Contract Capacity, and cannot exceed PMax. }

- (e) Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals kWh. The Expected Term Year Energy Production may be revised in accordance with Section 3.07(c), or based on changes in the Site Host Load or the Site Host thermal requirements; *provided, however,* that such revision must be supported by a certification from a California-licensed professional engineer qualified to make a representation affirming that such revision is reasonable and based on (i) actual modifications to the Generating Facility performed or to be performed by Seller in accordance with and subject to Section 3.07(c), or (ii) changes in the Site Host Load or the Site Host thermal requirements. Such certification must include all data relied on to support the revised Expected Term Year Energy Production.

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

- 1.03 Delivery Point. The delivery point is the point of delivery of the Power Product to the CAISO Controlled Grid (the “Delivery Point”). Seller shall provide and convey to Buyer the Power Product from the Generating Facility at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point.
- 1.04 Capacity Performance Requirements. As further described in Exhibit D, if the Generating Facility elects to provide Firm Contract Capacity, then the Generating Facility must have a minimum Firm Contract Capacity performance requirement of 95% to earn

the Maximum Firm Capacity Payment and a minimum Capacity Performance Requirement of 60% to earn any portion of the Maximum Firm Capacity Payment.

1.05 Maintenance Outages; Major Overhaul.

- (a) The total Maintenance Debit Value for Maintenance Outages, as determined in accordance with Exhibit E, may not exceed 550 hours in the first Term Year. At the end of each Term Year following the first Term Year, up to a maximum of 50 unused hours may be carried over to the following Term Year. For each of the Term Years after the first Term Year, the total Maintenance Debit Value for Maintenance Outages may not exceed 550 hours plus hours carried over from prior Term Years; *provided, however*, that such Maintenance Debit Value may not exceed 600 hours in any Term Year.
- (b) If the Term is greater than or equal to five years, Seller may (i) request up to two Major Overhaul Allowances (in accordance with Exhibit E) of up to 750 total hours for each Major Overhaul, and (ii) schedule up to two Major Overhauls; *provided, however*, that the second Major Overhaul may not occur within 48 months after the completion of the first Major Overhaul and the Maintenance Debit Value for each Major Overhaul may not exceed 750 hours.
- (c) If Seller utilizes all of its Major Overhaul Allowance during a Major Overhaul, the remaining portion of the Major Overhaul may be converted to a Maintenance Outage as far as Maintenance Credit Value and Maintenance Debit Value are concerned; *provided, however*, that Seller submits a Notice to Buyer of such conversion within 60 days of the end of such Major Overhaul.
- (d) During the Peak Months, Seller may only schedule Maintenance Outages during the non-peak hours of such Peak Months, and the monthly Maintenance Debit Value for Maintenance Outages during the Peak Months may not exceed 12 non-peak hours per Peak Month. Such limitation is part of, and not in addition to, the annual limits as set forth in Section 1.05(a).

1.06 Power Product Prices.

- (a) Firm Capacity Price. The Firm Capacity Price equals \$91.97 per kW-year.
- (b) As-Available Capacity Price. The As-Available Capacity Price is set forth in Section 3 of Exhibit D.
- (c) TOD Period Energy Price. The TOD Period Energy Price is set forth in Section 2 of Exhibit D.

1.07 Requirements Applicable Solely to New Qualifying Facilities. If the Generating Facility is a New Qualifying Facility, the provisions of this Section 1.07 also apply to Seller.

- (a) Credit and Collateral Requirements.
- (i) Seller shall post and thereafter maintain the Development Security in accordance with Section 4(b) of Exhibit F.
- (ii) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 2(a) of Exhibit F, in an amount equal to [Option 1: 12 months of expected total Net Contract Capacity revenues] [Option 2: 12 months of expected total revenues] [Option 3: five percent of the expected total revenues] [Option 4: [As proposed by Seller, subject to Buyer's acceptance in its sole discretion]] of the Generating Facility under this Agreement (the "Performance Assurance Amount"). The initial Performance Assurance Amount equals \$[____]. The Performance Assurance Amount will be revised upon any change to the Expected Term Year Energy Production.

{Buyer Comment: Select one of the three options for posting Performance Assurance listed above. Alternatively, Seller may propose a fourth option for posting Performance Assurance, which is subject to Buyer's acceptance in its sole discretion.}

- (iii) Seller shall comply with all of the provisions of Exhibit F.
- (b) Seller's Guarantor; Guaranty Amount; Guarantor Cross Default Amount.
- (i) Seller's Guarantor, if any, is [Name of Guarantor]. Unless otherwise set forth in the immediately preceding sentence, the Guarantor set forth in this Section 1.07(b)(i) does not include any parent, subsidiary or Related Entity of Seller.
- (ii) Guarantor shall guarantee \$[Performance Assurance Amount x 1.25].
- (iii) The Guarantor Cross Default Amount, if any, equals \$[____].

{Buyer Comment: Guarantor Cross Default Amount must equal two percent of Guarantor's tangible net worth.}

- 1.08 Scheduling Coordinator Election. [Buyer][Seller][_____, an agent of Seller] is the Scheduling Coordinator under this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, Buyer must be the Scheduling Coordinator under this Agreement if the Generating Facility is an Existing Qualifying Facility and Seller intends to utilize the exemptions set forth in, and subject to, Sections 3.06(b) or 3.09(b).

*** End of Article One ***

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

- 2.01 Seller's Satisfaction of Obligations before the Term Start Date. Seller shall satisfy each of the following obligations before the Term Start Date:
- (a) The Generating Facility is a Qualifying Facility, subject to Section 3.17(c);
 - (b) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:
 - (i) Operate the Generating Facility;
 - (ii) Deliver electric energy from the Generating Facility to the Delivery Point; and
 - (iii) Schedule, or arrange for a third party or Buyer to Schedule, the electric energy produced by the Generating Facility with the CAISO;
 - (c) Seller's Scheduling Coordinator, as set forth in Section 1.08, is authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
 - (d) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in this Agreement;
 - (e) Seller furnishes to Buyer the insurance documents required under Section 9.11(c);
 - (f) Seller is in compliance with the CAISO Tariff as set forth in this Agreement;
 - (g) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;
 - (h) Seller furnishes to Buyer the documents required under Section 3.05;
 - (i) If Buyer is Scheduling Coordinator and the Generating Facility is PIRP-eligible, then the Generating Facility is certified as a PIRP resource by the CAISO; and

- (j) If the Generating Facility is a New Qualifying Facility, Seller has posted with Buyer the Performance Assurance Amount in accordance with Section 1.07 and Exhibit F.

2.02 Termination Rights of the Parties.

- (a) [Intentionally omitted.]
- (b) Termination Right of Seller. Seller has the right to terminate this Agreement if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any electric energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation.
- (c) Event of Default. In the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have under PURPA, or otherwise, to enter into any new mandatory must-purchase contract (including the Transition PPA, the QF PPA or the Optional As-Available PPA, as such terms are defined in the Settlement Agreement) to sell electric energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(c), "control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.
- (d) End of Term. This Agreement automatically terminates at 11:59 p.m. PPT on the Term End Date.

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

- (a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;
- (b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;

- (c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Section 4.03(b) for periods before termination of this Agreement within 30 days of Seller's receipt of such invoice;
- (d) The obligation of Buyer or Seller, as applicable, to make payments, if any, after the termination of this Agreement, as set forth in SRAC;
- (e) The obligation to make a Termination Payment, as set forth in Section 6.03;
- (f) The indemnity obligations, as set forth in Section 9.04;
- (g) The obligation of confidentiality, as set forth in Section 9.10;
- (h) The right to pursue remedies under Section 6.02(c);
- (i) The limitation of damages under Article Seven; and
- (j) If the Generating Facility is a New Qualifying Facility, the obligation of Seller to post Performance Assurance in accordance with Section 1.07 and Exhibit F.

*** End of Article Two ***

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product; Retained Benefits.

- (a) Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of the Product.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

{ Buyer Comment: The Settlement Agreement provides that Buyer shall be entitled to count the Green Attributes towards its RPS program goal, notwithstanding the modification of RPS non-modifiable language set forth in Section 3.01(b). }

- (c) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:
- (i) Cooperating with the Governmental Authority responsible for resource adequacy administration to certify the Generating Facility for resource adequacy purposes;
- (ii) Testing the Generating Facility as may be required to certify the Generating Facility for resource adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties;
- (iii) Committing to Buyer the Net Contract Capacity;
- (iv) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in WREGIS or other process recognized under Applicable Laws. With respect to WREGIS, at Buyer's option, Seller shall cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as these two terms are defined by WREGIS) for the Generating Facility;

- (v) Complying with all CAISO Tariff requirements applicable to a Resource Adequacy Resource; and
 - (vi) If Buyer is not the Scheduling Coordinator:
 - 1) Timely submitting, or causing Seller's Scheduling Coordinator to timely submit, Supply Plans to identify and confirm the Net Qualifying Capacity of the Generating Facility sold to Buyer as a Resource Adequacy Resource; and
 - 2) Causing the Generating Facility's Scheduling Coordinator to certify to Buyer, within 15 Business Days before the relevant deadline for any applicable RAR Showing or LAR Showing, that Buyer will be credited with the Net Qualifying Capacity of the Generating Facility for such RAR Showing or LAR Showing in the Generating Facility's Scheduling Coordinator's Supply Plan.
 - (d) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products. Subject to Seller's compliance with the applicable FERC rules and regulations, Seller may use, provide and convey any electric energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term Start Date.
- 3.02 Resource Adequacy Rulings. During the Term, Seller shall grant, pledge, assign and otherwise commit to Buyer the generating capacity of the Generating Facility associated with the Related Products in order for Buyer to use in meeting its resource adequacy obligations under any Resource Adequacy Ruling. Seller:
- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;
 - (b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and
 - (c) Shall take all reasonable actions (including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings) and execute all documents that are reasonable and necessary to effect the use of the generating capacity of

the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

3.03 Site Control.

- (a) Seller shall have Site Control as of the earlier of: (i) the Term Start Date, and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term. Seller shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.
- (b) If the Generating Facility is a New Qualifying Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

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

3.05 Transmission.

- (a) Interconnection Studies. Seller has provided Buyer with true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is 24 months before the Effective Date.
- (b) Seller's Responsibility. Seller shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

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

- (i) All required Interconnection Studies, facilities upgrades, and agreements;
- (ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;
- (iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and

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

3.06 CAISO Relationship.

- (a) Throughout the Term, Seller shall comply with all applicable provisions of the CAISO Tariff (including complying with any exemption obtained from the CAISO pursuant to the CAISO Tariff), as determined by the CAISO, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the applicable provisions of the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.06(a), if (i) the Generating Facility is an Existing Qualifying Facility, (ii) Buyer is the Scheduling Coordinator under this Agreement, and (iii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not installed one or more CAISO-Approved Meters for the Generating Facility on or before the Term Start Date, Seller will not be in breach of this Agreement with respect to such requirement to install CAISO-Approved Meter(s) if Seller installs such CAISO-Approved Meter(s) within 180 calendar days after the Effective Date; *provided, however*, that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement to install CAISO-Approved Meter(s) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to Seller's requirement that the CAISO-Approved Meters for the Generating Facility be installed on or before the Term Start Date, which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.
- (c) Buyer agrees that, subject to the limitation set forth in Section 3.06(b) and upon the CAISO's request, pending the installation of the CAISO-Approved Meter(s) by Seller for the Generating Facility, Buyer shall provide to the CAISO any settlement quality meter data reasonably requested by the CAISO for settlement purposes.

3.07 Generating Facility Modifications.

- (a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.
- (b) Seller shall provide 30 days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:
 - (i) Electric energy output by five percent of Expected Term Year Energy Production; or
 - (ii) The type of Primary Fuel consumed by the Generating Facility.
- (c) Material modifications to the Generating Facility will result in the Generating Facility becoming a New Qualifying Facility; *provided, however*, that a Generating Facility that is modified or repowered will not be considered a New Qualifying Facility and modifications or repowering is permitted under this Agreement without further consideration, other than Notices required under Section 3.07(b), if:
 - (i) Capacity added as a result of such modification or repower (including the addition of a steam turbine) over the Term is within the applicable MW limits set forth in the following table (for a Generating Facility with multiple turbines, the limits below are limits per turbine):

Current Turbine Name Plate on the Effective Date	Increase to Turbine Name Plate Over the Term
10MW or Less	5MW
Greater than 10MW but less than 20MW	10MW, subject to the 20MW Power Rating limitation, as set forth in Section 1.02.

Or,

- (ii) Such modification or repower is reasonably necessary to respond to a Force Majeure or a change in law or regulation, and a qualified California-licensed professional engineer verifies that such modification or repower is not oversized relative to other equipment on the market. Seller shall bear the cost of such professional engineer and Seller shall secure all studies and upgrades necessitated by or associated with such modification or repower.

- (d) Seller acknowledges that nothing in this Section 3.07 excuses Seller from any requirements of the CAISO's interconnection process or any other applicable interconnection process.
- (e) Seller is solely responsible for all GHG Compliance Costs and all other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification or repowering of the Generating Facility in accordance with this Section 3.07.

3.08 Metering.

- (a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements.
- (b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Generating Facility at a location designated by Seller or any other location mutually agreeable to the Parties. The Check Meter location must allow for the Check Meter to be interconnected with Buyer's communication network to permit:
 - (i) Periodic, remote collection of revenue quality meter data; and
 - (ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.09; *provided, however*, that the transmission of such meter data through the Telemetry System is permitted by the CAISO.

If the Generating Facility is a New Qualifying Facility providing Firm Contract Capacity, before commencement of the Capacity Demonstration Test, Buyer shall provide a Notice to Seller providing Seller with access to all Check Meters for all meter data through a secure internet website.

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

- (c) Use of Check Meter for Back-Up Purposes.
 - (i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.

- (ii) If the deviation between the CAISO-Approved Meter data (after adjusting (1) for all appropriate compensation and correction factors applied, if applicable, by the CAISO to the CAISO-Approved Meter, or (2) for any deviation that may result due to the CAISO-Approved Meter and Check Meter being physically situated in different locations) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.
- (iii) Each Party shall bear its own costs for any meter check or recertification.
- (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.
- (v) The Check Meter is intended to be used (1) for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and (2) in the event Seller has not installed the CAISO-Approved Meter, as further described in Section 3.06(b). Data from the Check Meter will only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, or in accordance with and subject to Section 3.06(b), in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is certified.

3.09 Telemetry System.

- (a) Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff provisions applicable to the Generating Facility. Seller has the right to request any exemption from such requirements from the CAISO so long as it is obtained pursuant to the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.09(a), if (i) the Generating Facility is an Existing Qualifying Facility, (ii) Buyer is the Scheduling Coordinator under this Agreement, and (iii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not complied with Section 3.09(a) on or before the Term Start Date, Seller will not be in breach of this Agreement if Seller fully complies with Section 3.09(a) within 180 calendar days after the Effective Date; *provided, however,* that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement set forth in Section 3.09(a) by complying with a

milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to the requirement set forth in Section 3.09(a), which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.

- (c) Buyer agrees that, subject to the limitation set forth in Section 3.09(b) and upon the CAISO's request, pending Seller compliance with Section 3.09(a), Buyer shall provide to the CAISO any telemetry data reasonably requested by the CAISO for operating information purposes.

3.10 Provision of Information.

- (a) Within 30 days after the Effective Date, Seller shall provide to Buyer (to the extent not already in Buyer's possession), subject to Section 9.10:
- (i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
 - (ii) Any currently operative filings at FERC, including any rulings, orders or other pleadings or papers filed by FERC, concerning the qualification of the Generating Facility as a Qualifying Facility;
 - (iii) Any Permits reasonably requested by Buyer concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;
 - (iv) Each of the following engineering documents for the Generating Facility:
 - 1) Site plan drawings;
 - 2) Electrical one-line diagrams;
 - 3) Control and data acquisition details and configuration documents;
 - 4) Major electrical equipment specifications;
 - 5) Process flow diagrams;
 - 6) Piping and instrumentation diagrams;
 - 7) General arrangement drawings; and

- 8) Aerial photographs of the Site, if any; and
 - (v) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer.
 - (b) If applicable and subject to Section 9.10, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.
 - (c) Subject to Section 9.10 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, which commercially reasonable efforts shall, at a minimum, include providing Buyer with all documentation regarding the operational characteristics or past performance of the Generating Facility if such documentation is requested by the CPUC.
- 3.11 Progress Reporting. If the Generating Facility is a New Qualifying Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule.
- No later than the 10th day of each month while Seller has not yet met one or more milestones set forth in the Milestone Schedule, and within five days of Buyer's request, Seller shall, in accordance with Exhibit H, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule.
- Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (and the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.
- 3.12 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing or demonstration of the Generating Facility.
- 3.13 Capacity Demonstration Tests; Resource Adequacy Demonstrations.
- (a) If the Generating Facility provides only Firm Contract Capacity and is (i) a New Qualifying Facility, or (ii) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing Qualifying Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall complete the Capacity Demonstration Test in accordance with Exhibit C. To the

extent the Firm Contract Capacity set forth in Section 1.02(d) on the Effective Date and the Firm Contract Capacity demonstrated in accordance with Exhibit C are different, Section 1.02(d) will be adjusted to reflect the Firm Contract Capacity demonstrated in accordance with and subject to the limitations set forth in Exhibit C. The Reportable Capacity determined pursuant to Section 10 of Exhibit C will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.

- (b) If the Generating Facility provides only As-Available Contract Capacity and is (i) a New Qualifying Facility, or (ii) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing Qualifying Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall, on or before the Firm Operation Date, satisfy the Capacity Demonstration Test by delivering to Buyer a certificate, including all supporting data, from a qualified independent California-licensed professional engineer (the "As-Available Contract Capacity Confirmation Certificate"), which As-Available Contract Capacity Confirmation Certificate must set forth (x) the As-Available Contract Capacity, and (y) the Reportable Capacity, in each case as demonstrated to and determined by such engineer. To the extent the As-Available Contract Capacity set forth in Section 1.02(d) on the Effective Date and the As-Available Contract Capacity set forth in the As-Available Contract Capacity Confirmation Certificate are different, Section 1.02(d) will be adjusted to reflect the As-Available Contract Capacity set forth in the As-Available Contract Capacity Confirmation Certificate. The Reportable Capacity set forth in the As-Available Contract Capacity Confirmation Certificate will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.
- (c) If the Generating Facility provides both Firm Contract Capacity and As-Available Contract Capacity, and is (i) a New Qualifying Facility, or (ii) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing Qualifying Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall comply with each of the requirements set forth in Sections 3.13(a) and 3.13(b). The Firm Contract Capacity, the As-Available Contract Capacity and the Net Contract Capacity are subject to adjustment in accordance with Exhibit C. The Reportable Capacity determined pursuant to Section 3.13(b) above and Section 10 of Exhibit C will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.
- (d) Seller shall comply with any demonstration required for Resource Adequacy Rulings; *provided, however*, if such demonstrations could interfere with the operations of Seller, Seller shall be entitled to challenge such requirements with

the CPUC or other relevant agency. Absent a ruling or other action granting a stay, compliance shall be required pending resolution of the challenge.

3.14 Operation and Record Keeping. Seller shall:

- (a) Operate the Generating Facility in accordance with Prudent Electrical Practices;
- (b) Comply with the Forecasting requirements, as set forth in Exhibit I;
- (c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit I;
- (d) Pay all CAISO Charges, as set forth in Exhibit J;
- (e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit K;
- (f) Comply with the Maintenance Outage scheduling procedures, as set forth in Exhibit E;
- (g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit R;
- (h) Use reasonable efforts to deliver the maximum possible quantity of As-Available Contract Capacity and associated electric energy during an Emergency Condition or a System Emergency;
- (i) Use reasonable efforts to reschedule any outage that occurs during an Emergency Condition or a System Emergency;
- (j) Keep a daily Operating log for the Generating Facility that includes information on availability, outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including:
 - (i) Real and reactive power production;
 - (ii) Changes in Operating status;
 - (iii) Protective apparatus operations; and
 - (iv) Any unusual conditions found during inspections;
- (k) Keep all Operating records required of a Qualifying Facility by any applicable CPUC order as well as any additional information that may be required of a

Qualifying Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;

- (l) Provide copies of all daily Operating logs and Operating records to Buyer within 20 days of a Notice from Buyer;
- (m) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;
- (n) Pay all Scheduling Fees, as set forth in Exhibit G;
- (o) [Intentionally omitted]
- (p) Register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register by the NERC;
- (q) Maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with the NERC Reliability Standards applicable to protection systems for electric generators if Seller is required to maintain such documentation by the NERC;
- (r) If Buyer is Scheduling Coordinator, then at least 30 days before the Term End Date, or in accordance with Section 7(a) of Exhibit G, or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and
- (s) If Buyer is not Scheduling Coordinator:
 - (i) Cause its Scheduling Coordinator to submit a Self-Schedule of Seller's Day-Ahead Forecast associated with the Generating Facility through the IFM; Seller shall then submit the quantity associated with the Self-Schedule of Seller's Day-Ahead Forecast as a Physical Trade to Buyer in the IFM, specifying the generating resource identifier and all other CAISO-required Inter-SC Trade attributes;
 - (ii) Cause its Scheduling Coordinator to submit the IFM Day-Ahead Schedule quantity associated with the Generating Facility as an Inter-SC Trade of IFM Load Uplift Obligation to Buyer to be cleared through the Real-Time Market, specifying all CAISO-required Inter-SC Trade attributes; and

- (iii) Make available to Buyer all CAISO settlement data with respect to the Generating Facility required to validate payments made under this Agreement.

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

- (a) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the CAISO, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when the CAISO orders curtailment and the Scheduling Coordinator implements such curtailment in compliance with the CAISO Tariff or applicable orders to avoid or address a declared System Emergency.
- (b) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when curtailment of the Power Product is required to comply with:
 - (i) A CAISO curtailment declared pursuant to Section 3.15(a) or Transmission Provider declared Emergency Condition, subject to the interconnection agreement between Seller and the Transmission Provider; or
 - (ii) Transmission Provider's maintenance requirements, subject to the interconnection agreement between Seller and the Transmission Provider.
- (c) Notwithstanding the above, except as may be required in order to respond to any Emergency Condition or System Emergency, Buyer shall, consistent with FERC Order 888 and the interconnection agreement between Seller and the Transmission Provider and with the applicable provisions of the CAISO Tariff:
 - (i) Use reasonable good faith efforts to coordinate Transmission Provider's curtailment needs with Seller to the extent it can influence such needs; or
 - (ii) Request the Transmission Provider and CAISO limit the curtailment duration.
- (d) If Seller has entered into a QF PGA or PGA with the CAISO, or an interconnection agreement, the terms of the applicable QF PGA or PGA and the applicable interconnection agreement with respect to CAISO or Transmission Provider curtailments, shall govern the rights and obligations of Buyer and Seller to the extent any provision of this Section 3.15 is inconsistent with such applicable QF PGA or PGA, and interconnection agreement.

- (e) In the event Seller interconnects with a Person other than the CAISO, Seller shall adhere to any reliability curtailment order by such Person pursuant to the applicable tariff provisions of such Person.

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

- (a) Maintenance Outages;
- (b) Major Overhauls;
- (c) CAISO or Transmission Provider-ordered curtailments;
- (d) Force Majeure; or
- (e) Forced Outages.

3.17 FERC Qualifying Facility Status.

- (a) If the Generating Facility is a "qualifying cogeneration facility", as contemplated in 18 CFR Section 292.205, then within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, Seller shall provide to Buyer:
 - (i) Subject to Section 9.10, a completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit T-1, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and
 - (ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such order from the FERC.
- (b) If Generating Facility is a "qualifying small power production facility", as contemplated in 18 CFR Section 292.203, then within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, Seller shall provide to Buyer:

- (i) Subject to Section 9.10, a completed copy of Buyer's "Fuel Use Standards – Small Power Producer Data Reporting Form", substantially in the form of Exhibit T-2, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying small power production facility fuel use standards set forth in 18 CFR Part 292, Section 292.204, "Criteria for Qualifying Small Power Production Facilities", for the applicable year; and
 - (ii) A copy of a FERC order waiving for the Generating Facility, the applicable operating and fuel use standards for qualifying small power production facilities, as contemplated in 18 CFR Part 292, Section 292.204, "Criteria for Qualifying Small Power Production Facilities", for the applicable year, if Seller has received such order from the FERC.
- (c) Seller shall take all necessary steps, including making or supporting timely filings with the FERC in order to maintain, or obtain a FERC waiver of, the Qualifying Facility status of the Generating Facility throughout the Term; *provided, however*, that this obligation does not apply to the extent Seller is unable to maintain Qualifying Facility status using commercially reasonable efforts because of (i) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting the Qualifying Facility status of the Generating Facility occurring after the Effective Date.

The term "commercially reasonable efforts" in this Section 3.17(c) does not require Seller to pay or incur more than \$20,000 multiplied by the number of Term Years in the Term.

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

- (a) Interconnect with the Transmission Provider's electric system;
- (b) Transmit and deliver electric energy to the Delivery Point; or
- (c) Own and operate any CAISO-Approved Meter.

3.19 Buyer's Access Rights.

- (a) Upon providing at least one Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to

escorted access to the Generating Facility during regular business hours for:

- (i) Any purpose reasonably connected with this Agreement;
 - (ii) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or
 - (iii) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.
- (b) Seller shall promptly provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request. Seller shall promptly inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.20 Seller Financial Information.

- (a) The Parties shall determine, through consultation and review with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then:
- (i) Within 20 days following the end of each year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from

Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist.

If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after those statements are issued.

- (ii) Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period.

The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance GAAP, the International Financial Reporting Standards ("IFRS"), or any successor to either of the foregoing ("Successor"), the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.

- (c) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer.

If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(c) determines a material weakness or

significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; *provided, however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:
- (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.10(a)(vi) and 9.10(a)(vii); and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20, (2) use such information solely for purposes of conducting the audits described in this Section 3.20, and (3) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 3.20(a), then such dispute shall be subject to review by another

independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may declare an Event of Default pursuant to Section 6.01. If Buyer's independent audit firm, after the review by the third independent audit firm still determines that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided, however*, that in addition to the protections in Section 3.20(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

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

Notwithstanding anything to the contrary set forth in this Section 3.21 and subject to the indemnity obligations set forth in Section 9.04(h), each Party acknowledges that such Party's performance of the Generator Operator Obligations or Generator Owner Obligations may not satisfy the requirements for self-certification or compliance with the NERC Reliability Standards, and that it shall be the sole responsibility of each Party to implement the processes and procedures required by the NERC, the WECC, the CAISO, or a Governmental Authority in order to comply with the NERC Reliability Standards.

If Buyer is Seller's Scheduling Coordinator, Buyer as Scheduling Coordinator will reasonably cooperate with Seller to the extent necessary to enable Seller to comply and for Seller to demonstrate Seller's compliance with the NERC Reliability Standards referenced above. Buyer's cooperation will include providing to Seller, or such other Person as Seller designates in writing, information in Buyer's possession that Buyer as Scheduling Coordinator has provided to the CAISO related to the Generating Facility or actions that Buyer has taken as Scheduling Coordinator related to Seller's compliance with the NERC Reliability Standards referenced above (e.g., Seller's notices and updates provided by Buyer to the CAISO via SLIC). Buyer may, in its reasonable discretion (depending upon the quantity of information requested by Seller and the timeframe established by Seller for compliance), comply with the requirement to provide

information set forth in the previous sentence, by making such information available for inspection by Seller or by providing responsive summaries or excerpts of same, so long as the foregoing enables Seller to comply with the NERC Reliability Standards. In addition, Buyer may redact any information or data that is confidential to Buyer from materials or information to be supplied to Seller.

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges.

- (a) If Buyer is the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Buyer and for Buyer's account and any Non-Availability Charges will be the responsibility of Buyer and for Buyer's account.
- (b) If Buyer is not the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

3.23 Seller's Reporting Requirements.

- (a) Seller shall comply with the reporting requirements set forth in SRAC.
- (b) Seller shall deliver to Buyer, on or before the 10th Business Day following receipt of a Notice from Buyer, such information that Buyer is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Buyer otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Three ***

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit D.

4.02 Payment Adjustments.

- (a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:
 - (i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit G;
 - (ii) Any SDD Adjustment, as set forth in Exhibit K;
 - (iii) Any Forecast penalties owed by Seller to Buyer, as set forth in Exhibit I;
 - (iv) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit J;
 - (v) Any Physical Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit L;
 - (vi) Any SC Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit M;
 - (vii) Any payment adjustments (including adjustments to CAISO Charges) provided for under this Agreement;
 - (viii) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02;
 - (ix) The agreement of the Parties that Buyer shall have no liability to make any energy payments to Seller for any electricity deliveries from the Generating Facility in a Term Year that exceed 120% of Expected Term Year Energy Production; and
 - (x) Any payment adjustments provided for to determine Buyer's payment to Seller for GHG Compliance Costs and GHG Charges under SRAC.
- (b) Unless otherwise required in SRAC, during the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate payment adjustments.

- (c) Unless otherwise required in SRAC, after the Term End Date, Buyer shall invoice Seller for all payment adjustments within 60 days of Buyer's receipt of all of the information required in order to calculate payment adjustments.

4.03 Payment Statement and Payment.

- (a) No later than 30 days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:
 - (i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:
 - 1) Seller's Energy Forecast;
 - 2) Seller's Day-Ahead Forecast;
 - 3) Metered Energy;
 - 4) Metered Amounts;
 - 5) The final Buyer Energy Schedule; and
 - 6) The final Buyer Parent Energy Schedule.
 - (ii) A statement showing:
 - 1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);
 - 2) A calculation of the Monthly Contract Payment, as set forth in Exhibit D;
 - 3) A calculation of any payment adjustments pursuant to Section 4.02; and
 - 4) A calculation of the net dollar amount due for the month.
 - (iii) Buyer's payment to Seller, in accordance with Section 9.16, in the net dollar amount owed to Seller for the month (less any overpayments by Buyer of Seller's GHG Compliance Costs or GHG Charges under Section 4.04 in any calendar month); *provided, however*, in the event the statement shows a net amount owed to Buyer, Seller shall pay such amount within 20 days of the statement date or, if Seller fails to make such payment,

Buyer may offset this amount from a subsequent Monthly Contract Payment.

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

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

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

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

- (c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:
- (i) Under this Agreement; or
 - (ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.
- (d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within 45 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 45-day period, Seller shall have an additional 90 days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

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

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

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

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

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

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

- 4.04 GHG Compliance Costs. Buyer shall pay for Seller's GHG Compliance Costs and GHG Charges as set forth in SRAC; *provided, however*, that notwithstanding anything to the contrary set forth in this Agreement or SRAC, in no event will Buyer pay for any of Seller's GHG Compliance Costs or GHG Charges to the extent that such GHG Compliance Costs or GHG Charges are associated with deliveries of the Power Product that are in excess of 120% of the Expected Term Year Net Energy Production in any Term Year.
- 4.05 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:
- (a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;
 - (b) The Generating Facility complies with any Applicable Laws; or
 - (c) The Generating Facility will be able to meet the terms of this Agreement.

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

4.06 Buyer's Responsibility. Buyer shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point.

4.07 Buyer's Reporting Requirements. Buyer shall deliver to Seller, on or before the 10th Business Day following receipt of a Notice from Seller, such information as Seller is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Seller otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Four ***

ARTICLE FIVE. FORCE MAJEURE

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

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

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

- (a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

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

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

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

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

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

*** End of Article Five ***

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

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

- (a) With respect to either Party (a “Defaulting Party”):
 - (i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not:
 - 1) Remedied within 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or
 - 2) Capable of a cure, but the Non-Defaulting Party’s damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within 10 Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;
 - (ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;
 - (iv) A Party becomes Bankrupt; or
 - (v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations

of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

- (b) With respect to Seller's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):
- (i) Any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within 10 Business Days after Notice from Buyer to Seller;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure is not remedied within five Business Days after Notice from Buyer to Seller;
 - (iii) A Guarantor becomes Bankrupt and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Guarantor Cross Default Amount, which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (v) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (vi) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller; or
 - (vii) If the Guarantor fails to maintain a Credit Rating of at least (1) BBB- from S&P, Baa3 from Moody's, and BBB- from Fitch, if Guarantor is rated by all three ratings agencies, (2) the lower of BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch if Guarantor is rated by only two of the three ratings agencies, or (3) BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch if Guarantor is rated by only one of the ratings agency, and

replacement credit support is not provided within 10 Business Days after Notice from Buyer to Seller.

- (c) With respect to Seller:
- (i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.03(a), and Seller has not cured a failure with respect to Section 3.03(a) within 30 days after providing Notice to Buyer in accordance with Section 3.03(a);
 - (ii) If Seller abandons the Generating Facility (for purposes of this Section 6.01(c)(ii), Seller will be deemed to have abandoned the Generating Facility if Seller has ceased work on the Generating Facility or the Generating Facility has ceased production and delivery of the Product for a consecutive thirty (30) day period and such cessation is not a result of an event of Force Majeure);
 - (iii) Except as provided for in Section 3.01(d), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);
 - (iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;
 - (v) Seller removes from the Site equipment upon which the Net Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five Business Days after Notice from Buyer to Seller;
 - (vi) [Intentionally omitted]
 - (vii) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

- (viii) Seller fails to make all reasonable efforts to increase the Power Output from the Generating Facility to the Firm Contract Capacity during an Emergency Condition or a System Emergency;
- (ix) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Sections 3.20(b)(i) and (ii), and such failure is not remedied within 10 days after Notice from Buyer to Seller;
- (x) Seller fails to remediate any material weakness or significant deficiency in internal controls over financial reporting in accordance with Section 3.20(c), and such failure is not remedied within 90 days after Notice from Buyer to Seller;
- (xi) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within 10 days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;
- (xii) [Intentionally omitted]
- (xiii) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within 30 days after Notice from Buyer to Seller;
- (xiv) If Seller materially modifies or repowers the Generating Facility (except as provided in Section 3.07(c)):
 - 1) Without Buyer's prior written consent; or
 - 2) For modifications or repowerings that have the effect of converting the Generating Facility to a New Qualifying Facility, Seller does not follow the terms of this Agreement with respect to all obligations and requirements applicable to New Qualifying Facilities;

- (xv) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller; or
- (xvi) If the Generating Facility is a New Qualifying Facility:
 - 1) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit F and such failure is not cured within five Business Days after Notice is provided by Buyer to Seller;
 - 2) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender without Buyer's consent, which consent may not be unreasonably withheld, delayed or conditioned;
 - 3) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit F and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller;
 - 4) Seller fails to post and maintain the Performance Assurance Amount pursuant to Section 2 of Exhibit F and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller;
 - 5) The occurrence and continuation of a default, event of default or other similar condition or event under any loan agreement with any Lender, or any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness under those agreements or instruments becoming immediately due and payable; *provided, however*, if Seller, Buyer and a Lender have entered into a Collateral Assignment Agreement with substantially the provisions set forth in Section 9.06, and the terms of such Collateral Assignment Agreement conflict or are inconsistent with this Section 6.01(c)(xvi)(5), the provisions of the Collateral Assignment Agreement control;
 - 6) The occurrence and continuation of a default, event of default or other similar condition or event under any power purchase agreement between Buyer and Seller (other than this Agreement) or under any other related agreement or instrument with or for the benefit of Buyer; or

7) Subject to Section 3.17(c), the Generating Facility (A) is not designed and constructed so as to satisfy all of the requirements applicable to a Qualifying Facility, or (B) fails to maintain its status as a Qualifying Facility during the Term; or

(xvii) If the Generating Facility is an Existing Qualifying Facility, then, at anytime on or, subject to Section 3.17(c), after the Effective Date, the Generating Facility fails to maintain its status as a Qualifying Facility.

6.02 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Collateral Assignment Agreement agreed upon by Buyer, Seller and Lender in accordance with Section 9.06. The Party taking the default (the "Non-Defaulting Party") will have the right to:

- (a) Designate by Notice to the Defaulting Party a date, no later than 20 days after the Notice is effective, for the early termination of this Agreement (an "Early Termination Date");
- (b) Immediately suspend performance under this Agreement; and
- (c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

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

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

The Parties shall negotiate to resolve any disputes regarding the calculation of the Termination Payment and Forward Settlement Amount. Any disputes which the Parties

ID #[Number], [Seller's Name]

are unable to resolve through negotiation may be submitted for resolution through the dispute resolution procedure in Article Ten.

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

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

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

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

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.04, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE

ID #[Number], [Seller's Name]

DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

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

ARTICLE EIGHT. GOVERNMENTAL CHARGES

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

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

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

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

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

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

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

Nothing stated in this Section 8.02 relieves Buyer of its obligation to pay Seller for Seller's GHG Compliance Costs and GHG Charges in accordance with and subject to SRAC and this Agreement.

8.03 Providing Information to Taxing Governmental Authorities. To the extent required by Applicable Law and subject to Section 9.10(b), each Party shall provide information concerning the Generating Facility to any requesting taxing Governmental Authority.

*** End of Article Eight ***

ARTICLE NINE. MISCELLANEOUS

9.01 Representations, Warranties and Covenants.

- (a) On the Effective 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) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;
 - (iii) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
 - (iv) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Related Entities, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;
 - (v) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;
 - (vi) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
 - (vii) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and
 - (viii) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.
- (b) On the Effective Date:
- (i) Each Party covenants to the other Party that, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

- (ii) If Section 1.02(a) provides that the Generating Facility is an Existing Qualifying Facility, then, Seller represents and warrants to Buyer that the Generating Facility qualifies as an Existing Qualifying Facility.

9.02 Additional Covenants by Seller. Seller covenants to Buyer that:

- (a) It will have Site Control as of the earlier of (i) the Term Start Date and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;
- (b) Throughout the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;
- (c) Throughout the Term, it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person;
- (d) Throughout the Term, it will hold the rights to all of the Product, subject to the terms of this Agreement;
- (e) If Section 1.02(a) provides that the Generating Facility is a New Qualifying Facility, then, subject to Section 3.17(c), (i) the Generating Facility will be designed and constructed so as to satisfy all of the requirements applicable to a Qualifying Facility, and (ii) during the Term, the Generating Facility will maintain its status as a Qualifying Facility.
- (f) If Section 1.02(a) provides that the Generating Facility is an Existing Qualifying Facility, then, subject to Section 3.17(c), from the Effective Date until the Term End Date, the Generating Facility will maintain its status as a Qualifying Facility;
- (g) Throughout the Term, it will not (1) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except, if Buyer is not Scheduling Coordinator, as may relate to transactions in the Real-Time Market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);
- (h) Upon Buyer's request, Seller shall provide to Buyer documentation evidencing the Generating Facility's contribution to Buyer's compliance with the GHG EPS; and

- (i) Seller shall comply with all (i) applicable cap-and-trade programs for the regulation of Greenhouse Gas, as established by any Governmental Authority pursuant to federal or state legislation, and (ii) other applicable programs regulating Greenhouse Gas emissions.

9.03 Additional Representations, Warranties, and Covenants Applicable to Renewable Small Power Production Facilities. If the Generating Facility is a small power production facility, as set forth in Section 1.02(c), that utilizes a technology referenced in Section 399.12 of the California Renewables Portfolio Standard, then:

- (a) 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.

- (b) 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 term “commercially reasonable efforts” in Sections 9.03(a) and 9.03(b) does not require Seller to pay or incur more than \$20,000 multiplied by the number of Term Years in the Term.

- (c) 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.

9.04 Indemnity.

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

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

- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01, Section 9.02 and Section 9.03.
- (c) The provisions of this Section 9.04 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 9.11, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 9.11.

The inclusion of this Section 9.04(d) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 9.11.

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

- (f) Seller shall defend, save harmless and indemnify Buyer against any increase in GHG Compliance Costs and other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification or repowering of the Generating Facility in accordance with Section 3.07.
- (g) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02, with the exception of the obligations set forth in Section 3.01(c)(vi).
- (h) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.
- (i) All indemnity rights will survive the termination of this Agreement for 12 months.

9.05 Assignment.

- (a) With Consent. Subject to Section 9.05(b), Seller may not transfer or assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent will not be unreasonably withheld. For purposes of this Section 9.05, Buyer will not withhold its consent to an indirect change of control of Seller if Seller demonstrates to Buyer's reasonable satisfaction that Seller shall continue to perform its obligations under this Agreement as if no such indirect change of control had occurred.

- (b) Without Consent. Notwithstanding anything to the contrary set forth in Section 9.05(a):
- (i) Seller may, without the consent of Buyer (and without relieving itself from liability hereunder): (1) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with Section 9.06; or (2) transfer or assign this Agreement to an Related Entity of Seller, which Related Entity's creditworthiness is equal to or higher than that of Seller; and
 - (ii) Seller does not need to obtain Buyer's consent to any change of control described in this Section 9.05 if such change of control results from a purchase of the outstanding shares of a publicly traded company.

9.06 Consent to Collateral Assignment. Subject to the provisions of this Section 9.06, Seller may (but is not obligated to) assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

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

- (a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable cure period specified in Article VI, constitute an Event of Default (an "Incipient Event of Default");
- (b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;
- (c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.06(g)) provide to Buyer a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

- (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
 - (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;
- (d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;
- (e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender's intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.06(a). In addition, such cure period may, in Buyer's reasonable discretion, be extended by no more than an additional 180 days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Lender has commenced foreclosure proceedings within 60 days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed 180 days after Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;
- (f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;
- (g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;

- (h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided, however*, that Lender (or such Person) shall have no liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date (but this provision may not be interpreted to limit Buyer's rights to proceed against Seller as a result of an Event of Default) and Lender's (or such Person's) liability to Buyer after such assumption shall be limited to its interest in the Generating Facility; *provided further*, that before such assumption, if Buyer advises Lender (or such Person) that Buyer will require that Lender (or such Person) cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such Person takes title in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Event(s) of Default, then Lender (or such Person) at its option and in its sole discretion may elect to either (i) cause such Incipient Event(s) of Default or Event of Default to be cured, or (ii) not assume this Agreement;
- (i) If Lender has assumed this Agreement as provided in Section 9.06(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Related Entity of Lender or an Related Entity of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is Lender, Seller, an Related Entity of Lender or an Related Entity of Seller). Lender shall be released from all further obligations under the Agreement and all related documents following such assumption. Such sale or transfer (excluding a foreclosure) may be made only to a Person reasonably acceptable to Buyer; and
- (j) If this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith and if Lender or its representative or designee, directly or indirectly, takes title to the Generating Facility, then, at the request of either Buyer or Lender, Buyer and Lender (or its designee or representative) shall promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the term that would have been remaining under this Agreement, provided that Lender's (or its designee's or representative's) liability under such new agreement shall be limited to its interest in the Generating Facility and neither Lender (or its designee or representative) nor Buyer shall

have any personal liability to the other for any amounts owing and neither Buyer nor Lender (or its designee or representative) shall have any obligation to cure any defaults under the original Agreement that was rejected in, or otherwise terminated in connection with Seller's Bankruptcy.

9.07 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

9.08 Notices. All Notices shall be provided as specified in Exhibit N. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 9.08 are deemed given as follows:

- (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;
- (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;
- (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date;
- (d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;
- (e) A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith; and
- (f) All Notices for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.09 General.

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

- (b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.
- (d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.
- (f) The term “including” when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.
- (g) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to “Articles”, “Sections” and “Exhibits” refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to “Articles” or “Sections” in Exhibits A through T-2 refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.
- (i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.
- (j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties or between or among Seller, the CAISO

and the Transmission Provider, covering transmission, distribution, metering, scheduling or interconnection of electric energy (including the PGA and QF PGA). In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.

- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.
- (m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.
- (n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

9.10 Confidentiality.

- (a) Neither Party may disclose any Confidential Information to a third party, other than:
 - (i) To such Party’s employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
 - (ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however,* that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further,* that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;

- (iii) To Buyer's Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer's Procurement Review Group;
 - (iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, to the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;
 - (v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.10(a)(vi);
 - (vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC;
 - (vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement; and
 - (viii) As may reasonably be required to participate in WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Related Products.
- (b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.10(a)(vi) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may not be (x) prohibited from complying with a Disclosure Order, or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of any terms or conditions of this Agreement which are the subject of such Disclosure Order.

- (c) Except as provided in clause (y) of Section 9.10(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.10.

9.11 Insurance.

- (a) As of the Effective Date and throughout the Term (and for such additional periods as may be specified in this Section 9.11), Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified in this Section 9.11, and such additional coverage as may be required by Applicable Law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-:VII. The minimum insurance requirements specified in this Section 9.11 do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller's defense and indemnity obligations.

- (i) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;
- (ii) Employer's Liability Insurance with limits of not less than:
 - 1) Bodily injury by accident – One Million dollars (\$1,000,000) each accident;
 - 2) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit; and
 - 3) Bodily injury by disease – One Million dollars (\$1,000,000) each employee; and
- (iii) Commercial General Liability Insurance, (which, except with the prior written consent of Buyer and subject to Sections 9.11(a)(ii)(1) and (2), shall be written on an "occurrence," not a "claims-made" basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than one million dollars (\$1,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.

If Seller elects, with Buyer's written concurrence, to use a "claims made" form of Commercial General Liability Insurance, then the following additional requirements apply:

- 1) The retroactive date of the policy must be prior to the Effective Date; and

- 2) Either the coverage must be maintained for a period of not less than four years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four years after the Agreement terminates.
- (iv) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.
- (v) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than \$10,000,000 per occurrence and in the annual aggregate. The insurance requirements of this Section 9.11 can be provided by any combination of Seller's primary and excess liability policies.
- (b) The insurance required in Section 9.11(a) apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Applicable Law, Seller and its insurers are required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, ownership or Operation of the Generating Facility.
- (c) At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required in this Section 9.11, written on forms and with deductibles reasonably acceptable to Buyer. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide Buyer with at least 30 days' prior written notice in the event of cancellation of coverage. Buyer's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, does not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements

in this Section 9.11 and does not constitute a waiver of any of the requirements in this Section 9.11.

- (d) If Seller fails to comply with any of the provisions of this Section 9.11, Seller, among other things and without restricting Buyer's remedies under the Applicable Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
- (e) Seller has the right to self-insure to comply with Seller's obligations under this Section 9.11. The insurance carrier or carriers and form of policy (including any deductible amount), or any plan for self-insurance shall be subject to review and approval by Buyer, which approval may not be unreasonably withheld, conditioned or delayed.

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

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

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

9.14 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation

capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

- 9.15 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.
- 9.16 Payments. Payments to be made under this Agreement shall be made, at Seller’s option, by check or electronic wire funds transfer.
- 9.17 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.03, or 9.10 (and, if applicable, Section 4(e) of Exhibit F) in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

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

*** End of Article Nine ***

ARTICLE TEN. DISPUTE RESOLUTION

10.01 Dispute Resolution. Other than requests for provisional relief under Section 9.17, any and all disputes, Claims or controversies arising out of, relating to, concerning, or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement ("Disputes"), which Disputes the Parties have been unable to resolve by informal methods, will first be submitted to mediation in accordance with the procedures described in Section 10.02, and if the Dispute is not resolved through mediation, then for final and binding arbitration in accordance with the procedures described in Section 10.03.

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

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

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

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

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

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

The Parties will cooperate with one another in selecting the Arbitrator within 60 days after Notice of the demand for arbitration and will further cooperate in scheduling the

arbitration to commence no later than 180 days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

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

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

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

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

{Buyer Comment: For PG&E, insert San Francisco; for SDG&E, insert San Diego; and for SCE, insert Los Angeles.}

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within 30 days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;

- (e) Discovery will be limited to 25 document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;
- (g) Within 60 days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within 30 days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.03 or 9.10 (and, if applicable, Section 4(e) of Exhibit F).

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

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

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

*** End of Article Ten ***

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

[SELLER'S NAME],

[BUYER'S NAME],

a [Seller's business registration]

a California corporation

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
Definitions

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

“20-Day Demonstration” has the meaning set forth in Section 2 of Exhibit C.

“Agreement” has the meaning set forth in the Preamble.

“Allowed Firm Energy” is determined in Section 3(l) of Exhibit D.

“Allowed Hourly Energy”, or “E”, is determined in Section 3(f) of Exhibit D.

“Allowed Payment Energy”, or “APE”, is determined in Section 2(c) of Exhibit D.

“Ambient Factors” mean those particular corrections for actual ambient conditions being different from specified ambient conditions that are to be applied to the Demonstrated Rate of Metered Energy or Power Output during a Capacity Demonstration Test pursuant to Exhibit C, as defined in a written agreement between the Parties and as further explained in Section 9 of Exhibit C.

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

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

“Arbitrator” has the meaning set forth in Section 10.03.

“As-Available Capacity”, or “AAC”, is determined in Section 3(c) of Exhibit D.

“As-Available Capacity Payment”, or “ACP”, is determined in Section 3(b) of Exhibit D.

“As-Available Capacity Price” means the price adopted by the CPUC in the Decision and in subsequent rulings of the CPUC implementing the Decision, or pursuant to any such other formula as the CPUC may adopt from time to time for As-Available Capacity Payments to be made to Buyer’s Qualifying Facilities for the applicable year, as set forth in Section 3(b) of Exhibit D, in dollars per kW-year.

“As-Available Contract Capacity” means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(d), as may be adjusted in accordance with Section 3.07(c), Section 3.13(b) and Exhibit C, as applicable.

“As-Available Contract Capacity Confirmation Certificate” has the meaning set forth in Section 3.13(b).

“Availability Credit Factor”, or “ACF”, is determined in Section 3(i) of Exhibit D.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Penalty Factor”, or “APF”, is determined in Section 3(n) of Exhibit D.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“Bankrupt” means with respect to any Person, such Person:

- (a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (which petition is not dismissed within 90 days);
- (b) Makes an assignment or any general arrangement for the benefit of creditors;
- (c) Otherwise becomes bankrupt or insolvent (however evidenced);
- (d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or
- (e) Is generally unable to pay its debts as they fall due.

“Benchmark Capacity” is determined, as applicable, in Section 3(a) of Exhibit D-1, Section 3(a) of Exhibit D-2, and Section 9(a) of Exhibit E.

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

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

“Buyer Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy produced by the Generating Facility.

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

“Buyer Projected Energy Forecast” has the meaning set forth in Section 2(a) of Exhibit G.

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

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

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

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

“CAISO Charges Invoice” has the meaning set forth in Section 5 of Exhibit G.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

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

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

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

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

“California Renewables Portfolio Standard” means the California Public Utilities Code Section 399.11, *et seq.*

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

“Capacity Credit Hours”, or “CCH”, is determined in Section 3(m) of Exhibit D.

“Capacity Credit Period” is determined in Section 3(b)(iv) of Exhibit E.

“Capacity Demonstration Test” means the procedures for testing or otherwise determining the Power Product, as set forth in Exhibit C or Section 3.13(b), as applicable.

“Capacity Demonstration Factor” is determined in Section 3 of Exhibit C.

“Capacity Measurement Interval” means each 15-minute time period, beginning on the hour (e.g. 12:00 to 12:15, 12:30, 12:45, etc.), for which the Power Output is measured.

“Capacity Payment Allocation Factors”, or “CAF”, means the TOD Period factors which are used to calculate the TOD Period Capacity Payment, as set forth in the table in Section 3(a) of Exhibit D.

“Capacity Performance Requirement”, or “CR”, means the values set forth in Section 1.04.

“CARB” means California Air Resources Board, or any successor entity.

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

“CFR” means the Code of Federal Regulations, as may be amended from time to time.

“Check Meter” means the Buyer revenue-quality meter section or meter(s), which Buyer may require at its discretion, as set forth in Section 3.08(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility Electric Service Requirements.

“Claiming Party” has the meaning set forth in Section 5.02.

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed before or after the termination of this Agreement.

“Collateral Assignment Agreement” has the meaning set forth in Section 9.06.

“Commissioning Test” means tests applied to the Generating Facility, after completion of the construction of the Generating Facility, in order to verify that the Generating Facility may be released for Operation.

“Confidential Information” means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller’s compliance with operating and efficiency standards applicable to a “qualifying cogeneration facility” (as contemplated in 18 CFR Part 292, Section 292.205) or fuel use standards applicable to a “qualifying small power production facility” (as contemplated in 18 CFR Part 292, Section 292.204). Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

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

“Converted Physical Trade”, or “CPT”, means the quantity from Physical Trades, in MWh, that did not pass CAISO’s physical validation of the IFM.

“Converted Physical Trade Price” means the price, in dollars per MWh, used by the CAISO to settle the quantity, in MWh, associated with the Converted Physical Trade.

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

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

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

“Curtailment Period” means a time period for which Seller is requested by CAISO or a Transmission Provider to curtail its Power Product for Force Majeure or otherwise.

“D.” has the meaning set forth in Recital A.

“Daily Delay Liquidated Damages” has the meaning set forth in Section 4(c)(ii) of Exhibit F.

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

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Price” means the LMP_{QF}, as defined in the Hourly Location Adjustment formula set forth in SRAC.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Decision” has the meaning set forth in Recital A.

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

“Delivery Point” has the meaning set forth in Section 1.03.

“Delivery Term” means the Term.

“Demonstrated Firm Contract Capacity” means the rate of electric energy delivery that the Generating Facility is able to demonstrate as a result of the Capacity Demonstration Test of the Firm Contract Capacity, as set forth in Exhibit C.

“Demonstration Rate of Metered Energy” means the quantity, in kWh per hour, calculated by multiplying the Metered Energy amount, within a Metering Interval in kWh per interval, times the number of Metering Intervals in a one-hour period.

“Development Security” has the meaning set forth in Section 4(b)(i) of Exhibit F.

“Disclosure Order” has the meaning set forth in Section 9.10(b).

“Dispute” has the meaning set forth in Section 10.01.

“Early Termination Date” has the meaning set forth in Section 6.02(a).

“Earned Capacity Hours”, or “ECH”, means the number of firm capacity equivalent available hours determined by dividing the Firm TOD Energy by the Firm Contract Capacity, as set forth in Section 3(j) of Exhibit D.

“Effective Date” has the meaning set forth in the Preamble.

“Emergency Condition” has the meaning set forth in the Transmission Provider’s LGIA or SGIA with Seller, or the distribution-level FERC-jurisdictional interconnection agreement with Seller,

as applicable; *provided, however*, that if Seller interconnects pursuant to Tariff Rule 21, “Emergency Condition” means “Emergency”, as defined in such Tariff Rule 21.

“Equitable Defense” means any Bankruptcy or other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

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

“ERR” has the meaning set forth in Section 9.03(a)(i).

“Event of Default” has the meaning set forth in Section 6.01.

“Existing PPA” means [\[insert title and date of the existing power purchase agreement between Buyer and Seller, including any amendments, as well as any extension agreements entered into pursuant D.07-09-040\]](#).

The definition of Existing PPA above is necessary for purposes of Sections 3.06(b) and 3.09(b), as well as the definition of Existing Qualifying Cogeneration Facility. If Buyer and Seller are not parties to an existing power purchase agreement (including any extension agreements entered into pursuant to D.07-09-40), the above definition should be revised as necessary.

“Existing Qualifying Facility” means a Generating Facility that commenced Parallel Operation before the Settlement Effective Date, and that, as of the Settlement Effective Date, (a) is a Qualifying Facility, and (b) is the generating facility under the Existing PPA.

“Expected Term Year Energy Production” means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.02(e).

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

“FERC” means the Federal Energy Regulatory Commission, or any successor entity.

“Financial Consolidation Requirement” has the meaning set forth in Section 3.20(a).

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

“Firm Capacity Payment”, or “FCP”, has the meaning set forth in Section 3(g) of Exhibit D.

“Firm Capacity Price” or “CP” is set forth in Section 1.06(a), in dollars per kW-year.

“Firm Contract Capacity”, or “FCC”, means the monthly generating capacity that Seller commits to have available at the Site for the Power Product, as set forth in Section 1.02(d), as may be adjusted in accordance with Section 3.07(c) and Exhibit C if the Generating Facility is a New Qualifying Facility or, as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing Qualifying Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility.

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

“Firm TOD Energy”, or “FE”, has the meaning set forth in Section 3(k) of Exhibit D.

“First Penalty Month” has the meaning set forth in Section 3(b) of Exhibit I.

“Fitch” means Fitch Ratings Ltd.

“Forced Outage” has the meaning set forth in the CAISO Tariff.

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

- (a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;
- (b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;
- (c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or

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

“Force Majeure Credit Value”, or “FCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Force Majeure curtailment requested by Buyer, determined in accordance with Section 3 of Exhibit D-1.

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

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

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

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the gain of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Market Price Referents;
- (c) Comparable transactions;
- (d) Forward price curves based on economic analysis of the relevant markets; and
- (e) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remaining Term and shall include the value of Related Products.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, then the Non-Defaulting Party may use information available to it internally.

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

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

“Generation Operations Center” means the location of Buyer’s real-time operations personnel.

“Generator Operator” means the Person that Operates the Generating Facility and performs the functions of supplying electric energy and interconnected operations services within the meaning of the NERC Reliability Standards.

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

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

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

“GHG Charges” has the meaning set forth in SRAC.

“GHG Compliance Costs” has the meaning set forth in SRAC.

“GHG EPS” means the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and any subsequent CPUC-established precondition to the execution of this Agreement (including any precondition set forth in the Settlement Agreement), in each case as in effect as of the Effective Date.

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

“Governmental Charges” has the meaning as set forth in Section 8.02.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

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.

- (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.

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

“Guarantor” is that certain guarantor of Seller set forth in Section 1.07(b)(i).

“Guarantor Cross Default Amount” is the dollar amount set forth in Section 1.07(b)(iii).

“Guaranty Agreement” means a guaranty agreement substantially in the form of Exhibit O.

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

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

“Hourly Credit Value” is determined, as applicable, in Section 3(b) of Exhibit D-1, Section 3(b) of Exhibit D-2 and Section 9(b)(i) of Exhibit E.

“Hourly Debit Value” is determined in Section 9(b)(ii) of Exhibit E.

“Hourly Location Adjustment”, or “LA”, has the meaning set forth in SRAC.

“Hourly Power Output” means an hourly rate of electric energy delivery, in kWh per hour, that is equal to the Metered Energy for one hour, in kWh, divided by one hour.

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

“IFM Load Uplift Obligation” means the obligation of a Scheduling Coordinator to pay its share of unrecovered IFM Bid Costs (as defined in the CAISO Tariff) paid to resources through Bid Cost Recovery (as defined in the CAISO Tariff).

“IFRS” has the meaning set forth in Section 3.20(b)(iii).

“Incipient Event of Default” has the meaning set forth in Section 9.06(a).

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

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

“Inter-SC Trade” means a trade between Scheduling Coordinators of electric energy, Ancillary Service (as defined in the CAISO Tariff), or IFM Load Uplift Obligation in accordance with the CAISO Tariff.

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

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

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

“LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by another Local Regulatory Authority having jurisdiction over the load serving entity. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

“LAR Showings” means the LAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction over the load serving entity.

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

“Lender” means any third-party institution or entity or successor in interest or assignees that either (i) purchases the Generating Facility and then leases it to Seller under a Sale-Leaseback Transaction, or (ii) provides development, bridge, construction, or permanent debt or tax equity

financing or refinancing (including an Equity Investment) for the Generating Facility to Seller or credit support in connection with this Agreement.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least (a) “A-” from S&P and Fitch, and “A3” from Moody’s, if such entity is rated by all three rating agencies, or (b) “A-” from S&P or Fitch, or “A3” from Moody’s, if such entity is rated by only one or two of the ratings agencies, in each case, substantially in the form of Exhibit P. All costs to establish and maintain the Letter of Credit shall be borne by Seller.

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

- (a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and Fitch, and “A3” by Moody’s;
- (b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
- (c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
- (d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
- (e) Seller fails to provide an extended or replacement Letter of Credit within 30 days before such Letter of Credit expires or terminates; or
- (f) The issuer of such Letter of Credit becomes Bankrupt;

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

“LGIA” (i.e., Large Generator Interconnection Agreement or Standard Large Generator Interconnection Agreement) has the meaning set forth in the CAISO Tariff.

“Limited TOD Energy”, or “LE”, has the meaning set forth in Section 3(e) of Exhibit D.

“Local Regulatory Authority” has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it if any (exclusive of Costs), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Market Price Referents;
- (c) Comparable transactions;
- (d) Forward price curves based on economic analysis of the relevant markets; and
- (e) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remainder of the Term and must include the value of Related Products. Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“MAE_m” has the meaning set forth in Section 3(a) of Exhibit I.

“MAE Failure” has the meaning set forth in Section 3(b) of Exhibit I.

“Maintenance Credit Value”, or “MCV”, is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a Maintenance Outage or a Major Overhaul which has been properly scheduled in accordance with Exhibit E.

“Maintenance Debit Value” is a value indicating how much allowance is used when Seller requests credit for a Maintenance Outage or a Major Overhaul in accordance with Exhibit E.

“Maintenance Outage” means a time period during which Seller plans to reduce the Power Output of the Power Product, in full or in part, in order to facilitate maintenance work on the Generating Facility, other than a Major Overhaul.

“Major Overhaul” means a time period during which Seller plans to remove the Generating Facility from Operation in order to dismantle the Generating Facility’s equipment for inspections, repairs or replacement, with the goal that such equipment will be reassembled and made available for Operation.

“Major Overhaul Allowance” is a value indicating a Term-Year maximum allowance with which Seller can request credit for a Major Overhaul in accordance with Exhibit E.

“Market Price Referent” means the market price referent applicable to this Agreement, as determined by the CPUC in accordance with Public Utilities Code Section 399.15(c).

“Maximum Allowed Capacity”, or “MAC”, is determined in Section 3(d) of Exhibit D.

“Maximum Firm Capacity Payment”, or “MFCP”, means the maximum payment that Seller can earn during a year for the delivery of Firm Contract Capacity that is calculated in accordance with the procedure set forth in Section 3(h) of Exhibit D.

“Mediator” has the meaning set forth in Section 10.02.

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

“Metered Energy” means the quantity of electric energy, expressed in kWh, as measured by (i) the CAISO-Approved Meter(s), which quantity will be adjusted so as not to include compensation factors, if any, introduced by the CAISO into the CAISO-Approved Meter(s) other than (x) electric energy consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s) and, (y) if applicable, the Generating Facility’s radial line losses, or (ii) Check Meters, as applicable, in each case for the specified Metering Interval.

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

“Milestone Schedule” means Seller’s milestone schedule, the form of which is attached to this Agreement as Exhibit Q.

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

“Monthly Scheduling Fee” is described in Section 4(b) of Exhibit G.

“Moody’s” means Moody’s Investor Services, Inc.

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

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

“MW Target” means the number of MWs that Buyer must procure as part of meeting its obligations under the Settlement Agreement, pursuant to and as further described in the Settlement Agreement.

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

“NERC Reliability Standards” means the most recent version of those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available at http://www.nerc.com/files/Reliability_Standards_Complete_Set.pdf, or any successor thereto.

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

“Net Contract Capacity”, or “NCC”, means the sum of Firm Contract Capacity and As-Available Contract Capacity, as set forth in Section 1.02(d), as may be adjusted in accordance with Section 3.07(c), Section 3.13(b) and Exhibit C, as applicable. Net Contract Capacity may not exceed PMax.

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

“New Qualifying Facility” means a Qualifying Facility that (i) commenced Parallel Operation for the first time on or after the Settlement Effective Date, or (ii) materially modified or repowered on or after the Effective Date in a manner other than as provided in Section 3.07(c).

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

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

“Notice” means notices, requests, statements or payments provided in accordance with Section 9.08 and Exhibit N.

“OMAR” means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data, or any successor thereto.

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

“Outage” has the meaning set forth in the CAISO Tariff.

“Outage Schedule” has the meaning set forth in Section 2(a) of Exhibit R.

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

“Parallel Operation” means the Generating Facility’s electrical apparatus is connected to the Transmission Provider’s system and the circuit breaker at the point of common coupling is

closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.

“Party” has the meaning set forth in the Preamble.

“Peak Months” means [___].

{Buyer Comment: For SCE and PG&E, the Peak Months are June, July, August and September. For SDG&E, the Peak Months are May, June, July, August and September.}

“Penalized As-Available Contract Capacity” has the meaning set forth in Section 3(b)(ii) of Exhibit I.

“Penalized Firm Contract Capacity” has the meaning set forth in Section 3(b)(i) of Exhibit I.

“Performance Assurance” means collateral (in the amount of the Performance Assurance Amount) for Seller’s performance under this Agreement in the form of cash, Letter(s) of Credit, or the Guaranty Agreement. Performance Assurance is only required to be posted by Seller if the Generating Facility is a New Qualifying Facility.

“Performance Assurance Amount” has the meaning set forth in Section 1.07(a)(ii).

“Performance Tolerance Band Lower Limit” is determined in Section 1 of Exhibit K.

“Performance Tolerance Band Upper Limit” is determined in Section 1 of Exhibit K.

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

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

“PGA” (i.e., Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

“Physical Trade” has the meaning set forth in the CAISO Tariff.

“Physical Trade Settlement Amount” means the dollar amount calculated in accordance with Exhibit L.

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

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

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

“Power Output” means the average rate of electric energy delivery during one Metering Interval, converted to an hourly rate of electric energy delivery, in kWh per hour, that is equal to the product of Metered Energy for one Metering Interval, in kWh per Metering Interval, times the number of Metering Intervals in a one-hour period.

“Power Product” means (a) the Net Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.

“Power Rating” means the electrical power output value indicated on the generating equipment nameplate.

“PPT” means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Primary Fuel” means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

“Product” means the Power Product and the Related Products.

“Project” means the Generating Facility.

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

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

- (a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility’s needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable

- emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;
- (c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
 - (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
 - (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
 - (f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“PTSA” has the meaning set forth in Section 2 of Exhibit L.

“PURPA” means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, as amended from time to time.

“PURPA Contract” has the meaning set forth in Recital E.

“QF PGA” (i.e., Qualifying Facility Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

“Qualifying Facility” means an electric energy generating facility that:

- (a) Complies with the “qualifying cogeneration facility” or “qualifying small power production facility” definition and other requirements (including the requirements set forth in 18 CFR Part 292, Section 292.205) established by PURPA and any FERC rules, as amended from time to time implementing PURPA, as set forth in 18 CFR Part 292, Section 292.203 et seq.; and
- (b) Has filed with the FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which the FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

“RAR” means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by a Local Regulatory Authority or other Governmental Authority having jurisdiction.

“RAR Showings” means the RAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction.

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

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

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

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

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

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

“Reportable Capacity” means the Power Rating, in MW, minus Station Use, in MW.

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

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

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

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

“S&P” means the Standard & Poor’s Rating Group.

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

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

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

“Scheduled Power Offline” is described in Section 3(b)(v) of Exhibit E.

“Scheduling Coordinator” means a Person certified by the CAISO for the purposes of undertaking the functions specified in Exhibit G.

“Scheduling Fee” means the Monthly Scheduling Fee and the SC Set-Up Fee.

“SC Replacement Date” has the meaning set forth in Section 7(b) of Exhibit G.

“SC Set-Up Fee” is described in Section 4(a) of Exhibit G.

“SC Trade Settlement Amount” means the amount(s) determined in accordance with Exhibit M.

“SC Trade Tolerance Band” means the greater of (a) three percent of the Scheduled Amount or (b) one MW.

“SDD Administrative Charge” has the meaning set forth in Section 2 of Exhibit K.

“SDD Adjustment” means the adjustment, if any, to the Monthly Contract Payment, as determined in accordance with Exhibit K.

“SDD Energy Adjustment” has the meaning set forth in Section 1 of Exhibit K.

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

“Security Interest” has the meaning set forth in Section 3 of Exhibit F.

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

“Seller” has the meaning set forth in the Preamble.

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

“Seller's Energy Forecast” means Seller's most recently updated Forecast submitted in accordance with Exhibit I.

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

“Settlement Agreement” has the meaning set forth in Recital C.

“Settlement Effective Date” has the meaning set forth in Recital D.

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

“Settling Parties” has the meaning set forth in Recital B.

“SGIA” (i.e., Small Generator Interconnection Agreement) means the form of Interconnection Request (as defined in the CAISO Tariff) pertaining to a Small Generating Facility (as defined in the CAISO Tariff), which is attached to the CAISO Tariff as Appendix T.

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

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

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

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

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

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

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

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

“Six-Hour Demonstration” has the meaning set forth in Section 4 of Exhibit C.

“SLIC” means Scheduling and Logging system for the CAISO.

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

“Station Use” means the electric energy produced by the Generating Facility that is (a) used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, and (b) consumed within the Generating Facility’s electric energy distribution system as losses needed to deliver electric energy to the Site Host Load, and (c) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s).

“Successor” has the meaning set forth in Section 3.20(b)(iii).

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

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

“Tariff Rule 21” means the interconnection standards of the Transmission Provider for distributed generation adopted by the CPUC in Decisions 00-11-001 and 00-12-037, as modified by the CPUC.

“Telemetry System” means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO’s applicable requirements as set forth in Section 3.09.

“Term” has the meaning set forth in Section 1.01.

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

“Termination Payment” has the meaning set forth in Section 6.03.

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

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

“TOD Period” means the time of delivery period used to calculate the Monthly Contract Payment set forth in Section 4 of Exhibit D.

“TOD Period Capacity Payment” means the monthly payment to be calculated and made by Buyer to Seller for Power Product capacity during each TOD Period for the month for which a calculation is being performed, as set forth in Section 3(a) of Exhibit D, in dollars.

“TOD Period Energy Payment” means the monthly payment to be calculated and made by Buyer to Seller for the Metered Energy during each TOD Period for the month for which a calculation is being performed, as set forth in Section 2(a) of Exhibit D, in dollars.

“TOD Period Energy Price” means the price used to calculate the TOD Period Energy Payment, as set forth in Section 2(b) of Exhibit D, in dollars per kWh.

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

“Transmission Curtailment Credit Value” or “TCV” is the adder applied to the Earned Capacity Hours to account for the time during which Seller is not able to meet the Firm Contract Capacity obligation due to a curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, as determined in accordance with Section 3 of Exhibit D-2.

“Transmission Provider” means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility’s electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Seller from the Generating Facility to the Delivery Point.

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

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

“Web Client” has the meaning set forth in Section 2(a) of Exhibit R.

“Web Scheduler” has the meaning set forth in Section 2 of Exhibit E.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

“WREGIS” means the Western Renewable Energy Generation Information System, or any successor thereto.

*** End of Exhibit A ***

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, electric metering and the Seller's measurement of the Useful Thermal Energy Output, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s). }

2. Site Description.

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

*** End of Exhibit B ***

EXHIBIT C

Capacity Demonstration Test for Firm Contract Capacity

1. **Introduction.** This Exhibit C only applies if the Generating Facility provides Firm Contract Capacity and is a New Qualifying Facility or, as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing Qualifying Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility. The results of the Capacity Demonstration Test set forth in this Exhibit C will be used (i) to verify and adjust as necessary the Firm Contract Capacity set forth in Section 1.02(d), and (ii) to determine the Reportable Capacity, as further described in Section 10 of Exhibit C. If this Exhibit C is applicable, then Seller shall:
 - (a) Perform the 20-Day and Six Hour Demonstration; or
 - (b) Elect to perform one of the following Capacity Demonstration Tests: (i) the 20-Day Demonstration and Six Hour Demonstration adjusted utilizing the Ambient Factors (1) employed in the Commissioning Test, so long as Buyer is informed of and permitted to attend the Commissioning Test and subject to Buyer's reasonable satisfaction that such Ambient Factors are applicable to the Capacity Demonstration Test, or (2) obtained pursuant to the Performance Test Code on Overall Plant Performance (PTC 46-1996) established by the American Society of Mechanical Engineers, or any successor thereto, or (ii) the Commissioning Test, subject to Buyer's reasonable satisfaction that the Commissioning Test accurately demonstrates the Firm Contract Capacity.

2. **Capacity Demonstration Test Dates.** The 20-Day Demonstration shall commence at noon on a mutually agreed upon date which follows or is coincident with the Term Start Date and shall be completed no later than the Firm Operation Date, and shall extend for a total period of 20 consecutive non-holiday weekdays (the "20-Day Demonstration"). The Six-Hour Demonstration must be scheduled for a non-holiday weekday within the 20-Day Demonstration period.

Concurrently with the selection of the commencement date for the 20-Day Demonstration, Seller shall select which Generating Units will be the Generating Units for the Capacity Demonstration Test, if applicable. This selection may not be changed for any reason during the Capacity Demonstration Test or the Capacity Demonstration Test will be repeated in its entirety.

Buyer and Seller may each, upon three Business Days advance Notice, make up to two requests to reschedule the commencement date for either the 20-Day Demonstration or the Six-Hour Demonstration.

The commencement date for the Six-Hour Demonstration may only be rescheduled to a different date within the 20-Day Demonstration, if applicable.

Neither the 20-Day Demonstration nor a Six-Hour Demonstration may be rescheduled once it has commenced, except as set forth under Section 5 of this Exhibit C.

3. 20-Day Demonstration. In order to pass the 20-Day Demonstration, the Generating Facility must achieve a Capacity Demonstration Factor of *greater than or equal* to 0.95. The Capacity Demonstration Factor is calculated as follows:

$$\text{CAPACITY DEMONSTRATION FACTOR} = A / (B \times C)$$

Where A = The number of Capacity Measurement Intervals during the test period when the Demonstration Rate of Metered Energy equals or exceeds the Firm Contract Capacity specified in Section 1.02(d).

B = The total number of hours during the 20 consecutive non-holiday weekday test period that begin at noon and end at 6:00 p.m. (i.e., 120 hours).

C = The number of Capacity Measurement Intervals within each hour.

4. Six-Hour Demonstration. For the Six-Hour Demonstration, Seller shall demonstrate the ability of the Generating Facility to Operate for a six consecutive hour period, starting at noon and ending at 6:00 p.m. (the "Six-Hour Demonstration"). The Generating Facility shall be deemed to have satisfied the Six-Hour Demonstration if the Power Output in each and every Metering Interval during the six-hour period equals or exceeds the Firm Contract Capacity set forth in Section 1.02(d).

5. Remedial Action for Seller's Failing a Capacity Demonstration Test.

- (a) If, during the initial Capacity Demonstration Test, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration, Seller may request one additional 20-Day Demonstration or one additional Six-Hour Demonstration within the first 20-Day Demonstration upon providing three Business Days advance Notice sent by facsimile transmission or e-mail.

Any new 20-Day Demonstration must include another Six-Hour Demonstration.

- (b) If, during the second Capacity Demonstration Test, the Generating Facility fails to Demonstrate the Firm Contract Capacity during either the 20-Day Demonstration or the Six-Hour Demonstration due to an abnormal and unforeseeable operating condition, as verified and determined in Buyer's sole judgment, one additional and final Capacity Demonstration Test may be scheduled.

6. Demonstrated Firm Contract Capacity.

- (a) If the Generating Facility passes both the 20-Day Demonstration and the Six-Hour Demonstration, the Demonstrated Firm Contract Capacity shall be deemed to be equal to the Firm Contract Capacity in Section 1.02(d).
- (b) If the Generating Facility fails to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration during the initial Capacity Demonstration Test and, if one or two additional Capacity Demonstration Tests are conducted at Seller's request pursuant to the procedure described above and Seller fails in both of these additional Capacity Demonstration Tests to meet the minimum requirements of either the 20-Day Demonstration or the Six-Hour Demonstration, *then* the Demonstrated Firm Contract Capacity shall be deemed to be the lowest of:
 - (i) The lowest Power Output achieved in 95% of the Capacity Measurement Intervals during the 20-Day Demonstration;
 - (ii) The lowest Power Output in any Capacity Measurement Interval during the Six-Hour Demonstration; and
 - (iii) A Firm Contract Capacity amount, designated by Seller and approved by Buyer, that represents a Power Output that the Generating Facility can achieve during all hours of the entire Term while conforming with Prudent Electrical Practices.

In all instances, the Firm Contract Capacity for Seller shall either (1) be reduced pursuant to the applicable Capacity Demonstration Test(s), or (2) increased pursuant to the applicable Capacity Demonstration Test(s), provided that such increase may not exceed the limits for Firm Contract Capacity set forth in Section 1.02(d). The Net Contract Capacity and As-Available Contract Capacity, if applicable, may also be adjusted by Buyer based on the results of the Capacity Demonstration Test and the circumstances under which a Capacity Demonstration Test was required.

7. Representation and Access. Buyer representatives may attend the Capacity Demonstration Test and, if Seller relies upon the Commissioning Test for the purposes of this Exhibit C, the Commissioning Test or any portion thereof, including the setup, start-up, ramp-up, ramp-down and shutdown of the Generating Facility related to the Capacity Demonstration Test and, if applicable, the Commissioning Test. Buyer's representatives may, as part of their observation of the Capacity Demonstration Test and the Commissioning Test, conduct a site visual inspection of the Generating Facility and the Site; *provided, however*, that Buyer's representatives follow the requirements set forth in Section 3.19.

- Seller shall provide Buyer access to and copies of control room logs, control system display screens, and instrumentation data during and after any Capacity Demonstration Test or, if Seller relies upon the Commissioning Test for the purposes of this Exhibit C, Commissioning Test.
8. Cost of Capacity Demonstration Test. Buyer is responsible for all costs associated with witnessing the Capacity Demonstration Test. Buyer shall pay for the electric energy and electric capacity produced during the Capacity Demonstration Test using the Firm Contract Capacity existing at the time of the Capacity Demonstration Test pursuant to Exhibit D.
 9. Ambient Factors. Seller may elect to apply corrections to the Demonstrated Rate of Metered Energy or Power Output to adjust for Ambient Factors. The corrections to be applied (including, if requested by Seller, any adjustments to the Demonstrated Firm Contract Capacity for each monthly Firm Contract Capacity number set forth in Section 1.02(d), other than the Firm Contract Capacity number for the month in which the Capacity Demonstration Test is completed) shall be agreed upon in writing in advance of any Capacity Demonstration Test during technical discussions between representatives of Buyer and Seller that are professional engineers registered in California. Corrections shall be based on Prudent Electrical Practices and obtained pursuant to the applicable Performance Test Code established by the American Society of Mechanical Engineers, or any successor thereto, for the equipment under the Capacity Demonstration Test.
 10. Determination of Reportable Capacity. In addition to the other procedures set forth in this Exhibit C, Buyer shall, as part of the Capacity Demonstration Test, determine the Reportable Capacity of the Generating Facility. Seller shall provide Buyer with reasonable access to the Generating Facility and to records, reports and other applicable data in order for Buyer to determine the Reportable Capacity during the Capacity Demonstration Test.

*** End of Exhibit C ***

EXHIBIT D
Monthly Contract Payment Calculation

1. Introduction. Each Monthly Contract Payment is calculated on a calendar month basis as follows:

MONTHLY CONTRACT PAYMENT, in dollars =

TOD Period Energy Payment_{1st TOD Period} +
TOD Period Energy Payment_{2nd TOD Period} +
TOD Period Energy Payment_{3rd TOD Period} +
TOD Period Energy Payment_{4th TOD Period} +
TOD Period Capacity Payment_{1st TOD Period} +
TOD Period Capacity Payment_{2nd TOD Period} +
TOD Period Capacity Payment_{3rd TOD Period} +
TOD Period Capacity Payment_{4th TOD Period}

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit D.

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit D.

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

2. TOD Period Energy Payment Calculation.

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

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

Where:

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

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

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

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

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

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

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

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

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

3. TOD Period Capacity Payment Calculation.

(a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

TOD PERIOD CAPACITY PAYMENT in dollars = (ACP + FCP) x CAF

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit D, in dollars per year.

FCP = Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(g) of this Exhibit D, in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 [and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision]:

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is PG&E. Additionally, the bracketed text is only applicable if Buyer is PG&E, and should otherwise be deleted.}

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak Period	0.1792
	Mid-Peak	0.0310
	Off-Peak	0.0006
Winter	Mid-Peak	0.0178
	Off-Peak	0.0011
	Super-Off-Peak	0.0007

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is SCE.}

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak	0.098096
	Semi-Peak	0.006146
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002088
Winter	On-Peak	0.013237
	Semi-Peak	0.008118
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002008

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth set forth in the table immediately above if Buyer is SDG&E.}

- (b) Factor “ACP” in Section 3(a) of this Exhibit D. The As-Available Capacity Payment shall be calculated pursuant to the following formula:

$$\text{AS-AVAILABLE CAPACITY PAYMENT, in dollars} \\ = \text{AAC} \times \text{AAP}$$

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit D, in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

<u>As-Available Capacity Price</u>	
<i>Year</i>	<i>Price \$/kW-yr</i>
2010	39.39
2011	41.22
2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

- (c) Factor “AAC” in Section 3(b) of this Exhibit D. The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC – FCC (but not less than zero)

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit D, in kWh per hour.

FCC = The Firm Contract Capacity for all TOD Periods during a month.

- (d) Factor “MAC” in Section 3(c) of this Exhibit D. The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

$$\text{MAXIMUM ALLOWED CAPACITY, in kWh per hour} = \text{LE} / \text{PH}$$

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit D, in kWh.

PH = The total number of hours in the TOD Period (period hours).

- (e) Factor “LE” in Section 3(d) of this Exhibit D. The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (\text{E})_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

- (f) Factor “E” in Section 3(e) of this Exhibit D. The Allowed Hourly Energy is calculated as follows:

$$\text{ALLOWED HOURLY ENERGY in kWh} = 1 \text{ hour} \times \text{NCC}$$

Where:

NCC = The Net Contract Capacity, as set forth in Section 1.02(d), in kW.

- (g) Factor “FCP” in Section 3(a) of this Exhibit D. Each monthly Firm Capacity Payment is calculated as follows:

$$\text{FIRM CAPACITY PAYMENT in dollars} = \text{MFCP} \times \text{AF}$$

Where:

MFCP = Maximum Firm Capacity Payment for the TOD Period, as determined in accordance with Section 3(h) of this Exhibit D, in dollars.

- AF = (i) One (1), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is greater than or equal to 95%; or
- (ii) Zero (0), if the Availability Credit Factor, as calculated in Section 3(i) of this Exhibit D is less than 60%; or
- (iii) If neither (i) nor (ii) are true, then AF is the Availability Penalty Factor, as calculated in Section 3(n) of this Exhibit D.

- (h) Factor “MFCP” in Section 3(g) of this Exhibit D. The Maximum Firm Capacity Payment for each TOD Period of each month is calculated as follows:

MAXIMUM FIRM CAPACITY PAYMENT, in dollars = FCC x CP

Where:

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d), in kWh per hour.

CP = Firm Capacity Price, as set forth in Section 1.06(a), in \$/kW-year.

- (i) Factor “ACF” in Section 3(g) of this Exhibit D. The Availability Credit Factor for each monthly TOD Period is calculated as follows:

AVAILABILITY CREDIT FACTOR = (ECH + CCH) / PH

Where:

ECH = The total number of Earned Capacity Hours, determined in accordance with Section 3(j) of this Exhibit D.

CCH = The total number of Capacity Credit Hours, determined in accordance with Section 3(m) of this Exhibit D.

PH = The total number of hours in the TOD Period (period hours).

- (j) Factor “ECH” in Section 3(i) of this Exhibit D. The Earned Capacity Hours for each monthly TOD Period is calculated as follows:

EARNED CAPACITY HOURS = FE / FCC

Where:

FE = The sum of the Firm TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(k) of this Exhibit D, in kWh.

FCC = The Firm Contract Capacity for all TOD Periods during a month is the amount in Section 1.02(d) in kWh per hour.

- (k) Factor “FE” in Section 3(j) of this Exhibit D. The Firm TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{FIRM TOD ENERGY in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (\text{E})_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour in kWh; and (ii) Allowed Firm Energy, as determined in Section 3(l) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

- (l) Factor “E” in Section 3(k) of this Exhibit D. The Allowed Firm Energy is calculated as follows:

$$\text{ALLOWED FIRM ENERGY in kWh} = 1 \text{ hour} \times \text{FCC}$$

Where:

FCC = The Firm Contract Capacity set forth in Section 1.02(d).

- (m) Factor “CCH” in Section 3(i) of this Exhibit D. The total number of Capacity Credit Hours for each monthly TOD Period is determined as follows:

$$\text{CAPACITY CREDIT HOURS} = \text{TCV} + \text{FCV} + \text{MCV}$$

Where:

TCV = The total Transmission Curtailment Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-2, when the Metered Energy was curtailed by either the CAISO or the Transmission Provider.

FCV = The total Force Majeure Credit Value during the TOD Period, determined in accordance with Section 3 of Exhibit D-1, when the Metered Energy was curtailed by a Force Majeure event claimed by Buyer to the extent the Generating Facility is otherwise available.

MCV = The total Maintenance Credit Value during the TOD Period, determined in accordance with Section 9 of Exhibit E.

- (n) Factor “APF” in Section 3(g) of this Exhibit D. The Availability Penalty Factor for each monthly TOD Period is calculated as follows:

$$\text{AVAILABILITY PENALTY FACTOR} = 1.0 - 2.0 \times (\text{CR} - \text{ACF})$$

Where:

APF = The greater of: (i) zero; and (ii) the result of the above equation for APF.

CR = 95%, the minimum Capacity Performance Requirement.

ACF = The Availability Credit Factor determined in accordance with Section 3(i) of this Exhibit D.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
	Period A - Summer	Period B - Winter	
Time Period	May 1 - October 31	November 1 - April 30	Applicable Days
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. - Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

{Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is PG&E. }

TOD Period	Summer Jun 1 st – Sep 30 th	Winter Oct 1 st – May 31 st	Applicable Days
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Mid-Peak	8:00 a.m. – Noon	8:00 a.m. - 9:00 p.m.	Weekdays except Holidays.
	6:00 p.m. – 11:00 p.m.		Weekdays except Holidays.
Off-Peak	11:00 p.m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays.
		9:00 p.m. – Midnight	Weekdays except Holidays.
	Midnight – Midnight	6:00 a.m. – Midnight	Weekends and Holidays.
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends and Holidays.

{Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SCE. }

	Summer	Winter	
Time Period	MAY 1 - SEPTEMBER 30	OCTOBER 1 - APRIL 30	
ON-PEAK	11:00 a.m. - 6:00 p.m.	5:00 p.m. - 8:00 p.m.	Weekdays
SEMI-PEAK	6:00 a.m. - 11:00 a.m.	6:00 a.m. - 5:00 p.m.	Weekdays
	6:00 p.m. - 10:00 p.m.	8:00 p.m. - 10:00 p.m.	Weekdays
OFF-PEAK	10:00p.m. - 12:00 mid.	10:00 p.m. - 12:00 mid.	Weekdays
	5:00 a.m. - 6:00 a.m.	5:00 a.m. - 6:00 a.m.	Weekdays
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Weekends
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Holidays
Super Off-Peak	12:00 mid. - 5:00 a.m.	12:00 mid. - 5:00 a.m.	All Days

{ Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SDG&E. }

“Holiday”, as used in the above table, means New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When a Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

*** End of Exhibit D ***

EXHIBIT D-1
Force Majeure Credit Value

1. **Overview.** This Exhibit D-1 describes the methodology for computing Force Majeure Credit Value.
2. **Scheduling.** Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. **Calculation of Force Majeure Credit Value.** For every period of Force Majeure curtailment requested by Buyer, Buyer shall compute the Force Majeure Credit Value following these steps:
 - (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-1, "Benchmark Capacity" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the Force Majeure event and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Force Majeure Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.
- (d) After all the Hourly Credit Values have been applied, the final monthly Force Majeure Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

*** End of Exhibit D-1 ***

EXHIBIT D-2
Transmission Curtailment Credit Value

1. **Overview.** This Exhibit D-2 describes the methodology for computing Transmission Curtailment Credit Value.
2. **Scheduling.** Each Curtailment Period shall be scheduled to start and stop at the beginning of an hour. Also, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
3. **Calculation of Transmission Curtailment Credit Value.** For every period of curtailment of Power Product requested by the Transmission Provider, the CAISO or otherwise, Buyer shall compute the Transmission Curtailment Credit Value following these steps:

- (a) A Benchmark Capacity shall be determined for every Curtailment Period. For purposes of this Exhibit D-2, "**Benchmark Capacity**" is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, during the first 24-hour period which precedes the curtailment notification and does not overlap another Curtailment Period, Maintenance Outage, or Major Overhaul.

Notwithstanding this Section 3(a), upon Seller's request, if and to the extent Seller is able to demonstrate to Buyer's reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Curtailment Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during the Curtailment Period and that would have been able to return to service during the Curtailment Period but for the circumstances constituting the Curtailment Period.

- (b) For each hour in the Curtailment Period, an Hourly Credit Value shall be calculated using following formula:

$$\text{Hourly Credit Value} = (\textit{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$$

where *Delta* is the greater of:

Benchmark Capacity minus Hourly Power Output

or

zero

In case of division by zero, the value being calculated shall be zero.

- (c) For each hour in the Curtailment Period, the Hourly Credit Value shall be applied as Transmission Curtailment Credit Value, by TOD Period, to the Capacity Credit

Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Curtailment Period have been applied.

- (d) After all the Hourly Credit Values have been applied, the final monthly Transmission Curtailment Credit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

**** End of Exhibit D-2 ****

EXHIBIT E

Scheduling and Calculation of Maintenance Outage and Major Overhaul Credits

1. **Overview.** Seller shall follow the protocols established in this Exhibit E for the scheduling of Maintenance Outages and Major Overhauls, and for any subsequent notification that may be required to update a previously scheduled Maintenance Outage or Major Overhaul for which Seller wishes to obtain Maintenance Credit Value. This Exhibit E also describes the methodology for computing Maintenance Credit Value and Maintenance Debit Value.
2. **Notification.** Seller shall direct all Maintenance Outage and Major Overhaul notifications to Buyer's web-based outage scheduling system or an e-mail address designated by Buyer (the "Web Scheduler") and to the Generation Operations Center, whose URL and telephone number(s) can be found in Exhibit N.
3. **Scheduling.**
 - (a) Seller shall schedule all Maintenance Outages and Major Overhauls with Buyer in advance. Seller's failure to schedule an unplanned outage in advance is not a default under this Agreement. The notice requirements for Maintenance Outages and Major Overhauls are as follows:

<i>Outage Duration</i>	<i>Minimum Advance Notice</i>
Maintenance Outage, Less than 1 day	24 Hours
Maintenance Outage, 1 day or more	168 Hours
Major Overhaul	6 Months

- (b) Seller shall provide the following information when scheduling a Maintenance Outage or a Major Overhaul via the Web Scheduler:
 - (i) The identification number set forth on the cover page of this Agreement;
 - (ii) Password (supplied by Buyer);
 - (iii) Generating Unit Number*;
 - (iv) Capacity Credit Period, including:
 - (1) The date and time when Seller expects the Capacity Credit Period to begin, and
 - (2) The date and time when Seller expects the Capacity Credit Period to end.

(v) “Scheduled Power Offline”**, in kW, is the Hourly Power Output that is expected to be offline during each hour of the outage period, as such may be updated as set forth in this Exhibit E; and

(vi) Reason for the requested Maintenance Outage or Major Overhaul.

**Unit designation is applicable only when the contract calls for separate tracking of outage allowance for each Generating Unit.*

***If unit designation is applicable, Seller must provide the expected Scheduled Power Offline of the Generating Unit scheduled for maintenance; otherwise, Seller must provide the expected Scheduled Power Offline of the Generating Facility.*

4. Rescheduling.

- (a) A Maintenance Outage and the associated Capacity Credit Period may be rescheduled if Seller’s request to reschedule is received by Buyer no later than 5:00 p.m. PPT on the day before the Maintenance Outage was previously scheduled to begin.
- (b) A Major Overhaul and the associated Capacity Credit Period may be rescheduled provided:
 - (i) The rescheduled Major Overhaul begins six months or more after the first outage notification date and time;
 - (ii) The notification to reschedule is made at least one week before the Major Overhaul was previously scheduled to begin; and
 - (iii) There is at least a one-month period between the notification to reschedule and the commencement of the rescheduled Major Overhaul.
- (c) Maintenance Outages and Major Overhauls may be rescheduled more than once.

5. Extension.

- (a) Seller may extend a Maintenance Outage or a Major Overhaul and the associated Capacity Credit Period by notifying Buyer of the extension no later than 5:00 p.m. PPT on the day before the outage was previously scheduled to end. Seller’s failure to provide such notice, to the extent resulting from unexpected circumstances, is not a default under this Agreement.
- (b) Maintenance Outages and Major Overhauls and the associated Capacity Credit Periods may be extended more than once.

- (c) For a Maintenance Outage and the associated Capacity Credit Period which is less than 24 hours in duration, the extension cannot result in a total outage duration greater than 23 hours.
- 6. Cancellation. If Seller cancels a scheduled Maintenance Outage, Major Overhaul or the associated Capacity Credit Period, a cancellation notice must be received by Buyer no later than 5:00 p.m. PPT on the day before such Maintenance Outage or Major Overhaul was scheduled to begin.
- 7. Updating Scheduled Power Offline.
 - (a) If a change in the Hourly Power Output is anticipated or occurs during a Maintenance Outage or a Major Overhaul, the Scheduled Power Offline must be updated on a prospective basis as soon as possible via the Web Scheduler. Scheduled Power Offline cannot be updated once the Maintenance Outage or Major Overhaul is over.
 - (b) Multiple updates to the Scheduled Power Offline can be submitted if necessary on a prospective basis.
 - (c) If a Maintenance Outage or a Major Overhaul is completed ahead of schedule and Seller's Hourly Power Output has returned to normal output levels earlier than expected, Seller shall advise Buyer of the situation by providing an update to the Scheduled Power Offline as described in Section 7(a) of this Exhibit E.
- 8. Restrictions.
 - (a) Seller shall make reasonable efforts not to schedule a Maintenance Outage or Major Overhaul during the Peak Months. Should an outage be required during the said period, Seller shall abide by the limit as set forth in Section 1.05(d) for minor maintenance work during peak months.
 - (b) Each Capacity Credit Period must be scheduled to start and stop at the beginning of an hour. Also, when scheduling an outage, the notification time shall be rounded to the nearest hour. For example: 11:29 becomes 11:00 and 11:30 becomes 12:00.
 - (c) Seller may not schedule a Maintenance Outage or a Major Overhaul that overlaps another Maintenance Outage, Major Overhaul, or Curtailment Period already scheduled on the Generating Facility. If unit designation is applicable in Section 3(b)(iii) of this Exhibit E, this restriction applies to the Generating Unit.
- 9. Maintenance Credit Calculation. For every properly scheduled Maintenance Outage and Major Overhaul, to the extent there is an associated Capacity Credit Period, Buyer shall

compute and apply the associated Maintenance Credit Value and the Maintenance Debit Value following these steps:

- (a) A Benchmark Capacity shall be determined for every scheduled Maintenance Outage and Major Overhaul. For purposes of this Exhibit E, “Benchmark Capacity” is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, at or after the time of outage notification, and before the start of the outage. If the outage is rescheduled, the most recent notification time shall be used in defining Benchmark Capacity. If the outage is extended, or its Scheduled Power Offline is updated, the original notification time shall be used in defining Benchmark Capacity, unless the outage has been rescheduled before the extension, in which case the most recent rescheduling notification time shall be used in defining Benchmark Capacity.

In the special case of a less-than-one-day Maintenance Outage that directly follows another less-than-one-day Maintenance Outage, Benchmark Capacity of the outage that follows is defined as the highest Hourly Power Output, not to exceed Firm Contract Capacity, between these two outage time periods. In the event of back-to-back, less-than-one-day Maintenance Outages, Benchmark Capacity for the second outage shall be zero.

Notwithstanding this Section 9(a), upon Seller’s request, if and to the extent Seller is able to demonstrate to Buyer’s reasonable satisfaction that some or all of the Firm Contract Capacity of the Generating Facility available before the Benchmark Capacity was established was not available during the period when the Benchmark Capacity was established but became available during the Capacity Credit Period, the Benchmark Capacity will be adjusted to include such portion of the Firm Contract Capacity that became available during such Capacity Credit Period.

- (b) For each hour in the Capacity Credit Period of the Maintenance Outage or the Major Overhaul, an Hourly Credit Value and Hourly Debit Value shall be calculated using following formulas:

(i) $\text{Hourly Credit Value} = (\text{Delta} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

where *Delta* is the lesser of

Benchmark Capacity minus Hourly Power Output, or
Scheduled Power Offline.

However, in all cases, *Delta* shall never be less than zero.

(ii) $\text{Hourly Debit Value} = (\text{Scheduled Power Offline} / \text{Firm Contract Capacity}) * 1 \text{ hour}$

- (c) For each hour in the Capacity Credit Period, the Hourly Credit Value shall be applied as Maintenance Credit Value, by TOD Period, to the Capacity Credit Hours in Section 3(m) of Exhibit D, until the Hourly Credit Values for all hours in the Capacity Credit Period have been applied, or until the condition described in Section 9(d) of this Exhibit E is met, whichever comes first.
- (d) Simultaneous to Section 9(c) of this Exhibit E, for each hour in the Capacity Credit Period, the Hourly Debit Value shall be accumulated as Maintenance Debit Value in a Term-Year-to-date account whose increasing total is to be compared to the appropriate limit set forth in Sections 1.05(a) or (b). Once the Term-Year-to-date total reaches or exceeds the limit, no more Hourly Credit Values shall be applied.
- (e) After all the Hourly Credit Values have been applied and the Hourly Debit Values accounted for, the final monthly Maintenance Credit Value and the Term-Year-to-date cumulative Maintenance Debit Value shall be rounded to the nearest whole number. However, all intermediate computations leading up to the final result shall be carried out with appropriate numeric precision.

The above description of the evaluation process assumes that the outage was properly scheduled with sufficient advance notice pursuant to this Exhibit E and was approved by Buyer (or the CAISO, if applicable). Any deviation from the proper scheduling protocol can result in reduced Maintenance Credit Value or increased Maintenance Debit Value.

*** End of Exhibit E ***

EXHIBIT F
New Qualifying Facilities Requirements

1. **Financial Information.**

- (a) If requested by Buyer, Seller shall deliver to Buyer the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:
- (i) Within 120 days following the end of each fiscal year, a copy of Seller's and its Guarantor's annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year; and
 - (ii) Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's and its Guarantor's quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous fiscal year;

provided, however, that if Seller is not an SEC reporting company or if the financial statements required under Sections 1(a)(i) or (ii) of this Exhibit F are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year-end audit adjustments for the quarterly financial statements); *provided further*, that such information must be provided only to those employees of Buyer that need to know such information for financial risk management purposes and may not be disclosed to third parties except as permitted under Section 9.10.

- (b) For purposes of the requirement set forth in Section 1(a) of this Exhibit F:
- (i) If Seller or its Guarantor's financial statements are publicly available electronically on the website of Seller, its Guarantor or the SEC, then Seller is deemed to have met this requirement; and
 - (ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay is not an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

2. Performance Assurance.

- (a) Posting Performance Assurance. On or before the Term Start Date (or, if the Generating Facility was an Existing Qualifying Facility that becomes a New Qualify Facility due to a modification or repowering in excess of the limits set forth in Section 3.07(c), then within 10 Business Days of such modification or repowering), Seller shall post Performance Assurance with Buyer and shall maintain the Performance Assurance Amount at all times on and after the Term Start Date until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed 365 days following the Term End Date.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that if, as of the Term Start Date, Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit F, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 4(c) or (e) of this Exhibit F, after which Seller shall be obligated to post the full Performance Assurance Amount. In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 2(c) of this Exhibit F, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:
- (i) Each Letter of Credit must be maintained for the benefit of Buyer;
 - (ii) Seller shall:
 - (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least 30 days before the expiration of the outstanding Letter of Credit or within five Business Days of such indication by the Bank, whichever is later; and

- (3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within three Business Day after such refusal;
- (iii) Upon, or at any time after, the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the 10th Business Day after the occurrence thereof; and
- (iv) Upon the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit by submitting to the bank issuing such Letter of Credit one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 3 of this Exhibit F with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.
- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit O executed by the Guarantor identified in Section 1.07(b)(i) or other party, in each case acceptable to Buyer and meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:
 - (i) "BBB-" from S&P, "Baa3" from Moody's, and "BBB-" from Fitch, if Guarantor is rated by all three ratings agencies;
 - (ii) The lower of "BBB-" by S&P, "Baa3" by Moody's, or "BBB-" by Fitch if Guarantor is rated by only two of the three ratings agencies; or

- (iii) “BBB-” by S&P, “Baa3” by Moody’s, or “BBB-” by Fitch if Guarantor is rated by only one of the ratings agency.

- 3. First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 2 and 4 of this Exhibit F and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit; and
- (c) Liquidate all Development Security and Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller shall remain liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full. Buyer may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available, and from all such forms, and in any sequence Buyer may select; *provided, however*, that to the extent multiple instruments of credit support are provided by or on behalf of Seller, Buyer shall draw on each such instrument of credit support proportionately based on the maximum aggregate liability under each such instrument, such that, for the avoidance of doubt, Buyer must draw proportionately on all of such outstanding instruments in order to obtain its full claim for payment.

4. Development Security.

- (a) Introduction. If Seller is required to post Development Security, such Development Security shall be held by Buyer as security for Seller meeting the Term Start Date and: (i) if Seller designates only Firm Contract Capacity, successful completion of the Capacity Demonstration Test as set forth in Exhibit C; (ii) if Seller designates only As-Available Contract Capacity, Seller delivers to Buyer the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b), which As-Available Contract Capacity Confirmation Certificate must provide that Seller has installed the equipment sufficient to provide the As-Available Contract Capacity designated by Seller in Section 1.02(d) on the Effective Date; or (iii) if Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (i) and (ii) of this Section 4(a) are required.
- (b) Development Security. If Seller is required to post Development Security, Seller shall post such Development Security in accordance with the following terms and conditions:
- (i) Seller shall post a development fee (the “Development Security”) in the amount of \$20 per kW of Net Contract Capacity on or before the 30th day following the Effective Date. Seller shall post additional Development Security in the amount of \$40 per kW of Net Contract Capacity (for a total posted amount of \$60 per kW of Development Security) at the end of the 18th month following the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and
- (ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit P.
- (c) Forfeiture of Development Security for Failure to Commence Term by the Term Start Date; Extension of the Term Start Date.
- (i) Failure to Meet the Term Start Date. Subject to Seller’s right to extend the Term Start Date as provided in Section 4(c)(ii) of this Exhibit F or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), if the Term does not commence on or before the Term Start Date, Buyer may retain the entire Development Security (if applicable) and, if not already terminated, terminate this Agreement, and neither Party shall have liability for damages for failure to deliver or purchase the Product after the effective date of such termination.

- (ii) Daily Delay Liquidated Damages to Extend Term Start Date. Subject to limitations set forth in Section 1.01(a), Seller may elect to delay the Term Start Date by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the original Term Start Date to and excluding the actual Term Start Date (“Daily Delay Liquidated Damages”).

To extend the Term Start Date, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Term Start Date along with its estimate of the duration of the extension and its payment of Daily Delay Liquidated Damages for the full estimated Term Start Date extension period.

Seller may further extend the Term Start Date beyond the original Term Start Date extension period subject to the same terms applicable to the original Term Start Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Term Start Date extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Term Start Date was actually extended.

In no event may Seller extend the Term Start Date for more than a total of 180 days by the payment of Daily Delay Liquidated Damages.

- (d) Full Return of Development Security. The Development Security shall be returned to Seller in accordance with the following procedure:
- (i) Subject to Seller commencing the Term by the Term Start Date, as the Term Start Date may have been extended in accordance with Section 4(c)(ii) of this Exhibit F or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), Seller demonstrates the Net Contract Capacity on or before the Firm Operation Date as follows:
- (1) If Seller designates only Firm Contract Capacity, successful completion of the Capacity Demonstration Test as set forth in Exhibit C;

- (2) If Seller designates only As-Available Contract Capacity, Seller delivers to Buyer the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b), which As-Available Contract Capacity Confirmation Certificate must provide that Seller has installed the equipment sufficient to provide the entire As-Available Contract Capacity designated by Seller in Section 1.02(d) on the Effective Date; or
 - (3) If Seller designates both Firm Contract Capacity and As-Available Contract Capacity, both (1) and (2) of this Section 4(d)(i) are required.
- (e) Deficient Installation of Net Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller does not demonstrate any portion of the Net Contract Capacity or only demonstrates a portion of the Net Contract Capacity:
- (i) If Seller designates only Firm Contract Capacity, based on the Capacity Demonstration Test, if any, as set forth in Exhibit C;
 - (ii) If Seller designates only As-Available Contract Capacity, based on Seller's delivery of the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(b); or
 - (iii) If Seller designates both Firm Contract Capacity and As-Available Contract Capacity, based on both (i) and (ii) of this Section 4(e),

then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of either (1) \$20 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs after the 18th month following the Effective Date.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 2 of this Exhibit F shall be calculated using the adjusted Net Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted Net Contract Capacity shall be returned to Seller.

- (f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

- (a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.
- (b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof on or before the third Business Day of the first month after the last month to which the invoice relates, so long as such date is after the day on which such invoice is received; provided, however, that:
 - (i) No Event of Default has occurred and is continuing with respect to Seller; and
 - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:
 - (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
 - (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

*** End of Exhibit F ***

EXHIBIT G
Scheduling Coordinator Services

This Exhibit G is only applicable when Buyer is Scheduling Coordinator.

1. Designation of Buyer as Scheduling Coordinator.
 - (a) At least 30 days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.
 - (b) During the Term, unless Seller terminates Buyer as Scheduling Coordinator in accordance with Section 7 of this Exhibit G, Seller may not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller may not revoke Buyer's authorization to act as Scheduling Coordinator unless agreed to by Buyer.
 - (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and Seller's QF PGA or PGA, as applicable.
 - (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.
 - (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *provided, however,* that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.
2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:
 - (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit I, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;
 - (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;
 - (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and

- (d) Receiving notification of the final schedules from the CAISO.
3. **Notices.** As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, CAISO Forced Outage Reports, or must offer waiver forms.
4. **Scheduling Fees.** In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:
- (a) **SC Set-Up Fee.** The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal \$[_____].
- (b) **Monthly Scheduling Fee.** The Monthly Scheduling Fee will be as forth in the following table.

Net Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	\$2,500
10,000 – 20,000	\$5,000

5. **CAISO Settlements.** As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

Buyer shall render a separate invoice to Seller for all CAISO Charges for which Seller is responsible under this Agreement (“CAISO Charges Invoice”) as described in Sections 1 through 4 of Exhibit J, in accordance with the applicable billing and payment

methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental or supporting documentation provided by the CAISO to Buyer in the settlement process.

Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit G with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of 365 days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.
7. Terminating Buyer's Designation as Scheduling Coordinator.
 - (a) Seller may terminate Buyer as Scheduling Coordinator:
 - (i) In accordance with Section 7(b) of this Exhibit G; or
 - (ii) If Buyer materially fails to fulfill its obligations as Scheduling Coordinator and:
 - (1) Seller provides advance Notice to Buyer setting forth in reasonable detail the nature of such failure and such failure is not remedied within 30 days after such Notice; *provided, however,* that if such failure is not reasonably capable of being remedied within such 30-day period, Buyer shall have such additional time (not to exceed 120 days) as is reasonably necessary to remedy such failure, so long as Buyer promptly commences and diligently pursues such remedy;

- (2) Seller (A) submits to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the date of Buyer's termination as Scheduling Coordinator, and (B) causes its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and
 - (3) The Parties will take any other action necessary to terminate the designation of Buyer as Scheduling Coordinator, including amending this Agreement; or
 - (iii) If Seller is required to elect Buyer as Scheduling Coordinator in accordance with Section 1.08, then, subject to Section 3.06(b) or 3.09(b), as applicable, by (1) providing a Notice to Buyer on or before the 60th day after Seller meets the requirements of Section 3.06(a) and 3.09(a), and (2) at least 30 days before the replacement Buyer as the Scheduling Coordinator, complying with the requirements for designating a different Scheduling Coordinator by taking all necessary actions to terminate the designation of Buyer as Scheduling Coordinator, including those actions set forth in Sections 7(b)(i) and (b)(ii) of this Exhibit G. Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.
- (b) At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. PPT on the Term End Date ("SC Replacement Date"). Such actions include the following:
 - (i) Seller shall:
 - (1) Submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date; and
 - (2) Cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and
 - (ii) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.
- (c) Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.

*** End of Exhibit G ***

EXHIBIT H
Milestone Progress Reporting Form

1. Introduction. This Exhibit H is only applicable if the Generating Facility is a New Qualifying Facility.

Seller shall prepare a written milestone progress report as set forth in Section 3.11 on its progress relative to the:

- (a) Installation of the CAISO-Approved Meters and Telemetry System;
 - (b) Installation of the Telemetry System as required by the CAISO Tariff; and
 - (c) Work on other agreements with the CAISO and the Transmission Provider.
2. Format. The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit N, on the fifth Business Day of each month. Each such milestone progress report must include the following items:
- (a) Cover page;
 - (b) Brief Generating Facility description;
 - (c) Site plan of the Generation Facility;
 - (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;
 - (e) Bar chart schedule showing progress on achieving the Milestone Schedule;
 - (f) PERT or GANT chart showing critical path schedule of major items and activities;
 - (g) Summary of activities during the previous month;
 - (h) Forecast of activities scheduled for the current month;
 - (i) Written description about the progress relative to the Milestone Schedule;
 - (j) List of issues that could potentially impact the Milestone Schedule;
 - (k) Enumeration and schedule of any support or actions requested of Buyer;
 - (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and
 - (m) List of items required under Section 3.11.

*** End of Exhibit H ***

EXHIBIT I
Seller's Forecasting Submittal and Accuracy Requirements

1. **General Requirements.** The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:
 - (a) Comply with the CAISO Tariff;
 - (b) Accommodate changes to their respective generation technology and organizational structure; and
 - (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. **Seller's Forecasting Submittal Requirements for all Generating Facilities.**

- (a) **30-Day Forecast.**

No later than 30 days before the Term Start Date (or, in the case of a New Qualifying Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

In the case of a New Qualifying Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.

The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

- (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and

- (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.
- (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit I, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.
- (c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, or a Real-Time Forced Outage, any of which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit I must be submitted to Buyer via the Web Client by no later than:
 - (i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;
 - (ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or
 - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected electric energy production change.

Seller's updated Forecast must contain the following information:

- (w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected electric energy production change;
- (x) The expected ending date and time of the event;
- (y) The expected electric energy production, in MWh; and
- (z) Any other information required by the CAISO as communicated to Seller by Buyer.

3. Seller's Forecasting Accuracy Requirements. If a (non-zero) Firm Contract Capacity quantity is applicable to this Agreement, then this Section 3 applies to Seller.

- (a) Accuracy Metric. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate and report to Seller the monthly mean absolute error (" MAE_m ") between Seller's Day-Ahead Forecasts and the respective daily summations of Metered Energy:

$$MAE_m = \frac{\text{Forecast Error}}{\text{Total Forecast}}$$

$$\text{Forecast Error} = \sum_i^n |f_i - a_i|$$

$$\text{Total Forecast} = \sum_i^n f_i$$

where:

n = the total number of hours in calendar month "m"

i = an hour within month "m"

f_i = Seller's Day-Ahead Forecast for hour "i"

a_i = the quantity of (i) Metered Energy for hour "i" plus the quantity of electric energy not delivered as a result of a Real-Time Forced Outage for hour "i" (in MWh) when the Generating Facility is not PIRP-eligible, or when Buyer is not Scheduling Coordinator; or (ii) the actual available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible and Buyer is Scheduling Coordinator.

Buyer shall report each MAE_m to Seller and, upon Seller's request, Buyer shall furnish all supporting calculations within a reasonable timeframe.

Notwithstanding anything to the contrary set forth in this Section 3(a), for hour "i" for which the absolute difference between variable " f_i " and variable " a_i " is a number greater than zero, to the extent that such difference results from the fault or negligence of Buyer in its role as Scheduling Coordinator the value " $|f_i - a_i|$ " for that hour shall be deemed to be zero.

- (b) Forecasting Penalty. If the MAE_m for a particular month “m” is greater than 15% or if the average Forecast error for all hours of the month is greater than three MW, then an “MAE Failure” will be deemed to have occurred. An MAE Failure will be waived if Seller demonstrates to Buyer’s reasonable satisfaction that the MAE Failure was the result of unexpected changes in either electrical or steam demand associated with the Site Host Load. If such MAE Failure has been waived, then that month does not count as a month in which there was an MAE Failure.

For each month in which an MAE Failure has occurred, Seller shall pay a fee equal to the applicable Monthly Scheduling Fee in addition to any otherwise applicable Monthly Scheduling Fee.

During each month an MAE Failure occurs, subject to the limitations of the following paragraph, Seller will continue to receive Monthly Capacity Payments for the Firm Contract Capacity based on the Firm Capacity Price and capacity payment calculations for firm capacity as set forth in Section 3 of Exhibit D.

If, however, an MAE Failure occurs three times in any rolling 12-month period, then starting on the first day of the calendar month immediately following the third such occurrence (such month, the “First Penalty Month”):

- (i) The quantity of Firm Contract Capacity specified in Section 1.02(d) will be deemed to be zero (“Penalized Firm Contract Capacity”); and
- (ii) The quantity of As-Available Contract Capacity specified in Section 1.02(d) will be deemed increased by the quantity of Firm Contract Capacity as such quantity existed before the First Penalty Month (“Penalized As-Available Contract Capacity”).

The Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall continue to be in effect during every subsequent calendar month until there are two consecutive calendar months without an MAE Failure (including a month in which an MAE Failure has been waived).

Upon such event, starting on the first day of the calendar month immediately following the second consecutive month during which Buyer does not have an MAE Failure, the Penalized Firm Contract Capacity and Penalized As-Available Contract Capacity quantities shall revert to the Firm Contract Capacity and As-Available Contract Capacity quantities existing before the First Penalty Month.

*** End of Exhibit I ***

EXHIBIT J
CAISO Charges

If at any time after the Term Start Date Buyer is not Scheduling Coordinator for the Generating Facility, then Buyer will not be responsible for any CAISO Charges. If at any time after the Term Start Date Buyer is Scheduling Coordinator for the Generating Facility, then Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;
2. Seller or any third party dispatches any portion of the Net Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator);
3. Seller does not comply with:
 - (a) The requirements set forth in Section 3.15; or
 - (b) Seller's obligation associated with any CAISO or Transmission Provider notice or instruction (as may be communicated by Buyer as Scheduling Coordinator) to (i) increase output to the Firm Contract Capacity during a System Emergency or an Emergency Condition, or (ii) reschedule a planned outage set to occur during a System Emergency or an Emergency Condition, then

Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with any failure set forth in Sections 3(a) or 3(b) of this Exhibit J (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator); or

4. If the Generating Facility is PIRP-eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the electric energy generated and delivered from the Generating Facility.

If any of Sections 1 through 4 of this Exhibit J apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

*** End of Exhibit J ***

EXHIBIT K
Scheduling and Delivery Deviation Adjustments

If Buyer is Scheduling Coordinator for the Generating Facility and if the Generating Facility is not PIRP-eligible, then Seller or Buyer, as the case may be, shall be responsible for the following SDD Adjustments with respect to the Generating Facility:

1. **SDD Energy Adjustment**. An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

If $A < D$, then SDD Energy Adjustment = $(D - A) \times (EP - P)$

or

If $A > E$, then SDD Energy Adjustment = $(A - E) \times (P - EP)$

Otherwise, the SDD Energy Adjustment = 0

where:

A = Metered Energy for the Settlement Interval;

B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to Exhibit I corresponding to the Settlement Interval;

C = Performance Tolerance Band = One (1) MWh divided by the number of Settlement Intervals in such hour;

D = Performance Tolerance Band Lower Limit = $(B - C)$;

E = Performance Tolerance Band Upper Limit = $(B + C)$;

EP = TOD Period Energy Price applicable to the Settlement Interval specified in Section 2(b) of Exhibit D; and

P = Real-Time Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. **SDD Administrative Charge**. Seller shall make a payment to Buyer (the "SDD Administrative Charge") for each Settlement Interval in a month if Metered Energy (i)

exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

If $A > (B + C)$ or $A < (B - C)$, then:

SDD Administrative Charge = (Absolute Value $(B - A) - C$) x
Uninstructed Deviation GMC Rate.

Otherwise, the SDD Administrative Charge = 0.

*** End of Exhibit K ***

EXHIBIT L
Physical Trade Settlement Amount

This Exhibit L is only applicable when Buyer is not Scheduling Coordinator.

1. Physical Trades Cleared in the IFM. The CAISO Revenue credited to Buyer's account by CAISO as a result of a Physical Trade having cleared in the IFM shall be for Buyer's account.
2. Physical Trades not Cleared in the IFM. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate the Physical Trade Settlement Amount ("PTSA_i") for each hour as follows:

$$PTSA_i = CPT_i \times (CPTP_i - PNode_i)$$

Where:

- i = an hour within month "m"
- CPT = Converted Physical Trade, in MWh
- CPTP = Converted Physical Trade Price, and
- PNode = the Generating Facility's PNode price, in dollars per MWh.

If the PTSA_i is positive *and* Seller submitted the original Physical Trade in accordance with Section 3.14(s)(ii) and Exhibit I, then Buyer shall owe Seller the PTSA_m for month m. In any event the PTSA_i is negative, however, then Seller shall owe Buyer the PTSA_i.

*** End of Exhibit L ***

EXHIBIT M
SC Trade Settlement Amount

This Exhibit M is only applicable when Buyer is not Scheduling Coordinator.

If, in any Settlement Interval, a Generating Facility's Scheduled Amount differs from the Generating Facility's Metered Energy by more than the SC Trade Tolerance Band, then Seller shall be subject to a payment adjustment calculated by Buyer in accordance with the procedures and formulas set forth below.

(1) Under-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy, and the Real-Time Price is greater than the Day-Ahead Price payable during the Settlement Interval, then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy if, during such Settlement Interval, the Real-Time Price is equal to or less than the Day-Ahead Price payable during the Settlement Interval.

(2) Over-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy, and the Real-Time Price is less than the Day-Ahead Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

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

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy if, during such Settlement Interval, the Real-Time Price is greater than or equal to the Day-Ahead Price payable during the Settlement Interval.

*** End of Exhibit M ***

EXHIBIT N
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.08 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.08 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	

Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

*** End of Exhibit N ***

EXHIBIT O
Form of Guaranty Agreement

1. **Guaranty.** For valuable consideration, _____ [Guarantor's legal name] _____, _____ [legal status] ("Guarantor") guarantees payment to _____ [Buyer's legal name] _____, a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by _____ [Seller's legal name] _____, _____ [legal status] ("Principal") under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated _____ [date] _____, as amended from time to time ("Agreement") (said amounts are hereinafter referred to as the "Obligations").

Initially capitalized words that are used but not otherwise defined in this agreement ("Guaranty") shall have the meanings given them in the Agreement.

Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, that all cure periods have expired, and with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

The obligations of Guarantor hereunder is not subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. **Guaranty Limit.** Subject to Paragraph 13, the liability of Guarantor hereunder may not exceed \$ _____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.
3. **Guaranty Absolute.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:
- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
 - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
 - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
 - (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
 - (vii) Beneficiary's exercise of any other rights available to it under the Agreement;

- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
 - (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
 - (x) [Intentionally omitted;] and
 - (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.
- (f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the Term End Date, provided however, the termination of this Guaranty shall not release Guarantor from liability for any Obligations arising prior to the Term End Date.
- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.
6. Subrogation. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones the exercise of such rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

7. [Intentionally omitted.]

8. Waivers of Guarantor.

- (a) [Intentionally omitted.]
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:
 - (i) The Guarantor waives all rights and defenses that the Guarantor may have because the Principal's Obligations are secured by real property.

This means, among other things:

- a. The Beneficiary may collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Principal.

- b. If the Beneficiary forecloses on any real property collateral pledged by the Principal:
 - (1) The amount of the Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
 - (2) The Beneficiary may collect from the Guarantor even if the Beneficiary, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Principal.

This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Principal's Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

- (ii) The Guarantor waives all rights and defenses arising out of an election of remedies by the Principal, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for an Obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the Principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;
- (f) [Intentionally omitted]
- (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (h) Guarantor waives any other circumstances that limit the liability of or exonerate guarantors generally or provide any legal or equitable discharge of Guarantor's obligations hereunder;

- (i) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and
 - (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. No Waiver of Rights by Beneficiary. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.
10. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors and assigns. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided, however,* that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.
- The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.
11. Representations of Guarantor. Guarantor represents and warrants that:
- (a) It is a corporation duly organized, validly existing and in good standing in the jurisdiction of its formation and has full power and authority to execute, deliver and perform this Guaranty;
 - (b) It has taken all necessary corporate actions to execute, deliver and perform this Guaranty;
 - (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;
 - (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and

- (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.
12. Financial Statements. If requested by Beneficiary and if Guarantor is otherwise required to prepare the following, Guarantor shall deliver financial statements as describe below, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:
- (a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.
- (d) (c) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.
13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other reasonable costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 is not subject to, and does not count toward, the Guaranty limit set forth in Paragraph 2 above.
14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall

be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

15. Construction. All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any party.
16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, is not in any way be affected or impaired thereby.

17. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.
18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary: [Buyer]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

with a copy to: [Name]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Guarantor: [Guarantor]
 [Street]

[City, State Zip]

Attn:

Phone:

Facsimile:

Principal:

[Principal]

[Street]

[City, State Zip]

Attn:

Phone:

Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

[signature page follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, ____.

_____ [legal name]

By: _____

Name: _____

Title: _____

*** End of Exhibit O ***

EXHIBIT P
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Ladies and Gentlemen:

_____ (the "Bank") establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on _____ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations may not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference may not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

Name: _____

Title: _____

ATTACHMENT A
Drawing Certificate

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____, an authorized representative of _____ (the "Beneficiary"), certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { _____ }, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 - []A. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 - []B. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.
 - []C. The Letter of Credit will expire in fewer than 30 days from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - []D. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date

thereof (“Notice of Non-renewal”), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.

[]E. The Beneficiary is entitled to retain the entire Development Security (i) as a result of Applicant’s failure to commence the Term by the Term Start Date, or (ii) the Agreement has terminated due to an Event of Default by Applicant before the Term Start Date.

[]F. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of either (1) \$20 per kW of Net Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of Net Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs after the 18th month following the Effective Date.

2. Based upon the foregoing, the Beneficiary makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: [BENEFICIARY NAME]

By: _____

Name: _____

Title: _____

*** End of Exhibit P ***

EXHIBIT R
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

- (a) Comply with the CAISO Tariff;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

- (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client").
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.
- (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.
- (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code, the CAISO Tariff or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

*** End of Exhibit R ***

EXHIBIT S

[Intentionally Omitted.]

**** End of Exhibit S ****

EXHIBIT T-1
QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
 Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name: _____
 Street: _____
 City: _____ State: _____ Zip Code: _____

ID No.: _____ Generation Nameplate (KW): _____

II. In Operation: Yes No

III. Can your facility dump your thermal output directly to the environment? Yes No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1	_____	_____	_____	Y N
2	_____	_____	_____	Y N
3	_____	_____	_____	Y N
4	_____	_____	_____	Y N
5	_____	_____	_____	Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
 BTUs _____ Therms _____ mMBTUs _____
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

*** End of Exhibit T-1 **

EXHIBIT T-2

Fuel Use Standards – Small Power Production Facility Data Reporting Form

[Buyer's address]

Buyer's telephone number and email address]

[PrevYear]; ID NO. _____

I. Name and Address of Facility ("Project")

Name: _____

Street: _____

City: _____ State: _____ Zip Code: _____

Generation Nameplate (KW): _____

II. Primary Energy: Biomass Waste Solar Other: _____

III. Ownership

	Name	Address	Ownership (%)	Utility
1	_____	_____	_____	Y N
2	_____	_____	_____	Y N
3	_____	_____	_____	Y N
4	_____	_____	_____	Y N
5	_____	_____	_____	Y N

IV. [PrevYear] Monthly Operating Data

	Useful Power Output (1) (kWh)	Primary Energy Source (2) (mBTU)	Supplementary Energy Source (3) (mBTU)	Total Energy Input (4) (mBTU)
Jan				
Feb				
Mar				
Apr				
May				
Jun				
Jul				
Aug				
Sep				
Oct				
Nov				
Dec				
Total				

- (1) Useful Power Output is the electric or mechanical energy made available for use from the facility.
- (2) The Primary Energy Source must be biomass, waste, renewable resources, or geothermal resources. Use Lower Heating Value (LHV)
- (3) The Supplementary Energy Source is the use of fossil fuel. Use Lower Heating Value (LHV)
- (4) Please use Total Energy Input to include all energy sources: primary, supplementary, and auxiliary power from outside the facility.

*** End of Exhibit T-2 ***

ATTACHMENT A – EXHIBIT 7

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID #[Number])

Standard Contract for As-Available CHP Facilities

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

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- C. [Intentionally omitted]
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- F. New CHP Facilities Requirements
- G. Scheduling Coordinator Services
- H. Milestone Progress Reporting Form
- I. Seller's Forecasting Submittal and Accuracy Requirements
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- N. Notice List
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- T. QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

POWER PURCHASE AND SALE AGREEMENT

between

[BUYER'S NAME]

and

[SELLER'S NAME]

(ID# [Number])

PREAMBLE

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

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

RECITALS

- A. On or about September 20, 2007, the CPUC issued Decision ("D.") 07-09-040 (the "Decision") which, among other things, directed Buyer to develop a form of a standard contract and offer such contract to qualifying facilities meeting the eligibility criteria set forth in the Decision.
- B. Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the "Settling Parties") entered into CPUC-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.
- C. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the "Settlement Agreement"), which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.
- D. The Settlement Agreement became effective on **[]** (the "Settlement Effective Date").

- E. The Settling Parties, pursuant to the Settlement Agreement, developed a form of standard contract to be made available to eligible CHP Facilities that will only provide the Power Product on an as-available basis (the “Optional As-Available PPA”).
- F. This Agreement is based upon the form of the Optional As-Available PPA developed by the Settling Parties in accordance with the Settlement Agreement.

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

ARTICLE ONE. SPECIAL CONDITIONS

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

In accordance with Sections 7 and 8 of the Settlement Agreement, before executing this Agreement, Seller must provide to Buyer anticipated Generating Facility operations estimates in order for Buyer to count this Agreement towards Buyer's GHG Emissions Reduction Target (as defined in the Settlement Agreement), which include reasonable estimates of (i) the total expected Useful Thermal Energy Output of the Generating Facility per Term Year, and (ii) the total expected electricity generation of the Generating Facility per Term Year. Buyer shall use such information as specified in Section 7 of the Settlement Agreement. }

1.01 Term.

- (a) The term of this Agreement (the "Term") commences on, or within 120 days before [Date]; *provided, however*, that Seller may change the date set forth in this Section 1.01(a) by providing Notice to Buyer at least one year before such date;
- (b) Seller shall provide Buyer with 30 days advance Notice confirming the exact date on which the Term commences, which date must be within the 120-day period set forth in Section 1.01(a) (the "Term Start Date");
- (c) The Term Start Date must occur on the first day of a calendar month;
- (d) The Term ends [Number of months] months after the Term Start Date (the "Term End Date"); and
- (e) Notwithstanding the proviso set forth in Section 1.01(a), the Term Start Date must occur within 60 months of the Effective Date, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03) and Section 4(c)(ii) of Exhibit F.

{Buyer Comment: Select this Section 1.01 if Seller is a New CHP Facility. Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must be no more than seven years. }

- (a) Subject to any extension of the Term Start Date pursuant to Section 11.2.1 of the Settlement Agreement, the term of this Agreement (the "Term") commences on [Date] (the "Term Start Date");

- (b) The Term ends [Number of months] months after the Term Start Date (the “Term End Date”);
- (c) The Term Start Date must occur on the first day of a calendar month;
- (d) Subject to any extension of the Term Start Date pursuant to Section 11.2.1 of the Settlement Agreement, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least one year before such Term Start Date; and
- (e) Notwithstanding Section 1.01(c), the Term Start Date must occur within 24 months of the Effective Date, subject to any extension of the Term Start Date as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03).

{Buyer Comment: Select this Section 1.01 if Seller is an Existing CHP Facility. Seller designates the Term Start Date and the Term End Date; provided, however, that the Term must be no more than seven years.}

1.02 Generating Facility.

- (a) Name; Designation. The name of the Generating Facility is [Generating Facility name], which is [a New CHP Facility] [an Existing CHP Facility].
- (b) Location; Site. The Generating Facility is located at [Generating Facility address], and is further described in Exhibit B.
- (c) CHP Facility Type. As of the Effective Date, the Generating Facility is a [“topping-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(d)] [“bottoming-cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(e)].
- (d) As-Available Contract Capacity. The As-Available Contract Capacity equals [] kW. The As-Available Contract Capacity is subject to adjustment in accordance with Section 3.07(c) and Section 3.13(a); *provided, however,* that the As-Available Contract Capacity may never exceed 20,000 kW.
- (e) Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [] kWh. The Expected Term Year Energy Production may be revised in accordance with Section 3.07(c), or based on changes in the Site Host Load or the Site Host thermal requirements; *provided, however* that the Expected Term Year Energy Production may never exceed 131,400,000 kWh in any Term Year.

{Buyer Comment: Expected Term Year Energy Production cannot exceed 131,400,000 kWh per Term Year.}

- 1.03 Delivery Point. The delivery point is the point of delivery of the Power Product to the CAISO Controlled Grid (the “Delivery Point”). Seller shall provide and convey to Buyer the Power Product from the Generating Facility at the Delivery Point. Title to and risk of loss related to the Power Product transfer from Seller to Buyer at the Delivery Point.
- 1.04 [Intentionally omitted.]
- 1.05 [Intentionally omitted.]
- 1.06 Power Product Prices.
- (a) [Intentionally omitted.]
- (b) As-Available Capacity Price. The As-Available Capacity Price is set forth in Section 3 of Exhibit D.
- (c) TOD Period Energy Price. The TOD Period Energy Price is set forth in Section 2 of Exhibit D.
- 1.07 Requirements Applicable Solely to New CHP Facilities. If the Generating Facility is a New CHP Facility, the provisions of this Section 1.07 also apply to Seller.
- (a) Credit and Collateral Requirements.
- (i) Seller shall post and thereafter maintain the Development Security in accordance with Section 4(b) of Exhibit F.
- (ii) Seller shall post and thereafter maintain the Performance Assurance, in accordance with Section 2(a) of Exhibit F, in an amount equal to *[Option 1: 12 months of expected total As-Available Contract Capacity revenues] [Option 2: 12 months of expected total revenues] [Option 3: five percent of the expected total revenues] [Option 4: [As proposed by Seller, subject to Buyer's acceptance in its sole discretion]]* of the Generating Facility under this Agreement (the “Performance Assurance Amount”). The initial Performance Assurance Amount equals \$[____]. The Performance Assurance Amount will be revised upon any change to the Expected Term Year Energy Production.
- {Buyer Comment: Select one of the three options for posting Performance Assurance listed above. Alternatively, Seller may propose a fourth option for posting Performance Assurance, which is subject to Buyer's acceptance in its sole discretion.}*
- (iii) Seller shall comply with all of the provisions of Exhibit F.

(b) Seller's Guarantor; Guaranty Amount; Guarantor Cross Default Amount.

- (i) Seller's Guarantor, if any, is [Name of Guarantor]. Unless otherwise set forth in the immediately preceding sentence, the Guarantor set forth in this Section 1.07(b)(i) does not include any parent, subsidiary or Related Entity of Seller.
- (ii) Guarantor shall guarantee \$[Performance Assurance Amount x 1.25].
- (iii) The Guarantor Cross Default Amount, if any, equals \$[___].

{Buyer Comment: Guarantor Cross Default Amount must equal two percent of Guarantor's tangible net worth.}

1.08 Scheduling Coordinator Election. [Buyer][Seller][_____, an agent of Seller] is the Scheduling Coordinator under this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, Buyer must be the Scheduling Coordinator under this Agreement if the Generating Facility is an Existing CHP Facility and Seller intends to utilize the exemptions set forth in, and subject to, Sections 3.06(b) or 3.09(b).

1.09 Power Rating. If the Generating Facility is an Existing CHP Facility, on the Effective Date, the Power Rating of the Generating Facility equals [___] MW.

*** End of Article One ***

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

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

- (a) The Generating Facility is a CHP Facility, subject to Section 3.17(c);
- (b) Seller enters into all agreements, obtains all Governmental Authority approvals and Permits, and takes all steps necessary for it to:
 - (i) Operate the Generating Facility;
 - (ii) Deliver electric energy from the Generating Facility to the Delivery Point; and
 - (iii) Schedule, or arrange for a third party or Buyer to Schedule, the electric energy produced by the Generating Facility with the CAISO;
- (c) Seller's Scheduling Coordinator, as set forth in Section 1.08, is authorized by the CAISO to Schedule the electric energy produced by the Generating Facility with the CAISO;
- (d) Seller satisfies its obligation to install the CAISO-Approved Meters, as set forth in this Agreement;
- (e) Seller furnishes to Buyer the insurance documents required under Section 9.10(c);
- (f) Seller is in compliance with the CAISO Tariff as set forth in this Agreement;
- (g) Seller enters into and fulfills all of its obligations under (i) the applicable interconnection agreements with the applicable Transmission Provider that are required to enable Parallel Operation of the Generating Facility with the interconnected electric system and the CAISO Controlled Grid, and (ii) any transmission, distribution or other service agreement that are required to enable Seller to transmit electric energy from the Generating Facility to the Delivery Point;
- (h) Seller furnishes to Buyer the documents required under Section 3.05;
- (i) If Buyer is Scheduling Coordinator and the Generating Facility is PIRP-eligible, then the Generating Facility is certified as a PIRP resource by the CAISO;
- (j) If the Generating Facility is a New CHP Facility, Seller has posted with Buyer the Performance Assurance Amount in accordance with Section 1.07 and Exhibit F; and

- (k) If the Generating Facility is a New CHP Facility, Seller shall provide the Power Rating Notice to Buyer.

2.02 Termination Rights of the Parties.

- (a) [Intentionally omitted.]
- (b) Termination Right of Seller. Seller has the right to terminate this Agreement if Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any electric energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation.
- (c) Event of Default. In the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.02 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises control) agrees to waive any right it may have to enter into any new mandatory must-purchase contract (including the Transition PPA, the QF PPA or the Optional As-Available PPA, as such terms are defined in the Settlement Agreement) to sell electric energy, capacity or Related Products from the Generating Facility to Buyer or any other California investor-owned utility for a period of 365 days following the date of such termination. For purposes of this Section 2.02(c), "control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power.
- (d) End of Term. This Agreement automatically terminates at 11:59 p.m. PPT on the Term End Date.

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

- (a) The obligation of Buyer to make all outstanding Monthly Contract Payments for periods before termination of this Agreement;
- (b) The obligation of Buyer to invoice Seller for all payment adjustments for periods before termination of this Agreement, as set forth in Section 4.02;

- (c) The obligation of Seller to pay any Buyer payment-adjustment invoice described in Sections 4.03(b) or 4.04(c) for periods before termination of this Agreement within 30 days of Seller's receipt of such invoice;
- (d) The obligation of Buyer or Seller, as applicable, to make payments, if any, after the termination of this Agreement, as set forth in Section 3(c) of Exhibit S;
- (e) The obligation to make a Termination Payment, as set forth in Section 6.03;
- (f) The indemnity obligations, as set forth in Section 9.03;
- (g) The obligation of confidentiality, as set forth in Section 9.09;
- (h) The right to pursue remedies under Section 6.02(c);
- (i) The limitation of damages under Article Seven; and
- (j) If the Generating Facility is a New CHP Facility, the obligation of Seller to post Performance Assurance in accordance with Section 1.07 and Exhibit F.

*** End of Article Two ***

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product; Retained Benefits.

- (a) Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product and all benefits derived therefrom, including the exclusive right to sell, convey, transfer, allocate, designate, award, report or otherwise provide any and all of the Product purchased under this Agreement and the right to all revenues generated from the use, sale or marketing of the Product.
- (b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Related Products as part of the Product being delivered during the Term. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Related Products, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (c) Further Action by Seller. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term, which actions may include:
 - (i) Cooperating with the Governmental Authority responsible for resource adequacy administration to certify the Generating Facility for resource adequacy purposes;
 - (ii) Testing the Generating Facility as may be required to certify the Generating Facility for resource adequacy purposes in accordance with the requirements set forth in the CAISO Tariff or as otherwise agreed to by the Parties;
 - (iii) Committing to Buyer the As-Available Contract Capacity;
 - (iv) Complying with Applicable Laws regarding the registration, transfer or ownership of Green Attributes associated with the Related Products, including, if applicable to the Generating Facility, participation in WREGIS or other process recognized under Applicable Laws. With respect to WREGIS, at Buyer's option, Seller shall cause and allow Buyer to be the "Qualified Reporting Entity" and "Account Holder" (as these two terms are defined by WREGIS) for the Generating Facility;
 - (v) Complying with all CAISO Tariff requirements applicable to a Resource Adequacy Resource; and

- (vi) If Buyer is not the Scheduling Coordinator:
 - 1) Timely submitting, or causing Seller's Scheduling Coordinator to timely submit, Supply Plans to identify and confirm the Net Qualifying Capacity of the Generating Facility sold to Buyer as a Resource Adequacy Resource; and
 - 2) Causing the Generating Facility's Scheduling Coordinator to certify to Buyer, within 15 Business Days before the relevant deadline for any applicable RAR Showing or LAR Showing, that Buyer will be credited with the Net Qualifying Capacity of the Generating Facility for such RAR Showing or LAR Showing in the Generating Facility's Scheduling Coordinator's Supply Plan.
 - (d) Retained Benefits. Seller shall retain for its own use or disposition all Financial Incentives and all attributes, benefits and credits associated with the Generating Facility and the electrical or thermal energy produced therefrom, other than the Power Product and the Related Products. Subject to Seller's compliance with the applicable FERC rules and regulations, Seller may use, provide and convey any electric energy, capacity, Green Attributes, Capacity Attributes, Resource Adequacy Benefits, or any other product or benefit associated with the Generating Facility or the output thereof before the Term Start Date.
- 3.02 Resource Adequacy Rulings. During the Term, Seller shall grant, pledge, assign and otherwise commit to Buyer the generating capacity of the Generating Facility associated with the Related Products in order for Buyer to use in meeting its resource adequacy obligations under any Resource Adequacy Ruling. Seller:
- (a) Has not used, granted, pledged, assigned or otherwise committed any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer;
 - (b) Will not during the Term use, grant, pledge, assign or otherwise commit any portion of the generating capacity of the Generating Facility associated with the Related Products to meet the Resource Adequacy Rulings of, or to confer Resource Adequacy Benefits on, any Person other than Buyer; and
 - (c) Shall take all reasonable actions (including complying with all current and future CAISO Tariff provisions and decisions of the CPUC or any other Governmental Authority that address Resource Adequacy Rulings) and execute all documents that are reasonable and necessary to effect the use of the generating capacity of the Generating Facility associated with the Related Products for Buyer's sole benefit throughout the Term.

3.03 Site Control.

- (a) Seller shall have Site Control as of the earlier of: (i) the Term Start Date, and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term. Seller shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.
- (b) If the Generating Facility is a New CHP Facility, Seller shall provide Buyer with Notice of the status of its Site Control before commencing construction of the Generating Facility.

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

3.05 Transmission.

- (a) Interconnection Studies. Seller has provided Buyer with true and complete copies of all Interconnection Studies received by Seller for the Generating Facility after the date that is 24 months before the Effective Date.
- (b) Seller's Responsibility. Seller shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable Parallel Operation of the Generating Facility with the Transmission Provider's electric system and the applicable Control Area operator's electric grid and to effect Scheduling of the electric energy from the Generating Facility and transmission and delivery to the Delivery Point.

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

- (i) All required Interconnection Studies, facilities upgrades, and agreements;
- (ii) Interconnection of the Generating Facility to the Transmission Provider's electric system;
- (iii) Any costs or fees associated with obtaining and maintaining a wholesale distribution access tariff agreement, if applicable; and
- (iv) The transmission and delivery of electric energy from the Generating Facility to the Delivery Point.

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

3.06 CAISO Relationship.

- (a) Throughout the Term, Seller shall comply with all applicable provisions of the CAISO Tariff (including complying with any exemption obtained from the CAISO pursuant to the CAISO Tariff), as determined by the CAISO, including securing and maintaining in full force all of the CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the applicable provisions of the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.06(a), if (i) the Generating Facility is an Existing CHP Facility, (ii) Buyer is the Scheduling Coordinator under this Agreement, and (iii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not installed one or more CAISO-Approved Meters for the Generating Facility on or before the Term Start Date, Seller will not be in breach of this Agreement with respect to such requirement to install CAISO-Approved Meter(s) if Seller installs such CAISO-Approved Meter(s) within 180 calendar days after the Effective Date; *provided, however*, that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement to install CAISO-Approved Meter(s) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to Seller's requirement that the CAISO-Approved Meters for the Generating Facility be installed on or before the Term Start Date, which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.
- (c) Buyer agrees that, subject to the limitation set forth in Section 3.06(b) and upon the CAISO's request, pending the installation of the CAISO-Approved Meter(s) by Seller for the Generating Facility, Buyer shall provide to the CAISO any settlement quality meter data reasonably requested by the CAISO for settlement purposes.

3.07 Generating Facility Modifications.

- (a) Seller is responsible for the design, procurement and construction of all modifications necessary for the Generating Facility to meet the requirements of this Agreement and to comply with any restriction set forth in any Permit.
- (b) Subject to Section 3.07(c), Seller shall provide 30 days advance Notice to Buyer if there is any modification (other than a routine fluctuation in output or consumption) of the Generating Facility, the Site Host Load or operations related to the Site Host Load changing:
 - (i) Electric energy output by five percent of Expected Term Year Energy Production; or
 - (ii) The type of Primary Fuel consumed by the Generating Facility.
- (c) Seller shall only materially modify the Generating Facility if:
 - (i) Such modification is necessary because of an imminent or actual mechanical failure of the Generating Facility that is not a result of Seller's negligence or failure to maintain the Generating Facility in accordance with Prudent Electrical Practices; and
 - (ii) Seller provides Notice to Buyer as soon as possible after (1) such actual mechanical failure of the Generating Facility, or (2) Seller determines in its reasonable discretion that a mechanical failure of the Generating Facility is imminent; and
 - (iii) A qualified California-licensed professional engineer verifies that the equipment that will be used to modify the Generating Facility is not oversized relative to other equipment on the market; and
 - (iv) Results in capacity added to the Generating Facility over the Term that is within the applicable MW limits set forth in the following table (for a Generating Facility with multiple turbines, the limits below are limits per turbine):

Current Turbine Name Plate on the Effective Date	Increase to Turbine Name Plate Over the Term
10MW or Less	5MW
Greater than 10MW but less than 20MW	10MW
Greater than or equal to 20MW but less than 25MW	15MW

Greater than or equal to 25MW but less than 50MW	20MW
Greater than or equal to 50MW but less than 100MW	25MW
Greater than or equal to 100 but less than 200MW	35MW
Greater than or equal to 200 but less than 350MW	45MW
Greater than or equal 350MW	50MW

Or,

- (v) Such modification is reasonably necessary to respond to a Force Majeure or a change in law or regulation, and a qualified California-licensed professional engineer verifies that such modification is not oversized relative to other equipment on the market.
- (d) Separate and distinct from Seller's rights under Section 3.07(c), Seller in its sole discretion may modify the Generating Facility if such modification does not increase the Power Rating of the Generating Facility by more than 10 percent. Such 10 percent increase shall be based upon the Power Rating of the Generating Facility on (i) the Effective Date (as set forth in Section 1.09), if the Generating Facility is an Existing CHP Facility, or (ii) the Term Start Date (as set forth in the Power Rating Notice), if the Generating Facility is a New CHP Facility.
- (e) With respect to Section 3.07(c), Seller shall bear the cost of the professional engineer and Seller shall secure all studies and upgrades necessitated by or associated with the modification of the Generating Facility.
- (f) Seller acknowledges that nothing in this Section 3.07 excuses Seller from any requirements of the CAISO's interconnection process or any other applicable interconnection process.
- (g) Seller is solely responsible for all GHG Compliance Costs and all other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification of the Generating Facility in accordance with this Section 3.07.
- (h) Notwithstanding any modification of the Generating Facility, Buyer shall have no liability to make any energy payments to Seller for any electricity deliveries from the Generating Facility in excess of 131,400 MWh in any Term Year.

3.08 Metering.

- (a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test all CAISO-Approved Meters pursuant to the CAISO Tariff or other applicable metering requirements.
- (b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Generating Facility at a location designated by Seller or any other location mutually agreeable to the Parties. The Check Meter location must allow for the Check Meter to be interconnected with Buyer's communication network to permit:
 - (i) Periodic, remote collection of revenue quality meter data; and
 - (ii) Back-up real time transmission of operating-quality meter data through the Telemetry System set forth in Section 3.09; *provided, however,* that the transmission of such meter data through the Telemetry System is permitted by the CAISO.

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

- (c) Use of Check Meter for Back-Up Purposes.
 - (i) Buyer shall routinely compare the Check Meter data to the CAISO-Approved Meter data.
 - (ii) If the deviation between the CAISO-Approved Meter data (after adjusting (1) for all appropriate compensation and correction factors applied, if applicable, by the CAISO to the CAISO-Approved Meter, or (2) for any deviation that may result due to the CAISO-Approved Meter and Check Meter being physically situated in different locations) and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable.
 - (iii) Each Party shall bear its own costs for any meter check or recertification.

- (iv) Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.
- (v) The Check Meter is intended to be used (1) for back-up purposes in the event of a failure or other malfunction of the CAISO-Approved Meter, and (2) in the event Seller has not installed the CAISO-Approved Meter, as further described in Section 3.06(b). Data from the Check Meter will only be used to validate the CAISO-Approved Meter data and, in the event of a failure or other malfunction of the CAISO-Approved Meter, or in accordance with and subject to Section 3.06(b), in place of the CAISO-Approved Meter until such time that the CAISO-Approved Meter is certified.

3.09 Telemetry System.

- (a) Seller is responsible for designing, furnishing, installing, maintaining and testing a real time Telemetry System in accordance with the CAISO Tariff provisions applicable to the Generating Facility. Seller has the right to request any exemption from such requirements from the CAISO so long as it is obtained pursuant to the CAISO Tariff.
- (b) Notwithstanding anything to the contrary set forth in Section 3.09(a), if (i) the Generating Facility is an Existing CHP Facility, (ii) Buyer is the Scheduling Coordinator under this Agreement, and (iii) Buyer and Seller were, immediately before the Effective Date, parties to the Existing PPA, then, to the extent that Seller would be out of compliance with the CAISO Tariff as of the Term Start Date if Seller has not complied with Section 3.09(a) on or before the Term Start Date, Seller will not be in breach of this Agreement if Seller fully complies with Section 3.09(a) within 180 calendar days after the Effective Date; *provided, however,* that Seller must demonstrate progress toward compliance with the CAISO Tariff requirement set forth in Section 3.09(a) by complying with a milestone schedule specified by the CAISO in consultation with Seller for satisfaction of this requirement within the 180-calendar-day compliance period. Seller may request further extensions from the CAISO (pursuant to the CAISO Tariff) with respect to the requirement set forth in Section 3.09(a), which extensions, if approved by the CAISO, must be in writing and provided to Buyer by Seller upon Buyer's request.
- (c) Buyer agrees that, subject to the limitation set forth in Section 3.09(b) and upon the CAISO's request, pending Seller compliance with Section 3.09(a), Buyer shall provide to the CAISO any telemetry data reasonably requested by the CAISO for operating information purposes.

3.10 Provision of Information.

- (a) Within 30 days after the Effective Date, Seller shall provide to Buyer (to the extent not already in Buyer's possession), subject to Section 9.09:
 - (i) All currently operative agreements with providers of distribution, transmission or interconnection services for the Generating Facility and all amendments thereto;
 - (ii) Any currently operative filings at FERC, including any rulings, orders or other pleadings or papers filed by FERC, concerning the qualification of the Generating Facility as a Qualifying Cogeneration Facility;
 - (iii) Any Permits reasonably requested by Buyer concerning the Operation or licensing of the Generating Facility, and any applications or filings requesting or pertaining to such Permits;
 - (iv) Each of the following engineering documents for the Generating Facility:
 - 1) Site plan drawings;
 - 2) Electrical one-line diagrams;
 - 3) Control and data acquisition details and configuration documents;
 - 4) Major electrical equipment specifications;
 - 5) Process flow diagrams;
 - 6) Piping and instrumentation diagrams;
 - 7) General arrangement drawings; and
 - 8) Aerial photographs of the Site, if any; and
 - (v) Instrument specifications, installation instructions, operating manuals, maintenance procedures and wiring diagrams for the CAISO-Approved Meter(s) and the Telemetry System reasonably requested by Buyer.
- (b) If applicable and subject to Section 9.09, as soon as possible, Seller shall provide to Buyer (i) engineering specifications and design drawings for the Telemetry System, and (ii) annual test reports for the CAISO-Approved Meters.
- (c) Subject to Section 9.09 and upon Buyer's request, Seller shall make commercially reasonable efforts to provide Buyer with all documentation necessary for Buyer to

comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, which commercially reasonable efforts shall, at a minimum, include providing Buyer with all documentation regarding the operational characteristics or past performance of the Generating Facility if such documentation is requested by the CPUC.

- 3.11 Progress Reporting. If the Generating Facility is a New CHP Facility, Seller shall use commercially reasonable efforts to meet the Milestone Schedule and shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware which may materially impact its ability to meet the Milestone Schedule.

No later than the 10th day of each month while Seller has not yet met one or more milestones set forth in the Milestone Schedule, and within five days of Buyer's request, Seller shall, in accordance with Exhibit H, prepare and provide to Buyer a written report detailing Seller's progress toward meeting the Milestone Schedule.

Seller shall include in such report a list of all letters, notices and Permits to or from any Governmental Authority (and the CAISO) applicable to Seller's effort to meet the Milestone Schedule, and shall provide any such documents as may be reasonably requested on Notice from Buyer.

- 3.12 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing or demonstration of the Generating Facility.

- 3.13 Capacity Demonstration Test; Resource Adequacy Demonstrations.

- (a) If the Generating Facility is (i) a New CHP Facility, or (ii) as set forth in Section 5.2.4.4 of the Settlement Agreement, an Existing CHP Facility that is Operating in California but that has never entered into an agreement for the purchase and sale of electric energy with Buyer or any other California investor-owned utility, then Seller shall, on or before the Firm Operation Date, satisfy the Capacity Demonstration Test by delivering to Buyer a certificate, including all supporting data, from a qualified independent California-licensed professional engineer (the "As-Available Contract Capacity Confirmation Certificate"), which As-Available Contract Capacity Confirmation Certificate must set forth (x) the As-Available Contract Capacity, and (y) the Reportable Capacity, in each case as demonstrated to and determined by such engineer. To the extent the As-Available Contract Capacity set forth in Section 1.02(d) on the Effective Date and the As-Available Contract Capacity set forth in the As-Available Contract Capacity Confirmation Certificate are different, Section 1.02(d) will be adjusted to reflect the As-Available Contract Capacity set forth in the As-Available Contract Capacity Confirmation Certificate; *provided, however*, that the As-Available Contract Capacity may never exceed 20,000 kW.

- (b) The Reportable Capacity set forth in the As-Available Contract Capacity Confirmation Certificate delivered to Buyer in accordance with Section 3.13(a) will be used by Buyer to determine Buyer's MW Target with respect to this Agreement.
- (c) Seller shall comply with any demonstration required for Resource Adequacy Rulings; *provided, however*, if such demonstrations could interfere with the operations of Seller, Seller shall be entitled to challenge such requirements with the CPUC or other relevant agency. Absent a ruling or other action granting a stay, compliance shall be required pending resolution of the challenge.

3.14 Operation and Record Keeping. Seller shall:

- (a) Operate the Generating Facility in accordance with Prudent Electrical Practices;
- (b) Comply with the Forecasting requirements, as set forth in Exhibit I;
- (c) Use reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit I;
- (d) Pay all CAISO Charges, as set forth in Exhibit J;
- (e) Pay all SDD Adjustments for which Seller is responsible, as set forth in Exhibit K;
- (f) [Intentionally omitted]
- (g) Comply with the Outage Schedule Submittal Requirements, as set forth in Exhibit R;
- (h) Use reasonable efforts to deliver the maximum possible quantity of As-Available Contract Capacity and associated electric energy during an Emergency Condition or a System Emergency;
- (i) Use reasonable efforts to reschedule any outage that occurs during an Emergency Condition or a System Emergency;
- (j) Keep a daily Operating log for the Generating Facility that includes information on availability, outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the Operation of the Generating Facility, including:

- (i) Real and reactive power production;
 - (ii) Changes in Operating status;
 - (iii) Protective apparatus operations; and
 - (iv) Any unusual conditions found during inspections;
- (k) Keep all Operating records required of a CHP Facility by any applicable CPUC order as well as any additional information that may be required of a CHP Facility in order to demonstrate compliance with all applicable California utility industry standards which have been adopted by the CPUC;
- (l) Provide copies of all daily Operating logs and Operating records to Buyer within 20 days of a Notice from Buyer;
- (m) Provide, upon Buyer's request, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor-owned utilities of expected or experienced outages by facilities under contract to supply electric energy;
- (n) Pay all Scheduling Fees, as set forth in Exhibit G;
- (o) [Intentionally omitted]
- (p) Register with the NERC as the Generating Facility's Generator Owner and Generator Operator if Seller is required to register by the NERC;
- (q) Maintain documentation of all procedures applicable to the testing and maintenance of the Generating Facility protective devices as necessary to comply with the NERC Reliability Standards applicable to protection systems for electric generators if Seller is required to maintain such documentation by the NERC;
- (r) If Buyer is Scheduling Coordinator, then at least 30 days before the Term End Date, or in accordance with Section 7(a) of Exhibit G, or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and
- (s) If Buyer is not Scheduling Coordinator:
- (i) Cause its Scheduling Coordinator to submit a Self-Schedule of Seller's Day-Ahead Forecast associated with the Generating Facility through the

IFM; Seller shall then submit the quantity associated with the Self-Schedule of Seller's Day-Ahead Forecast as a Physical Trade to Buyer in the IFM, specifying the generating resource identifier and all other CAISO-required Inter-SC Trade attributes;

- (ii) Cause its Scheduling Coordinator to submit the IFM Day-Ahead Schedule quantity associated with the Generating Facility as an Inter-SC Trade of IFM Load Uplift Obligation to Buyer to be cleared through the Real-Time Market, specifying all CAISO-required Inter-SC Trade attributes; and
- (iii) Make available to Buyer all CAISO settlement data with respect to the Generating Facility required to validate payments made under this Agreement.

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

- (a) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the CAISO, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when the CAISO orders curtailment and the Scheduling Coordinator implements such curtailment in compliance with the CAISO Tariff or applicable orders to avoid or address a declared System Emergency.
- (b) Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from the Transmission Provider, which may be communicated by Buyer if Buyer is the Scheduling Coordinator. Such notice or instruction shall only be provided when curtailment of the Power Product is required to comply with:
 - (i) A CAISO curtailment declared pursuant to Section 3.15(a) or Transmission Provider declared Emergency Condition, subject to the interconnection agreement between Seller and the Transmission Provider; or
 - (ii) Transmission Provider's maintenance requirements, subject to the interconnection agreement between Seller and the Transmission Provider.
- (c) Notwithstanding the above, except as may be required in order to respond to any Emergency Condition or System Emergency, Buyer shall, consistent with FERC Order 888 and the interconnection agreement between Seller and the Transmission Provider and with the applicable provisions of the CAISO Tariff:
 - (i) Use reasonable good faith efforts to coordinate Transmission Provider's curtailment needs with Seller to the extent it can influence such needs; or

- (ii) Request the Transmission Provider and CAISO limit the curtailment duration.
 - (d) If Seller has entered into a QF PGA or PGA with the CAISO, or an interconnection agreement, the terms of the applicable QF PGA or PGA and the applicable interconnection agreement with respect to CAISO or Transmission Provider curtailments, shall govern the rights and obligations of Buyer and Seller to the extent any provision of this Section 3.15 is inconsistent with such applicable QF PGA or PGA, and interconnection agreement.
 - (e) In the event Seller interconnects with a Person other than the CAISO, Seller shall adhere to any reliability curtailment order by such Person pursuant to the applicable tariff provisions of such Person.
- 3.16 Report of Lost Output. To the extent the conditions set forth in Sections 3.16(a) through (e) occur, Seller shall prepare and provide to Buyer, by the fifth Business Day following the end of each month during the Term, a lost output report. The lost output report shall identify the date, time, duration, cause and amount by which the Metered Energy was reduced below the Seller's Energy Forecast due to:
- (a) Maintenance Outages;
 - (b) Major Overhauls;
 - (c) CAISO or Transmission Provider-ordered curtailments;
 - (d) Force Majeure; or
 - (e) Forced Outages.
- 3.17 FERC Qualifying Cogeneration Facility Status.
- (a) Subject to Section 9.09, within 30 Business Days following the end of each year, and within 30 Business Days following the Term End Date, Seller shall provide to Buyer:
 - (i) A completed copy of Buyer's "QF Efficiency Monitoring Program – Cogeneration Data Reporting Form", substantially in the form of Exhibit T, with calculations and verifiable supporting data, which demonstrates the compliance of the Generating Facility with qualifying cogeneration facility operating and efficiency standards set forth in 18 CFR Part 292, Section 292.205 "Criteria for Qualifying Cogeneration Facilities", for the applicable year; and

- (ii) A copy of a FERC order waiving for the Generating Facility the applicable operating and efficiency standards for qualifying cogeneration facilities, as contemplated in 18 CFR Part 292, Section 292.205, "Criteria for Qualifying Cogeneration Facilities", for the applicable year, if Seller has received such FERC order.
- (b) [Intentionally omitted.]
- (c) Seller shall take all necessary steps, including making or supporting timely filings with the FERC in order to maintain, or obtain a FERC waiver of, the Qualifying Cogeneration Facility status of the Generating Facility throughout the Term; *provided, however*, that this obligation does not apply to the extent Seller is unable to maintain Qualifying Cogeneration Facility status using commercially reasonable efforts because of (i) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Effective Date, or (ii) a change in Applicable Laws directly impacting the Qualifying Cogeneration Facility status of the Generating Facility occurring after the Effective Date.

The term "commercially reasonable efforts" in this Section 3.17(c) does not require Seller to pay or incur more than \$20,000 multiplied by the number of Term Years in the Term.

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

- (a) Interconnect with the Transmission Provider's electric system;
- (b) Transmit and deliver electric energy to the Delivery Point; or
- (c) Own and operate any CAISO-Approved Meter.

3.19 Buyer's Access Rights.

- (a) Upon providing at least one Business Day advance Notice to Seller, or as set forth in any Applicable Law (whichever is later), Buyer has the right to examine the Site, the Generating Facility and the Operating records, provided that Buyer follows Seller's safety policies and procedures that Seller has communicated to Buyer, does not interfere with or hinder Seller's Operations, and agrees to escorted access to the Generating Facility during regular business hours for:
 - (i) Any purpose reasonably connected with this Agreement;
 - (ii) The exercise of any and all rights of Buyer under Applicable Law or its tariff schedules and rules on file with the CPUC; or

- (iii) The inspection and testing of any Check Meter, CAISO-Approved Meter or the Telemetry System.
- (b) Seller shall promptly provide Buyer access to all meter data and data acquisition services both in real-time, and at later times, as Buyer may reasonably request. Seller shall promptly inform Buyer of meter quantity changes after becoming aware of, or being informed of, any such changes by the CAISO. Seller shall provide instructions to the CAISO granting authorizations or other documentation sufficient to provide Buyer with access to the CAISO-Approved Meter and to Seller's settlement data on OMAR.

3.20 Seller Financial Information.

- (a) The Parties shall determine, through consultation and review with their respective independent registered public accounting firms, whether Buyer is required to consolidate Seller's financial statements with Buyer's financial statements for financial accounting purposes under Accounting Standards Codification (ASC) 810/Accounting Standards Update 2009-17, "Consolidation of Variable Interest Entities" (ASC 810), or future guidance issued by accounting profession governance bodies or the SEC that affects Buyer accounting treatment for this Agreement (the "Financial Consolidation Requirement").
- (b) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then:
 - (i) Within 20 days following the end of each year (for each year that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the year. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

The annual financial statements should include quarter-to-date and yearly information. Buyer shall provide to Seller a checklist before the end of each year listing the items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the information on the checklist.

If audited financial statements are prepared for Seller for the year, Seller shall provide such statements to Buyer within five Business Days after

those statements are issued.

- (ii) Within 15 days following the end of each fiscal quarter (for each quarter that such treatment is required), Seller shall deliver to Buyer unaudited financial statements and related footnotes of Seller as of the end of the quarterly period.

The financial statements should include quarter-to-date and year-to-date information. Buyer shall provide to Seller a checklist before the end of each quarter listing items which Buyer believes are material to Buyer and required for this purpose, and Seller shall provide the information on the checklist, subject to the availability of data from Seller's records. It is permissible for Seller to use accruals and prior month's estimates with true-up to actual activity, in subsequent periods, when preparing the unaudited financial statements.

- (iii) If Seller regularly prepares its financial data in accordance GAAP, the International Financial Reporting Standards ("IFRS"), or any successor to either of the foregoing ("Successor"), the financial information provided to Buyer shall be prepared in accordance with such principles. If Seller is not a SEC registrant and does not regularly prepare its financial data in accordance with GAAP, IFRS or Successor, the information provided to Buyer shall be prepared in a format consistent with Seller's regularly applied accounting principles, e.g., the format that Seller uses to provide financial data to its auditor.
- (c) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then promptly upon Notice from Buyer, Seller shall allow Buyer's independent registered public accounting firm such access to Seller's records and personnel, as reasonably required so that Buyer's independent registered public accounting firm can conduct financial statement audits in accordance with the standards of the Public Company Accounting Oversight Board (United States), as well as internal control audits in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, as applicable. All expenses for the foregoing shall be borne by Buyer.

If Buyer's independent registered public accounting firm during or as a result of the audits permitted in this Section 3.20(c) determines a material weakness or significant deficiency, as defined by GAAP, IFRS or Successor, as applicable, exists in Seller's internal controls over financial reporting, then within 90 days of Seller's receipt of Notice from Buyer, Seller shall remediate any such material weakness or significant deficiency; *provided, however*, that Seller has the right to challenge the appropriateness of any determination of material weakness or significant deficiency. Seller's true up to actual activity for yearly

or quarterly information as provided herein shall not be evidence of material weakness or significant deficiency.

- (d) Buyer shall treat Seller's financial statements and other financial information provided under the terms of this Section 3.20 in strict confidence and, accordingly:
- (i) Shall utilize such Seller financial information *only* for purposes of preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, for making regulatory, tax or other filings required by law in which Buyer is required to demonstrate or certify its or any parent company's financial condition or to obtain credit ratings;
 - (ii) Shall make such Seller financial information available only to its officers, directors, employees or auditors who are responsible for preparing, reviewing or certifying Buyer's or any Buyer parent company financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Buyer parent company financial statement and to those Persons who are entitled to receive confidential information as identified in Sections 9.09(a)(vi) and 9.09(a)(vii); and
 - (iii) Buyer shall ensure that its internal auditors and independent registered public accounting firm (1) treat as confidential any information disclosed to them by Buyer pursuant to this Section 3.20, (2) use such information solely for purposes of conducting the audits described in this Section 3.20, and (3) disclose any information received only to personnel responsible for conducting the audits.
- (e) If the Parties mutually agree that the Financial Consolidation Requirement is applicable, then, within two Business Days following the occurrence of any event affecting Seller which Seller understands, during the Term, would require Buyer to disclose such event in a Form 8-K filing with the SEC, Seller shall provide to Buyer a Notice describing such event in sufficient detail to permit Buyer to make a Form 8-K filing.
- (f) If, after consultation and review, the Parties do not agree on issues raised by Section 3.20(a), then such dispute shall be subject to review by another independent audit firm not associated with either Party's respective independent registered public accounting firm, reasonably acceptable to both Parties. This third independent audit firm will render its recommendation on whether consolidation by Buyer is required. Based on this recommendation, Seller and Buyer shall mutually agree on how to resolve the dispute. If Seller fails to provide the data consistent with the mutually agreed upon resolution, Buyer may

declare an Event of Default pursuant to Section 6.01. If Buyer's independent audit firm, after the review by the third independent audit firm still determines that Buyer must consolidate, then Seller shall provide the financial information necessary to permit consolidation to Buyer; *provided, however*, that in addition to the protections in Section 3.20(d), such information shall be password protected and available only to those specific officers, directors, employees and auditors who are preparing and certifying the consolidated financial statements and not for any other purpose.

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

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

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

3.22 Allocation of Availability Incentive Payments and Non-Availability Charges.

- (a) If Buyer is the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Buyer and for Buyer's account and any Non-Availability Charges will be the responsibility of Buyer and for Buyer's account.
- (b) If Buyer is not the Scheduling Coordinator, and if the Generating Facility is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the CAISO Tariff, then any Availability Incentive Payments will be for the benefit of Seller and for Seller's account and any Non-Availability Charges will be the responsibility of Seller and for Seller's account.

3.23 Seller's Reporting Requirements.

- (a) Seller shall comply with the reporting requirements set forth in Section 3 of Exhibit S.
- (b) Seller shall deliver to Buyer, on or before the 10th Business Day following receipt of a Notice from Buyer, such information that Buyer is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Buyer otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Three ***

ARTICLE FOUR. BUYER'S OBLIGATIONS

4.01 Obligation to Pay. For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit D.

4.02 Payment Adjustments.

- (a) Buyer shall adjust each Monthly Contract Payment to Seller to account for:
 - (i) Scheduling Fees owed by Seller to Buyer, as set forth in Exhibit G;
 - (ii) Any SDD Adjustment, as set forth in Exhibit K;
 - (iii) [Intentionally omitted]
 - (iv) Any CAISO Charges owed by Seller to Buyer, as set forth in Exhibit J;
 - (v) Any Physical Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit L;
 - (vi) Any SC Trade Settlement Amount owed by either Party to the other Party, as set forth in Exhibit M;
 - (vii) Any payment adjustments (including adjustments to CAISO Charges or payment adjustments made based on Section 4.04) provided for under this Agreement; or
 - (viii) Any Governmental Charges owed by either Party to the other Party, as set forth in Section 8.02.
- (b) Unless otherwise required in Exhibit S, during the Term, any payment adjustments will be added to or deducted from a subsequent regular Monthly Contract Payment that is made by Buyer to Seller after the expiration of a 30-day period which begins upon Buyer's receipt of all of the information required in order to calculate payment adjustments.
- (c) Unless otherwise required in Exhibit S, after the Term End Date, Buyer shall invoice Seller for all payment adjustments within 60 days of Buyer's receipt of all of the information required in order to calculate payment adjustments.

4.03 Payment Statement and Payment.

- (a) No later than 30 days after the end of each calendar month (or the last day of the month if the month in which the payment statement is being sent is February), or the last Business Day of the month if such 30th day (or 28th or 29th day for February) is not a Business Day, Buyer shall mail to Seller:
- (i) A table showing the hourly electric energy quantities for each of the following, in MWh per hour:
- 1) Seller's Energy Forecast;
 - 2) Seller's Day-Ahead Forecast;
 - 3) Metered Energy;
 - 4) Metered Amounts;
 - 5) The final Buyer Energy Schedule; and
 - 6) The final Buyer Parent Energy Schedule.
- (ii) A statement showing:
- 1) TOD Period subtotals and overall monthly totals for each of the items set forth in Section 4.03(a)(i);
 - 2) A calculation of the Monthly Contract Payment, as set forth in Exhibit D;
 - 3) A calculation of any payment adjustments pursuant to Sections 4.02 or 4.04;
 - 4) A calculation of any payment adjustments pursuant to Exhibit S; and
 - 5) A calculation of the net dollar amount due for the month.
- (iii) Buyer's payment to Seller, in accordance with Section 9.15, in the net dollar amount owed to Seller for the month (including a deduction for any overpayments by Buyer under Section 4.04 in any calendar month); *provided, however*, in the event the statement shows a net amount owed to Buyer, Seller shall pay such amount within 20 days of the statement date or, if Seller fails to make such payment, Buyer may offset this amount from a subsequent Monthly Contract Payment.

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

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

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

At Buyer's sole discretion, Buyer may offset any remaining amount owed to Buyer in any subsequent monthly payments to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 30 days of receipt of such invoice.

- (c) Buyer reserves the right to deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer:
- (i) Under this Agreement; or
 - (ii) Arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.
- (d) Except as provided in Section 4.03(b) and as otherwise provided in this Section 4.03(d), if, within 45 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete; *provided, however*, that if an error is identified by Seller as a result of settlement, audit or other information provided to Seller by the CAISO after the expiration of the original 45-day period, Seller shall have an additional 90 days from the date on which it receives the information from the CAISO in which to give Notice to Buyer of the error identified by such settlement, audit or other information.

If Seller identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment

caused by the error and add the underpayment to the next monthly statement that is calculated.

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

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

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

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

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

4.04 Payment Adjustment for Delivery of Excess Energy.

- (a) Buyer shall pay for Seller's GHG Compliance Costs and GHG Charges in accordance with Exhibit S; *provided, however*, that notwithstanding anything to the contrary set forth in this Agreement (including Exhibit S), in no event will Buyer pay for any of Seller's GHG Compliance Costs or GHG Charges to the extent that such GHG Compliance Costs or GHG Charges are associated with deliveries of the Power Product that are in excess of (i) 131,400 MWh in any Term Year, or (ii) a rate of delivery of electric energy equal to 20 MWh per hour.
- (b) Notwithstanding anything to the contrary set forth in this Agreement:
 - (i) In no event shall Buyer have any liability to Seller for Seller's delivery of the Power Product to the extent that such delivery of the Power Product exceeds 131,400 MWh in a Term Year;
 - (ii) Seller shall owe Buyer, and Buyer shall have the right to deduct from any payment to Seller, \$50 for each MWh of the Power Product delivered by Seller to Buyer during any Term Year to the extent that such delivered Power Product is in excess of 103% of 131,400 MWh during such Term Year; and

- (iii) Upon Seller delivering to Buyer 131,400 MWh of the Power Product in a Term Year, Seller shall be responsible for all CAISO Charges and Buyer shall retain all CAISO Revenues to the extent that such CAISO Charges or CAISO Revenues are attributable to deliveries of the Power Product to Buyer that are in excess of 131,400 MWh of electric energy in a Term Year.
 - (c) If Buyer determines that the calculation of a Monthly Contract Payment is incorrect as a result of an overpayment by Buyer to Seller pursuant to Sections 4.04(a) and 4.04(b), Buyer shall offset such overpayment in a subsequent monthly payment to Seller under this Agreement or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 30 days of receipt of such invoice.
- 4.05 No Representation by Buyer. Any review by Buyer of the design, engineering, construction, testing and Operation of the Generating Facility is solely for Buyer's information. Buyer makes no representation that:
- (a) It has reviewed the financial viability, technical feasibility, operational capability, or long term reliability of the Generating Facility;
 - (b) The Generating Facility complies with any Applicable Laws; or
 - (c) The Generating Facility will be able to meet the terms of this Agreement.
- Seller shall in no way represent to any third party that any such review by Buyer constitutes any such representation.
- 4.06 Buyer's Responsibility. Buyer shall obtain and maintain all distribution, transmission and interconnection rights and agreements (including all Governmental Authority approvals) required to enable transmission and delivery of electric energy at and after the Delivery Point.
- 4.07 Buyer's Reporting Requirements. Buyer shall deliver to Seller, on or before the 10th Business Day following receipt of a Notice from Seller, such information as Seller is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement, or which Seller otherwise requires in order to comply with the Settlement Agreement.

*** End of Article Four ***

ARTICLE FIVE. FORCE MAJEURE

- 5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.
- 5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected.

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

- (a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
- (b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

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

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

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

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

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

*** End of Article Five ***

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

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

- (a) With respect to either Party (a “Defaulting Party”):
 - (i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not:
 - 1) Remedied within 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party; or
 - 2) Capable of a cure, but the Non-Defaulting Party’s damages resulting from such misrepresentation or breach of warranty can reasonably be ascertained and the payment of such damages is not made within 10 Business Days after a Notice of such damages is provided by the Non-Defaulting Party to the Defaulting Party;
 - (ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 30-day cure period, the Defaulting Party shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as such Defaulting Party promptly commences and diligently pursues such cure;
 - (iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;
 - (iv) A Party becomes Bankrupt; or
 - (v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations

of such Party under this Agreement to which such Party or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

- (b) With respect to Seller's Guarantor, if any (each event listed below to be deemed an Event of Default with respect to Seller):
- (i) Any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature and the misrepresentation or breach of warranty is not remedied within 10 Business Days after Notice from Buyer to Seller;
 - (ii) The failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty Agreement and such failure is not remedied within five Business Days after Notice from Buyer to Seller;
 - (iii) A Guarantor becomes Bankrupt and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (iv) The occurrence and continuation of a default, event of default or other similar condition or event under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in the aggregate amount of not less than the Guarantor Cross Default Amount, which results in such indebtedness becoming immediately due and payable and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (v) The failure of any Guaranty Agreement to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller;
 - (vi) The Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any Guaranty Agreement given to Buyer and replacement credit support is not provided within five Business Days after Notice from Buyer to Seller; or
 - (vii) If the Guarantor fails to maintain a Credit Rating of at least (1) BBB- from S&P, Baa3 from Moody's, and BBB- from Fitch, if Guarantor is rated by all three ratings agencies, (2) the lower of BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch if Guarantor is rated by only two of the three ratings agencies, or (3) BBB- by S&P, Baa3 by Moody's, or BBB- by Fitch if Guarantor is rated by only one of the ratings agency, and

replacement credit support is not provided within 10 Business Days after Notice from Buyer to Seller.

- (c) With respect to Seller:
- (i) Seller does not own or lease the Generating Facility or otherwise have the authority over the Generating Facility as required in Section 3.03(a), and Seller has not cured a failure with respect to Section 3.03(a) within 30 days after providing Notice to Buyer in accordance with Section 3.03(a);
 - (ii) If Seller abandons the Generating Facility (for purposes of this Section 6.01(c)(ii), Seller will be deemed to have abandoned the Generating Facility if Seller has ceased work on the Generating Facility or the Generating Facility has ceased production and delivery of the Product for a consecutive thirty (30) day period and such cessation is not a result of an event of Force Majeure);
 - (iii) Except as provided for in Section 3.01(d), Seller (1) conveys, transfers, allocates, designates, awards, reports or otherwise provides any and all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except as may relate to transactions in the imbalance market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) starts up or Operates the Generating Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);
 - (iv) Seller intentionally or knowingly delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement electric energy that was not generated by the Generating Facility;
 - (v) Seller removes from the Site equipment upon which the As-Available Contract Capacity has been based, except for the purposes of replacement, refurbishment, repair, repowering or maintenance, and such equipment is not returned within five Business Days after Notice from Buyer to Seller;
 - (vi) [Intentionally omitted]
 - (vii) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system for transmission and delivery of the electric energy from the Generating Facility to the Delivery Point, or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation;

- (viii) [Intentionally omitted]
- (ix) Seller fails to provide any financial statements or other information within the timeframe and in the manner set forth in Sections 3.20(b)(i) and (ii), and such failure is not remedied within 10 days after Notice from Buyer to Seller;
- (x) Seller fails to remediate any material weakness or significant deficiency in internal controls over financial reporting in accordance with Section 3.20(c), and such failure is not remedied within 90 days after Notice from Buyer to Seller;
- (xi) Seller fails to take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Related Products for Buyer's benefit throughout the Term as specified in Section 3.01, if such failure is not remedied within 10 days after Notice of such failure is provided by Buyer to Seller, which Notice sets forth in reasonable detail the nature of the Event of Default; *provided, however*, that if the Event of Default is not reasonably capable of being cured within such 10-day cure period, Seller shall have such additional time (not to exceed 120 days) as is reasonably necessary to cure such Event of Default, so long as Seller promptly commences and diligently pursues such cure;
- (xii) [Intentionally omitted]
- (xiii) If any failure by Seller to comply with the CAISO Tariff materially impacts Buyer's ability to comply with this Agreement, the CAISO Tariff or other Applicable Laws, and such failure by Seller (including any consequences suffered by Buyer) is not cured within 30 days after Notice from Buyer to Seller;
- (xiv) If Seller materially modifies the Generating Facility (except as provided in Section 3.07(c)) without Buyer's prior written consent;
- (xv) If Seller fails to satisfy all of the conditions set forth in Section 2.01 before the Term Start Date, and such failure is not cured within 30 Business Days after Notice from Buyer to Seller;
- (xvi) If the Generating Facility is a New CHP Facility:
 - 1) Seller fails to satisfy the creditworthiness and collateral requirements in Sections 2 and 3 of Exhibit F and such failure is not cured within five Business Days after Notice is provided by Buyer to Seller;

- 2) The stock or equity ownership interest in Seller has been pledged or assigned as collateral or otherwise to any party other than Lender without Buyer's consent, which consent may not be unreasonably withheld, delayed or conditioned;
 - 3) Seller fails to post and maintain the Development Security pursuant to Section 4(b) of Exhibit F and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller;
 - 4) Seller fails to post and maintain the Performance Assurance Amount pursuant to Section 2 of Exhibit F and such failure is not cured within five Business Days after Notice of such failure from Buyer to Seller;
 - 5) The occurrence and continuation of a default, event of default or other similar condition or event under any loan agreement with any Lender, or any other related agreement or instrument with or for the benefit of any Lender, which results in any indebtedness under those agreements or instruments becoming immediately due and payable; *provided, however*, if Seller, Buyer and a Lender have entered into a Collateral Assignment Agreement with substantially the provisions set forth in Section 9.05, and the terms of such Collateral Assignment Agreement conflict or are inconsistent with this Section 6.01(c)(xvi)(5), the provisions of the Collateral Assignment Agreement control;
 - 6) The occurrence and continuation of a default, event of default or other similar condition or event under any power purchase agreement between Buyer and Seller (other than this Agreement) or under any other related agreement or instrument with or for the benefit of Buyer; or
 - 7) Subject to Section 3.17(c), the Generating Facility (A) is not designed and constructed so as to satisfy all of the requirements applicable to a CHP Facility, (B) fails to maintain its status as a Qualifying Cogeneration Facility during the Term, or (C) otherwise fails to meet the requirements of a CHP Facility during the Term; or
- (xvii) If the Generating Facility is an Existing CHP Facility, then, at anytime on or, subject to Section 3.17(c), after the Effective Date, the Generating Facility (1) fails to maintain its status as a Qualifying Cogeneration Facility, or (2) otherwise fails to meet the requirements of a CHP Facility.

- 6.02 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01 or pursuant to a Collateral Assignment Agreement agreed upon by Buyer, Seller and Lender in accordance with Section 9.05. The Party taking the default (the “Non-Defaulting Party”) will have the right to:
- (a) Designate by Notice to the Defaulting Party a date, no later than 20 days after the Notice is effective, for the early termination of this Agreement (an “Early Termination Date”);
 - (b) Immediately suspend performance under this Agreement; and
 - (c) Pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.
- 6.03 Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the sum of all amounts owed by the Defaulting Party under this Agreement less any amounts owed by the Non-Defaulting Party to the Defaulting Party under this Agreement, including any Forward Settlement Amount (the “Termination Payment”). The Notice shall include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, including the Forward Settlement Amount, together with appropriate supporting documentation. If the Generating Facility is a New CHP Facility, no Forward Settlement Amount is assessed for any Termination Payment due to Buyer as the Non-Defaulting Party by Seller as the Defaulting Party if this Agreement is terminated before the Term Start Date.

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

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

*** End of Article Six ***

ARTICLE SEVEN. LIMITATIONS OF LIABILITIES

EXCEPT AS SET FORTH IN THIS ARTICLE SEVEN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

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

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

UNLESS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, INCLUDING THE PROVISIONS OF SECTION 9.03, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED IN THIS ARTICLE SEVEN ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN

ID #[Number], [Seller's Name]

ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED UNDER THIS AGREEMENT CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

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

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

ARTICLE EIGHT. GOVERNMENTAL CHARGES

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

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

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

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

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

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

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

Nothing stated in this Section 8.02 relieves Buyer of its obligation to pay Seller for Seller’s GHG Compliance Costs and GHG Charges in accordance with and subject to this Agreement (including Exhibit S).

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

*** End of Article Eight ***

ARTICLE NINE. MISCELLANEOUS

9.01 Representations, Warranties and Covenants.

- (a) On the Effective 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) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws;
 - (iii) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
 - (iv) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Related Entities, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;
 - (v) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;
 - (vi) It is acting for its own account, and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement;
 - (vii) It has not relied on any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement; and
 - (viii) It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or receive the Power Product as contemplated by this Agreement.
- (b) On the Effective Date:
 - (i) Each Party covenants to the other Party that, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

- (ii) If Section 1.02(a) provides that the Generating Facility is an Existing CHP Facility, then, Seller represents and warrants to Buyer that the Generating Facility qualifies as a Qualifying Cogeneration Facility and otherwise meets the requirements of a CHP Facility; and
- (iii) If the Generating Facility is an Existing CHP Facility, Seller represents and warrants to Buyer that the Power Rating of the Generating Facility equals the value set forth in Section 1.09.

9.02 Additional Covenants by Seller. Seller covenants to Buyer that:

- (a) It will have Site Control as of the earlier of (i) the Term Start Date and (ii) any period before the Term Start Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, will maintain Site Control throughout the Term;
- (b) Throughout the Term, it or its subcontractors will own or lease and Operate the Generating Facility unless otherwise agreed to by the Parties;
- (c) Throughout the Term, it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person;
- (d) Throughout the Term, it will hold the rights to all of the Product, subject to the terms of this Agreement;
- (e) If Section 1.02(a) provides that the Generating Facility is a New CHP Facility, then, subject to Section 3.17(c), (i) the Generating Facility will be designed and constructed so as to satisfy all of the requirements applicable to a CHP Facility, and (ii) throughout the Term, the Generating Facility will maintain its status as a Qualifying Cogeneration Facility and will otherwise meet the requirements of a CHP Facility;
- (f) If Section 1.02(a) provides that the Generating Facility is an Existing CHP Facility, then, subject to Section 3.17(c), from the Effective Date until the Term End Date, the Generating Facility will maintain its status as a Qualifying Cogeneration Facility and will otherwise meet the requirements of a CHP Facility;
- (g) Throughout the Term, it will not (1) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer (except, if Buyer is not Scheduling Coordinator, as may relate to transactions in the Real-Time Market arising from ordinary course deviations between Metered Energy and electric energy Scheduled to Buyer), or (2) start-up or Operate the Generating

Facility per instruction of or for the benefit of any third party (except in order to satisfy the Site Host Load, or as required by other Applicable Laws);

- (h) Upon Buyer's request, Seller shall provide to Buyer documentation evidencing the Generating Facility's contribution to Buyer's compliance with the GHG EPS;
- (i) Seller shall comply with all (i) applicable cap-and-trade programs for the regulation of Greenhouse Gas, as established by any Governmental Authority pursuant to federal or state legislation, and (ii) other applicable programs regulating Greenhouse Gas emissions; and
- (j) If the Generating Facility is a New CHP Facility, Seller covenants that before the Term Start Date it shall provide a Notice to Buyer setting forth the Power Rating ("Power Rating Notice") of the Generating Facility on the Term Start Date.

9.03 Indemnity.

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

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

- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 9.01 and Section 9.02.
- (c) The provisions of this Section 9.03 may not be construed to relieve any insurer of its obligations to pay any insurance Claims in accordance with the provisions of any valid insurance policy.
- (d) Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 9.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability,

damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any person or damage to any property, including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 9.10.

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

- (e) Each Party shall defend, save harmless and indemnify the other Party against any Governmental Charges for which such indemnifying Party is responsible under Article Eight.
- (f) Seller shall defend, save harmless and indemnify Buyer against any increase in GHG Compliance Costs and other costs associated with the implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility to the extent that such GHG Compliance Costs or other costs result from Seller's modification of the Generating Facility in accordance with Section 3.07.
- (g) Seller shall defend, save harmless and indemnify Buyer against any penalty imposed upon Buyer as a result of Seller's failure to fulfill its obligations regarding Resource Adequacy Benefits as set forth in Sections 3.01 and 3.02, with the exception of the obligations set forth in Section 3.01(c)(vi).
- (h) Seller is solely responsible for any NERC Standards Non-Compliance Penalties arising from or relating to Seller's failure to perform the Generator Operator Obligations or the Generator Owner Obligations for which Seller is responsible, in accordance with Section 3.21, and will indemnify, defend and hold Buyer harmless from and against all liabilities, damages, Claims, losses, and reasonable costs and expenses (which shall include reasonable costs and expenses of outside or in-house counsel) incurred by Buyer arising from or relating to Seller's actions or inactions that result in NERC Standards Non-Compliance Penalties or an attempt by any Governmental Authority, Person to assess such NERC Standards Non-Compliance Penalties against Buyer. Buyer will indemnify, defend and hold Seller harmless from and against all liabilities, damages, Claims, losses and reasonable costs and expenses (which shall include reasonable costs of outside and in-house counsel) incurred by Seller for any NERC Standards Non-Compliance Penalties to the extent they are due to Buyer's negligence or willful misconduct in performing its role as Seller's Scheduling Coordinator during the Term.
- (i) All indemnity rights will survive the termination of this Agreement for 12 months.

9.04 Assignment.

- (a) With Consent. Subject to Section 9.04(b), Seller may not transfer or assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld or delayed. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent will not be unreasonably withheld. For purposes of this Section 9.04, Buyer will not withhold its consent to an indirect change of control of Seller if Seller demonstrates to Buyer's reasonable satisfaction that Seller shall continue to perform its obligations under this Agreement as if no such indirect change of control had occurred.
- (b) Without Consent. Notwithstanding anything to the contrary set forth in Section 9.04(a):
- (i) Seller may, without the consent of Buyer (and without relieving itself from liability hereunder): (1) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements in accordance with Section 9.05; or (2) transfer or assign this Agreement to an Related Entity of Seller, which Related Entity's creditworthiness is equal to or higher than that of Seller; and
- (ii) Seller does not need to obtain Buyer's consent to any change of control described in this Section 9.04 if such change of control results from a purchase of the outstanding shares of a publicly traded company.

9.05 Consent to Collateral Assignment. Subject to the provisions of this Section 9.05, Seller may (but is not obligated to) assign this Agreement as collateral to a Lender for any financing or refinancing of the Generating Facility, including a Sale-Leaseback Transaction or Equity Investment and, in connection therewith, Buyer shall in good faith work with Seller and Lender to agree upon a consent to a collateral assignment of this Agreement or to a Sale-Leaseback Transaction or Equity Investment, as applicable ("Collateral Assignment Agreement").

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

- (a) Buyer shall give, to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, simultaneously with the Notice to Seller and before exercising its right to terminate this Agreement, written Notice of any event or circumstance known to Buyer which would, if not cured within the applicable

- cure period specified in Article VI, constitute an Event of Default (an “Incipient Event of Default”);
- (b) Lender shall have the right to cure an Incipient Event of Default or an Event of Default by Seller in accordance with the same provisions of this Agreement as apply to Seller;
 - (c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to (although Lender may, but shall have no obligation, subject to 9.05(g)) provide to Buyer a report concerning:
 - (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
 - (iii) If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
 - (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan;
 - (d) Seller or Lender shall provide the report to Buyer within 10 Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;
 - (e) Lender shall have the right to cure an Event of Default or Incipient Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender’s intention to cure. Lender may remedy or cure the Event of Default or Incipient Event of Default within the cure period under this Agreement. Such cure period for Lender shall be extended for each day Buyer does not provide the Notice to Lender referred to in Section 9.05(a). In addition, such cure period may, in Buyer’s reasonable discretion, be extended by no more than an additional 180 days. If possession of the Generating Facility is necessary to cure such Incipient Event of Default or Event of Default, Lender has commenced foreclosure proceedings within 60 days after receipt of such Notice from Buyer, and Lender is making diligent and consistent efforts to complete such foreclosure, take possession of the Generating Facility and promptly cure the Incipient Event of Default or Event of Default, Lender or its designee(s) or assignee(s) will be allowed a reasonable period of time to complete such foreclosure proceedings, take possession of the Generating Facility and cure such Incipient Event of Default or Event of Default, not to exceed 180 days after

Lender's commencement of foreclosure. Additionally, if Lender is prohibited from curing any Incipient Event of Default or Event of Default by any process, stay or injunction issued by a Governmental Authority or pursuant to any bankruptcy, insolvency or similar proceedings, then the time period for curing such Incipient Event of Default or Event of Default shall be extended for the period of the prohibition provided that Lender is exercising reasonable diligence in having such process, stay or injunction removed;

- (f) Lender shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default or the end of the Term;
- (g) Lender shall receive prior Notice of, and shall have the right to approve material amendments to this Agreement, which approval may not be unreasonably withheld, delayed or conditioned;
- (h) In the event Lender, directly or indirectly, takes title to the Generating Facility (including title by foreclosure or deed in lieu of foreclosure), the Person taking title to the Generating Facility shall assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided, however*, that Lender (or such Person) shall have no liability for any monetary obligations of Seller under this Agreement which are due and owing to Buyer as of the assumption date (but this provision may not be interpreted to limit Buyer's rights to proceed against Seller as a result of an Event of Default) and Lender's (or such Person's) liability to Buyer after such assumption shall be limited to its interest in the Generating Facility; *provided further*, that before such assumption, if Buyer advises Lender (or such Person) that Buyer will require that Lender (or such Person) cure (or cause to be cured) one or more monetary or non-monetary Incipient Event(s) of Default or Event(s) of Default existing as of the date such Person takes title in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Incipient Event(s) of Default or Event(s) of Default, then Lender (or such Person) at its option and in its sole discretion may elect to either (i) cause such Incipient Event(s) of Default or Event of Default to be cured, or (ii) not assume this Agreement;
- (i) If Lender has assumed this Agreement as provided in Section 9.05(h) and elects to sell or transfer the Generating Facility (after Lender directly or indirectly, takes title to the Generating Facility), or sale of the Generating Facility occurs through the actions of Lender or an agent of or representative of Lender (excluding any foreclosure sale where a third party other than Lender, Seller, an Related Entity of Lender or an Related Entity of Seller is the buyer), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer excluding, however, a foreclosure (unless the transferee or buyer is Lender,

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

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

9.06 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

- (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day;
- (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out;
- (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date;

- (d) Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement;
- (e) A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith; and
- (f) All Notices for this Generating Facility must reference the identification number set forth on the cover page of this Agreement.

9.08 General.

- (a) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.
- (b) This Agreement will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.
- (d) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- (e) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.
- (f) The term “including” when used in this Agreement is by way of example only and will not be considered in any way to be in limitation.
- (g) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (h) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to “Articles”, “Sections” and “Exhibits” refer to the corresponding Articles, Sections and Exhibits of this Agreement. Unless otherwise specified, all references to “Articles” or “Sections” in Exhibits A through T refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

- (i) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.
- (j) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as shall inure to a successor or permitted assignee.
- (k) No provision of this Agreement is intended to contradict or supersede any applicable agreement between the Parties or between or among Seller, the CAISO and the Transmission Provider, covering transmission, distribution, metering, scheduling or interconnection of electric energy (including the PGA and QF PGA). In the event of an apparent contradiction between this Agreement and any such agreement, the applicable agreement controls.
- (l) Whenever this Agreement specifically refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.
- (m) The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code.
- (n) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.

9.09 Confidentiality.

- (a) Neither Party may disclose any Confidential Information to a third party, other than:
- (i) To such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
 - (ii) To potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; *provided, however*, that disclosure (1) of cash flow and other financial projections to any potential Lender or investor in connection with a potential loan or tax equity investment; or (2) to potential Lenders or investors with whom Seller has negotiated (but not necessarily executed) a term sheet or other similar written mutual understanding, will not require such consent of Buyer; *provided further*, that in each case such potential Lender or investor has a need to know such information and has agreed to keep such terms confidential;
 - (iii) To Buyer's Procurement Review Group, as defined in D.02-08-071, subject to a protective order applicable to Buyer's Procurement Review Group;
 - (iv) With respect to Confidential Information other than nonpublic financial information of Seller supplied to Buyer pursuant to Section 3.20, to the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information;
 - (v) In order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party, other than to those entities set forth in Section 9.09(a)(vi);
 - (vi) In order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC;
 - (vii) To representatives of a Party's credit ratings agencies who have a need to review the terms and conditions of this Agreement for the purpose of assisting the Party in evaluating this Agreement for credit rating purposes

or with respect to the potential impact of this Agreement on the Party's financial reporting obligations, in each case subject to confidentiality restrictions no less stringent than as set forth in this Agreement; and

- (viii) As may reasonably be required to participate in the WREGIS or other process recognized under Applicable Laws for the registration, transfer or ownership of Green Attributes associated with the Related Products.
- (b) In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Sections 8.03 and 9.09(a)(vi) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to (i) notify the other Party before disclosing the confidential information, and (ii) prevent or limit such disclosure. After using such reasonable efforts, the disclosing party may not be (x) prohibited from complying with a Disclosure Order, or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of any terms or conditions of this Agreement which are the subject of such Disclosure Order.
- (c) Except as provided in clause (y) of Section 9.09(b), the Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 9.09.

9.10 Insurance.

- (a) As of the Effective Date and throughout the Term (and for such additional periods as may be specified in this Section 9.10), Seller shall, at its own expense, provide and maintain in effect the insurance policies and minimum limits of coverage specified in this Section 9.10, and such additional coverage as may be required by Applicable Law, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A-:VII. The minimum insurance requirements specified in this Section 9.10 do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller's defense and indemnity obligations.
 - (i) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Seller's employees;
 - (ii) Employer's Liability Insurance with limits of not less than:
 - 1) Bodily injury by accident – One Million dollars (\$1,000,000) each accident;
 - 2) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit; and
 - 3) Bodily injury by disease – One Million dollars (\$1,000,000) each employee; and

- (iii) Commercial General Liability Insurance, (which, except with the prior written consent of Buyer and subject to Sections 9.10(a)(ii)(1) and (2), shall be written on an “occurrence,” not a “claims-made” basis), covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a combined single limit per occurrence and annual aggregate of not less than one million dollars (\$1,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.

If Seller elects, with Buyer’s written concurrence, to use a “claims made” form of Commercial General Liability Insurance, then the following additional requirements apply:

- 1) The retroactive date of the policy must be prior to the Effective Date; and
- 2) Either the coverage must be maintained for a period of not less than four years after the Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four years after the Agreement terminates.

- (iv) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than \$1,000,000 per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement.

- (v) Umbrella/Excess Liability Insurance, written on an “occurrence,” not a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than \$10,000,000 per occurrence and in the annual aggregate. The insurance requirements of this Section 9.10 can be provided by any combination of Seller’s primary and excess liability policies.

- (b) The insurance required in Section 9.10(a) apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller’s policies to the contrary. To the extent permitted by Applicable Law, Seller and its insurers are required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required

above shall name Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, ownership or Operation of the Generating Facility.

- (c) At the time this Agreement is executed, or within a reasonable time thereafter, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required in this Section 9.10, written on forms and with deductibles reasonably acceptable to Buyer. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. All certificates of insurance shall note that the insurers issuing coverage shall endeavor to provide Buyer with at least 30 days' prior written notice in the event of cancellation of coverage. Buyer's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, does not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 9.10 and does not constitute a waiver of any of the requirements in this Section 9.10.
 - (d) If Seller fails to comply with any of the provisions of this Section 9.10, Seller, among other things and without restricting Buyer's remedies under the Applicable Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.
 - (e) Seller has the right to self-insure to comply with Seller's obligations under this Section 9.10. The insurance carrier or carriers and form of policy (including any deductible amount), or any plan for self-insurance shall be subject to review and approval by Buyer, which approval may not be unreasonably withheld, conditioned or delayed.
- 9.11 Nondedication. Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and such service shall cease upon termination of this Agreement.
- 9.12 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party will seek, nor will they support any third party in seeking, to prospectively or retroactively revise the rates, terms, or conditions of service of this Agreement through application or

complaint to FERC pursuant to the provisions of Section 205, 206, or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties.

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

- 9.13 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.
- 9.14 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.
- 9.15 Payments. Payments to be made under this Agreement shall be made, at Seller’s option, by check or electronic wire funds transfer.
- 9.16 Provisional Relief. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 3.01, 3.02, 3.03, or 9.09 (and, if applicable, Section 4(e) of Exhibit F) in any court of competent jurisdiction, notwithstanding the obligation to submit all other disputes (including all Claims for monetary damages under this Agreement) to arbitration pursuant to Section 10.01. The Parties further acknowledge and agree that the results of such arbitration may be rendered ineffectual without such provisional relief.

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

provision, or if this Agreement does not specify a remedy for such breach, all other remedies available at law or equity to the Parties for such breach.

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

ARTICLE TEN. DISPUTE RESOLUTION

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

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

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

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

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

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

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

The Parties will cooperate with one another in selecting the Arbitrator within 60 days after Notice of the demand for arbitration and will further cooperate in scheduling the

arbitration to commence no later than 180 days from the date of Notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court.

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

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

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

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

{Buyer Comment: For PG&E, insert San Francisco; for SDG&E, insert San Diego; and for SCE, insert Los Angeles.}

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within 30 days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to 25 document requests (with no subparts), three lay witness depositions, and three expert witness depositions (unless the Arbitrator

holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);

- (f) Each Party is allowed a maximum of three expert witnesses, excluding rebuttal experts;
- (g) Within 60 days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (h) Within 30 days after the initial expert disclosure, the Parties may designate a maximum of two rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Article Seven, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Agreement are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Sections 3.01, 3.02, 3.03 or 9.09 (and, if applicable, Section 4(e) of Exhibit F).

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

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

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

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

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

[SELLER'S NAME],

[BUYER'S NAME],

a [Seller's business registration]

a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
Definitions

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

“Actual HR” means the Heat Rate that must be used in accordance with and subject to the terms set forth in Section 2(a)(ii) of Exhibit S, which Heat Rate Buyer shall calculate, on the date of the commencement of the First Compliance Period, using the following formula:

Actual HR_n = The average of the Daily HR_n for each delivery or flow date in the two (2) year period immediately preceding the commencement of the First Compliance Period

Where:

$$\text{Daily } HR_n = [EP_n - VOM_n] / [GP_n + GT_n]$$

Where:

EP_n = The average of the Day-Ahead hourly electric energy prices, as determined by the Integrated Forward Market (as defined in the CAISO Tariff) for (i) SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor, if Buyer is SCE or SDG&E, and (ii) NP15 Existing Zone Generation Trading Hub (formerly known as NP15), or its successor, if Buyer is PG&E;

VOM_n = Calendar month avoided variable O&M for the applicable month (\$/kWh), per the Decision and CPUC Resolution E-4246;

GP_n = The applicable daily gas price index, which is (i) Platt's Gas Daily (currently SoCalGas gas indices), if Buyer is SCE or SDG&E, or (ii) Platt's Gas Daily (currently SoCalGas and PG&E Malin gas indices), if Buyer is PG&E; and

GT_n = The gas transportation rate for the applicable month, per CPUC Resolution E-4246.

“Additional GHG Documentation” means the documentation necessary to allocate Free Allowances to electric energy delivered by Seller to Buyer, which documentation consists of the following, in each case for the time-period to which the Free Allowances are to apply: (a) the total amount of GHG emissions attributable to the Generating Facility, the electric energy used to serve the Site Host Load, the Useful Thermal Energy Output of the Generating Facility, and the electric energy delivered to Buyer; (b) the Useful Thermal Energy Output of the Generating Facility; (c) the total electric energy produced by the Generating Facility, the electric energy used to serve the Site Host Load, and the electric energy delivered to Buyer; and (d) total fuel usage of the Generating Facility.

“Agreement” has the meaning set forth in the Preamble.

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

“Allowance Cost” has the meaning set forth in Section 2(a)(ii) of Exhibit S.

“Allowed Hourly Energy”, or “E”, is determined in Section 3(f) of Exhibit D.

“Allowed Payment Energy”, or “APE”, is determined in Section 2(d) of Exhibit D.

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

“Annual GHG Reports” has the meaning set forth in Section 3(a) of Exhibit S.

“Applicable HR” has the meaning set forth in Section 1 of Exhibit S.

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

“Arbitrator” has the meaning set forth in Section 10.03.

“As-Available Capacity”, or “AAC”, is determined in Section 3(c) of Exhibit D.

“As-Available Capacity Payment”, or “ACP”, is determined in Section 3(b) of Exhibit D.

“As-Available Capacity Price” means the price adopted by the CPUC in the Decision and in subsequent rulings of the CPUC implementing the Decision, or pursuant to any such other formula as the CPUC may adopt from time to time for As-Available Capacity Payments to be made to Buyer’s Qualifying Cogeneration Facilities for the applicable year, as set forth in Section 3(b) of Exhibit D, in dollars per kW-year.

“As-Available Contract Capacity” means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.02(d), as may be adjusted in accordance with Sections 3.07(c) and 3.13(a).

“As-Available Contract Capacity Confirmation Certificate” has the meaning set forth in Section 3.13(a).

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“Bankrupt” means with respect to any Person, such Person:

- (a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (which petition is not dismissed within 90 days);
- (b) Makes an assignment or any general arrangement for the benefit of creditors;
- (c) Otherwise becomes bankrupt or insolvent (however evidenced);
- (d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or
- (e) Is generally unable to pay its debts as they fall due.

“Burner Tip Gas Price” or “BTGP” has the meaning set forth in Section 1 of Exhibit S.

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

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

“Buyer Energy Schedule” means the schedule of electric energy that Buyer establishes with the CAISO for electric energy produced by the Generating Facility.

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

“Buyer Projected Energy Forecast” has the meaning set forth in Section 2(a) of Exhibit G.

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

“CAISO-Approved Meter” means any revenue quality, electric energy measurement meter furnished by Seller, that (a) is designed, manufactured and installed in accordance with the

CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) includes all of the associated metering transformers and related appurtenances that are required in order to measure the net electric energy output from the Generating Facility.

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

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

“CAISO Charges Invoice” has the meaning set forth in Section 5 of Exhibit G.

“CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.

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

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

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

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

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

“Capacity Demonstration Test” means the procedure for determining the Power Product and the Reportable Capacity, as set forth in Section 3.13(a).

“Capacity Payment Allocation Factors”, or “CAF”, means the TOD Period factors which are used to calculate the TOD Period Capacity Payment, as set forth in the table in Section 3(a) of Exhibit D.

“CARB” means California Air Resources Board, or any successor entity.

“CARB Annual Report” has the meaning set forth in Section 3(a)(i) of Exhibit S.

“CARB Mandatory GHG Emissions Annual Report” means the mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources.

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

“CFR” means the Code of Federal Regulations, as may be amended from time to time.

“Check Meter” means the Buyer revenue-quality meter section or meter(s), which Buyer may require at its discretion, as set forth in Section 3.08(b) and will include those devices normally supplied by Buyer or Seller under the applicable utility Electric Service Requirements.

“CHP Facility” means a Qualifying Cogeneration Facility that sequentially uses natural gas energy for the production of electric energy and Useful Thermal Energy Output for industrial, commercial, heating or cooling purposes and, if such Qualifying Cogeneration Facility is:

- (a) A “topping cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(d), then throughout the Term, the Site Host consumes, consistent with California Public Utility Code Section 218(b), at least 75% of the total electric energy produced by such cogeneration facility; or
- (b) A “bottoming cycle cogeneration facility”, as defined in 18 CFR Part 292, Section 292.202(e), then, throughout the Term, the Site Host must consume, consistent with California Public Utility Code Section 218(b), at least 25% of the total electric energy produced by the Generating Facility; and
- (c) Either a topping cycle cogeneration facility or a bottoming cycle cogeneration facility with supplemental firing, then such cogeneration facility meets a 60% efficiency standard, calculated per Term Year as follows:
 - (i) For a topping cycle cogeneration facility, by dividing the total 12-month Useful Thermal Energy Output and total electric energy output of the Generating Facility by the total annual fuel use, based on Higher Heating Value; and
 - (ii) For a bottoming cycle cogeneration facility, by dividing the total 12-month Useful Thermal Energy Output and total electric energy output of the Generating Facility by the total annual supplemental fuel use, based on Higher Heating Value of the supplemental fuel.

No efficiency requirement applies if the Qualifying Cogeneration Facility is a bottoming cycle cogeneration facility without supplemental firing.

“Claiming Party” has the meaning set forth in Section 5.02.

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed before or after the termination of this Agreement.

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

“Confidential Information” means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller’s compliance with operating and efficiency standards applicable to a “qualifying cogeneration facility” (as contemplated in 18 CFR Part 292, Section 292.205). Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.

“Contract Energy Payment” or “CEP” has the meaning set forth in Section 2(b) of Exhibit D.

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

“Converted Physical Trade”, or “CPT”, means the quantity from Physical Trades, in MWh, that did not pass CAISO’s physical validation of the IFM.

“Converted Physical Trade Price” means the price, in dollars per MWh, used by the CAISO to settle the quantity, in MWh, associated with the Converted Physical Trade.

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

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

“Credit Rating” means with respect to any Person, on the relevant date of determination, the respective ratings then assigned to such Person’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or Fitch. If no rating is assigned to such Person’s unsecured, senior long-term debt or deposit obligation by any

of S&P, Moody's or Fitch, then "Credit Rating" shall mean the general corporate credit rating or long-term issuer rating assigned to such Person by S&P, Moody's or Fitch, as the case may be.

"Curtailed Period" means a time period for which Seller is requested by CAISO or a Transmission Provider to curtail its Power Product for Force Majeure or otherwise.

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

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

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

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

"Day-Ahead Price" means the LMP_{QF}, as set forth in Section 1 of Exhibit S.

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

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

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

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

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

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

"Dispute" has the meaning set forth in Section 10.01.

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

"Effective Date" has the meaning set forth in the Preamble.

"Emergency Condition" has the meaning set forth in the Transmission Provider's LGIA or SGIA with Seller, or the distribution-level FERC-jurisdictional interconnection agreement with Seller, as applicable; *provided, however*, that if Seller interconnects pursuant to Tariff Rule 21, "Emergency Condition" means "Emergency", as defined in such Tariff Rule 21.

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

"Equity Investment" means an acquisition by a Lender of an ownership interest in the form of stock, membership or partnership interest of Seller or the immediate parent of Seller under which Seller retains the right to act in all matters relating to the control and Operation of the Site and

the Generating Facility for the Term, subject to Lender's rights to enforce its ownership interest in Seller or the immediate parent of Seller, as applicable, in the event of a default by Seller or the immediate parent of Seller under Lender's equity acquisition agreement or the partnership agreement, operating agreement, or other agreement governing the relationship between the equity owners of the Generating Facility.

"Event of Default" has the meaning set forth in Section 6.01.

"Existing CHP Facility" means a Generating Facility that commenced Parallel Operation before the Settlement Effective Date, and that, as of the Settlement Effective Date, (a) is a CHP Facility, and (b) is the generating facility under the Existing PPA.

"Existing PPA" means [insert title and date of the existing power purchase agreement between Buyer and Seller, including any amendments, as well as any extension agreements entered into pursuant D.07-09-040].

The definition of Existing PPA above is necessary for purposes of Sections 3.06(b) and 3.09(b), as well as the definition of Existing CHP Facility. If Buyer and Seller are not parties to an existing power purchase agreement (including any extension agreements entered into pursuant to D.07-09-40), the above definition should be removed or revised as necessary.

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

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

"FERC" means the Federal Energy Regulatory Commission, or any successor entity.

"Financial Consolidation Requirement" has the meaning set forth in Section 3.20(a).

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

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

"First Compliance Period" means the first period of time for compliance with a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or by a different Governmental Authority pursuant to federal or state legislation). There will be no more than a single First Compliance Period.

"Fitch" means Fitch Ratings Ltd.

“Floor Test Term” means the date that the First Compliance Period commences, for a period of three years.

“Forced Outage” has the meaning set forth in the CAISO Tariff.

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

- (a) A failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure event;
- (b) Failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility;
- (c) Breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or
- (d) A lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.

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

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

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

“Free Allowance Notice” means the Notice, delivered by Seller to Buyer in accordance with this Agreement, that sets forth the aggregate quantity of Free Allowances received by Seller during

the applicable time-period and sets forth the allocation of such Free Allowances in accordance with the following:

- (i) The allocation of Free Allowances by the CARB (or any other Governmental Authority) to the electric energy generated by the Generating Facility and delivered to Buyer during the applicable time-period; or
- (ii) If the CARB (or any other Governmental Authority) does not allocate Free Allowances received by Seller as described in subsection (i) above, then Seller shall set forth in the Free Allowance Notice the quantity of Free Allowances allocated to the electric energy generated by the Generating Facility and delivered to Buyer during the applicable time-period (FA_d) utilizing the following formula:

$$FA_d = FA_t * [G_e / (G_e + G_t)] * [E_d / (E_{sh} + E_d)]$$

Where:

FA_t = Total number of Free Allowances received by Seller with respect to the Generating Facility for the applicable time-period;

G_e (in MTs) = Emissions of Greenhouse Gas attributed to the total amount of electric energy produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

G_t (in MTs) = Emissions of Greenhouse Gas attributed to the Useful Thermal Energy Output produced by the Generating Facility for the applicable time-period (calculated in accordance with the formula set forth in Section 95112 of the California Code of Regulations, or any successor thereto, which calculation must be set forth in the Free Allowance Notice);

E_d (in kWh) = Electric energy generated by the Generating Facility and delivered to Buyer for the applicable time-period; and

E_{sh} (in kWh) = Electric energy generated by the Generating Facility and used to serve the Site Host Load for the applicable time-period;

or

- (iii) If the CARB (or any other Governmental Authority) does not allocate the Free Allowances received by Seller, as described in (i) above, and there is no available formula in any applicable rule or regulation for the calculation of G_e and G_t , as described in (ii) above, then Seller shall include in the Free Allowance Notice the total amount of

emissions of Greenhouse Gas attributed to the electric energy period (G_e , in MTs) and the Useful Thermal Energy Output (G_t , in MTs) produced by the Generating Facility for the applicable time-period based on the two following formulas:

$$G_e = G * (\text{Useful Power Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

$$G_t = G * (\text{Useful Thermal Energy Output} / (\text{Useful Power Output} + \text{Useful Thermal Energy Output}))$$

Where:

G (in MTs) = Total emissions of Greenhouse Gas produced by the Generating Facility for the applicable time-period;

Useful Power Output (in MMBtu) = As defined in 18 CFR §292.202(g), or any successor thereto;

Useful Thermal Energy Output (in MMBtu) = As defined in 18 CFR §292.202(h), or any successor thereto;

Upon determining G_e and G_t in subsection (iii) above, Seller shall then calculate for and provide the quantity of Free Allowances attributed to electric energy generated by the Generating Facility and delivered to Buyer for the applicable time-period (FA_d) using the formula set forth in subsection (ii) of this definition.

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

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), as of the Early Termination Date resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the gain of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Comparable transactions;
- (c) Forward price curves based on economic analysis of the relevant markets; and
- (d) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remaining Term and shall include the value of Related Products.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the gain of economic benefits, then the Non-Defaulting Party may use information available to it internally.

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

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

“Generation Operations Center” means the location of Buyer’s real-time operations personnel.

“Generator Operator” means the Person that Operates the Generating Facility and performs the functions of supplying electric energy and interconnected operations services within the meaning of the NERC Reliability Standards.

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

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

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

“GHG Allowance Price” has the meaning set forth in Section 2(a)(ii) of Exhibit S.

“GHG Auction” means any auction or other sale-by-bid event applicable to California and by an authorized Governmental Authority (or any entity authorized by such Governmental Authority) for the sale of Allowances.

“GHG Charges” has the meaning set forth in Section 1 of Exhibit S.

“GHG Compliance Costs” means the cost of Allowances, as determined in accordance with Exhibit S.

“GHG EPS” means the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and any subsequent CPUC-

established precondition to the execution of this Agreement (including any precondition set forth in the Settlement Agreement), in each case as in effect as of the Effective Date.

“GHG Floor Test” has the meaning set forth in Section 2(a) of Exhibit S.

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

“Governmental Charges” has the meaning as set forth in Section 8.02.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from the Project,
- (ii) Production tax credits associated with the construction or operation of the Project

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.

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.

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

“Guarantor” is that certain guarantor of Seller set forth in Section 1.07(b)(i).

“Guarantor Cross Default Amount” is the dollar amount set forth in Section 1.07(b)(iii).

“Guaranty Agreement” means a guaranty agreement substantially in the form of Exhibit O.

“Heat Rate” means, for purposes of this Agreement, the value obtained, in BTU per kWh, when the fuel input, on a Higher Heating Value basis, in BTU is divided by generation, net of Station Use, in kWh.

“Higher Heating Value” means the high or gross heat content of the fuel with the heat of vaporization included (the water vapor is assumed to be in a liquid state).

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

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

“Hourly Location Adjustment”, or “LA”, has the meaning set forth in Section 1 of Exhibit S.

“Hourly Power Output” means an hourly rate of electric energy delivery, in kWh per hour, that is equal to the Metered Energy for one hour, in kWh, divided by one hour.

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

“IFM Load Uplift Obligation” means the obligation of a Scheduling Coordinator to pay its share of unrecovered IFM Bid Costs (as defined in the CAISO Tariff) paid to resources through Bid Cost Recovery (as defined in the CAISO Tariff).

“IFRS” has the meaning set forth in Section 3.20(b)(iii).

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

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

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

“Inter-SC Trade” means a trade between Scheduling Coordinators of electric energy, Ancillary Service (as defined in the CAISO Tariff), or IFM Load Uplift Obligation in accordance with the CAISO Tariff.

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

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

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

“LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by another Local Regulatory Authority having jurisdiction over the load serving entity. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

“LAR Showings” means the LAR compliance showings (or similar or successor showings) a load serving entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction over the load serving entity.

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

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

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit provided by Seller and issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least (a) “A-” from S&P and Fitch and “A3” from Moody’s, if such entity is rated by all three rating agencies, or (b) “A-” from S&P or Fitch, or “A3” from Moody’s, if such entity is rated by only one or two of the ratings agencies, in each case, substantially in the form of Exhibit P. All costs to establish and maintain the Letter of Credit shall be borne by Seller.

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

- (a) The issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P and Fitch, and “A3” by Moody’s;
- (b) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;
- (c) The issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
- (d) Such Letter of Credit fails or ceases to be in full force and effect at any time;
- (e) Seller fails to provide an extended or replacement Letter of Credit within 30 days before such Letter of Credit expires or terminates; or
- (f) The issuer of such Letter of Credit becomes Bankrupt;

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

“LGIA” (i.e., Large Generator Interconnection Agreement or Standard Large Generator Interconnection Agreement) has the meaning set forth in the CAISO Tariff.

“Limited TOD Energy”, or “LE”, has the meaning set forth in Section 3(e) of Exhibit D.

“LMP_{QF}” has the meaning set forth in Section 1 of Exhibit S.

“LMP_{Trading Hub}” has meaning set forth in Section 1 of Exhibit S.

“Local Regulatory Authority” has the meaning set forth in the CAISO Tariff.

“Locational Marginal Price” has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it if any (exclusive of Costs), as of the Early Termination Date, resulting from the termination of this Agreement, expressed in dollars and determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit to a Party may include:

- (a) Reference to information supplied by one or more third parties, which shall exclude Related Entities of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets;
- (b) Comparable transactions;
- (c) Forward price curves based on economic analysis of the relevant markets; and
- (d) Settlement prices for comparable transaction at liquid trading hubs (e.g., NYMEX);

All of which should be calculated for the remainder of the Term and must include the value of Related Products. Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine the loss of economic benefits, then the Non-Defaulting Party may use information available to it internally.

“Maintenance Outage” means a time period during which Seller plans to reduce the Power Output of the Power Product, in full or in part, in order to facilitate maintenance work on the Generating Facility, other than a Major Overhaul.

“Major Overhaul” means a time period during which Seller plans to remove the Generating Facility from Operation in order to dismantle the Generating Facility’s equipment for inspections, repairs or replacement, with the goal that such equipment will be reassembled and made available for Operation.

“Market Disruption Event” means, with respect to any MHR Source, any of the following events: (i) the permanent discontinuation or material suspension of trading in the exchange or in the market specified for determining a Market Heat Rate; (ii) the temporary or permanent discontinuance or unavailability of the MHR Source; or (iii) the temporary or permanent closing of any exchange specified for determining a Market Heat Rate. For purposes of this definition, “temporary” means five (5) or more continuous Trading Days.

“Market Energy Payment” or “MEP” has the meaning set forth in Section 2(f) of Exhibit D.

“Market Heat Rate” means the 12-month forward market heat rate, calculated for each calendar pricing month utilizing the methodology set forth in Commission Decision 07-09-040 and Commission Resolution E-4246 for [*For SCE and SDG&E: SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor*] [*For PG&E: NP15 Existing Zone Generation Trading Hub (formerly known as NP15), or its successor*]. Unless otherwise agreed to by the Parties, this definition of Market Heat Rate will not be updated by any subsequent decision, ruling or order by the CPUC.

“Maximum Allowed Capacity”, or “MAC”, is determined in Section 3(d) of Exhibit D.

“Maximum Contract Energy” or “MCE” has the meaning set forth in Section 2(e) of Exhibit D.

“Mediator” has the meaning set forth in Section 10.02.

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

“Metered Energy” means the quantity of electric energy, expressed in kWh, as measured by (i) the CAISO-Approved Meter(s), which quantity will be adjusted so as not to include compensation factors, if any, introduced by the CAISO into the CAISO-Approved Meter(s) other than (x) electric energy consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s) and, (y) if applicable, the Generating Facility’s radial line losses, or (ii) Check Meters, as applicable, in each case for the specified Metering Interval.

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

“MHR Source” the relevant publications used to determine the Market Heat Rate.

“Milestone Schedule” means Seller’s milestone schedule, the form of which is attached to this Agreement as Exhibit Q.

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

“Monthly Scheduling Fee” is described in Section 4(b) of Exhibit G.

“Moody’s” means Moody’s Investor Services, Inc.

“MT” means metric ton(s).

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

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

“MW Target” means the number of MWs that Buyer must procure as part of meeting its obligations under the Settlement Agreement, pursuant to and as further described in the Settlement Agreement.

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

“NERC Reliability Standards” means the most recent version of those reliability standards applicable to the Generating Facility, or to the Generator Owner or the Generator Operator with respect to the Generating Facility, that are adopted by the NERC and approved by the applicable regulatory authorities, which are available at http://www.nerc.com/files/Reliability_Standards_Complete_Set.pdf, or any successor thereto.

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

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

“New CHP Facility” means a CHP Facility that commenced Parallel Operation for the first time on or after the Settlement Effective Date.

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

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

“Notice” means notices, requests, statements or payments provided in accordance with Section 9.07 and Exhibit N.

“OMAR” means the Operational Metering Analysis and Reporting System operated and maintained by the CAISO as the repository of settlement quality meter data, or any successor thereto.

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

“Optional As-Available PPA” has the meaning set forth in Recital E.

“Outage” has the meaning set forth in the CAISO Tariff.

“Outage Schedule” has the meaning set forth in Section 2(a) of Exhibit R.

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

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

“Party” has the meaning set forth in the Preamble.

“Performance Assurance” means collateral (in the amount of the Performance Assurance Amount) for Seller’s performance under this Agreement in the form of cash, Letter(s) of Credit, or the Guaranty Agreement. Performance Assurance is only required to be posted by Seller if the Generating Facility is a New CHP Facility.

“Performance Assurance Amount” has the meaning set forth in Section 1.07(a)(ii).

“Performance Tolerance Band Lower Limit” is determined in Section 1 of Exhibit K.

“Performance Tolerance Band Upper Limit” is determined in Section 1 of Exhibit K.

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

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

“PGA” (i.e., Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

“Physical Trade” has the meaning set forth in the CAISO Tariff.

“Physical Trade Settlement Amount” means the dollar amount calculated in accordance with Exhibit L.

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

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

“Power Output” means the average rate of electric energy delivery during one Metering Interval, converted to an hourly rate of electric energy delivery, in kWh per hour, that is equal to the product of Metered Energy for one Metering Interval, in kWh per Metering Interval, times the number of Metering Intervals in a one-hour period.

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

“Power Rating” means the electrical power output value indicated on the generating equipment nameplate.

“Power Rating Notice” has the meaning set forth in Section 9.03(j).

“PPT” means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Primary Fuel” means the fuel or combination of fuels that are provided for in the Permits applicable to the Generating Facility.

“Product” means the Power Product and the Related Products.

“Project” means the Generating Facility.

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

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

- (a) Equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility’s needs;
- (b) Sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site;

- (c) Preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools;
- (d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- (e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and
- (f) Equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

“PTSA_i” has the meaning set forth in Section 2 of Exhibit L.

“PURPA” means the Public Utility Regulatory Policies Act of 1978, Public Law, 95-617, as amended from time to time.

“QF PGA” (i.e., Qualifying Facility Participating Generator Agreement) has the meaning set forth in the CAISO Tariff.

“Qualifying Cogeneration Facility” means an electric energy generating facility that:

- (a) Complies with the “qualifying cogeneration facility” definition and other requirements (including the requirements set forth in 18 CFR Part 292, Section 292.205) established by PURPA and any FERC rules as amended from time to time implementing PURPA, as set forth in 18 CFR Part 292, Section 292.203 et seq.; and
- (b) Has filed with the FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which the FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

“RAR” means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, or by a Local Regulatory Authority or other Governmental Authority having jurisdiction.

“RAR Showings” means the RAR compliance showings (or similar or successor showings) a

load serving entity is required to make to the CPUC (or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, or to a Local Regulatory Authority having jurisdiction.

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

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

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

“Reference Market-Maker” means a leading dealer in the electric energy market that is not an Related Entity of either Party (or of a Trade Organization) and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.

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

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

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

“Reportable Capacity” means the Power Rating, in MW, minus Station Use, in MW.

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

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

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

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

“RPS Program” means the State of California Renewable Portfolio Standard Program, as codified at California Public Utilities Code Section 399.11, et seq.

“S&P” means the Standard & Poor’s Rating Group.

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

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

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

“Scheduling Coordinator” means a Person certified by the CAISO for the purposes of undertaking the functions specified in Exhibit G.

“Scheduling Fee” means the Monthly Scheduling Fee and the SC Set-Up Fee.

“SC Replacement Date” has the meaning set forth in Section 7(b) of Exhibit G.

“SC Set-Up Fee” is described in Section 4(a) of Exhibit G.

“SC Trade Settlement Amount” means the amount(s) determined in accordance with Exhibit M.

“SC Trade Tolerance Band” means the greater of (a) three percent of the Scheduled Amount or (b) three (3) MW.

“SDD Administrative Charge” has the meaning set forth in Section 2 of Exhibit K.

“SDD Adjustment” means the adjustment, if any, to the Monthly Contract Payment, as determined in accordance with Exhibit K.

“SDD Energy Adjustment” has the meaning set forth in Section 1 of Exhibit K.

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

“Security Interest” has the meaning set forth in Section 3 of Exhibit F.

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

“Seller” has the meaning set forth in the Preamble.

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

“Seller's Energy Forecast” means Seller's most recently updated Forecast submitted in accordance with Exhibit I.

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

“Settlement Agreement” has the meaning set forth in Recital C.

“Settlement Effective Date” has the meaning set forth in Recital D.

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

“Settling Parties” has the meaning set forth in Recital B.

“SGIA” (i.e., Small Generator Interconnection Agreement) means the form of Interconnection Request (as defined in the CAISO Tariff) pertaining to a Small Generating Facility (as defined in the CAISO Tariff), which is attached to the CAISO Tariff as Appendix T.

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

- (a) Dollar amount on which the Simple Interest Payment is based; by
- (b) Federal Funds Effective Rate or Interest Rate as applicable; by

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

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

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

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

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

“SLIC” means Scheduling and Logging system for the CAISO.

“Station Use” means the electric energy produced by the Generating Facility that is (a) used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, and (b) consumed within the Generating Facility’s electric energy distribution system as losses needed to deliver electric energy to the Site Host Load, and (c) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s).

“Successor” has the meaning set forth in Section 3.20(b)(iii).

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

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

“Tariff Rule 21” means the interconnection standards of the Transmission Provider for distributed generation adopted by the CPUC in Decisions 00-11-001 and 00-12-037, as modified by the CPUC.

“Telemetry System” means a system of electronic components that interconnects the CAISO and the Generating Facility in accordance with the CAISO’s applicable requirements as set forth in Section 3.09.

“Term” has the meaning set forth in Section 1.01.

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

“Termination Payment” has the meaning set forth in Section 6.03.

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

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

“TOD Period” means the time of delivery period used to calculate the Monthly Contract Payment set forth in Section 4 of Exhibit D.

“TOD Period Capacity Payment” means the monthly payment to be calculated and made by Buyer to Seller for Power Product capacity during each TOD Period for the month for which a calculation is being performed, as set forth in Section 3(a) of Exhibit D, in dollars.

“TOD Period Energy Payment” means the monthly payment to be calculated and made by Buyer to Seller for the Metered Energy during each TOD Period for the month for which a calculation is being performed, as set forth in Section 2(a) of Exhibit D, in dollars.

“TOD Period Energy Price” means the price used to calculate the TOD Period Energy Payment, as referenced in Section 2(c) for Contract Energy Payment or Section 2(g) for Market Energy Payment of Exhibit D, in dollars per kWh.

“TOU” has the meaning set forth in Section 1 of Exhibit S.

“Trade Organizations” means the California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association.

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

“Transmission Provider” means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility’s electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Seller from the Generating Facility to the Delivery Point.

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

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

“Useful Thermal Energy Output” has the meaning set forth in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto.

“VOM” has the meaning set forth in Section 1 of Exhibit S.

“Web Client” has the meaning set forth in Section 2(a) of Exhibit R.

ID #[Number], [Seller's Name]

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the western United States, northwestern Mexico, and southwestern Canada, or any successor entity.

“WREGIS” means the Western Renewable Energy Generation Information System, or any successor thereto.

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

EXHIBIT B
Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, electric metering and the Seller's measurement of the Useful Thermal Energy Output, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

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

*** End of Exhibit B ***

EXHIBIT C

[Intentionally omitted.]

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

EXHIBIT D
Monthly Contract Payment Calculation

1. Introduction. Each Monthly Contract Payment is calculated on a calendar month basis as follows:

MONTHLY CONTRACT PAYMENT, in dollars =

TOD Period Energy Payment_{1st TOD Period} +
TOD Period Energy Payment_{2nd TOD Period} +
TOD Period Energy Payment_{3rd TOD Period} +
TOD Period Energy Payment_{4th TOD Period} +
TOD Period Capacity Payment_{1st TOD Period} +
TOD Period Capacity Payment_{2nd TOD Period} +
TOD Period Capacity Payment_{3rd TOD Period} +
TOD Period Capacity Payment_{4th TOD Period}

All TOD Period Energy Payments shall be calculated as set forth in Section 2 of this Exhibit D.

All TOD Period Capacity Payments shall be calculated as set forth in Section 3 of this Exhibit D.

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

2. TOD Period Energy Payment Calculation.

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

TOD PERIOD ENERGY PAYMENT, in dollars = CEP + MEP

Where:

CEP = Contract Energy Payment, stated in Section 2(b) of this Exhibit D, in dollars per kWh.

MEP = Market Energy Payment, stated in Section 2(f) of this Exhibit D, in dollars per kWh.

- (b) For electric energy delivered by Seller to Buyer at a Power Output *up to* 20,000 kWh per hour that is pursuant to a Day-Ahead Schedule, each monthly Contract Energy Payment is calculated as follows:

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

Where:

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

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

LA = Hourly Location Adjustment price, as set forth in Section 1 of Exhibit S.

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

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Notwithstanding the provisions of Sections 2 and 3 of this Exhibit D, once Seller delivers 131,400 MWh of energy to Buyer during any Term Year, no further Contract Energy Payment or capacity payments will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

- (c) Factor “EP” in Section 2(b) of this Exhibit D. The TOD Period Energy Price for any TOD Period of any month shall be calculated as follows:

For electric energy delivered by Seller to Buyer at a Power Output up to 20,000 kWh per hour in a given hour interval that is pursuant to a Day-Ahead Schedule, EP is determined using the methodology set forth in Exhibit S with respect to such delivered electric energy;

- (d) Factor “APE” in Section 2(b) of this Exhibit D. The Allowed Payment Energy for each hour of each TOD Period of any month is calculated as follows:

APE = The lesser of the Metered Energy, Scheduled Amounts and Maximum Contract Energy as determined in Section 2(e) of this Exhibit D from the Generating Facility for each hour of the TOD Period, in kWh, subject to the limits described above in Section 2(b) of this Exhibit D.

- (e) Factor “MCE” in Section 2(d) of this Exhibit D. The Maximum Contract Energy for each TOD Period of any month is calculated as follows:

MAXIMUM CONTRACT ENERGY, in kWh = PO x PH

Where:

PO = Power Output = 20,000 kWh per hour.

PH = Period Hours, the number of hours in the TOD Period.

- (f) Each monthly Market Energy Payment is calculated as follows for Power Output greater than or equal to 20,000 kWh per hour:

$$\text{MARKET ENERGY PAYMENT, in dollars} = \sum_{\text{FirstHour}}^{\text{LastHour}} \text{EP} \times (\text{MA} - \text{APE})$$

Where:

EP = TOD Period Energy Price, stated in Section 2(g) of this Exhibit D, in dollar per kWh.

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

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

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Notwithstanding the provisions of Sections 2 and 3 of this Exhibit D, once Seller delivers 131,400 MWh of energy to Buyer during any Term Year, no further Market Energy Payment will be calculated for the remaining TOD Periods within any remaining months of the current Term Year.

- (g) Factor “EP” in Section 2(f) of this Exhibit D. The TOD Period Energy Price for any TOD Period of any month shall be calculated as follows:
- (i) For any electric energy delivered by Seller to Buyer at a Power Output *in excess of* 20,000 kWh per hour that is pursuant to a Day-Ahead Schedule, EP equals the Day-Ahead Price with respect to such delivered electric energy; and
 - (ii) For any electric energy delivered by Seller to Buyer (whether or not such electric energy is delivered at a Power Output *up to, at or in excess of* 20,000 kWh per hour) that is *not* pursuant to a Day-Ahead Schedule, EP

equals the Real-Time Price with respect to such delivered energy; *provided, however*, that notwithstanding anything to the contrary set forth in Exhibits J or K, Seller shall pay all CAISO Charges and receive all CAISO Revenues attributable to deviations between the Scheduled Amounts and Metered Amounts for its delivery of electric energy pursuant to this Section 2(g)(ii).

3. TOD Period Capacity Payment Calculation.

- (a) Each monthly TOD Period Capacity Payment is calculated on a calendar month basis as follows:

$$\text{TOD PERIOD CAPACITY PAYMENT in dollars} = \text{ACP} \times \text{CAF}$$

Where:

ACP = As-Available Capacity Payment for the TOD Period, as determined in accordance with Section 3(b) of this Exhibit D, in dollars per year.

CAF = The CPUC approved Capacity Payment Allocation Factor for the TOD Period in the year, based upon the formula adopted by the CPUC in D.01-03-067 [and D.97-03-017. For purposes of this Agreement, the CPUC approved Capacity Payment Allocation Factors are as provided in the table below, allocated to each month of the season based on the proportion of the month's hours in the TOD Period to the season's hours in TOD Period, and may be updated per subsequent CPUC decision]:

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	Peak	0.7619
	Partial Peak	.0238
	Off Peak	.0002
	Super Off Peak	0.00000
Winter	Peak	N/A
	Partial Peak	0.2125
	Off Peak	0.0015
	Super Off Peak	0.00000

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is PG&E. Additionally, the bracketed text is only applicable if Buyer is PG&E, and should otherwise be deleted.}

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak Period	0.1792
	Mid-Peak	0.0310
	Off-Peak	0.0006
Winter	Mid-Peak	0.0178
	Off-Peak	0.0011
	Super-Off-Peak	0.0007

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth in the table immediately above if Buyer is SCE.}

Capacity Payment Allocation Factors		
Season	TOD Period	Factor
Summer	On-Peak	0.098096
	Semi-Peak	0.006146
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002088
Winter	On-Peak	0.013237
	Semi-Peak	0.008118
	Off-Peak	0.000000
	Super Off-Peak	0.000000
	Non TOU	0.002008

{Buyer Comment: Use the Capacity Payment Allocation Factors set forth set forth in the table immediately above if Buyer is SDG&E.}

- (b) Factor “ACP” in Section 3(a) of this Exhibit D. The As-Available Capacity Payment shall be calculated pursuant to the following formula:

$$\text{AS-AVAILABLE CAPACITY PAYMENT, in dollars} = \text{AAC} \times \text{AACP}$$

Where:

AAC = As-Available Capacity for the TOD Period, as determined in accordance with Section 3(c) of this Exhibit D, in kWh per hour.

AACP= The As-Available Capacity Price adopted by the CPUC in the Decision for the applicable year as set forth in the following table:

As-Available Capacity Price	
Year	Price \$/kW-yr
2010	39.39
2011	41.22

2012	43.09
2013	45.00
2014	46.97
2015	48.98
2016	51.05
2017	53.16
2018	55.33
2019	57.56
2020	59.83
2021	62.17
2022	64.57
2023	67.02
2024	69.53
2025	72.11
2026	74.76
2027	77.46
2028	80.24

- (c) Factor “AAC” in Section 3(b) of this Exhibit D. The As-Available Capacity for each TOD Period of each month is calculated as follows:

AS-AVAILABLE CAPACITY, in kWh per hour = MAC

Where:

MAC = The Maximum Allowed Capacity for the TOD Period as determined in Section 3(d) in this Exhibit D, in kWh per hour.

- (d) Factor “MAC” in Section 3(c) of this Exhibit D. The Maximum Allowed Capacity for each monthly TOD Period is calculated as follows:

MAXIMUM ALLOWED CAPACITY, in kWh per hour = LE / PH

Where:

LE = The sum of the Limited TOD Energy from the Generating Facility for all hours of the TOD Period, as determined in Section 3(e) of this Exhibit D, in kWh.

PH = The total number of hours in the TOD Period (period hours).

- (e) Factor “LE” in Section 3(d) of this Exhibit D. The Limited TOD Energy for each TOD Period of any month is calculated as follows:

$$\text{LIMITED TOD ENERGY, in kWh} = \sum_{\text{FirstHour}}^{\text{LastHour}} (E)_{\text{Hour}}$$

Where:

E = The lesser of: (i) Metered Energy for the applicable hour, in kWh; and (ii) Allowed Hourly Energy, as determined in Section 3(f) of this Exhibit D, in kWh.

First Hour = First hour of the applicable TOD Period.

Last Hour = Last hour of the applicable TOD Period.

Metered Energy for any hour is equal to the sum of Metered Energy for all Metering Intervals in that hour.

(f) Factor “E” in Section 3(e) of this Exhibit D. The Allowed Hourly Energy is calculated as follows:

ALLOWED HOURLY ENERGY in kWh = 1 hour x AACC

Where:

AACC = The lesser of: (i) the As-Available Contract Capacity, as set forth in Section 1.02(d), in kW and (ii) 20,000 kWh per hour.

4. Time of Delivery Periods.

SEASON AND TIME PERIOD			
	Period A - Summer	Period B - Winter	
Time Period	May 1 - October 31	November 1 - April 30	Applicable Days
Peak	Noon - 6:00 p.m.	NA	Weekdays except Holidays
Partial-Peak	8:30 a.m. - Noon	8:30 a.m. - 9:30 p.m.	Weekdays except Holidays
	6:00 p.m. - 9:30 p.m.		Weekdays except Holidays
Off-Peak	9:30 p.m. - 1:00 a.m.	9:30 p.m. - 1:00 a.m.	Weekdays except Holidays
	5:00 a.m. - 8:30 a.m.	5:00 a.m. - 8:30 a.m.	Weekdays except Holidays
	5:00 a.m. - 1:00 a.m.	5:00 a.m. - 1:00 a.m.	Weekends & Holidays
Super Off-Peak	1:00 a.m. - 5:00 a.m.	1:00 a.m. - 5:00 a.m.	All Days

{ Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is PG&E. }

TOD Period	Summer Jun 1 st – Sep 30 th	Winter Oct 1 st – May 31 st	Applicable Days
On-Peak	Noon – 6:00 p.m.	Not Applicable.	Weekdays except Holidays.
Mid-Peak	8:00 a.m. – Noon	8:00 a.m. - 9:00 p.m.	Weekdays except Holidays.
	6:00 p.m. – 11:00 p.m.		Weekdays except Holidays.
Off-Peak	11:00 p.m. – 8:00 a.m.	6:00 a.m. – 8:00 a.m.	Weekdays except Holidays.
		9:00 p.m. – Midnight	Weekdays except Holidays.
	Midnight – Midnight	6:00 a.m. – Midnight	Weekends and Holidays.
Super-Off-Peak	Not Applicable.	Midnight – 6:00 a.m.	Weekdays, Weekends and Holidays.

{ Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SCE. }

	Summer	Winter	
Time Period	MAY 1 - SEPTEMBER 30	OCTOBER 1 - APRIL 30	
ON-PEAK	11:00 a.m. - 6:00 p.m.	5:00 p.m. - 8:00 p.m.	Weekdays
SEMI-PEAK	6:00 a.m. - 11:00 a.m.	6:00 a.m. - 5:00 p.m.	Weekdays
	6:00 p.m. - 10:00 p.m.	8:00 p.m. - 10:00 p.m.	Weekdays
OFF-PEAK	10:00p.m. - 12:00 mid.	10:00 p.m. - 12:00 mid.	Weekdays
	5:00 a.m. - 6:00 a.m.	5:00 a.m. - 6:00 a.m.	Weekdays
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Weekends
	5:00 a.m. - 12:00 mid.	5:00 a.m. - 12:00 mid.	Holidays
Super Off-Peak	12:00 mid. - 5:00 a.m.	12:00 mid. - 5:00 a.m.	All Days

{ Buyer Comment: Use the Time of Delivery Periods set forth set forth in the table immediately above if Buyer is SDG&E. }

“Holiday”, as used in the above table, means New Year’s Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. When a Holiday falls on a Sunday, the following Monday will be recognized as a Holiday. No change will be made for Holidays falling on Saturday.

*** End of Exhibit D ***

EXHIBIT E

[Intentionally omitted.]

*** *End of Exhibit E* ***

EXHIBIT F
New CHP Facilities Requirements

1. **Financial Information.**

- (a) If requested by Buyer, Seller shall deliver to Buyer the following financial statements, which in all cases shall be for the most recent accounting period and prepared in accordance with GAAP:
- (i) Within 120 days following the end of each fiscal year, a copy of Seller's and its Guarantor's annual report containing audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year; and
 - (ii) Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller's and its Guarantor's quarterly report containing consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous fiscal year;

provided, however, that if Seller is not an SEC reporting company or if the financial statements required under Sections 1(a)(i) or (ii) of this Exhibit F are not audited financial statements, a Responsible Officer of Seller will certify such financial statements as being in accordance with all Applicable Laws, prepared in accordance with GAAP and fairly stated in all material respects (subject to normal year-end audit adjustments for the quarterly financial statements); *provided further*, that such information must be provided only to those employees of Buyer that need to know such information for financial risk management purposes and may not be disclosed to third parties except as permitted under Section 9.09.

- (b) For purposes of the requirement set forth in Section 1(a) of this Exhibit F:
- (i) If Seller or its Guarantor's financial statements are publicly available electronically on the website of Seller, its Guarantor or the SEC, then Seller is deemed to have met this requirement; and
 - (ii) Should any such financial statements not be available on a timely basis due to a delay in preparation or certification, such delay is not an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

2. Performance Assurance.

- (a) Posting Performance Assurance. On or before the Term Start Date, then within 10 Business Days of such modification or repowering), Seller shall post Performance Assurance with Buyer and shall maintain the Performance Assurance Amount at all times on and after the Term Start Date until such time as Seller has satisfied all monetary obligations which survive any termination of this Agreement, not to exceed 365 days following the Term End Date.

The Performance Assurance Amount shall be either in the form of cash or Letter of Credit acceptable to Buyer; *provided, however*, that if, as of the Term Start Date, Seller has posted the Development Security in the form of cash or a Letter of Credit and Buyer has either not returned the Development Security to Seller or given Seller Notice, in accordance with this Exhibit F, of its determination regarding the disposition of the Development Security by such date, then Seller may withhold the portion of the Performance Assurance Amount equal to the Development Security or any portion thereof held by Buyer until three Business Days following the later of Seller's receipt or forfeiture of the Development Security or any portion thereof pursuant to Section 4(c) or (e) of this Exhibit F, after which Seller shall be obligated to post the full Performance Assurance Amount.

In lieu of cash or a Letter of Credit, Buyer may accept a Guaranty Agreement, in accordance with Section 2(c) of this Exhibit F, from a Guarantor acceptable to Buyer, to satisfy Seller's Performance Assurance obligation.

- (b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit is subject to the following provisions:
- (i) Each Letter of Credit must be maintained for the benefit of Buyer;
 - (ii) Seller shall:
 - (1) Renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit;
 - (2) If the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide alternative Performance Assurance acceptable to Buyer at least 30 days before the expiration of the outstanding Letter of Credit or within five Business Days of such indication by the Bank, whichever is later; and

- (3) If the bank issuing a Letter of Credit fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit, provide alternative Performance Assurance acceptable to Buyer within three Business Day after such refusal;
- (iii) Upon, or at any time after, the occurrence of a Letter of Credit Default, Seller shall provide to Buyer either a substitute Letter of Credit or alternative Performance Assurance acceptable to Buyer, in each case on or before the 10th Business Day after the occurrence thereof; and
- (iv) Upon the occurrence and continuation of an Event of Default by Seller, or if an Early Termination Date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit by submitting to the bank issuing such Letter of Credit one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing.

Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for Seller's obligations to Buyer and Buyer shall have the rights and remedies set forth in Section 3 of this Exhibit F with respect to such cash proceeds.

Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable for any (1) failure to provide or maintain sufficient Performance Assurance, or (2) any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.
- (v) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by Seller.
- (c) Guaranty Agreement. If Seller's Performance Assurance obligation is satisfied by a Guaranty Agreement, such agreement shall be in the form of Exhibit O executed by the Guarantor identified in Section 1.07(b)(i) or other party, in each case acceptable to Buyer and meeting the Credit Rating requirements for the Guarantor set forth immediately below. The Guarantor shall maintain a Credit Rating of at least:
 - (i) "BBB-" from S&P, "Baa3" from Moody's, and "BBB-" from Fitch, if Guarantor is rated by all three ratings agencies;
 - (ii) The lower of "BBB-" by S&P, "Baa3" by Moody's, or "BBB-" by Fitch if Guarantor is rated by only two of the three ratings agencies; or

- (iii) “BBB-” by S&P, “Baa3” by Moody’s, or “BBB-” by Fitch if Guarantor is rated by only one of the ratings agency.

3. First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security (if applicable), Performance Assurance, any other cash collateral and cash equivalent collateral posted pursuant to Sections 2 and 4 of this Exhibit F and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take such action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by Seller or an Early Termination Date resulting from an Event of Default caused by Seller, Buyer may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Development Security and Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding Letter of Credit issued for its benefit; and
- (c) Liquidate all Development Security and Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller shall remain liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full. Buyer may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available, and from all such forms, and in any sequence Buyer may select; *provided, however*, that to the extent multiple instruments of credit support are provided by or on behalf of Seller, Buyer shall draw on each such instrument of credit support proportionately based on the maximum aggregate liability under each such instrument, such that, for the avoidance of doubt, Buyer must draw proportionately on all of such outstanding instruments in order to obtain its full claim for payment.

4. Development Security.

- (a) Introduction. If Seller is required to post Development Security, such Development Security shall be held by Buyer as security for Seller (i) meeting the

Term Start Date and (ii) delivering to Buyer the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(a), which As-Available Contract Capacity Confirmation Certificate must provide that Seller has installed the equipment sufficient to provide the As-Available Contract Capacity designated by Seller in Section 1.02(d) on the Effective Date.

- (b) Development Security. If Seller is required to post Development Security, Seller shall post such Development Security in accordance with the following terms and conditions:
- (i) Seller shall post a development fee (the “Development Security”) in the amount of \$20 per kW of the As-Available Contract Capacity on or before the 30th day following the Effective Date. Seller shall post additional Development Security in the amount of \$40 per kW of the As-Available Contract Capacity (for a total posted amount of \$60 per kW of Development Security) at the end of the 18th month following the Effective Date. The Development Security shall be held by Buyer and shall be in the form of either a cash deposit or a Letter of Credit; and
 - (ii) If Seller establishes the Development Security by means of a Letter of Credit, such Letter of Credit shall be substantially in the form of Exhibit P.
- (c) Forfeiture of Development Security for Failure to Commence Term by the Term Start Date; Extension of the Term Start Date.
- (i) Failure to Meet the Term Start Date. Subject to Seller’s right to extend the Term Start Date as provided in Section 4(c)(ii) of this Exhibit F or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), if the Term does not commence on or before the Term Start Date, Buyer may retain the entire Development Security (if applicable) and, if not already terminated, terminate this Agreement, and neither Party shall have liability for damages for failure to deliver or purchase the Product after the effective date of such termination.
 - (ii) Daily Delay Liquidated Damages to Extend Term Start Date. Subject to limitations set forth in Section 1.01(a), Seller may elect to delay the Term Start Date by paying to Buyer liquidated damages in an amount equal to one percent of the Development Security per day for each day (or portion thereof) from and including the original Term Start Date to and excluding the actual Term Start Date (“Daily Delay Liquidated Damages”).
- To extend the Term Start Date, Seller must, at the earliest possible time, but no later than 6 a.m. on the first day of the proposed extension, provide Buyer with Notice of its election to extend the Term Start Date along with its estimate of the duration of the extension and its payment of Daily

Delay Liquidated Damages for the full estimated Term Start Date extension period.

Seller may further extend the Term Start Date beyond the original Term Start Date extension period subject to the same terms applicable to the original Term Start Date extension.

The Daily Delay Liquidated Damages payments applicable to days included in any Term Start Date extension shall be nonrefundable and are in addition to and not to be considered part of the Development Security.

Seller shall be entitled to a refund (without interest) of any estimated Daily Delay Liquidated Damages payments paid by Seller which exceed the amount required to cover the number of days by which the Term Start Date was actually extended.

In no event may Seller extend the Term Start Date for more than a total of 180 days by the payment of Daily Delay Liquidated Damages.

- (d) Full Return of Development Security. The Development Security shall be returned to Seller (subject to Seller commencing the Term by the Term Start Date, as the Term Start Date may have been extended in accordance with Section 4(c)(ii) of this Exhibit F or as a result of a Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03)) upon Seller delivering to Buyer the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(a), which As-Available Contract Capacity Confirmation Certificate must provide that Seller has installed the equipment sufficient to provide the entire As-Available Contract Capacity designated by Seller in Section 1.02(d) on the Effective Date
- (e) Deficient Installation of the As-Available Contract Capacity; Partial Forfeiture and Partial Return of the Development Security. If, on or before the Firm Operation Date, Seller does not demonstrate any portion of the As-Available Contract Capacity or only demonstrates a portion of the As-Available Contract Capacity, which demonstration is based on Seller's delivery of the As-Available Contract Capacity Confirmation Certificate in accordance with Section 3.13(a), then Seller will only be entitled to a return of the portion of the Development Security posted by Seller equal to the product of either (i) \$20 per kW times the kilowatts of As-Available Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs within 18 months of the Effective Date, or (ii) \$60 per kW times the kilowatts of As-Available Contract Capacity which Seller has demonstrated, if any, if the Term Start Date occurs after the 18th month following the Effective Date.

Seller shall forfeit and Buyer shall be entitled to retain the balance of the Development Security.

In addition, as of the Firm Operation Date, the Performance Assurance Amount for the Performance Assurance required to be posted and maintained pursuant to Section 2 of this Exhibit F shall be calculated using the adjusted As-Available Contract Capacity, and any amount of Performance Assurance in excess of that required for the adjusted As-Available Contract Capacity shall be returned to Seller.

- (f) Seller shall provide Notice to Buyer of its request for a refund of the Development Security.

5. Interest Payments on Cash Deposits.

- (a) Buyer shall make monthly Simple Interest Payments, calculated using the Federal Funds Effective Rate, to Seller on cash amounts posted for the Development Security and Performance Assurance.
- (b) Upon receipt of a monthly invoice that sets forth the calculation of the Simple Interest Payment amount due, Buyer shall make payment thereof on or before the third Business Day of the first month after the last month to which the invoice relates, so long as such date is after the day on which such invoice is received; *provided, however*, that:
 - (i) No Event of Default has occurred and is continuing with respect to Seller; and
 - (ii) No Early Termination Date for which any unsatisfied payment obligation of Seller exists, has occurred or has been designated as the result of an Event of Default by Seller.
- (c) On or after the occurrence of an Event of Default by Seller or an Early Termination Date as a result of an Event of Default by Seller, Buyer shall retain any such Simple Interest Payment amount as an additional Development Security amount or a Performance Assurance amount hereunder until:
 - (i) In the case of an Early Termination Date, the obligations of Seller under this Agreement have been satisfied; or
 - (ii) In the case of an Event of Default, for so long as such Event of Default is continuing.

*** End of Exhibit F ***

EXHIBIT G
Scheduling Coordinator Services

This Exhibit G is only applicable when Buyer is Scheduling Coordinator.

1. Designation of Buyer as Scheduling Coordinator.
 - (a) At least 30 days before the Term Start Date, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Scheduling Coordinator with the CAISO effective as of the Term Start Date.
 - (b) During the Term, unless Seller terminates Buyer as Scheduling Coordinator in accordance with Section 7 of this Exhibit G, Seller may not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller may not revoke Buyer's authorization to act as Scheduling Coordinator unless agreed to by Buyer.
 - (c) Buyer shall submit bids and schedules to the CAISO in accordance with the CAISO Tariff and Seller's QF PGA or PGA, as applicable.
 - (d) Buyer shall submit all required notices and updates regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO in accordance with the CAISO procedures.
 - (e) Seller is not entitled to any Monthly Capacity Payment until Buyer is fully authorized as Scheduling Coordinator for the Generating Facility; *provided, however*, that Buyer may not take, or not refrain from taking, any action if the result would be to delay such authorization.

2. Buyer's Scheduling Responsibilities. Pursuant to the CAISO Tariff, Buyer shall be responsible for the following:
 - (a) Using the Forecast submitted by Seller to Buyer pursuant to Exhibit I, including updated Forecasts to the extent reasonably practicable, to forecast Seller's expected generation using Buyer's forecasting model ("Buyer Projected Energy Forecast") in any given hour;
 - (b) Adjusting Buyer Projected Energy Forecast for forecasted electric energy line losses in accordance with the amount of electric energy Seller is expected to deliver to the Delivery Point;
 - (c) Submitting the adjusted Forecasts to the CAISO as Scheduling Coordinator Schedules (as defined in the CAISO Tariff); and
 - (d) Receiving notification of the final schedules from the CAISO.

3. **Notices.** As Scheduling Coordinator, Buyer shall submit all notices and updates required under the CAISO Tariff and Applicable Laws regarding each Generating Unit's or the Generating Facility's status, as applicable, to the CAISO, including all SLIC Outage requests, SLIC Forced Outages, CAISO Forced Outage Reports, or must offer waiver forms.
4. **Scheduling Fees.** In accordance with Section 4.02, Buyer shall invoice to Seller and Seller shall pay to Buyer the following Scheduling Fees:
 - (a) **SC Set-Up Fee.** The SC Set-Up Fee is equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable, in accordance with the CAISO Tariff. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee, including separate line items for registration charges, equipment costs, software costs, and labor costs (including hourly rate if applicable) itemized for registration, equipment installation, configuration, testing and software related charges. Buyer estimates that the SC Set-up Fee for this Agreement will equal \$[___].
 - (b) **Monthly Scheduling Fee.** The Monthly Scheduling Fee will be as forth in the following table.

As-Available Contract Capacity (kW)	Monthly Scheduling Fee
Less than 10,000	\$2,500
10,000 – 20,000	\$5,000

5. **CAISO Settlements.** As Scheduling Coordinator, Buyer shall be responsible for all settlement functions with the CAISO related to the Generating Units or the Generating Facility, as applicable. Seller shall cooperate with Buyer in Buyer's performance of any settlement functions, and Seller shall promptly deliver to Buyer, or provide Buyer access to, all Generating Unit or the Generating Facility, as applicable, data necessary for CAISO settlements and any correspondence or communications with CAISO related to the Generating Units or the Generating Facility, as applicable, including any invoices or settlement data, in the mutually agreed upon format reasonably requested by Buyer.

Buyer shall render a separate invoice to Seller for all CAISO Charges for which Seller is responsible under this Agreement (“CAISO Charges Invoice”) as described in Sections 1 through 4 of Exhibit J, in accordance with the applicable billing and payment methodologies utilized for the specific CAISO Charge as set forth in the CAISO Tariff. CAISO Charges Invoices shall be rendered after final settlement information becomes

available from the CAISO that identifies any CAISO Charges. At Seller's request, Buyer shall provide Seller with an invoice detailing all Generating Facility CAISO Charges by individual CAISO Charge codes or types used by CAISO to identify individual CAISO Charges including a copy of all supplemental or supporting documentation provided by the CAISO to Buyer in the settlement process.

Seller shall pay the amount of CAISO Charges Invoices on or before the later of the 20th day of each month, or tenth day after receipt of the CAISO Charges Invoice or, if such day is not a Business Day, then on the next Business Day. If Seller fails to pay a CAISO Charges Invoice within such timeframe, Buyer may offset any amounts owing to it for these CAISO Charges Invoices as set forth in Section 4.02.

6. Disputes and Adjustments of CAISO Invoices. The Parties agree that all CAISO Charges Invoices are subject to the CAISO Tariff and may be adjusted by the CAISO, or disputed by Buyer, as Scheduling Coordinator, in accordance with the CAISO Tariff. The Parties agree that all CAISO Charges Invoices are subject to dispute between the Parties in accordance with this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that the obligations under this Exhibit G with respect to the payment of CAISO Charges Invoices, or the adjustment of such CAISO Charges Invoices, shall survive the expiration or termination of this Agreement for a period of 365 days beyond the time period which CAISO may adjust, modify or change any previously issued invoice, or any charges or revenues set forth on such invoice pursuant to the CAISO Tariff.
7. Terminating Buyer's Designation as Scheduling Coordinator.
 - (a) Seller may terminate Buyer as Scheduling Coordinator:
 - (i) In accordance with Section 7(b) of this Exhibit G; or
 - (ii) If Buyer materially fails to fulfill its obligations as Scheduling Coordinator and:
 - (1) Seller provides advance Notice to Buyer setting forth in reasonable detail the nature of such failure and such failure is not remedied within 30 days after such Notice; *provided, however*, that if such failure is not reasonably capable of being remedied within such 30-day period, Buyer shall have such additional time (not to exceed 120 days) as is reasonably necessary to remedy such failure, so long as Buyer promptly commences and diligently pursues such remedy;
 - (2) Seller (A) submits to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the date of Buyer's termination as Scheduling Coordinator and (B) causes its

- newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and
- (3) The Parties will take any other action necessary to terminate the designation of Buyer as Scheduling Coordinator, including amending this Agreement; or
- (iii) If Seller is required to elect Buyer as Scheduling Coordinator in accordance with Section 1.08, then, subject to Section 3.06(b) or 3.09(b), as applicable, by (1) providing a Notice to Buyer on or before the 60th day after Seller meets the requirements of Section 3.06(a) and 3.09(a), and (2) at least 30 days before the replacement Buyer as the Scheduling Coordinator, complying with the requirements for designating a different Scheduling Coordinator by taking all necessary actions to terminate the designation of Buyer as Scheduling Coordinator, including those actions set forth in Sections 7(b)(i) and (b)(ii) of this Exhibit G. Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.
- (b) At least 30 days before the expiration of the Term or as soon as an Early Termination Date is declared (regardless of which Party declared it), the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator as of 11:59 p.m. PPT on the Term End Date (“SC Replacement Date”). Such actions include the following:
- (i) Seller shall:
- (1) Submit to the CAISO a designation of a new Scheduling Coordinator to replace Buyer effective as of the SC Replacement Date; and
- (2) Cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and
- (ii) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator effective as of the SC Replacement Date.
- (c) Seller bears sole responsibility for locating, selecting, and reaching agreement on terms with any replacement Scheduling Coordinator.

*** End of Exhibit G ***

EXHIBIT H
Milestone Progress Reporting Form

1. **Introduction.** This Exhibit H is only applicable if the Generating Facility is a New CHP Facility.

Seller shall prepare a written milestone progress report as set forth in Section 3.11 on its progress relative to the:

- (a) Installation of the CAISO-Approved Meters and Telemetry System;
- (b) Installation of the Telemetry System as required by the CAISO Tariff; and
- (c) Work on other agreements with the CAISO and the Transmission Provider.

2. **Format.** The report must be sent via e-mail in the form of a single Adobe Acrobat file or facsimile to Buyer's Contract Administrator, as noted in Exhibit N, on the fifth Business Day of each month. Each such milestone progress report must include the following items:

- (a) Cover page;
- (b) Brief Generating Facility description;
- (c) Site plan of the Generation Facility;
- (d) Description of any planned changes to the Generating Facility and Site Description in Exhibit B;
- (e) Bar chart schedule showing progress on achieving the Milestone Schedule;
- (f) PERT or GANT chart showing critical path schedule of major items and activities;
- (g) Summary of activities during the previous month;
- (h) Forecast of activities scheduled for the current month;
- (i) Written description about the progress relative to the Milestone Schedule;
- (j) List of issues that could potentially impact the Milestone Schedule;
- (k) Enumeration and schedule of any support or actions requested of Buyer;
- (l) Progress and schedule of all material agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages; and
- (m) List of items required under Section 3.11.

*** End of Exhibit H ***

EXHIBIT I

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:
 - (a) Comply with the CAISO Tariff;
 - (b) Accommodate changes to their respective generation technology and organizational structure; and
 - (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements for all Generating Facilities.
 - (a) 30-Day Forecast.

No later than 30 days before the Term Start Date (or, in the case of a New CHP Facility no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the start of the Term (or, if applicable, Parallel Operation) using the Web Client.

In the case of a New CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.

If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.

The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

- (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and
- (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

- (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit I, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or telephoning Buyer's Generation Operations Center, at the e-mail address or telephone number(s) listed in Exhibit N.
- (c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, or a Real-Time Forced Outage, any of which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit I must be submitted to Buyer via the Web Client by no later than:
- (i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;
 - (ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or
 - (iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected electric energy production change.

Seller's updated Forecast must contain the following information:

- (w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected electric energy production change;
- (x) The expected ending date and time of the event;
- (y) The expected electric energy production, in MWh; and
- (z) Any other information required by the CAISO as communicated to Seller by Buyer.

*** End of Exhibit I ***

EXHIBIT J
CAISO Charges

If at any time after the Term Start Date Buyer is not Scheduling Coordinator for the Generating Facility, then Buyer will not be responsible for any CAISO Charges. If at any time after the Term Start Date Buyer is Scheduling Coordinator for the Generating Facility, then Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided, however*, if at any time after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller, then such sanctions or penalties will be Seller's responsibility;
2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator);
3. Seller does not comply with:
 - (a) The requirements set forth in Section 3.15; or
 - (b) Seller's obligation associated with any CAISO or Transmission Provider notice or instruction (as may be communicated by Buyer as Scheduling Coordinator) to (i) increase output to the Firm Contract Capacity during a System Emergency or an Emergency Condition, or (ii) reschedule a planned outage set to occur during a System Emergency or an Emergency Condition, then

Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with any failure set forth in Sections 3(a) or 3(b) of this Exhibit J (except to the extent such CAISO Charges result from the fault or negligence of Buyer in its role as Scheduling Coordinator); or

4. If the Generating Facility is PIRP-eligible and is not certified as a PIRP resource for any reason, then Seller shall indemnify, defend, and hold Buyer harmless against all CAISO Charges associated with the electric energy generated and delivered from the Generating Facility.

If any of Sections 1 through 4 of this Exhibit J apply and the Generating Facility is subject to an Uninstructed Deviation Penalty, Seller will not be required to pay the SDD Energy Adjustment and, instead, shall be responsible for all applicable Uninstructed Deviation Penalty charges for the Generating Facility.

*** End of Exhibit J ***

EXHIBIT K
Scheduling and Delivery Deviation Adjustments

If Buyer is Scheduling Coordinator for the Generating Facility and if the Generating Facility is not PIRP-eligible, then, subject to Section 4.04(b)(iii), Seller or Buyer, as the case may be, shall be responsible for the following SDD Adjustments with respect to the Generating Facility:

1. **SDD Energy Adjustment**. An Adjustment will be calculated for each Settlement Interval in a month if the Metered Energy is either (a) less than the Performance Tolerance Band Lower Limit in any Settlement Interval or (b) greater than the Performance Tolerance Band Upper Limit in any Settlement Interval. When the SDD Energy Adjustment is negative, Seller shall make a payment to Buyer and when the SDD Energy Adjustment is positive, Seller shall receive a credit from Buyer. The SDD Energy Adjustment is calculated as follows:

If $A < D$, then SDD Energy Adjustment = $(D - A) \times (EP - P)$

or

If $A > E$, then SDD Energy Adjustment = $(A - E) \times (P - EP)$

Otherwise, the SDD Energy Adjustment = 0

where:

A = Metered Energy for the Settlement Interval;

B = Seller's Final Energy Forecast based on the hourly forecasts made pursuant to Exhibit I corresponding to the Settlement Interval;

C = Performance Tolerance Band =

The greater of (a) three percent of the Seller's Final Energy Forecast divided by the number of Settlement Intervals in such hour or (b) three (3) MWh divided by the number of Settlement Intervals in such hour;

D = Performance Tolerance Band Lower Limit = $(B - C)$;

E = Performance Tolerance Band Upper Limit = $(B + C)$;

EP = TOD Period Energy Price applicable to the Settlement Interval specified in Section 2(b) of Exhibit D; and

P = Real-Time Price for the Generator's PNode as published by the CAISO on OASIS for the Settlement Interval.

2. SDD Administrative Charge. Seller shall make a payment to Buyer (the “SDD Administrative Charge”) for each Settlement Interval in a month if Metered Energy (i) exceeds the Performance Tolerance Band Upper Limit or (ii) is less than the Performance Tolerance Band Lower Limit, in any Settlement Interval. The SDD Administrative Charge is calculated as follows:

If $A > (B + C)$ or $A < (B - C)$, then:

SDD Administrative Charge = $(\text{Absolute Value } (B - A) - C) \times$
Uninstructed Deviation GMC Rate.

Otherwise, the SDD Administrative Charge = 0.

*** End of Exhibit K ***

EXHIBIT L
Physical Trade Settlement Amount

This Exhibit L is only applicable when Buyer is not Scheduling Coordinator.

1. Physical Trades Cleared in the IFM. The CAISO Revenue credited to Buyer's account by CAISO as a result of a Physical Trade having cleared in the IFM shall be for Buyer's account.
2. Physical Trades not Cleared in the IFM. With respect to each calendar month "m", as soon as practicable after the end of such month, Buyer shall calculate the Physical Trade Settlement Amount ("PTSA_i") for each hour as follows:

$$PTSA_i = CPT_i \times (CPTP_i - PNode_i)$$

Where:

- i = an hour within month "m"
- CPT = Converted Physical Trade, in MWh
- CPTP = Converted Physical Trade Price, and
- PNode = the Generating Facility's PNode price, in dollars per MWh.

If the PTSA_i is positive *and* Seller submitted the original Physical Trade in accordance with Section 3.14(s)(ii) and Exhibit I, then Buyer shall owe Seller the PTSA_m for month m. In any event the PTSA_i is negative, however, then Seller shall owe Buyer the PTSA_i.

*** End of Exhibit L ***

EXHIBIT M
SC Trade Settlement Amount

This Exhibit M is only applicable when Buyer is not Scheduling Coordinator.

If, in any Settlement Interval, a Generating Facility's Scheduled Amount differs from the Generating Facility's Metered Energy by more than the SC Trade Tolerance Band, then Seller shall be subject to a payment adjustment calculated by Buyer in accordance with the procedures and formulas set forth below.

(1) Under-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy, and the Real-Time Price is greater than the Day-Ahead Price payable during the Settlement Interval, then Seller's monthly payment amount shall be reduced by each Under-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

$$\text{UNDER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT} = \\ [A - B] \times [D - C]$$

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No under-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount plus the SC Trade Tolerance Band is less than the Metered Energy if, during such Settlement Interval, the Real-Time Price is equal to or less than the Day-Ahead Price payable during the Settlement Interval.

(2) Over-Scheduling Adjustment.

If during any Settlement Interval the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy, and the Real-Time Price is less than the Day-Ahead Price payable during the Settlement Interval;

Then Seller's monthly payment amount shall be reduced by each Over-Scheduling Settlement Interval Adjustment Amount calculated by the following formula:

OVER-SCHEDULING SETTLEMENT INTERVAL ADJUSTMENT AMOUNT =

$$[B - A] \times [C - D]$$

- Where A = The Metered Energy in the Settlement Interval being calculated.
B = The Scheduled Amount in the Settlement Interval being calculated.
C = Day-Ahead Price for the Settlement Interval being calculated in \$/kWh.
D = Real-Time Price for the Settlement Interval being calculated in \$/kWh.

No over-scheduling adjustment shall be assessed against Seller for a Settlement Interval in which the Scheduled Amount is greater than the SC Trade Tolerance Band plus the Metered Energy if, during such Settlement Interval, the Real-Time Price is greater than or equal to the Day-Ahead Price payable during the Settlement Interval.

*** End of Exhibit M ***

EXHIBIT N
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 9.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	

Payment Statements: Attn: Phone: Facsimile: E-mail:	
CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Guarantor: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

*** End of Exhibit N ***

EXHIBIT O
Form of Guaranty Agreement

1. Guaranty. For valuable consideration, _____ [Guarantor's legal name], _____ [legal status] ("Guarantor") guarantees payment to _____ [Buyer's legal name], a California corporation ("Beneficiary"), its successors and assigns, of all amounts owed to Beneficiary by _____ [Seller's legal name], _____ [legal status] ("Principal") under that certain Power Purchase and Sale Agreement between Beneficiary and Principal dated _____ [date], as amended from time to time ("Agreement") (said amounts are hereinafter referred to as the "Obligations").

Initially capitalized words that are used but not otherwise defined in this agreement ("Guaranty") shall have the meanings given them in the Agreement.

Upon the failure or refusal by Principal to pay all or any portion of the Obligations, the Beneficiary may make a demand upon the Guarantor.

Such demand shall be in writing and shall state the amount Principal has failed to pay and an explanation of why such payment is due, that all cure periods have expired, and with a specific statement that Beneficiary is calling upon Guarantor to pay under this Guaranty.

Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds.

The obligations of Guarantor hereunder is not subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law.

A payment demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations.

2. Guaranty Limit. Subject to Paragraph 13, the liability of Guarantor hereunder may not exceed \$_____ in the aggregate, which amount shall include all interest that has accrued on any amount owed hereunder.
3. Guaranty Absolute. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent and unconditional and is not affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees as follows:
- (a) The liability of Guarantor under this Guaranty is a continuing guaranty of payment and not of collectibility, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;

- (b) Beneficiary may enforce this Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
- (c) The obligations of Guarantor under this Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;
- (d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Guarantor under this Guaranty, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and
- (e) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:
 - (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
 - (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
 - (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
 - (iv) Any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
 - (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment is not deemed to release Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
 - (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this Guaranty;
 - (vii) Beneficiary's exercise of any other rights available to it under the Agreement;

- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
 - (ix) Any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
 - (x) [Intentionally omitted;] and
 - (xi) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Guarantor as an obligor with respect to the Obligations.
- (f) Guarantor agrees that upon a demand for payment under this Guaranty in accordance with Section 1 hereof, Guarantor shall pay such Obligations as are included in such demand notwithstanding any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, statute of frauds and accord and satisfaction; provided that Guarantor reserves the right to assert any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary (except for such defenses, setoffs or counterclaims as are expressly waived under other provisions of this Guaranty) in a subsequent action for recoupment, restitution or reimbursement.

4. Termination; Reinstatement.

- (a) The term of this Guaranty is continuous until the Term End Date, provided however, the termination of this Guaranty shall not release Guarantor from liability for any Obligations arising prior to the Term End Date.
- (b) This Guaranty shall be reinstated if at any time following the termination of this Guaranty, any payment by Guarantor under this Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made.

If all or any portion of the Obligations are paid by Principal, the obligations of Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Guaranty.

5. Bankruptcy. So long as any Obligations remain outstanding, Guarantor may not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Guarantor under this Guaranty may not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding.
6. Subrogation. Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Guarantor pursuant to the Guaranty, provided that Guarantor postpones the exercise of such rights until all Obligations have been irrevocably paid in full to the Beneficiary.

If any amount is paid to Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder have not been indefeasibly paid in full, Guarantor shall hold such amount in trust for the benefit of Beneficiary (provided that no fiduciary duty shall be deemed to arise in connection herewith) and shall promptly pay such amount to Beneficiary.

7. [Intentionally omitted.]

8. Waivers of Guarantor.

- (a) [Intentionally omitted.]
- (b) Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement.
- (c) Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Guarantor by reason of Sections 2787 to 2855 thereof, inclusive. Without limiting the generality of the foregoing waiver:
 - (i) The Guarantor waives all rights and defenses that the Guarantor may have because the Principal's Obligations are secured by real property.

This means, among other things:

- a. The Beneficiary may collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Principal.
- b. If the Beneficiary forecloses on any real property collateral

pledged by the Principal:

- (1) The amount of the Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
- (2) The Beneficiary may collect from the Guarantor even if the Beneficiary, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Principal.

This is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Principal's Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

- (ii) The Guarantor waives all rights and defenses arising out of an election of remedies by the Principal, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for an Obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the Principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.
- (d) Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Guarantor hereunder, and Beneficiary shall have no duty to advise Guarantor of information known to it regarding such risks.
- (e) Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability of the Principal, failure of consideration or any defense based on or arising out of the lack of validity or enforceability of the Obligations;
- (f) [Intentionally omitted]
- (g) Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;
- (h) Guarantor waives any other circumstances that limit the liability of or exonerate guarantors generally or provide any legal or equitable discharge of Guarantor's obligations hereunder;
- (i) Other than demand for payment, the Guarantor expressly waives all notices between the Beneficiary and the Principal including without limitation all notices

with respect to the Agreement and this Guaranty, notice of acceptance of this Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and

- (j) Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.
9. No Waiver of Rights by Beneficiary. No right or power of Beneficiary under this Guaranty shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.
10. Assignment, Successors and Assigns. This Guaranty shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary and its successors and assigns. The Beneficiary shall have the right to assign this Guaranty to any person or entity without the prior consent of the Guarantor; *provided, however*, that no such assignment shall be binding upon the Guarantor until it receives written notice of such assignment from the Beneficiary.

The Guarantor shall have no right to assign this Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

11. Representations of Guarantor. Guarantor represents and warrants that:
- (a) It is a corporation duly organized, validly existing and in good standing in the jurisdiction of its formation and has full power and authority to execute, deliver and perform this Guaranty;
 - (b) It has taken all necessary corporate actions to execute, deliver and perform this Guaranty;
 - (c) This Guaranty constitutes the legal, valid and binding obligation of Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles;
 - (d) Execution, delivery and performance by Guarantor of this Guaranty does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; and

- (e) All consents, approvals and authorizations of governmental authorities required in connection with Guarantor's execution, delivery and performance of this Guaranty have been duly and validly obtained and remain in full force and effect.
12. Financial Statements. If requested by Beneficiary and if Guarantor is otherwise required to prepare the following, Guarantor shall deliver financial statements as describe below, which in all cases shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles:
- (a) Within one hundred-twenty (120) days following the end of each fiscal year that any Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year; and
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year that any Obligations are outstanding, a copy of its quarterly report containing its consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year and: (i) certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission ("SEC") rules and regulations, if Guarantor is an SEC reporting company; or (ii) certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments) if Guarantor is not an SEC reporting company.
- (c) For the purposes of the requirement in this Paragraph 12, if Guarantor's financial statements are publicly available electronically on the website of Guarantor or the SEC, then Guarantor shall be deemed to have met this requirement.
13. Attorneys' Fees. In addition to the amounts for which payment is guaranteed hereunder, Guarantor agrees to pay reasonable attorneys' fees and all other reasonable costs and expenses incurred by Beneficiary in enforcing this Guaranty or in any action or proceeding arising out of or relating to this Guaranty. Any costs for which Guarantor becomes liable pursuant to this Paragraph 13 is not subject to, and does not count toward, the Guaranty limit set forth in Paragraph 2 above.
14. Governing Law. This Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Guaranty is held invalid under the laws of California, this Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly.

15. Construction. All parties to this Guaranty are represented by legal counsel. The terms of this Guaranty and the language used in this Guaranty shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Guaranty. No rule of strict construction will be applied against any party.

16. Amendment; Severability. Neither this Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Guarantor and Beneficiary.

If any provision in or obligation under this Guaranty is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, is not in any way be affected or impaired thereby.

17. Third Party Rights. This Guaranty may not be construed to create any rights in any parties other than Guarantor and Beneficiary and their respective successors and permitted assigns.

18. Notices. Any demand for payment, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary: [Buyer]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

with a copy to: [Name]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Guarantor: [Guarantor]
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Principal: *[Principal]*
 [Street]
 [City, State Zip]
 Attn:
 Phone:
 Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

[signature page follows]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of _____, ____.

_____ *[legal name]*

By: _____
Name: _____
Title: _____

*** End of Exhibit O ***

EXHIBIT P
Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number:

Transaction Date:

BENEFICIARY:

Ladies and Gentlemen:

_____ (the "Bank") establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of _____, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation, also known as ID# _____ (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$_____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on _____ (the "Expiration Date").

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation in compliance on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance;

provided that, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations may not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference may not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Issuer

Name: _____

Title: _____

ATTACHMENT A
Drawing Certificate

TO [ISSUING BANK NAME]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Bank

Bank Address

Subject: Irrevocable Non-transferable Standby Letter of Credit

Reference Number:

The undersigned _____, an authorized representative of _____ (the "Beneficiary"), certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. { _____ }, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 - [A]. An Event of Default, as defined in that certain Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 - [B]. An Early Termination Date (as defined in the Agreement) has occurred or been designated as a result of an Event of Default (as defined in the Agreement) with respect to the Applicant for which there exist any unsatisfied payment obligations.
 - [C]. The Letter of Credit will expire in fewer than 30 days from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - [D]. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the

Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within 30 days following the date of the Notice of Non-renewal.

- []E. The Beneficiary is entitled to retain the entire Development Security (i) as a result of Applicant's failure to commence the Term by the Term Start Date, or (ii) the Agreement has terminated due to an Event of Default by Applicant before the Term Start Date.
 - []F. The Beneficiary is entitled to retain a portion of the Development Security equal to the product of either (1) \$20 per kW of As-Available Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs within 18 months of the Effective Date, or (2) \$60 per kW times the kilowatts of As-Available Contract Capacity which Seller failed to demonstrate, if the Term Start Date occurs after the 18th month following the Effective Date.
2. Based upon the foregoing, the Beneficiary makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$_____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
 3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: [BENEFICIARY NAME]

By: _____

Name: _____

Title: _____

*** End of Exhibit P ***

EXHIBIT R
Outage Schedule Submittal Requirements

1. General Requirements.

The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to:

- (a) Comply with the CAISO Tariff;
- (b) Accommodate changes to their respective generation technology and organizational structure; and
- (c) Address changes in the operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements for all Generating Facilities.

Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

- (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client").
- (b) Seller shall provide the following information for each proposed planned outage:
 - (i) Start date and time;
 - (ii) End date and time; and
 - (iii) Capacity online, in MW, during the planned outage.
- (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.
- (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.
- (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web

Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

- (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code, the CAISO Tariff or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

*** End of Exhibit R ***

EXHIBIT S

TOD Period Energy Price Calculation; Greenhouse Gas Reporting Requirements

Introduction. Subject to Section 4.04 and Exhibit D, this Exhibit S sets forth the formulas and methodology that Buyer will use in order to calculate the TOD Period Energy Price, and also sets forth Seller's Greenhouse Gas emissions reporting requirements.

1. TOD Period Energy Price. Subject to Section 2 of this Exhibit S, Buyer shall calculate the TOD Period Energy Price for electric energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{TOD Period Energy Price } \$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

Applicable HR = The Heat Rate for the specified time-period, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,225
January 1, 2013 through December 31, 2014	8,125
January 1, 2015 until the termination of this Agreement	Market Heat Rate

BTGP = Calendar month Burner Tip Gas Price (\$/MMBtu), per the Decision and CPUC Resolution E-4246;

VOM = Calendar month avoided variable O&M (\$/kWh), per the Decision and CPUC Resolution E-4246;

GHG Charges = All taxes, charges or fees assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable HR or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula;

TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
Peak	1.2564	N/A
Partial-Peak	1.1535	1.1395

Off-Peak	0.9155	0.9628
Super Off-Peak	0.7439	0.8216

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the electric energy-only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC-approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

Off-Peak TOU factors will be calculated as a residual – similar to the current method – to preserve the correctness of the monthly hourly weighting. An example for Period A – Summer is: [Number of hours in month - (1.2564 * Number of Summer Peak hours in Month) - (1.1535 * Number of Summer Partial-Peak hours in Month) - (0.7439 * Number of Summer Super Off-Peak hours in Month)] / Number of Summer Off-Peak hours in Month

{Buyer Comment: These TOU factors are only applicable if Buyer is PG&E, in which case, the TOU variable and factors for SCE and SDG&E (below) must be deleted.}

TOU (i.e., time-of-use) = Throughout the Term, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 * # of Summer On-Peak hours in month) - (0.8526 * # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 * # of Winter Mid-Peak hours in month) - (0.7760 * # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

{Buyer Comment: These TOU factors are only applicable if Buyer is SCE, in which case, the TOU variable and factors for PG&E (above) and SDG&E (below) must be deleted.}

TOU (i.e., time-of-use) = The TOU factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.411	1.224
Semi-Peak	1.106	1.106
Off-Peak	0.986	0.933

Super Off-Peak 0.645 0.711

Buyer may update the TOU factors set forth above at the beginning of each calendar year using the electric energy-only portion of the time-of-use factors (as adjusted by Buyer, if necessary, to reflect Buyer's CPUC-approved time-of-use periods) set forth in Buyer's most recent RPS Program solicitation (e.g., 2012 time-of-use factors are those used in Buyer's 2011 RPS Program solicitation).

{*Buyer Comment: These TOU factors are only applicable if Buyer is SDG&E, in which case, the TOU variable and factors for SCE and PG&E (above) should be deleted.*}

LA (i.e., hourly location adjustment, in \$/kWh) = LMP_{QF} - $LMP_{Trading\ Hub}$

Where the hourly location adjustment (i.e., LA) will be based on the hourly Day-Ahead prices and actual hourly generation by the Generating Facility for delivery to Buyer as follows:

LMP_{QF} (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO Controlled Grid associated with the Generating Facility; and

$LMP_{Trading\ Hub}$ (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

2. TOD Period Energy Price during the Floor Test Term.

(a) If there is a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or by a different Governmental Authority pursuant to federal or state legislation), then, during the Floor Test Term, the TOD Period Energy Price will be the higher of the following two formulas (the "GHG Floor Test"):

(i) TOD Period Energy Price \$/kWh = ((Market Heat Rate * BTGP/1,000,000) + VOM) * TOU + LA

Where:

$Market\ Heat\ Rate$ (Btu/kWh) = As defined in Exhibit A;

$BTGP$ (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

OR

- (ii) TOD Period Energy Price \$/kWh = ((Applicable HR * (BTGP + GHG Allowance Price) / 1,000,000) + VOM) * TOU + LA + GHG Charges

Where:

Applicable HR = (A) 8,225 Btu/kWh through December 31, 2012; (B) 8,125 Btu/kWh from January 1, 2013 through December 31, 2014; and (C) Actual HR from January 1, 2015 until the end of the Floor Test Term;

BTGP (\$/MMBtu) = As set forth above;

GHG Allowance Price (\$/MMBtu) = Allowance Cost (\$/MT) * 117lbs of Greenhouse Gas per MMBtu / 2,204.6 lbs per MT

Where:

Allowance Cost (\$/MT) = The cost of one Allowance, determined using the GHG Auction clearing price from the latest GHG Auction that has taken place during the calendar quarter immediately preceding the date that Buyer's payment is due to Seller; *provided, however*, that if there is no GHG Auction held during the applicable time-period, then the Allowance Cost is determined in accordance with Section 2(c) of this Exhibit S;

VOM (\$/kWh) = As set forth above;

GHG Charges (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (b) Free Allowance Reporting and Allocation. If, at any time, Buyer makes a monthly payment to Seller utilizing the GHG Floor Test formula set forth in Section 2(a)(ii) of this Exhibit S, then Buyer shall deduct from the monthly payment to Seller for the applicable month the value of the Free Allowances disclosed in and based on all Free Allowance Notices that have not already been applied to a prior payment to Seller; *provided, however*, that if Buyer, using reasonable efforts, is unable to process such payment

adjustment for the applicable month, then Buyer shall make such payment adjustment to the next monthly payment due to Seller. For any month that Buyer utilizes the formula set forth in Section 2(a)(ii) of this Exhibit S to make a monthly payment to Seller, Buyer shall maintain a record of the value and quantity of all Free Allowances disclosed in the Free Allowance Notices, if any, and shall deduct the value of such Free Allowances to any subsequent monthly payment due to Seller where Buyer calculates such monthly payment utilizing the formula set forth in Section (2)(a)(ii) of this Exhibit S until such time that the value of all such Free Allowances are expended.

In order for Buyer to make the payment adjustment set forth in the immediately preceding paragraph, Seller agrees to deliver to Buyer, within twenty (20) days of receiving any Free Allowances, a Free Allowance Notice for the applicable month, which Free Allowance Notice must include all Additional GHG Documentation. Buyer shall value any such Free Allowances using the same methodology Buyer uses in valuing the Allowance Cost, as set forth above.

(c) Determining Allowance Costs under the GHG Floor Test if there is No GHG Auction.

This Section 2(c) is applicable if no GHG Auction has been held during the time-period for which the Allowance Cost variable set forth in Section 2(a) of this Exhibit S is to be determined. In such an instance, publicly available indices will be used to determine the price for the applicable period. If no such indices exist, Buyer will meet with the Trade Organizations to negotiate in good faith to reach an agreement on setting the Allowance Cost variable. If, after negotiating for fifteen (15) Business Days, Buyer and the Trade Organizations have not reached an agreement on setting the Allowance Cost variable, then Buyer and the Trade Organizations shall each select, within fifteen (15) days after such failed negotiations, price quotations for the cost of one Allowance, as set forth in two (2) different Reference Market-Makers, for a total of four (4) price quotations. The Allowance Cost variable for the applicable time-period will be determined by taking the average of the four (4) price quotations so selected by Buyer and the Trade Organizations. Seller agrees and acknowledges that it shall be bound by any agreement as to the Allowance Cost variable between Buyer and the Trade Organizations, in accordance with the foregoing.

(d) TOD Period Energy Price from the end of the Floor Test Term. As of end of the Floor Test Term until the termination of this Agreement, Buyer shall calculate the TOD Period Energy Price for electric energy delivered to Buyer by Seller during the applicable time-period in accordance with the following formula:

$$\text{TOD Period Energy Price } \$/\text{kWh} = ((\text{Market Heat Rate} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

Market Heat Rate (Btu/kWh) = As defined in Exhibit A;

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

- (e) Seller's Responsibility. Other than Buyer's payment to Seller for GHG Compliance Costs and GHG Charges as set forth in payment formulas above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of GHG emissions with respect to Seller or the Generating Facility.

3. Reporting Requirements.

- (a) From the Effective Date through the Term End Date (and for any period following the termination of this Agreement to the extent relating back to the Term), Seller shall provide to Buyer the following information (together, the "Annual GHG Reports"):
- (i) On or before the fifth (5th) Business Day following Seller's timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB, detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Report"), Seller shall deliver such CARB Annual Report to Buyer; and
- (ii) To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Buyer, along with the CARB Annual Report (or, if Seller is no longer required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the electric energy delivered to Buyer; and (5) the number of Allowances (including Free Allowances) held or surrendered by Seller for such calendar year during any period where the TOD Period Energy Price is calculated based on the GHG Floor Test.

- (b) If Buyer requires any other information not delineated in Section 3(a) of this Exhibit S in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB or by any other Governmental Authority and imposed on Buyer (other than the information that Seller must provide in accordance with Section 3(c) of this Exhibit S), then Buyer shall promptly meet and confer with the Trade Organizations regarding such other information that Buyer requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Buyer and the Trade Organizations, in accordance with the foregoing.
- (c) Buyer will review the Annual GHG Reports described in this Section 3 to determine if there is any discrepancy in the payments made by Buyer to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Buyer determines that there is any such discrepancy, (i) if Buyer owes Seller an additional payment for GHG Compliance Costs, then Buyer shall make such additional payment in a subsequent monthly payment to Seller under this Agreement, or (ii) if Seller owes Buyer a payment refund for GHG Compliance Costs, then Buyer shall offset such payment refund amount in a subsequent monthly payment to Seller under this Agreement. If this Agreement terminates before Buyer is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Buyer or Seller, as applicable, shall pay all remaining payment amounts due within the thirty- (30) day period after the termination of this Agreement.
- (d) To the extent that the information provided by the disclosing Party in accordance with this Section 3 is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Cogeneration Facilities under the existing Qualifying Cogeneration Facilities monitoring compliance program.
4. Market Disruption Event. Unless this Agreement has terminated, if, on or after the date that the Market Heat Rate applies to and is used in the calculation of the TOD Period Energy Price and until the termination of this Agreement, there occurs a Market Disruption Event, then the Market Heat Rate for the affected Trading Day(s) must be determined by reference to the Market Heat Rate for the first Trading Day thereafter on which no Market Disruption Event exists; *provided, however*, that if the Market Heat Rate is not so determined within five (5) Trading Days after the Market Disruption Event occurred or existed, then Buyer shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on a Market Heat Rate (or a method for determining a Market Heat Rate), and if Buyer and the Trade Organizations have not so agreed on or before the twelfth (12th) Trading Day after which the Market Disruption Event occurred or existed, then the Market Heat Rate will be determined in good faith by taking the average of the price quotations for electric energy and relevant Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by each of Buyer and the Trade Organizations (for a total of four (4) price

ID #[Number], [Seller's Name]

quotations). Seller hereby agrees and acknowledges that it shall be bound by any agreement as to a Market Heat Rate (or a method for determining a Market Heat Rate) between Buyer and the Trade Organizations, in accordance with the foregoing.

**** End of Exhibit S ****

EXHIBIT T
QF Efficiency Monitoring Program – Cogeneration Data Reporting Form

[Buyer's address]
 Buyer's telephone number and email address]

[PrevYear]

I. Name and Address of Project

Name: _____
 Street: _____
 City: _____ State: _____ Zip Code: _____

ID No.: _____ Generation Nameplate (KW): _____

II. In Operation: Yes No

III. Can your facility dump your thermal output directly to the environment? Yes No

IV. Ownership

	Name	Address	Ownership (%)	Utility
1	_____	_____	_____	Y N
2	_____	_____	_____	Y N
3	_____	_____	_____	Y N
4	_____	_____	_____	Y N
5	_____	_____	_____	Y N

V. [PrevYear] Monthly Operating Data

- Indicate the unit of measure used for your useful thermal output if other than mBTUs:
 BTUs _____ Therms _____ mmBTUs _____
- If Energy Input is natural gas, use the Lower Heating Value (LHV) as supplied by Gas Supplier.

	Useful Power Output (kWh)	Energy Input (Therms)	Useful Thermal Energy Output (mBtu)
JAN			
Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			
Yearly Total			

*** End of Exhibit T ***

ATTACHMENT A – EXHIBIT 8

NONDISCLOSURE AGREEMENT

RECITALS

Pursuant to Section 9 of the Combined Heat and Power (CHP) Program Settlement Agreement (“Settlement”) adopted by the California Public Utilities Commission (“CPUC”) Decision (“D.”) _____, the CPUC has directed IOU to provide for a CHP Auditor.

Pursuant to Section 9.1.2 of the Settlement, the purpose and role of a CHP Auditor is to be an informed advocate for CHP interests regarding the implementation of the CHP Program. CHP Auditor(s) will only be designated to conduct a CHP Program audit if, upon written notice the IOU does not, or anticipates it will not, meet any of the following: a MW Target established by the Settlement; a GHG Emissions Reduction Target established by the Settlement; any MW Target or GHG Emissions Reduction target established by the CPUC after the Settlement Effective Date (collectively, “Target” or “Targets”).

Pursuant to Section 9.1.4.1 of the Settlement the CHP Auditor, before the CPUC, and all divisions thereof, and before an IOU’s procurement review group (PRG) report on the IOU’s conduct of and procurement decisions arising from a particular IOU Request for Offer (RFO), may use any information, including Confidential Information obtained by the CHP Auditor from the IOU.

On _____, IOU provided written notice to those CHP Parties on the CPUC service list [docket] that it will not meet, or anticipates that it will not meet a Target, associated with a particular RFO.

Except as otherwise provided in the Settlement, any Confidential Information (as defined below) that is provided to the CHP Auditor during the audit process will be kept confidential by the CHP Auditor and specified support staff.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, the Parties, intending to be legally bound, agree as follows:

THIS NON-DISCLOSURE AGREEMENT (this “Agreement”) is made as of _____, 201_ (“Effective Date”) and entered into between _____ (“IOU”), and _____ (“CHP Auditor”).

In consideration of the mutual covenants set forth below, the parties hereby agree as follows:

1. “Confidential Information” shall mean, collectively, all agreements and associated documents (regardless of whether such agreement(s) and associated documents are executed or in draft form), and technical, financial and business information of any kind whatsoever including, where appropriate and without limitation, all data, specifications, technology, ideas, know-how, improvements, maps, technical drawings, inventions (whether or not patentable or copyrightable), trade secrets, that are provided

by or on behalf of IOU, and without limiting the foregoing, any other information as well as any and all tangible and intangible embodiments thereof of any kind whatsoever that would reasonably be considered the confidential or proprietary information of IOU, its parent company, its subsidiaries or affiliates and/or third parties who have licensed or provided such information to IOU given the nature of the information or manner of disclosure, in each case disclosed by or on behalf of IOU to CHP Auditor or obtained by CHP Auditor through observation or examination of the foregoing, regardless of whether such information or embodiment has been marked as confidential or proprietary. Confidential Information shall not include information that:

- (a) has been publicly known prior to disclosure by IOU of such information to CHP Auditor;
 - (b) has become publicly known, without fault on the part of CHP Auditor or, subsequent to disclosure by IOU of such information to CHP Auditor;
 - (c) has been or is received by CHP Auditor at any time on a non-confidential basis from a source, other than IOU, lawfully having possession of and the right to disclose such information; or
 - (d) has been independently developed by CHP Auditor, which may include the written records of CHP Auditor, without use of Confidential Information.
2. Pursuant to Section 9.5.3 of the Settlement, at the initiation of the CHP audit for the subject RFO the CHP Auditor certifies that he/she is not currently engaged, and will not engage for a period of twenty four (24) months beginning on the date of delivery of Confidential Information associated with the subject CHP RFO directly in: (a) a transaction for the generation, purchase, sale or marketing of electrical energy, capacity, and/or related products, including but not limited to electricity related financial products (meaning derivatives, swaps or options), at wholesale in the State of California, (b) a transaction for the purchase, sale or marketing at wholesale of natural gas commodity, assets, including but not limited to natural gas related financial products, for electric generation purposes in the State of California, (c) preparing bids and/or bidding strategies, bidding on, or purchasing of power or power plants in the State of California (or the substantive supervision of any employee(s) whose duties include such responsibilities with regard to those activities, subject to the following Section 3), or (d) mergers and/or acquisitions of entities that own or control electric generation and/or natural gas assets or commodity associated with electric generation in the State of California, (e) consulting with or advising others in connection with any activity set forth in subparagraphs (a), (b), (c) or (d).
3. As provided in Section 9.5.4 of the Settlement, the CHP Auditor(s) may not share the Confidential Information with any third party, including any co-worker or employee, except to provide necessary technical, administrative and clerical support of no more than three (3) individuals for the Auditor's work; provided that such party is also subject to this Agreement. The CHP Auditor may directly supervise employees, office

colleagues or co-workers, but shall establish rules to eliminate any substantive supervision of activities identified in Section 2, above. A supervisor, employee, office colleague or co-worker of a CHP Auditor shall not have any substantive involvement in reviewing, providing guidance to or reviewing the results of the analysis derived from the Confidential Information

4. In the course of an audit, IOU may disclose certain Confidential Information to CHP Auditor. Each such disclosure shall be subject to the terms and conditions of this Agreement, provided that the limitations on engaging in specified activities in Section 2 shall begin on the date of initial delivery of any Confidential Information.
5. Subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, the CHP Auditor shall not disclose Confidential Information. CHP Auditor shall hold the Confidential Information in strict confidence and shall not, subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, directly or indirectly, without the prior written consent of IOU, disclose the Confidential Information to any third party other than CPUC Commissioners, Staff or Procurement Review Group (“PRG”) members. Moreover, disclosure of Confidential Information to the CPUC Commissioners, Staff or PRG members shall be accompanied by an appropriate declaration concerning its confidentiality. IOU acknowledges that CHP Auditor shall have the right to convey Confidential Information to CPUC Commissioners, Staff and PRG members. CHP Auditor shall keep the Confidential Information in a safe and secure location.
6. Notwithstanding the foregoing, in the event that CHP Auditor becomes legally compelled by notice of deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process to disclose any of the Confidential Information, CHP Auditor shall give IOU prompt prior written notice of such requirement so that IOU may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement and if such protective order or other remedy is not obtained, or IOU waives compliance with the terms hereof, CHP Auditor agrees to provide only that limited portion of the Confidential Information that it is required by the legal request and to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment. Prior to disclosure, CHP Auditor shall work with IOU to determine whether or not such information shall be marked confidential before being disclosed.
7. When the Confidential Information is no longer needed for the purpose of auditing the CHP RFO associated with a Target or due to a violation of this Agreement, the IOU may request in writing and the CHP Auditor shall promptly return all tangible items relating to Confidential Information, including all written material, photographs, models, compounds, compositions and the like made available or supplied by IOU to CHP Auditor, and all copies and derivatives thereof. CHP Auditor agrees that all Confidential Information shall, together with any copies, reproductions and other records, thereof, in any form, and all information and materials developed by CHP Auditor therefrom, be returned to IOU or destroyed by CHP Auditor, as IOU shall instruct, when no longer needed for the performance of CHP Auditor’s services or due

to a violation of this Agreement. CHP Auditor shall provide IOU with a written certification of return or destruction signed by the CHP Auditor.

8. As between IOU and CHP Auditor, IOU's Confidential Information will remain the property of IOU. Nothing contained in this Agreement will be construed as obligating IOU to disclose Confidential Information to CHP Auditor, or as granting to or conferring on CHP Auditor, expressly or by implication, any rights to use the Confidential Information other than in the CHP Auditor's conduct of his/her duties under this Agreement, or pursuant to provisions of the Settlement, including Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement.
9. CHP Auditor is aware of the restrictions imposed by the United States securities laws on the purchase or sale of securities by any person who has received material, non-public information from the issuer of such securities.
10. Subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, CHP Auditor will not disclose any information or make any news release, advertisement, public communication, response to media inquiry or other public statement regarding this Agreement, the Confidential Information, any transactions, potential transactions, or bids contained in the Confidential Information and/or the potential commercial relationship between the parties or CHP Auditor's performance hereunder without the prior written consent of IOU.
11. This Agreement shall last until and cover Confidential Information received by the CHP Auditor for five (5) years following the Effective Date. Notwithstanding the foregoing, all of the CHP Auditor's duties of confidentiality and non-use shall, with respect to Confidential Information, continue until such time that Confidential Information is no longer deemed confidential by IOU or falls within one of the exceptions set forth in Section 1.
12. CHP Auditor may not transfer or assign all or part of this Agreement, whether by operation of law or otherwise, without the prior written consent of IOU.
13. IOU makes no express or implied warranty or representation relating to the Confidential Information (including as to completeness) or its use, provided that, consistent with Section 9.4.2 of the Settlement, at a minimum the Confidential Information shall include all information provided to the subject RFO's Independent Evaluator. Notwithstanding anything to the contrary in this Settlement, the CHP Auditor is not entitled to review any proprietary models used by an IOU in an RFO, provided that all inputs and outputs of the model used in the RFO shall be provided to the CHP Auditor. IOU provides the Confidential Information on an "as is" basis and CHP Auditor's use of the Confidential Information shall be at its own risk.
14. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and shall supersede all previous communications, representations, understandings, acknowledgements and agreements, whether oral or written, by or

between the parties with respect to Confidential Information, whether heretofore or hereafter disclosed between the parties.

15. No change, modification, extension, termination or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by a duly authorized representative of the IOU and by the CHP Auditor.
16. CHP Auditor shall be responsible for any breach of the provisions of this Agreement by it and its support staff pursuant to Section 3. In the event that CHP Auditor learns of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the CHP Auditor or its support staff or reasonably believes such use, disclosure or breach has occurred, CHP Auditor shall immediately notify IOU in writing, and shall cooperate with IOU in every reasonable way to help IOU regain possession of such Confidential Information and to prevent its further unauthorized use.
17. This 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. Any controversy or claim arising out of or in any way relating to this Agreement which cannot be amicably settled without court action shall be litigated in a California State Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California State Court, in a Federal Court of competent jurisdiction situated in the State of California.
18. CHP Auditor understands and agrees that, because of the unique nature of the Confidential Information, IOU and/or CHP RFO Participants will suffer irreparable harm if CHP Auditor fails to comply with any of its obligations under this Agreement, and monetary damages will be inadequate to compensate IOU for such breach. Accordingly, CHP Auditor agrees that IOU shall, in addition to any other remedies available to IOU at law or in equity, be entitled to injunctive relief to enforce the terms of this Agreement without posting a bond or other undertaking. It is further understood and agreed that no failure or delay by IOU in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
19. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
20. This Agreement has been negotiated by both parties and shall not be strictly construed against either party.

21. This Agreement may be executed in one or more original or faxed counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Intending to be legally bound, each of the undersigned Parties has executed this Agreement, which is effective on the last date indicated below.

Name of IOU
By: _____
Printed: _____
Title: _____
Date: _____

CHP Auditor
By: _____
Printed: _____
Title: _____
Date: _____

ATTACHMENT A – EXHIBIT 9

Exhibit 9 – List of Members of Cogeneration Association of California

Coalinga Cogeneration Company
Mid-Set Cogeneration Company
Kern River Cogeneration Company
Sycamore Cogeneration Company
Sargent Canyon Cogeneration Company
Salinas River Cogeneration Company
Midway Sunset Cogeneration Company
Watson Cogeneration Company

ATTACHMENT A – EXHIBIT 10

Exhibit 10: California Cogeneration Council Members

Applied Energy, LLC
Badger Creek Ltd.
Bear Mountain Ltd.
Berry Petroleum Company
Chalk Cliff Ltd.
Corona Energy Partners Ltd.
CP Kelco
Double C Ltd.
EF Oxnard Ltd.
EIF Mojave, LLC
Goal Line, L.P.
Graphic Packaging International, Inc.
High Sierra Ltd.
International Paper Company
Kern Front Ltd.
Live Oak Ltd.
Martinez Cogen Limited Partnership
McKittrick Ltd.
Oildale Energy, LLC
O.L.S. Energy - Chino
PE-Berkeley, Inc.
Temple-Inland (TIN, Inc.)
The Proctor & Gamble Paper Products Company
United Cogen, Inc.
U.S. Borax, Inc.

ATTACHMENT A – EXHIBIT 11

Exhibit 11: List of Members of Energy Producers and Users Coalition

Aera Energy LLC,
BP West Coast Products LLC
Chevron U.S.A. Inc.
ConocoPhillips Company
ExxonMobil Power and Gas Services Inc.
Shell Oil Products US
THUMS Long Beach Company
Occidental Elk Hill, Inc.