

TOLLING POWER PURCHASE AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

[
(as "Seller")

Pro Forma Tolling Agreement

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.

TOLLING POWER PURCHASE AGREEMENT

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REFERENCE EXAMPLE ONLY

TOLLING POWER PURCHASE AGREEMENT

This Power Purchase Agreement is made by and between Pacific Gas and Electric Company, a California corporation (“PG&E”, and as further defined herein, “Buyer”) and _____, a *[identify State]* limited liability company (“Seller”) as of the Execution Date. Seller and Buyer are referred to individually as “Party” or collectively as “Parties”. Buyer and Seller hereby agree to the following:

RECITALS

This Agreement is for the purchase and sale of all Products that are available from the Unit(s). This is a tolling Agreement under which Buyer will make Gas available at the Gas Delivery Point as necessary for Seller to provide the Products described herein.

This Agreement specifically provides for the dispatch of the Unit(s) solely by Buyer, and under no circumstances may the Units become or be deemed to be Regulatory Must-Take Generation or Regulatory Must-Run Generation resources, as those terms are used in the CAISO Tariff, without the prior written agreement of Buyer.

ARTICLE I. GOVERNING TERMS

1.1 Entire Agreement. This Agreement, together with each and every appendix, attachment, amendment, schedule and written supplements hereto, to the extent those are executed by the Parties, constitutes the entire agreement of the Parties as to the matters set forth herein.

1.2 Interpretation. The following rules of interpretation shall apply:

(a) The term “including” shall mean “including without limitation”; the term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins or ends, respectively.

(b) Unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld or unreasonably delayed.

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

(d) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Appendix I, unless otherwise specified.

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

(f) Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. Words referring to market rules, activities and practices shall have the meaning generally ascribed to such words in California.

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

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

(i) All references to dollars or "\$" are to U.S. dollars.

(j) When an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific prevailing time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day.

1.3 Recordings. Unless a Party expressly objects to a Recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement related to the scheduling of any Product, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, subject to the confidentiality provisions of Section 10.7. Each Party waives any further notice of such monitoring or Recording and agrees to notify its officers and employees of such monitoring or Recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the Recordings pursuant to this Agreement.

1.4 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of Gas or any Product or make or receive other Notices on behalf of such Party ("Authorized Representative") and in connection with such Notices and specify the scope of their individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time in its sole discretion by providing Notice.

ARTICLE II. TERM

2.1 Term.

(a) The "Contract Term" will commence upon the Execution Date and, unless earlier terminated pursuant to Article V or Article XI, will continue throughout the Delivery Term and until the date as of which all payment or delivery obligations arising under this Agreement, including any compensation for the Products, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the collateral is released and/or returned as applicable.

(b) The “Delivery Term” is the period commencing on the Initial Delivery Date and continuing for a period of [redacted] years from the Initial Delivery Date unless earlier terminated pursuant to Article V.

(c) The “Initial Delivery Date” shall be the later of (i) _____ (as may be extended in accordance with Section 11.1(f) or Section 11.5) *[Seller to insert date, which shall be the first date of a month]* (the “Expected Initial Delivery Date”) or (ii) the first day of the month directly following satisfaction of the Conditions Precedent pursuant to the terms set forth in Article XI.

(i) The Parties shall execute and exchange the “Initial Delivery Date Confirmation Letter attached hereto as Appendix IV on the Initial Delivery Date.

2.2 Binding Nature. Except as explicitly provided herein, this Agreement shall be effective and binding as of the Execution Date (“Effective Date”).

ARTICLE III. OBLIGATIONS AND DELIVERIES

3.1 Transaction.

(a) Purchase and Sale Obligation. During the Delivery Term, Seller shall sell and make available to Buyer and Buyer shall accept and pay, in accordance with the provisions of this Agreement, for all the Monthly Contract Capacity of the Units which shall convey to Buyer the right to receive all the Products provided by the Units, including those Products associated with Capacity and Capacity Attributes in excess of the Monthly Contract Capacity as described in Section 3.11(d) and pursuant to the terms and conditions contained herein. The Parties acknowledge and agree that this Agreement is a forward contract (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date).

(b) Resource Adequacy Requirement (“RAR”).

(i) Seller agrees that the Units meet and maintain all requirements necessary to qualify as a resource capable of contributing to Buyer’s RAR or similar successor requirements at all times during the Delivery Term. Seller’s obligations pursuant to this Section 3.1(b) shall include, but are not limited to, the obligations set forth in this Sections 3.1(b). Seller agrees that it will take all measures necessary so that each Unit’s Capacity Attributes and/or Capacity qualifies, is recognized, and is counted as RA Capacity subject to the Operational Limitations as set forth in Appendix II. Seller will execute any and all documents or instruments reasonably necessary to enable Buyer to use fully such RA Capacity to satisfy Buyer's RAR in accordance with the Operational Limitations set forth in Appendix II. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Capacity Attributes. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Capacity and/or Capacity Attributes for re-sale in such market, and retain and receive any and all related revenues. Seller’s obligations pursuant to this Section 3.1(b) shall include the obligations set forth in subsections 3.1(b)(i) – (iv) below:

(i) Seller shall cooperate with and encourage the regional entity responsible for RAR administration, including the CAISO, if applicable, to certify or qualify at least Maximum Contract Capacity for RAR purposes. This includes following requirements the CPUC has established and may establish in the future, including calculation of RA Capacity over

all hours required for RAR eligibility, and delivery of the RA Capacity to the Electrical Delivery Point.

(ii) Seller shall comply with the RAR reporting requirements set forth in Section 40 of the CAISO Tariff, including but not limited to the following:

(A) taking all actions to register the Facility with the CAISO to ensure that the Facility's Capacity Attributes and/or Maximum Contract Capacity is able to be recognized and counted as RA Capacity; and

(B) coordinating with Buyer to comply with the applicable reporting requirements of the CAISO Tariff.

(iii) Seller shall comply with PG&E's Outage Protocol and Notifications specified in Section 3.8 and Appendix III.

(iv) Seller shall obtain and maintain Full Capacity Deliverability Status as determined by the CAISO for the Units as of the Initial Delivery Date and throughout the Delivery Term.

(c) Control. Seller shall at all times during the Contract Term retain operational control of each and all Units, be responsible for or cause Seller's agent to be responsible for, all operation and maintenance of each and all Units and Seller will bear all costs related to development, construction, ownership, operation and maintenance of each and all Units.

(d) Exclusivity; Rights to Output and Payments.

(i) Buyer shall have the exclusive right to any and all Products from each Unit, and Seller shall not dispatch or operate a Unit, or any portion thereof, or sell any Product associated with a Unit during the Delivery Term, to any Person other than Buyer other than pursuant to an Instructed Operation. For the avoidance of doubt, during the Delivery Term, Seller shall not cause the Unit to become subject to an RMR agreement or any other obligation to operate a Unit or deliver a Product to any other Person other than pursuant to an Instructed Operation, and Buyer shall have the exclusive right to enter into an RMR agreement with respect to any Unit and/or resell any Product from any Unit, provided in each case that the RMR agreement or resale would not result in a violation of the Operational Limitations of the affected Unit.

(ii) Subject to the reporting requirements of Section 3.5, nothing herein shall prevent Seller from complying with Instructed Operations; provided that if Seller receives an Instructed Operation other than through Buyer, it should advise the entity issuing the Instructed Operation that such communications are to be made to its Scheduling Coordinator, and in any event, Seller shall promptly report such event in accordance with Section 3.5 and Appendix III.

(iii) Seller acknowledges and agrees that Buyer may take whatever measures it elects to protest, challenge, eliminate, institute or modify any Instructed Operation, which may include communicating directly with the Governmental Authority or Transmission Provider, as applicable, responsible for such Instructed Operation.

(iv) If during the Delivery Term Seller requires the ability to operate the Facility other than pursuant to Scheduled Operations (for example, for the purpose of conducting environmental testing or to test newly installed equipment), it shall Notify Buyer in advance of such operation, and Buyer and Seller shall work in good faith to accommodate Seller's request; provided that, (A) such request is consistent with other provisions of this Agreement, including 3.3, 3.5, and the timelines provided in 3.11(f), and (B) Seller shall be liable for Buyer's reasonable costs in accommodating Seller's requests. Operations undertaken pursuant to the prior sentence shall not be deemed to be part of Scheduled Operations, and Seller shall bear the costs and receive the benefits of such operations, Start-Ups and Shut-Downs, including any and all CAISO charges, as applicable.

(v) To the extent that Seller receives any payment associated with the Products from a Unit during the Delivery Term, including non-Energy or fixed payments received for or in connection with RAR, Instructed Operations or any RMR agreement, from any Person (including the Transmission Provider) other than Buyer, Seller shall remit such payment to Buyer ("Third Party Payments"); provided that, for the avoidance of doubt, nothing herein precludes Seller from retaining credits related to Transmission Upgrades as contemplated pursuant to Section 3.1(f). Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(e) Unit Modifications. Absent the written consent of Buyer, which may be withheld or delayed at Buyer's sole discretion until such time as the terms of this Section 3.1(e) are satisfied, Seller shall not, and shall not permit any other Person to:

(i) undertake any construction at or modification of the Unit(s) or the Facility; or

(ii) modify the Capacity or the Heat Rate of the Units that are committed to Buyer (as compared to its Design Capacity and Guaranteed Heat Rate); or

(iii) take any other action that would, or may reasonably be expected to, impair or limit the ability of a Unit to supply Products to the Buyer, the ability of the Buyer to make Gas available at the Gas Delivery Point, or the ability of Seller to deliver any and all Products that the Unit is capable of producing, as set forth in Appendix II, as measured at the Electrical Delivery Point, including the Maximum Contract Capacity.

Nothing in this Section 3.1(e) shall be deemed to limit or impair the ability of the Seller to perform or cause to be performed routine maintenance in the ordinary course of business, including those that may result in restoring Design Capacity or Heat Rate lost through degradation, subject to the provisions of Section 3.8.

(f) Separation of Functions.

(i) Electric. The Parties acknowledge that the Parties have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as an owner or provider of electrical interconnection or transmission service. Thus, whether or not the Units are interconnected to electrical transmission or distribution systems that are owned or operated by PG&E, Seller's arrangements for electrical interconnection and transmission must be made separately with Seller's Transmission Provider (which may be PG&E acting in its capacity as a transmission provider) and, except for setting forth the rights and obligations of the Seller to

construct, and/or cause to be constructed, and maintain metering facilities, Electrical Interconnection Facilities, Transmission Upgrades, (in each case in accordance with the requirements of its Transmission Provider or transmission owner, as applicable) and arrange for transmission of Products (to the extent applicable) to and at the Electrical Delivery Point, this Agreement conveys no rights or obligations with respect to electrical interconnection and transmission. If, in accordance with the applicable tariffs, rules, or agreements governing Seller's arrangements for Transmission Upgrades, Seller is entitled to receive a credit, repayment or other rights or privileges as a result of funding the Transmission Upgrades, nothing in this Agreement shall impair or prohibit Seller from retaining those credits, repayments, rights or privileges for its use and benefit. Regardless of whether PG&E owns or operates the interconnecting transmission system, under no circumstances will PG&E in its capacity as a Buyer under this Agreement be responsible for Seller's interconnection arrangements or costs nor any credit, repayment or other rights or privileges due to Seller as a result of its funding of the Transmission Upgrades. Moreover, Buyer is not responsible for or liable in any way for any delay in the Initial Delivery Date owing to electric interconnection or transmission service, and Seller's non-performance of any provision of this Agreement shall not be excused to any greater extent due to any action or inaction of PG&E in its capacity as an owner or provider of electrical interconnection or transmission service than it would be if the non-performance were due to any action or inaction of a Person other than PG&E.

(ii) Gas. The Parties acknowledge that the Parties have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as an owner or provider as a Gas LDC or in-state pipeline. Thus, whether or not the Units are interconnected to a Gas transportation system that is owned or operated by PG&E, Seller's arrangements for Gas interconnection and transportation must be made separately with Seller's LDC or in-state pipeline (which may be PG&E in its capacity as an LDC or in-state pipeline).

(g) No Replacement Product. In no event shall Seller have the right to procure and substitute any Product from a source other than the Units designated by Buyer for sale or delivery to Buyer under this Agreement, including during an Outage.

3.2 Interconnection Facilities.

(a) Construction. In accordance with Article XI, it is solely Seller's obligation to cause the construction of such Electrical Interconnection Facilities and Fuel Handling Facilities, including metering and submetering facilities and Transmission Upgrades, as are needed to enable Seller to deliver all Products to and at the Electrical Delivery Point under this Agreement.

(b) Maintenance of Electrical Interconnection Facilities. Beginning with the Initial Delivery Date and at all times during the Delivery Term, Seller shall maintain and/or cause to be maintained, at its expense, the Electrical Interconnection Facilities such that the Electrical Interconnection Facilities are capable of delivering the Products that can be generated or produced using the Maximum Contract Capacity in accordance with the terms of this Agreement to and at the Electrical Delivery Point during each month as applicable (in addition to such other output of the Facility as the Electrical Interconnection Facilities are required to transmit) in accordance with the terms of this Agreement.

(c) Maintenance of Fuel Handling Facilities. Beginning with the Initial Delivery Date and at all times during the Delivery Term, Seller shall maintain and/or cause to be

maintained, at its expense, the Fuel Handling Facilities such that the Fuel Handling Facilities are capable of delivering Fuel to, at, and from the Gas Delivery Point to and at each Unit, in quantities and at pressures that enable the Units to generate or produce the Products using the Maximum Contract Capacity in accordance with the terms of this Agreement during each month as applicable (in addition to such other quantities of Fuel as the Fuel Handling Facilities and Gas Interconnection Facilities are required to deliver to the Facility) in accordance with the terms of this Agreement.

3.3 Gas Supply & Transportation.

(a) Title and Risk of Loss. Title to and risk of loss related to Gas shall transfer from Buyer to Seller at the Gas Delivery Point.

(b) Buyer's Gas. During the Delivery Term and subject to Section 3.3(f), Buyer or Buyer's agent will make Gas available at the Gas Delivery Point as necessary, at Buyer's expense, for all Scheduled Operations, Scheduled Start-Ups, Scheduled Shut-Downs, and Buyer's Performance Tests, in each case, as necessary to perform such operations as determined by reference to the most recent Guaranteed Heat Rates or the Gas requirements set forth in Appendix II, as applicable, excluding Gas burned during Failed Starts (cumulatively, "Buyer's Gas"); provided that the Products produced as a result of such operations are delivered to Buyer. Any Gas used for Scheduled Operations, Scheduled Start-Ups, Scheduled Shut-Downs, and Buyer's Performance Tests in amounts other than as specified by the most recent Guaranteed Heat Rates or as set forth in Appendix II, as applicable, shall be subject to the provisions of Section 3.3(f) and 3.3(g). During the Delivery Term, Seller shall have the obligation to receive Buyer's Gas and to use it exclusively for Scheduled Operations, Scheduled Start-Ups, Scheduled Shut-Downs, and Buyer's Performance Tests, as directed by Buyer. Buyer's Gas and Additional Gas shall be provided only at the pressure and of the quality available from the interconnecting pipeline or LDC. Buyer is a separate entity from the Gas LDC or transmission provider as described in Section 3.1(f)(ii) and shall not be responsible for pipeline pressure and Gas quality at the Gas Delivery Point. For the avoidance of doubt, if Gas pressure at the Gas Delivery Point is for any reason insufficient to enable Seller to meet its obligations under this Agreement, it is Seller's responsibility to have available or to install compression downstream of the Gas Delivery Point.

(c) Seller's Gas Transportation Agreements.

(i) At Buyer's request, Seller shall assign to Buyer (or, as applicable, appoint Buyer as Seller's balancing agent with respect to) any or all of specified Seller's rights under agreements with its LDC and other Gas transportation providers with respect to nominating, scheduling, balancing, park and loan services or such other arrangements for the management of Gas supply and delivery for and to the Unit(s); and Buyer shall assume such rights or accept such appointment, as applicable. Seller shall provide notification of such assignment to the LDC and Gas transportation provider no later than five (5) Business Days prior to the Initial Delivery Date. **[Note: Five (5) Business Days is sufficient for PG&E Citygate. More time may be needed for other areas.]**

(ii) Seller shall permit Buyer to directly communicate with and receive information from the LDC and Gas transportation provider regarding any changes in the delivery of Gas, which may include, but is not limited to, formal notifications, outages, pressure reductions, and curtailments that may affect the operation of the Facility in connection with the Agreement.

(iii) Prior to Buyer taking over the gas supplier responsibility under this Agreement, Seller shall use commercially reasonable efforts to ensure that zero Gas imbalance is transferred to Buyer, or, if an imbalance position is transferred from Seller or Seller's Agent to Buyer, at Buyer's election, Seller shall (A) pay Buyer for any under-delivery imbalance (negative) or any over-delivery imbalance (positive) at the applicable LDC or Gas pipeline rate or charge, including penalties, as applicable, and/or (B) if there is a negative imbalance (ie. under-delivery), Seller shall pay Buyer at the Gas Index Price, Midpoint of a future date or dates to be determined by Buyer.

(iv) Buyer shall be responsible for procuring, contracting for and otherwise arranging for Gas transportation services as necessary to make Gas available at the Gas Delivery Point during the Delivery Term. During the Delivery Term, Seller shall provide Buyer access to data as provided in Section 3.7(g) plus timely access to Gas data, records and invoices associated with LDC or Gas transportation provider services for the Facility.

(v) During the Delivery Term, at Buyer's direction, Buyer may assume any of Seller's rights under any Operational Balancing Agreement ("OBA"), receipt point access agreements, or other Gas transportation contracts, (together designated as "Transportation Contracts") associated with the Units during the Delivery Term. All such agreements shall be listed in Appendix V and, if requested by Buyer, Seller shall provide Buyer with a copy of all such agreements.

(vi) Buyer and Seller shall promptly take all actions required by each Gas LDC or transportation provider to terminate the assignment of the Transportation Contracts to Buyer or to terminate Buyer's authority to act as Seller's agent under the Transportation Contracts at the earlier of Buyer's request or at the expiration or termination of this Agreement. Buyer shall continue to make Gas available at the Gas Delivery Point until the expiration or early termination of such assignments or authorizations or the expiration or termination of this Agreement.

(d) Gas Transportation Costs. During the Delivery Term and subject to Sections 3.3(e) and 3.3(f), Buyer or Buyer's agent shall be responsible for arranging for the transportation of all Buyer's Gas, and for the payment of all charges, surcharges and fees related to transportation of Buyer's Gas, to the Gas Delivery Point, including inter-state, in-state and LDC charges, surcharges and fees; provided that, if Seller pays such amounts (other than with respect to Additional Gas), Buyer shall reimburse Seller in accordance with a verifiable invoice from Seller ("Gas Reimbursements"). Notwithstanding the foregoing, Buyer shall not be responsible for any charges, surcharges or fees assessed pursuant to, or associated with, (i) an Exceptional Case Agreement; or (ii) any other agreement if such charges, surcharges or fees are related to interconnection or construction costs; or (iii) failure to meet a minimum volume requirement; or (iv) transportation, balancing or other costs not associated with the transportation of Buyer's Gas. Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(e) Additional Gas. To the extent that during the Delivery Term Seller desires to have Gas other than Buyer's Gas ("Additional Gas") made available at the Gas Delivery Point, which shall be for testing purposes only per the terms of this Agreement, Seller shall provide at minimum three (3) Business Days' Notice to Buyer of the quantities of Additional Gas required and the time at which the Additional Gas is required, and subject to timely receipt of such Notice, Buyer shall make such Additional Gas available as necessary at the Gas Delivery Point. Buyer shall receive a fee for this service equal to one cent (\$0.01) per

MMBtu plus one-half percent (0.5%) of the Gas Index Price, Midpoint (“Fuel Manager Fee”). Buyer shall invoice Seller, and Seller shall pay, for the cost of Additional Gas in an amount equal to the MMBtus of Additional Gas made available (exclusive of Buyer’s Gas) multiplied by the Gas Index Price, Midpoint plus all transportation charges, surcharges, penalties and fees that have been (or are to be) paid by Buyer related to the Additional Gas and the Fuel Manager Fee (“Additional Gas Payment”). Seller shall be subject to the provisions of Sections 3.3(f) and 3.3(g) to the extent that Buyer incurs a Gas imbalance from the quantity of Additional Gas requested by Seller to be made available at the Gas Delivery Point. Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(f) Gas True-up. During the Delivery Term, in addition to the provisions in Section 3.3(e), Seller shall compensate Buyer, or Buyer shall compensate Seller, on a monthly basis, based on a Daily Imbalance Amount for each individual day of the calendar month as follows, with an example of the Gas True-up shown in Appendix VI.

Daily Imbalance Amount = Daily Actual Gas - Daily Qualified Gas - Additional Gas

where:

“Daily Actual Gas” (in MMBtu) shall equal the total quantity of Gas for a calendar day as measured by the Gas meter at the Gas Delivery Point;

“Daily Qualified Gas” (in MMBtu) shall equal (x) the sum of Qualified Gas over all Settlement Intervals in the day plus (y) Gas requirements for Scheduled Start-Ups and Scheduled Shut-downs as specified in Appendix II, excluding Gas burned during Failed Starts, plus (z) any Gas requirements for the Buyer’s Performance Tests not already accounted for in items (x) and (y). The most recent Guaranteed Heat Rates corrected for ambient conditions pursuant to meteorological data provided in Section 3.7(g) (or if Seller has not met the obligations to provide data as specified in Sections 3.7(g) and 6.1, the Guaranteed Heat Rate Point at ISO Conditions **[for the applicable Configuration]** as specified in Appendix II) shall be used for the purpose of calculating Daily Qualified Gas. If there is more than one applicable Settlement Interval in the Real-Time Market for the same period of time, the calculation of Daily Qualified Gas shall include the sum of Settlement Intervals applicable to the final award or schedule in the Real-Time Market;

“Additional Gas” (in MMBtu) is pursuant to Section 3.3(e), if any is requested by Seller for the day.

(i) For each day in which the Daily Imbalance Amount is positive, Seller shall owe Buyer an amount equal to (A) the Daily Imbalance Amount multiplied by Gas Daily Index Price, High plus (B) all Gas transportation charges related to the Daily Imbalance Amount that have been (or are to be) paid by Buyer.

(ii) For each day in which the Daily Imbalance Amount is negative, Buyer shall owe Seller an amount equal to the absolute value of the Daily Imbalance Amount multiplied by Gas Index Price, Low multiplied by fifteen percent (15%), provided that Seller has met the obligation to provide data for settlement and compensation purposes pursuant to Section 3.7(g). If Seller has not met such obligations or if such obligations have not been waived by Buyer, Buyer will not owe Seller in the event when the Daily Imbalance Amount is negative.

(iii) Buyer shall calculate a monthly payment that nets any daily payments from Seller to Buyer against payments from Buyer to Seller for the month (the “Gas True-Up Payment”) and shall Notify Seller of Gas True-Up Payments due. The Gas True-Up Payment shall be invoiced and paid pursuant to Article VI.

(g) Operational Flow Orders Charge. An OFO, or comparable operational directive with the same or similar meaning or effect, may be issued by the LDC or Gas pipeline in the event of high or low Gas pipeline inventory (i.e. High Inventory OFO or Low Inventory OFO). During such OFO issuance, the LDC or Gas pipeline will specify an OFO Tolerance Band and associated OFO Noncompliance Rate that applies during cases when such OFO Tolerance Band is exceeded. If an OFO is issued for a given day by the Facility’s LDC or Gas pipeline during the Delivery Term, Seller will be assessed an OFO Charge by Buyer if Daily Actual Gas when compared to Daily Qualified Gas, as determined in Section 3.3(f), and Additional Gas (if any) exceeds the applicable OFO Tolerance Band specified for the day as set forth below.

(i) During a High Inventory OFO, the OFO Charge shall be calculated as:

$$\text{OFO Charge} = \text{Max} [(((1 - \text{High Inventory OFO Tolerance Band}) \times (\text{Daily Qualified Gas} + \text{Additional Gas})) - \text{Daily Actual Gas}), 0] \times (\text{OFO Noncompliance Rate})$$

(ii) During a Low Inventory OFO, the OFO Charge shall be calculated as:

$$\text{OFO Charge} = \text{Max} [(\text{Daily Actual Gas} - ((1 + \text{Low Inventory OFO Tolerance Band}) \times (\text{Daily Qualified Gas} + \text{Additional Gas}))), 0] \times (\text{OFO Noncompliance Rate})$$

If the LDC or Gas pipeline issues a simultaneous High Inventory OFO and Low Inventory OFO, Seller will be assessed an OFO Charge, if any, by evaluating both clause (i) and (ii) in the foregoing.

Buyer shall calculate a monthly OFO Charge that sums any OFO Charges and penalties that Seller has incurred on a daily basis for the month and shall Notify Seller of payments due pursuant to Article VI. An illustrative example of an OFO Charge calculation is provided in Appendix VII. OFO charges discussed in this section 3.3(g) are separate and additional to any charges in Section 3.3 (f).

3.4 Electric Transmission and Delivery.

(a) Electrical Delivery Point. The “Electrical Delivery Point” shall be the specified point of interconnection for the Facility to the CAISO-controlled grid, and is identified in Appendix II.

(b) Title and Risk of Loss. Title to and risk of loss related to each Product shall transfer from Seller to Buyer from the Electrical Delivery Point.

(c) Seller’s Responsibility. During the Delivery Term, Seller shall arrange, schedule and be responsible for electric interconnection, distribution and/or transmission service and any and all costs or charges imposed on or associated with the Products or its delivery of the Products, including electric distribution and/or transmission costs, distribution and/or transmission losses, congestion costs and all risks and costs associated with any distribution

and/or transmission outages or curtailment up to and at the Electrical Delivery Point. Seller's interconnection, distribution, and/or transmission arrangements shall provide for Full Capacity Deliverability Status as of the Initial Delivery Date and throughout the Delivery Term.

(d) Buyer's Responsibility. During the Delivery Term, Buyer shall arrange, schedule and be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Products or its receipt of the Products with respect to Scheduled Operations, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment, from and after the Electrical Delivery Point.

(e) Change of Market Structure. In the event the CAISO implements changes in the market design such that Seller becomes exempt from, is reimbursed for or receives any refunds, credits or benefits from the CAISO for congestion charges or losses, whether due to congestion revenue rights, Locational Marginal Price (LMP) adjustments, market adjustment, invoice adjustments or any other CAISO market instruments associated with the delivery of Product in accordance with the terms of this Agreement (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall promptly Notify Buyer of such Reductions and transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions; provided that Buyer shall be responsible for CAISO charges or losses, and entitled to receive CAISO Reductions related to congestion or losses attributed to the LMP.

3.5 Scheduling.

(a) Scheduling Coordinator Timeline and Requirements. At least thirty (30) days before the beginning of the Delivery Term, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Buyer's Third-Party Scheduling Coordinator, as Seller's SC, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's SC. If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(b) Scheduling Coordinator Function. During the Delivery Term, Buyer, or Buyer's Third-Party SC, will be the Scheduling Coordinator for the Units. Accordingly, Buyer shall be authorized and entitled to exercise all rights and obligations on behalf of the Seller that are customarily included in the responsibilities of the Scheduling Coordinator, including bidding and scheduling deliveries of Products (as applicable) from the Units throughout the Delivery Term, overseeing CAISO accounts and settlements related to the Units and Products delivered from the Units, discussing and/or resolving disputes related thereto with the CAISO, and complying with all dispatch and bidding aspects of the Resource Adequacy Requirement. Notwithstanding the foregoing, depending on the timing of the Initial Delivery Date and the then-applicable standard scheduling protocols, Buyer will have the right, in accordance with then-applicable standard scheduling protocols, to bid or schedule the Units in advance of the Initial

Delivery Date as necessary to commence deliveries of Products (as applicable) on the Initial Delivery Date. In its capacity as Seller's representative to the CAISO, the Scheduling Coordinator shall be responsible for exercising due diligence in processing and validating all settlements for the Units and ensuring all settlements are valid.

(c) Buyer's Dispatch Rights. During the Delivery Term, Buyer shall have the exclusive right to bid, schedule, or designate any or all Units for the delivery of the Products, in accordance with and up to the Operational Limitations set forth in Appendix II, in any CAISO forward, day-ahead, hour ahead, real-time or intra-day markets, and Seller shall take all reasonable steps within Prudent Electrical Practices to meet Buyer's dispatch instructions and CAISO instructions resulting from Buyer's instructions. The Operational Limitations specified in Appendix II shall allow Buyer to bid and/or schedule the Unit(s) for all hours of the day, seven (7) days per week for all available Products, unless the Unit(s) are incapable of operations pursuant due to an Outage, Excused Event, or operations pursuant to Section 3.1(d)(iv), as specified in this Agreement.

(i) Seller's Notices of Availability. By 5:00 a.m. each day, commencing seven (7) calendar days prior to the Initial Delivery Date and continuing thereafter throughout the Delivery Term, Seller shall provide Buyer a complete and accurate Notice of the expected availability of all relevant Products of each Unit (as reasonably determined at that time) for that day and each of the next 13 days or such shorter period as the Buyer may specify from time to time and in the format per Buyer's specification, and a disclosure of the existence and expected duration of any Outage or any Instructed Operation, the amount of Capacity affected by such Outage and the nature and effect of the Instructed Operation on each Unit's availability, regardless of whether or the extent to which a Unit is then or may be scheduled for operation; provided that (A) disclosure of Outages not previously Noticed or approved by Buyer pursuant to Section 3.8 shall not be deemed an Excused Scheduled Maintenance Outage unless explicitly approved as such by Buyer, and (B) any Notice of availability that is below a given Unit's Minimum Load per Appendix II shall be deemed fully unavailable for the purposes of bidding, scheduling or calculation of Availability pursuant to Section 4.1 for that Unit, and (C) such information shall be required only for days that are part of the Delivery Term. Buyer may schedule up to and in accordance with the most recent availability Notice received from Seller.

(ii) Dispatch Quantity. By the first day of each calendar quarter of the Delivery Term, Seller shall provide Buyer a Notice of the remaining Dispatch Quantity applicable to the current calendar year. *[Note: Include if Facility has annual emissions or dispatch limitations.]*

(iii) Seller's Continuing Obligations. During the Delivery Term, to the extent not reported in the most recent availability Notice or pursuant to Section 3.8, Seller shall Notify Buyer as soon as reasonably practicable, in accordance with PG&E's Outage Reporting Protocols, of every Outage of a Unit, change in availability of all relevant Products or imposition of an Instructed Operation, whether or not the Unit is scheduled for operation. Seller shall update Buyer periodically through the day as information becomes available as well as through availability Notices, with any revised estimates regarding the Unit's return to full output capability or release from or change in Instructed Operation and shall promptly provide Buyer Notice of any further change in the availability of a Unit or Products for dispatch from that set forth in the last Notice provided, whether or not the Unit is scheduled for operation, including any developments that will affect the severity or duration of each Outage, availability and capability of the Unit to return to service after an Outage or scope and duration of the Instructed Operation.

For Forced Outages, Seller shall Notify PG&E's Real Time Desk within ten minutes of the event as specified in Appendix III.

(iv) Other Reporting Obligations. Each Notice provided pursuant to Sections 3.5(c)(i), 3.5(c)(ii) and 3.5(c)(iii) that includes an Outage shall include all such information concerning such Outage, change or limitation as the Transmission Provider may require to be reported by Seller or by Buyer, in its capacity as Buyer or as the Units' SC. Each such Notice from Seller to Buyer shall be made by providing Notice in accordance with the PG&E Outage Reporting Protocols as specified in Appendix III. During the Delivery Term, Buyer is responsible for providing to the Transmission Provider notice of each Outage to the extent required by Law, CAISO Tariff, the tariff of the interconnecting Transmission Provider, or contract. During the Delivery Term, each of Seller and Buyer shall promptly communicate to the other all information received by it from the Transmission Provider or other Governmental Authority regarding planned or in-progress Outages or Instructed Operations. Seller is responsible for providing regulatory bodies such as the FERC and the CPUC with Outage information (for example, but not limited to, NERC outage reporting requirements) as required by Law, tariff or regulation.

(v) Buyer's Schedule. Buyer, as SC, shall bid or schedule the Unit(s) in accordance with Section 3.6 of this Agreement, CAISO protocols, and within Operational Limitations as set forth in Appendix II. Any CAISO market awards or schedules, Dispatch Instructions, Instructed Operations, or oral or written notification by Buyer to operate the Unit(s) in the requested manner shall be deemed "Buyer's Schedule," as it may be adjusted from time to time by the CAISO, Buyer, or Instructed Operations. Notwithstanding Buyer's exclusive rights to schedule and require delivery of the Products from the Units during the Delivery Term as set forth in Section 3.1(d), Buyer shall adjust Buyer's Schedule to the extent necessary to allow Seller to Start-Up, operate, curtail or Shut-Down the Units as required to comply with an Instructed Operation.

(vi) Seller's Operation. During the Delivery Term, Seller shall dispatch and operate each Unit designated by Buyer as required to meet Buyer's Schedule as it may be adjusted from time to time in any CAISO markets, except when and to the extent (A) a Unit designated to operate is incapable of operation due to an Outage (subject to the provisions for declaring and remedying Outages as set forth herein), or (B) operation or dispatch is prevented by an Excused Event. During the Delivery Term, Seller shall not dispatch and operate Units other than pursuant to Buyer or the CAISO's direction except as specifically contemplated herein. Buyer reserves the right to require Seller to acquire systems as necessary to respond to an electronic signal conveying real-time or intra-day instructions to operate the Units at the request of Buyer or the CAISO, and such systems must be in place prior to the Initial Delivery Date.

(d) Deviation Charges. Buyer shall have no obligation or liability of any kind with respect to a given Unit's Uninstructed Deviations from Scheduled Operations, except to the extent any such obligations or liabilities arise as a result of any act or omission of Buyer in its role as Scheduling Coordinator. Seller shall reimburse Buyer, or Buyer shall reimburse Seller, for any and all Uninstructed Deviations as follows: Each month, Seller shall owe Buyer the sum (if positive) or Buyer shall owe Seller the sum (if negative) of (i) the amount of any and all costs, charges, penalties, and surcharges assessed on Buyer by the CAISO that were incurred during all periods of Uninstructed Deviations during that month, less (ii) any and all payments made to Buyer by the CAISO for supplying Energy in excess of Energy delivered pursuant to Scheduled Operations (Sections 3.5(d)(i) and 3.5(d)(ii) are cumulatively the "Deviation Charges"). If the net amount of Deviation Charges is positive for the month, Seller shall owe Buyer the positive

amount; and if the net amount of such charges is negative for the month, Buyer shall pay that amount to Seller. Seller and Buyer acknowledge and agree that if Seller Notifies Buyer of updated availability of the Unit(s) after such time as Buyer has bid or scheduled the Units with the CAISO for any particular period of time, Buyer will take action to notify the CAISO of the Unit(s)' updated availability, which action does not eliminate Seller's responsibility of Deviation Charges for such period of time. Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI. An example of Deviation Charges is provided in Appendix VIII.

(e) Forced Outage Compensation. On a monthly basis, Seller shall compensate Buyer during Forced Outage events, whether full Unit Outage or partial derates, during hours in which the Unit is experiencing a Forced Outage and has a market award or schedule in the Day-Ahead Market or Real-Time Market, as specified below ("Forced Outage Compensation").

(i) Seller shall pay Buyer a Forced Outage Compensation for each Settlement Interval in the Forced Outage Evaluation Period as follows: If (A) the Unit is experiencing a Forced Outage, (B) there exists a Day-Ahead Schedule for the Unit in the hour of a given Settlement Interval, and (C) Instructed Imbalance Energy is negative for that Settlement Interval, then:

$$FOC_i = (RT Price_i - DA Price_h) \times Abs(IIE_i)$$

where:

FOC_i is the Forced Outage Compensation in interval i within the Forced Outage Evaluation Period;

$RT Price_i$ is the Real-Time Price for Settlement Interval i ;

$DA Price_h$ is the hourly Day-Ahead Price in the hour of Settlement Interval i ,

IIE_i is the Instructed Imbalance Energy in Settlement Interval i .

(ii) Seller shall pay Buyer a Forced Outage Compensation for each Settlement Interval in the Forced Outage Evaluation Period as follows: if (A) the Unit is experiencing a Forced Outage, (B) there exists a schedule or award for the Unit in the Real-Time Market for the hour or partial hour of a given Settlement Interval, and (C) Instructed Imbalance Energy is negative for the Settlement Interval, then:

$$FOC_i = (RT Price_i - RT Price_h) \times Abs(IIE_i)$$

where:

FOC_i is the Forced Outage Compensation in interval i within the Forced Outage Evaluation Period;

$RT Price_i$ is the Real-Time Price for Settlement Interval i ;

RT Price_{*i*} is the Real-Time Price for the market award or schedule for the hour or partial hour of Settlement Interval *i*,

IIE_{*i*} is the Instructed Imbalance Energy in Settlement Interval *i*.

(iii) Seller shall pay no Forced Outage Compensation in Settlement Intervals that are not part of a Forced Outage Evaluation Period. On a monthly basis, Buyer shall sum the Forced Outage Compensation for all Settlement Intervals within any Forced Outage Evaluation Period in the month to determine the total Forced Outage Compensation due to Buyer from Seller, if any. If the sum of the Forced Outage Compensation for all Settlement Intervals within Forced Outage Evaluation Periods is negative, the Forced Outage Compensation for that month will be zero. In no case will Buyer owe Seller Forced Outage Compensation. An example is provided in Appendix IX.

(f) Other Products Charges. During the Delivery Term, Seller shall be liable for any costs, charges, or penalties assessed by the CAISO to Buyer related to the inability of the Unit(s) to provide or dispatch any scheduled or awarded Other Products as available to Buyer in Appendix II, due to Uninstructed Deviation or a Forced Outage event (an “Other Products Charge”), except to the extent any such obligations or liabilities arise solely as a result of any act or omission of Buyer in its role as Scheduling Coordinator. Invoicing and payment for an Other Products Charge shall be done pursuant to Article VI on a monthly basis.

3.6 Standards of Care.

(a) General Operations. Seller shall comply with all applicable requirements of Law, the Transmission Provider, NERC and WECC relating to the Facility and the Site and the transactions contemplated by this Agreement (including those related to development, construction, safety, ownership and/or operation of the Facility or the Site and the transactions contemplated by this Agreement and sale of Products therefrom). For the avoidance of doubt, Seller shall be responsible for procuring and maintaining, at its expense, all Governmental Approvals and all emissions credits required for operation of the Units throughout the Delivery Term in compliance with Law and to permit operation of the Facility in accordance with this Agreement, including as specified in Section 11.3(a)(v).

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

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and Transmission Provider reliability requirements and (ii) all of PG&E’s applicable requirements regarding interconnection of the Units per this Agreement.

3.7 Metering.

(a) Metering Requirements and Data.

(i) At Buyer’s specification: (A) all Products from the Units must be delivered through a single Electric Revenue Meter and that meter must be dedicated exclusively to all of the Units; or (B) all Products from each Unit must be delivered through an Electric Revenue Meter dedicated exclusively to each respective Unit. All Energy must be

measured by the Units' Electric Revenue Meter to be eligible for payment under this Agreement. Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters. Seller shall authorize Buyer to view the on-line meter data from the Electric Revenue Meter. Within Seller's Meter Service Agreement with the CAISO, Seller shall identify Buyer as an authorized user with "read only" privileges.

(ii) All Gas must be delivered through and measured by the Gas Meter, which must be revenue quality. If such Gas Meter is not dedicated exclusively to a single Unit, then all Gas used by such Unit shall be measured by a Gas submeter. In addition, Seller hereby agrees to provide all meter and submeter data to Buyer as set forth in Section 3.7(g).

(iii) Seller consents to Buyer obtaining Electric Revenue Meter data from the Transmission Provider, all Gas Meter data with hourly meter updates if available from the interconnecting Gas pipeline applicable to the Units, and all inspection, testing and calibration data and reports for the Gas and Electric Revenue Meters. Seller agrees to provide to Buyer all meter data, inspection, testing and calibration data and reports for the submeter(s) upon Buyer's request therefor.

(iv) If the Transmission Provider makes any adjustment to any Electric Revenue Meter data for a given time period, or if the interconnecting pipeline makes any adjustment to any Gas Meter data for a given time period, Buyer shall incorporate such revisions in its next monthly invoices, or a subsequent monthly invoice, pursuant to Section 6.1, covering the entire applicable time period in order to conform fully such adjustments to the meter data. If Seller is the recipient of the meter information, Seller shall promptly provide the meter information to Buyer. Buyer shall submit any such revised invoice on the next date on which Buyer is to render an invoice in accordance with Section 6.1 provided that Buyer shall not be required to render an invoice sooner than twenty (20) days after the date on which Buyer receives such binding adjustment to the meter data. Payment or credit resulting from the adjustment shall be due on the first Monthly Payment Date following the submission of the invoice.

(v) Should Gas or electric submetering data be required for invoice settlement purposes, individual submeter readings shall be normalized by Seller, and approved by Buyer, such that the electric submeter readings sum to a total equaling the single Electric Revenue Meter reading, and Gas submeter readings sum to a total equaling the Gas Meter reading.

(b) Meter Installation and Testing. Seller shall, at its sole cost and expense, cause the installation, maintenance, operation and replacement (as needed) of a meter to be used as (i) the Electric Revenue Meter and back-up meters, in accordance with the Transmission Provider's metering protocols, at the Electrical Delivery Point to determine the amount of the Energy produced by the Units and delivered to the Electrical Delivery Point, and (ii) the Gas Meter and back-up meters, in accordance with the requirements of the interconnecting pipeline, at the Gas Delivery Point, to determine the amount of Gas delivered to the Gas Delivery Point. To the extent necessary to isolate data related to each Unit, Buyer may in its discretion, require Seller to cause the installation, maintenance, operation and replacement of electrical and/or Gas submeters, at Seller's sole cost and expense; provided that each such submeter shall be of revenue quality and sufficient for the purposes of providing the data contemplated by this Agreement. Each Gas Meter and Electric Revenue Meter shall be locked or sealed only by, and the lock or seal shall be broken only by, the interconnecting utility or Transmission Provider, as applicable. Unless otherwise specified by Buyer, all of the submeters will be locked or sealed by both Parties, which locks or seals will only be broken by both Parties for inspection, testing or adjustment.

The meters shall meet all specifications of the Transmission Provider or interconnecting Gas pipeline, as applicable, and all meters and submeters shall be tested annually by Seller, who shall provide Buyer with not less than fourteen (14) days prior Notice of such tests. Testing procedures and standards for submeters shall be the same as for a comparable utility-owned meter. Buyer will have the right to have a representative present during such tests.

(c) Meter Maintenance. All electric metering equipment, Gas Meters, submeters, and other Gas metering equipment, whether owned by Seller or by a third party, which are installed on Seller's side of the Gas Delivery Point or Seller's side of the Electrical Delivery Point, as applicable, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Electrical Practices, in the case of the electric metering equipment, and, in the case of the Gas Meters, Gas submeters, and Gas metering equipment, in accordance with American Gas Association and American National Standards Institute standards; provided that if the electric metering equipment test is conducted by the interconnecting utility or the Transmission Provider, testing shall be conducted in accordance with the procedures and the standards generally applied by such utility or the Transmission Provider (as applicable).

(d) Meter Retesting. Either Party may from time to time request a retest of the meters and/or submeters if it reasonably believes that one or more of them are not accurate within the tolerance limits established by the Transmission Provider or the interconnecting Gas pipeline, as applicable. The requesting Party shall pay for any such retest and shall provide the other Party with not less than 14 days prior Notice of such retest. Such other Party will have the right to have a representative present during such retest.

(e) Adjustments. If any tested or retested meter is found to be not accurate within the tolerance limits established by the Transmission Provider or the interconnecting Gas pipeline, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters or submeters to determine the amount of the inaccuracy. If any tested or retested back-up meter and/or submeter is found to be not accurate within the tolerance limits (applying the same tolerance limits as applicable to the comparable utility-owned meter) and the Parties cannot otherwise agree as to the amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the earlier of (i) one-half of the period from such discovery to the date of the last testing or retesting of the meter or submeter, as applicable, or (ii) one hundred and eighty (180) days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by the Party owed such amount on the next date on which such Party is to render an invoice in accordance with Section 6.1 following discovery of such inaccuracy.

(f) Meteorological Data. Seller must supply to Buyer ambient dry-bulb temperature data, relative humidity data, and barometric pressure data from the Site. The sensors and equipment used to measure and record this data must represent ambient conditions at the Site and must be installed in a way that the sensor readings are not adversely affected by buildings, vents, structures, or local obstacles. The siting of the equipment and sensors must be consistent with EPA guidelines for meteorological monitoring programs (EPA (2000) – Meteorological Monitoring Guidance for Regulatory Modeling Applications, EPA-454/R-99-005 Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711 and EPA (2008) – Quality Assurance Handbook for Air Pollution Measurement Systems, EPA-454/B-08-002 Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711). Prior to installation of the sensors and other equipment described in this Section 3.7(f), Seller shall Notify Buyer of the proposed location of the meteorological equipment and sensors and Buyer may

approve or disapprove of the location for commercially reasonable purposes. Any request by Buyer for Seller to change the placement of the meteorological equipment shall be performed at the cost of Seller. Such equipment as specified in this Section 3.7(f) shall be used for all meteorological purposes under the terms of this Agreement, including settlement and compensation purposes and testing. The sensors must meet the following specifications:

(i) Dry Bulb Temperature: accuracy: less than or equal to +/- 0.27°C over the full range; range: -50 °C to + 50 °C; time constant: \leq 5.5 seconds; linearity: +/- 0.3°C

(ii) Relative Humidity: accuracy: less than or equal to +/- 1% from 0% to 100%; operating temperature range: -40° C to +60°C; stability: +/- 1% RH over 12 months; response time: 10 seconds

(iii) Barometric Pressure: accuracy: less than or equal to +/- 0.1% over the full range; range: 600 to 1100 hPA; operating temperature range: -40° C to +55° C; time constant: less than 10 ms to reach 90% final output with step function pressure input.

(iv) All sensors, when new, must have a National Institute of Standards and Technology (“NIST”) traceable calibration certificate. Seller must calibrate the meteorological sensors using transfer standards that are traceable to NIST at an interval not to exceed every six (6) months. The results of these calibrations must be kept in the project file for a minimum of five years and copies provided to the Buyer within thirty (30) days of the date of the calibration.

(v) Data collection of dry-bulb temperature, relative humidity, and barometric pressure must be consistent with Section 3.7(a).

(g) Real-Time Data Information Systems. Seller shall deliver data to Buyer through a secure communication link installed and paid for by Seller in order to provide Buyer with access to the following data on a real-time and historical basis:

- (i) Gas flow at each Gas Meter;
- (ii) Gas flow to each combustion turbine (if applicable);
- (iii) Gas flow to duct burners, by Unit (if applicable);
- (iv) electrical output of each electrical generator;
- (v) auxiliary power consumption, by Unit and Facility;
- (vi) net plant electrical output at each Electric Revenue Meter;
- (vii) ambient dry bulb temperature, relative humidity and barometric pressure by Facility. (Buyer reserves the right to validate such data with information from publicly available from NOAA and nearby weather stations); and
- (viii) additional data as specified by Buyer for commercially reasonable purposes.

Seller shall also provide to Buyer, in a form reasonably acceptable to Buyer, read-only access to measurements collected by the supervisory control and data acquisition (“SCADA”) system for the Facility commencing on the Initial Delivery Date.

In addition, all such data as described in this Section 3.7(g) shall be provided by Seller to Buyer on a daily basis, in a form acceptable to Buyer, not later than one (1) Business Day after each day of Product delivery, or in the case of daily recorded data disruption, no later than five (5) Business Days after the day of Product delivery, which in each case shall be used for settlement and compensation purposes. Seller shall maintain at least a minimum of one hundred and twenty (120) days historical data for all data required pursuant to this Section 3.7(g). If requested by Buyer, all such data described in this Section 3.7(g) shall also be provided by Seller to Buyer real-time in one (1) minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal. If data required pursuant to Section 3.7(g) is not provided by Seller in a format accepted by Buyer or provided to Buyer in the timeframe specified in this Section 3.7(g), Buyer will use Guaranteed Heat Rate Point for ISO Conditions (for the applicable Configuration) as specified in Appendix II for the purposes of the Gas True-up Payment and Emissions Quantity calculations. Examples of data formats acceptable to Buyer that comply with this Section 3.7(g) are provided in Appendix X. Seller should begin coordination with Buyer at least ninety (90) days prior to the Initial Delivery Date to prepare data systems and a format acceptable to Buyer to comply with this Section 3.7(g).

3.8 Outage Notifications.

(a) Seller’s Cooperation for Outage Submittals to CAISO. Seller is responsible for providing to Buyer, in Buyer’s capacity as the Units’ SC, all information that Buyer requires to notify and/or secure CAISO approvals and to comply with WECC and CAISO requirements, as applicable, for all Scheduled Maintenance Outages and Forced Outages, including but not limited to providing information to Buyer to secure changes to the proposed Maintenance Outage schedules when CAISO disapproves such schedules or cancels previously approved Scheduled Maintenance Outages.

(b) Maintenance Outage Notification Timeline. Seller shall Notify Buyer of its proposed Maintenance Outages for the Units in accordance with PG&E’s Outage Reporting Protocols in Appendix III for the specified time frames for periods during the Delivery Term, commencing prior to the Initial Delivery Date if necessary to meet the Notification timelines as follows:

(i) by July 1 of the prior calendar year, Notifying Buyer of the proposed Maintenance Outage schedule for the next calendar year; and

(ii) by the earlier of (A) ninety (90) days before the calendar month of delivery, or (B) forty-five (45) days prior to the delivery month’s RA Monthly Compliance Showing, updating to the extent required the Maintenance Outage schedule previously Noticed to Buyer for the next twelve (12) months starting with the calendar month of delivery.

(c) Scheduled Maintenance Outages and Excused Scheduled Maintenance Outages. All Seller-proposed Maintenance Outages shall be reviewed by Buyer and subject to Buyer approval, not to be unreasonably withheld. Within twenty (20) Business Days after

Buyer's receipt of Seller's Maintenance Outage schedule proposal, Buyer shall Notify Seller of Buyer's approval, or, if Buyer desires to modify a Seller-proposed Maintenance Outage prior to submittal to the CAISO, the Parties shall work together in good faith to accommodate the desired changes. Buyer, as the Units' SC, shall then submit the proposed Maintenance Outage schedule to the CAISO, which shall be subject to approval by the CAISO. If such Outage schedule is then approved by the CAISO, it shall be deemed a Scheduled Maintenance Outage, and Seller shall adhere to the timelines of the CAISO-approved Scheduled Maintenance Outage. Only those Scheduled Maintenance Outages that meet the submittal timelines in Section 3.8(b), do not violate the hourly limitations set forth in Section 3.8(e), are approved by the CAISO, and are approved in writing by Buyer in accordance with Appendix III (Section D), shall be deemed an Excused Scheduled Maintenance Outages. As noted in Appendix III, any change made to a previously approved Excused Scheduled Maintenance Outage outside of the approved window of time is deemed a new Outage request and is subject to re-approval from Buyer.

(d) Buyer-Requested Changes to Scheduled Maintenance Outages. At any time, Buyer may request that Seller re-schedule a Scheduled Maintenance Outage. Seller shall Notify Buyer of any incremental costs associated with the schedule change and propose an alternative schedule change, if any, that would entail lower incremental costs. If Buyer's proposed change is feasible and imposes no incremental costs (as compared to Seller's proposed schedule), or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and Buyer, as the Units' SC, shall communicate the change to the CAISO and seek CAISO approval for the revised schedule. However, unless it is transmitting to Seller a CAISO order, Buyer may not change a Scheduled Maintenance Outage unilaterally. If a previously Excused Scheduled Maintenance Outage is modified at the Buyer's Request less than ninety (90) days before the calendar month of delivery, the Outage shall remain an Excused Scheduled Maintenance Outage.

(e) Scheduled Maintenance Outage Restrictions.

(i) Scheduled Maintenance Outages are restricted during the Summer Months, absent written pre-approval by Buyer;

(ii) During Winter Months, there shall be no Scheduled Maintenance Outages during hours ending 0700 through 2200, Monday through Sunday, of each day, absent written pre-approval of Buyer;

(iii) Excused Scheduled Maintenance Outages for any Unit, whether full or partial, may not exceed **[350 hours]** total in any consecutive twelve (12) month period; provided that Excused Scheduled Maintenance Outages of up to the applicable total Excused Scheduled Maintenance Outage hours noted in Table 3.8(e) below may be permitted within a consecutive twelve (12) month period when Major Maintenance overhauls are required. In addition, the annual allowance for Excused Scheduled Maintenance Outages hours provided in this Section 3.8(e)(iii), and as may be extended to accommodate Major Maintenance Events as described herein, shall be reduced in accordance with clause (b) in the definition of Excused Hours, if applicable.

Table 3.8(e)			
<i>[Note: Seller shall fill in the table below. Buyer will verify whether the requested Major Maintenance schedule is appropriate to the technology manufacturer’s specifications.]</i>			
Major Maintenance overhaul event	Equivalent Operating Hours-based Interval	Equivalent Starts-based Interval	Total Excused Scheduled Maintenance Outage hours
Combustor Inspection			
Hot gas Path Inspection			
Major Inspection			

(iv) Seller shall schedule Major Maintenance as identified in Table 3.8(e) above in the column titled “Major Maintenance overhaul event” for each Unit in accordance with reasonable forecasts of the earlier to occur of either (but not both) of (A) the “Equivalent Operating Hours-based interval” as specified in Table 3.8(e), or (B) the “Equivalent Starts-based interval” as specified in Table 3.8(e), each for a duration that along with any other Scheduled Maintenance during the same consecutive twelve (12) month period does not exceed the number of hours indicated in the column titled “Total Scheduled Maintenance Outage Hours” in Table 3.8(e).

(v) Seller may schedule Major Maintenance overhauls for a Unit during the Delivery Term consistent with the frequency noted in Table 3.8(e) and Appendix II, and shall provide Buyer with verified manufacturer requirements for such Major Maintenance request.

(f) Short-term Outage Requests. If Seller reasonably concludes that a Unit must be Shut-Down as soon as practicable to conduct maintenance that cannot be delayed until the next Excused Scheduled Maintenance Outage established in accordance with Sections 3.8(b) through 3.8(e), Seller shall Notify Buyer in accordance with the Forced Outage Reporting Protocol specified in Appendix III (Section C). If all of the criteria set forth in subsections (i) through (iii) are met, then at Buyer’s sole discretion, such Outage may be deemed an Excused Scheduled Maintenance Outage: (i) in consultation with Buyer, Seller is able to delay the Outage to occur in its entirety within a period acceptable to Buyer at its sole discretion that is also within seven (7) days, (ii) Seller receives Buyer’s written approval as specified in Appendix III (Section D) after the initial notification, and (iii) the Outage does not exceed the limitations within Section 3.8(e)(iii).

(g) Unexcused Scheduled Maintenance Outages. In the event Seller desires to take a Unit out of service in a manner that would be recognized by the CAISO as a planned outage but does not otherwise comply with the timelines set forth in Sections 3.8(b) through 3.8(f) to be deemed an Excused Scheduled Maintenance Outage, Seller shall Notify Buyer of its proposed Maintenance Outage schedule for the Unit(s) by submitting Notice to Buyer in accordance with PG&E’s Outage Reporting Protocols as promptly as possible upon determining the need for such maintenance. Buyer, as the SC, shall submit the proposed Maintenance Outages for the Unit(s) to the CAISO for approval in the form proposed by Seller. If such requested Outage is approved by CAISO, it will then be deemed by Buyer to be an “Unexcused

Scheduled Maintenance Outage,” and Seller shall adhere to the Outage schedule approved by the CAISO for that Outage. At any time, Buyer may request that Seller re-schedule its Unexcused Scheduled Maintenance Outage, in which case Seller shall Notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer’s proposed change to Seller’s Unexcused Scheduled Maintenance Outage Schedule is feasible and imposes no incremental costs (as compared to Seller’s proposed schedule) or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer’s request and Buyer, as the SC, shall communicate the change to the CAISO and seek CAISO approval for the revised Unexcused Scheduled Maintenance Outage. However, unless it is transmitting to Seller a CAISO order, Buyer may not change Seller’s Unexcused Scheduled Maintenance Outage schedule unilaterally.

(h) Exclusions. Any Unexcused Scheduled Maintenance Outage taken pursuant to Section 3.8(g) that does not also meet the requirements set forth in Sections 3.8(b) through 3.8(f) above for an Excused Scheduled Maintenance Outage shall be treated as unavailable during such periods for purposes of determining Availability as specified in Section 4.1. Reductions to the Monthly Fixed Payment due to reduced Availability will apply.

3.9 Force Majeure.

(a) Effect of Force Majeure. A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure event, and the non-affected Party shall be excused from its corresponding performance obligations for the period of the affected Party’s failure or delay of performance. Notwithstanding the foregoing, (i) a failure to make payments accrued prior to the Force Majeure event when due shall not be excused, and (ii) the unavailability of the Monthly Contract Capacity of the Units due to Force Majeure events declared by Seller will be deemed to be unavailable for purposes of determining Availability and the Availability Adjustment to the extent specified in Section 4.1(b). The burden of proof for establishing the existence and consequences of an event of Force Majeure lies with the Party initiating the claim.

(b) Notice of Force Majeure. In addition to satisfying the Notification provisions set forth in Section 3.5 and 3.8, as applicable, within two (2) Business Days of the commencement of an event of Force Majeure, the Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation (other than the payment of money) hereunder, shall provide the other Party with Notice in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure. Promptly, but in any event within ten (10) days after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such event of Force Majeure.

(c) Mitigation of Force Majeure. The suspension of a Party’s performance under the Agreement due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event.

(d) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following:

(i) if during the Delivery Term:

(A) the Units' Availability, taking into account all hours of unavailability, including those due to Force Majeure (in excess of Excused Hours), averages less than sixty percent (60%) over a rolling 12-month period; or

(B) if the Tested Capacity of all the Units (cumulatively) adjusted to ISO Conditions is less than eighty percent (80%) of the applicable Design Capacity due to an event of Force Majeure, unless Seller is able to demonstrate a Tested Capacity for all of the Units (cumulatively) in excess of eighty-five percent (85%) of the Design Capacity within (12) months of the date on which the Tested Capacity of less than eighty percent (80%) was established **[subject to modification based on the Minimum Load of Unit]**; or

(C) the Project is destroyed or rendered inoperable by an event of Force Majeure caused by a catastrophic natural disaster.

(ii) if prior to the Initial Delivery Date, as applicable, Seller is unable, due solely to a Force Majeure event, to achieve the Construction Start Date or other Critical Milestones, after applicable extensions or cure periods have run, as set forth in Section 11.2 and Appendix XXVII (in either case a "Force Majeure Development Failure").

3.10 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption, efficiency, availability, maintenance performed, Outages, electrical characteristics of the generators and similar information relating to the availability, testing and operation of the Units and availability and production of the Products. Seller shall provide this information electronically to Buyer within 30 days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall, while observing safety requirements, have the right of ingress to and egress from the Units and the Facility at any time and for any purposes reasonably connected with this Agreement, including verification of the Units' availability or unavailability. Buyer shall make reasonable efforts to coordinate its emergency activities with the safety and security departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's safety and security departments.

3.11 Performance Testing; Adjustment of Monthly Contract Capacity.

(a) Performance Testing Requirement. Seller shall be obligated to conduct Performance Testing prior to and/or during the Delivery Term as specified in this Section 3.11 or in Section 4.2. Performance Testing may include an Initial Performance Test, a Standard Performance Test, a Buyer's Performance Test, or a Seller's Performance Test.

(i) Seller shall conduct an Initial Performance Test **[for New Facilities: at least thirty (30) days prior to the Initial Delivery date; for Existing Facilities:**

no later than thirty (30) days after the Initial Delivery Date], the results of which shall be applicable to Seller as of the Initial Delivery Date.

(ii) During each Contract Year of the Delivery Term, Buyer may request Seller to perform up to two Performance Tests upon Notice of no less than twenty-four (24) hours (“Standard Performance Tests”). Buyer’s decision to forgo any such test shall not be deemed a waiver of Buyer’s right to require any subsequent test.

(b) Performance Test Procedures. Each Performance Test shall be conducted in general accordance with **[ASME Performance Test Code 46 for Combined Cycle facilities, ASME Performance Test Code 22 for simple cycle Gas Turbine facilities or ASME Performance Test Code 17 for Reciprocating Internal Combustion Engine facilities, depending on the technology of the Facility]**, and in accordance with the procedures set forth in subsections (i) through (xi) below, including additional procedures and protocols related to Performance Testing as mutually agreed between Buyer and Seller (“Test Procedures”).

(i) Meteorological equipment used for Performance Testing shall include the same equipment as specified in Section 3.7(f).

(ii) The Performance Test shall consist of six (6) one-half-hour test periods (the “Test Period”) at one hundred percent (100%) of Base Load with all turbines operating simultaneously **[and six (6) one-half-hour test periods with all turbines operating simultaneously with duct firing “Peak Load”, if applicable]. [Language is for a combined cycle facility. For simple cycle facilities, test each turbine individually. For facilities other than simple cycle or combined cycle technology, specify the applicable test requirements. Facilities that have multiple operating modes may be subject to additional testing requirements as necessary to test the full range of capability of the Units.]** For each one-half-hour test period, the data will be averaged and adjusted both to ISO Conditions as well as Peak July Conditions.

(iii) The Units shall be operated in steady state with all equipment in normal operating service.

(iv) The Energy output of the Units during the Performance Test shall be measured by the Electric Revenue Meter for Delivered Energy at the Electrical Delivery Point.

(v) The Capacity of a Unit as demonstrated by a Performance Test (“Tested Capacity”) shall be the metered Capacity, net of auxiliary loads and station use, of such Unit per hour (measured in megawatts), adjusted to ISO Conditions by using standard and accepted engineering methods. **[Note: for Facilities with duct firing, the Tested Capacity is demonstrated up to Peak Load. For Facilities without duct firing, the Tested Capacity is demonstrated up to one hundred percent (100%) of Base Load.]** The determination of the Tested Capacity shall be done by Seller. The Tested Capacity of the Units will be the arithmetic average of the results of the six corrected Test Periods adjusted to ISO Conditions.

(vi) The Performance Test final results shall be delivered to Buyer no later than thirty (30) days after the completion of a Performance Test. Within five (5) Business Days of receipt of the Performance Test results, Buyer shall approve such Performance Test results or shall specify to Seller the reasons why the results cannot be approved as submitted. Seller shall deliver revised Performance Test results to Buyer no later than five (5) Business Days after Seller has received Buyer’s reasons for not approving the results. Within five (5) Business

Days of receipt of the revised Performance Test results, Buyer shall approve such revised Performance Test results or shall specify to Seller the reasons why the results cannot be approved as submitted, which again shall trigger Seller's obligation to deliver revised Performance Test results and Buyer's obligation to approve or specify the reasons for nonapproval with respect to such revised Performance Test within five (5) Business Days of receipt thereof. If Buyer has met its five (5)-Business Day response deadlines as specified above, and if Performance Test or revised Performance Test results have not been approved by Buyer within sixty (60) days of the Performance Test ("Test Results Deadline"), then Buyer shall have the right to withhold ten percent (10%) of each Monthly Fixed Payment from the next payment due after the Test Results Deadline until Buyer has received and approved such Performance Test results. Buyer's approval of test results may not be unreasonably withheld or delayed and shall constitute verification that the Test Procedures have been correctly implemented.

(vii) Buyer may have a representative present at the Site at any time during a Performance Test, or alternatively, at Buyer's request, all necessary and requested test information shall be provided to Buyer during the test without the need of a Buyer representative on Site. Buyer has the right to require Seller's test engineer to be at the Site for the test.

(viii) Seller shall determine the Heat Rate of the Unit(s) during any Performance Test, the results of which, as adjusted to ISO Conditions, shall be the "Actual Tested Heat Rate" of the Unit. Procedures for Heat Rate testing shall be conducted in general accordance with the applicable ASME test code and in accordance with Test Procedures.

(ix) Performance Testing shall not be conducted during a Scheduled Maintenance Outage, Forced Outage or other Outage; provided that Seller has Notified Buyer of such Outage in accordance with Appendix III.

(x) Seller shall prepare the Test Procedures based upon Appendix XI and provide the same to Buyer at least one-hundred and eighty (180) days prior to the Initial Delivery Date. The Parties shall finalize mutually acceptable Test Procedures at least thirty (30) days prior to the Initial Performance Test.

(c) Cost Responsibility. During the Delivery Term:

(i) subject to Section 3.11(d)(ii), Seller shall bear all non-fuel costs of each Performance Test other than the Buyer's Performance Tests;

(ii) with respect to the Buyer's Performance Tests only, Buyer shall accept all Energy produced during such testing;

(iii) with respect to the Buyer's Performance Tests, only, Buyer shall make Gas available as required to carry out such testing; and

(iv) additional cost responsibilities for Seller's Performance Tests and Buyer's Performance Tests are set forth in Sections 3.11(d)(i)(C) and 3.11(d)(ii), respectively.

(v) During the Delivery Term, all Gas supplied for a Seller's Performance Test and the Initial Performance Test shall be treated as Additional Gas; and

(vi) Seller shall bear the costs or receive the benefits of operations, Start-Ups and Shut-Downs required for Seller's Performance Test and the Initial Performance Test, including any and all CAISO charges and in accordance with the provisions of Sections 3.3 and 3.5, as applicable.

(d) Capacity Adjustments.

(i) For New Facilities, the Initial Performance Test shall be used to determine whether Seller has met the criteria to be declared Commercially Operable. For Existing Facilities and during the Delivery Term, the Initial Performance Test shall be used to confirm or adjust the Monthly Contract Capacity amounts.

(ii) Performance Tests shall be used to determine whether the Units perform at the Design Capacity and to confirm and/or adjust (as appropriate) the Monthly Contract Capacities as follows:

(A) If the Tested Capacity of the Units adjusted to ISO Conditions is less than ninety-nine percent (99%) of the Design Capacity, then, subject to Section 3.11(d)(ii)(B), the Monthly Contract Capacities shall equal the Contract Capacities set forth in Appendix II as of the Execution Date adjusted downward by a percentage equal to the positive percentage difference between the Tested Capacity, as adjusted to ISO Conditions and the Design Capacity. If the Tested Capacity of the Units adjusted to ISO Conditions is ninety-nine percent (99%) or more of the Design Capacity, then, subject to Section 3.11(d)(ii)(B), the Monthly Contract Capacities shall be equal to the Contract Capacities set forth in Appendix II as of the Execution Date. Notwithstanding the foregoing sentence, but also subject to Section 3.11(d)(ii)(B), if the Tested Capacity of the Unit exceeds the Design Capacity, then the Monthly Contract Capacities shall be equal to the Contract Capacities as set forth in Appendix II as of the Execution Date adjusted upward by a percentage equal to the lesser of (I) the positive percentage difference between the Tested Capacity, as adjusted to ISO Conditions, and the Design Capacity and (II) one percent (1%). An example of the calculation of the Capacity adjustments is provided in Appendix XII.

(B) An adjustment to the Monthly Contract Capacities shall be effective as of the first day of the month following the month in which the Performance Test occurred, subject to Section 3.11(a).

(e) Buyer's Performance Tests. In addition to the Standard Performance Tests required above, Buyer may request up to two additional Performance Tests in any Contract Year which shall be performed in accordance with the Test Procedures and upon no less than twenty-four (24) hours written Notice to Seller ("Buyer's Performance Test"). Prior to the commencement of a Buyer's Performance Test, Seller shall Notify Buyer of all costs of each Buyer's Performance Tests in excess of Seller's usual costs of responding to dispatch of the Units during a non-test period ("Additional Test Costs"), and such costs shall be borne by Buyer, if commercially reasonable. Buyer agrees to accept all Energy produced during a Buyer's Performance Test and make Gas available as required for such testing at its expense. The Tested Capacity as determined through the Buyer's Performance Test shall be used to determine the Monthly Contract Capacity in the same manner as the Tested Capacity determined through a Performance Test as provided in Section 3.11(d)(ii)(A) and (B) and the adjustment shall be effective as of the first day of the month following the month in which the Buyer's Performance Test occurs. Seller's Additional Test Costs as approved by Buyer prior to the commencement of the additional Performance Test, shall be invoiced by Seller to Buyer and Buyer shall pay such

costs, provided that invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(f) Seller's Performance Tests. In the event that (I) as a result of a Performance Test, the Monthly Contract Capacities are adjusted downward pursuant to Section 3.11(d)(ii)(A), or the Actual Tested Heat Rate at one hundred percent (100%) of Base Load exceeds the Guaranteed Heat Rate Point at one hundred percent (100%) of Base Load by more than four percent (4%), (II) upon the completion of Scheduled Maintenance, or (III) results of an Operational Limitations Test are outside the tolerance band specified in the Additional Test Procedures, Seller may request an additional Performance Test ("Seller's Performance Test") to be performed. A Seller's Performance Test must commence no later than ten (10) Business Days after completion of the Performance Test showing the low test results, or the completion of the Scheduled Maintenance (which shall be performed in accordance with Section 3.8, as applicable), and shall be performed in accordance with the Test Procedures, except that (1) Seller shall provide Buyer with Notice of its request to test and the proposed starting and end times of the Seller's Performance Test no later than three (3) Business Days before it commences; (2) Buyer shall evaluate Seller's proposal and, in its sole discretion, either grant such request or identify two alternative start and stop times from which Seller may elect, and to which Buyer will consent; and (3) if performance of the Seller's Performance Test would require operation of the Units during hours other than when Scheduled Operations are occurring or require Start-Ups or Shut-Downs not required by Scheduled Operations, Buyer shall schedule the Unit with the CAISO (and such other Transmission Provider, if any, as applicable) accordingly. Notwithstanding the foregoing, operations, Start-Ups and Shut-Downs required for Seller's Performance Test that are not required for Scheduled Operations shall not be deemed to be part of Scheduled Operations. The Tested Capacity as determined through the Seller's Performance Test shall be used to determine the Monthly Contract Capacities in the same manner as the Tested Capacity determined through a Performance Test as provided in Section 3.11(d)(ii)(A) and (B).

(g) Operational Limitations Tests. Buyer also has the right to require additional types of tests to verify the Facility and/or Unit is performing in accordance with the Operational Limitations specified in Appendix II ("Operational Limitations Tests"). The Parties shall finalize Additional Test Procedures specific to the nature of the test at least thirty (30) days prior to each Operational Limitations Test. If the results of an Operational Limitations Test are outside the tolerance band specified within the Additional Test Procedures for such Operational Limitations Test, then Buyer will assess a penalty until such time as the deficiency is remedied by Seller as demonstrated by a Seller's Performance Test ("Operational Limitations Test Penalty"). Operational Limitations Test Penalties shall start on the first day after the Operational Limitations Test indicates an operational deficiency and shall continue to be assessed until the first day after the operational deficiency is remedied by a Seller's Performance Test. An Operational Limitations Test Penalty shall be assessed within the Availability compensation calculation in Section 4.1(b) by considering all hours and partial hours during this period to be considered UNAVAILPRODHRS.

(h) Disputes. If Buyer disputes the test results, as reported by Seller pursuant to this Section 3.11, in any respect, including the adjustment of the metered results to establish the Tested Capacity, the dispute shall be resolved in accordance with Article XII (Dispute Resolution). Pending such resolution, the Monthly Contract Capacities shall be confirmed or adjusted as set forth in Section 3.11(d) based on the Tested Capacity as determined by Seller, provided that in the event that the dispute is resolved with a determination that the

Tested Capacity as established by Seller is excessively high such that the Monthly Contract Capacities should have been adjusted downward, the invoices shall be adjusted retroactively in accordance with the revised Tested Capacity and revised Monthly Contract Capacities (notwithstanding any provision of this Agreement that requires prospective adjustment of the Monthly Contract Capacity), and Buyer may set off the overpaid amount, with interest calculated at the Interest Rate, from subsequent monthly payments, retroactive to the date on which the Monthly Contract Capacities should have been adjusted.

3.12 Operating Procedures. Prior to the Initial Delivery Date, the Parties shall mutually develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein including, but not be limited to, (a) procedures for scheduling and dispatch, (b) methods of day-to-day communications, (c) key personnel lists, (d) record keeping, and (e) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the “Operating Procedures”); provided that failure to agree on such procedures shall not relieve either of the Parties of its obligations under this Agreement. The Operating Procedures are provided in Appendix XIII.

3.13 Changes to Scheduling and Outage Procedures. Notwithstanding Section 3.12, Buyer may, unilaterally and after providing Seller with prior Notice, change scheduling and outage procedures and requirements in Appendix III or Appendix XIII to conform to changes instituted by the CAISO.

ARTICLE IV. AVAILABILITY; HEAT RATE; AND COMPENSATION

4.1 Availability.

(a) Guaranteed Availability. The “Guaranteed Availability” of the Units is:

Summer Months: ninety-eight percent (98.0%) Availability

Non-Summer Months: ninety-six percent (96.0%) Availability

(b) Calculation of “Availability”. The Availability of the Units shall be calculated by Seller, subject to audit by Buyer, on a monthly basis where the “Availability” of the Units, measured as a percentage, is determined as follows:

$$\text{Availability}_m = \text{TPE}_m / [(\text{MCC}_m) \times (\text{MNTHRS}_m - \text{MAINTHRS}_m)]$$

where:

TPE_m is the total amount of Energy (measured in MWh) that the Units could have produced for the month (“ m ”) to which the calculation applies if the Units had been scheduled at their full Monthly Contract Capacity (“MCC”) for such month (measured in MW) for every hour in which the Units were Available to operate for Buyer less the Energy which is could have been produced due to MAINTHRS_m , UNAVAILHRS_m , and UNAVAILPRODHRS_m (as defined below). To the extent the Units were unavailable to Buyer due to Instructed Operations, Excused Events, or Operational Limitations in Appendix II, the Units shall be deemed to have been Available for purposes of determining TPE_m and therefore no deduction is made for such hours.

TPE_m can be expressed algebraically as follows:

$$TPE_m = (MCC_m) \times (MNTTHRS_m - \text{MAINTHRS}_m - \text{UNAVAILHRS}_m - \text{UNAVAILPRODHRS}_m)$$

where:

MCC_m is the Monthly Contract Capacity of the Units, measured in MW.

$MNTTHRS_m$ is the total amount of hours for the month.

MAINTHRS_m is the total amount of hours that the Units were unavailable due to Excused Scheduled Maintenance Outages or Force Majeure declared by Seller during the month, provided that the number of hours of Outages due to Excused Scheduled Maintenance Outages shall not exceed the maximum number of hours per year permitted for Excused Scheduled Maintenance Outages pursuant to Section 3.8(e)(iii) and the number of hours of Outages due to Force Majeure declared by Seller shall not exceed the number of Excused Hours available to the Seller at the end of the applicable month. An Excused Scheduled Maintenance Outage or Force Majeure (declared by Seller) that results in partial Outage of the Units or occurs less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. For example, if the Units' capacity was reduced by ten percent (10%) for twenty (20) hours due to an Excused Scheduled Maintenance Outage, then the Units shall be deemed unavailable due to an Excused Scheduled Maintenance Outage for two (2) full hours.

UNAVAILHRS_m consists of each hour or partial hour in which the Units were unavailable to deliver Energy to Buyer due to (i) a Forced Outage; (ii) an Unexcused Scheduled Maintenance Outage; (iii) Force Majeure declared by Seller, but only to the extent the number of hours of Force Majeure exceed the cumulative number of Excused Hours available to the Seller as of the end of the applicable month; (iv) an extension of an Excused Scheduled Maintenance Outage from its original Outage schedule that was not Notified to Buyer prior to the timelines specified in Section 3.8; (v) any Notice of Unit availability that is below the Minimum Load of a given Unit (per Appendix II) in which case all such hours when availability is below Minimum Load will be counted as unavailable.

UNAVAILPRODHRS_m consists of each hour or partial hour in which the Units (i) were unable to provide Other Products due to an event that inhibits the Unit's capability to provide such Other Products but not its ability to deliver Energy; or (ii) inability of Seller to maintain certification of any Other Products, provided that for clause (i) and (ii) that only twenty percent (20%) of the amount of Capacity unavailable to provide such Other Products shall be counted as unavailable. Any hour or partial hour considered unavailable for the purposes of UNAVAILHRS_m herein shall not be considered UNAVAILPRODHRS_m .

Hours in which the Units are deemed unavailable shall be included in the determination of UNAVAILHRS_m or UNAVAILPRODHRS_m to the extent of the Units' unavailability (which may be less than one hundred percent (100%)), such that TPE_m reflects a proportional downward adjustment from the MCC for deratings, partial Outages and partial hours of unavailability of the Units or any Other Products, as well as for full hours in which the Units were entirely unavailable.

If Seller identifies the Units as unavailable, in whole or in part, for any hour, the Units shall be deemed unavailable for that hour (to the extent of such unavailability) for purposes of the Availability calculation, provided that if Seller provides a revised Notice, indicating the Units are available for an hour in which they were previously deemed unavailable, by 5:00 a.m. of the morning Buyer schedules or bids the Units in the Day-Ahead Market, all of the available

Capacity of the Units will be deemed to be available for such hour for purposes of determining TPE_m ; and if Seller provides a revised Notice, indicating the Units are available for an hour in which they were previously deemed unavailable, at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Units in the Real-Time Market, and the Units are dispatched in the Real-Time Market, all of the available Capacity of the Units will be deemed to be available for such hour for purposes of determining TPE_m .

Sample calculations of "Availability" are set forth in Appendix XIV and includes the application of the Availability Adjustment described in Section 4.1(c) below.

(c) Availability Adjustment.

(i) During each month of the Delivery Term in which the Availability of the Units is less than the applicable Guaranteed Availability, the Availability Adjustment ("AA"), measured as a percentage, shall be determined as follows:

For Summer Months:

If Availability is greater than or equal to 98% but less than 99%, then
AA=100%;
if Availability is less than 98%, but not less than 70%, then
AA = 100% - [(98% - Availability) x 2]; and
if Availability is less than 70% then AA=0

For Non-Summer Months:

If Availability is greater than or equal to 96%, then
AA=100%;
if Availability is less than 96%, but not less than 60%, then
AA = 100% - [(96% - Availability) x 2]; and
If Availability is less than 60%, then AA=0

(ii) Availability Bonus. During each Summer Month of the Delivery Term in which the Availability of the Units is ninety-nine percent (99%) or greater, AA for the Units, measured as a percentage, shall be one hundred and two percent (102%).

4.2 Heat Rate.

(a) Guaranteed Heat Rates.

(i) Seller shall guarantee the Facility's Heat Rate as set forth in Appendix II ("the Guaranteed Heat Rate") over the following range of dispatchable operational levels **[if applicable: for each operational configuration of one or more Units]** at the mean Site elevation at standard ISO Conditions (59° F, sixty percent (60%) relative humidity):

(A) at one hundred percent (100%) of Base Load on the
combustion turbine(s);

(B) at seventy-five percent (75%) of Base Load on the
combustion turbine(s);

(C) at fifty percent (50%) of Base Load on the combustion turbine(s);

(D) if applicable, at Minimum Load on the combustion turbine(s), if less than fifty percent (50%); and

(E) throughout the full range between one hundred percent (100%) of Base Load and Peak Load.

[Note: The concept of the operational configuration of one or more Units, and the curve shape below that takes into consideration duct-fired operations as well as operations without duct firing, is particular to combined cycle technology.]

(ii) For purposes of scheduling the output of the Unit(s) and settlement, Seller shall provide **[for each Unit]** a curve from Minimum Load to one hundred percent (100%) of Base Load based on the Guaranteed Heat Rate Points found in Appendix II and the best fit mathematical curve fit equations for each curve at ISO Conditions **[for each operational configuration of one or more Units]** (“the Guaranteed Heat Rate Curve”). ***[If applicable: Additionally Seller will guarantee the incremental heat rate for the Facility and each operational configuration of one or more Units for the output between one hundred percent (100%) of Base Load and Peak Load (“the Incremental Duct Fired Guaranteed Heat Rate” or “IDFHR”), as set forth in Appendix II. The IDFHR shall be fixed for the term of the Agreement, and will not vary due to degradation. The linear curve between the Guaranteed Heat Rate Point at one hundred percent (100%) of Base Load and the Guaranteed Heat Rate Point at Peak Load determined by the IDFHR shall also be part of the Guaranteed Heat Rate Curve.]*** For each instance during the Delivery Term where a Performance Test requires a change to the Guaranteed Heat Rate (the “Adjusted Guaranteed Heat Rate”) as specified in Sections 4.2(b) and 4.2(c), the Adjusted Guaranteed Heat Rate shall be the Guaranteed Heat Rate effective upon the first day of the following month.

(b) Guaranteed Heat Rate Adjustment Up to One Hundred Percent (100%) of Base Load.

(i) Prior to the Initial Delivery Date, the Initial Performance Test shall include a test to establish the Capacity of the Facility at one hundred percent (100%) Base Load (“Initial Base Capacity Test”). The output (measured in MWs) corrected to ISO Conditions determined from this test shall be the “Initial Base Capacity” (C_i). The Initial Performance Test shall also include tests to establish the Capacity for one hundred percent (100%) of Base Load at each operational configuration of one or more Units (C_{ix} , where x is the number of Units in the operational configuration) and to establish the Capacity for one hundred percent (100%) of Base Load separately for each combustion turbine.

(ii) In accordance with Section 3.11(b)(ii), Performance Tests shall include a test to re-establish the Capacity of the Facility at one hundred percent (100%) Base Load (“Base Capacity Test”). The output (measured in MWs) corrected to ISO Conditions determined from this test shall be the “Tested Base Capacity” (C_b). A Performance Test shall also include tests to re-establish the Capacity at one hundred percent (100%) of Base Load at each operational configuration of one or more Units (C_{bx}) and may, at Buyer’s option, include tests to re-establish the Capacity of each combustion turbine.

(iii) The “Initial Base Load Guaranteed Heat Rates” (HR_i) for the Facility and each operational configuration of one or more Units at varying output levels from Minimum Load to one hundred percent (100%) of Base Load shall be the appropriate subset of the Guaranteed Heat Rate Curves defined in 4.2(a)(ii) and shown in Appendix II. The ratio of Unit output to Unit Capacity shall be the ratio of Unit output to C_i until C_b has been determined, at which point it shall be the ratio of Unit output to C_b, as determined from the most recent Performance Test.

(iv) As of the Execution Date, an appropriate heat rate degradation factor for the Facility defining the functional relationship between heat rate degradation and measured Capacity degradation (“Heat Rate Degradation Factor” or “HDF”) is set forth in Appendix II. The HDF is fixed for the term of the Agreement.

(v) For each Performance Test, a “Capacity Degradation Factor” (“CDF”) will be computed as:

$$\text{CDF} = 1 - (C_b/C_i);$$

The “Base Load Heat Rate Adjustment” (“HRA”) will be computed as:

$$\text{HRA} = \text{CDF} * \text{HDF}$$

The “Adjusted Base Load Guaranteed Heat Rate” (HR_c) for varying Unit output will be determined as the Heat Rate obtained by entering the HR_i curve fit equation at the ratio of Unit output to C_b (or C_i if C_b has not yet been determined), and multiplied by (1 + HRA), where:

$$\text{HR}_c = \text{HR}_i * (1 + \text{HRA})$$

(c) Guaranteed Heat Rate Adjustment from One Hundred Percent (100%) of Base Load to Peak Load. [if applicable]

(i) Prior to the Initial Delivery Date, the Initial Performance Test shall include a test to establish the Capacity of the Facility at Peak Load (“Initial Peak Capacity Test”). The output (measured in MWs) corrected to ISO Conditions determined from this test shall be the “Initial Peak Capacity” (PC_i). The Initial Performance Test shall also include tests to establish the Capacity for Peak Load at each operational configuration of one or more Units (PC_{ix}, where x is the number of Units in the operational configuration) and to establish the Capacity for Peak Load separately for the operational configuration of one or more Units.

(ii) In accordance with Section 3.11(b)(ii), the Performance Tests shall include a test to re-establish the Capacity of the Facility at Peak Load. The output (measured in MWs) corrected to ISO Conditions determined from this test shall be the “Tested Peak Capacity” (PC_b). A Performance Test shall also include tests to re-establish the Capacity at Peak Load at each operational configuration of one or more Units (PC_{bx}).

(iii) The “Adjusted Peak Load Guaranteed Heat Rate” for varying Unit output will be determined by applying the IDFHR for all dispatch levels between C_i and PC_i and the subsequent Capacity results from testing: C_b and PC_b.

Examples of the calculations described in Sections 4.2(a) – (c) above can be found in Appendix XV.

(d) Seller shall provide no later than twelve (12) months prior to the Initial Delivery Date (i) the correction curves for power and Heat Rate to correct for changes in ambient dry bulb temperature from the ISO Conditions, (ii) the correction curves for power and Heat Rate to correct for changes in ambient relative humidity from the ISO Conditions, and (iii) the correction curves for power and Heat Rate to correct for changes in ambient barometric pressure from ISO Conditions (collectively with the Guaranteed Heat Rate Curve tables set forth in Appendix II, the “Guaranteed Heat Rate Correction Curves”), which will be deemed incorporated into Appendix II when provided. The Guaranteed Heat Rate Correction Curves shall consist of **[two]** curve segments **[if duct firing available]**: (A) the Base Load Guaranteed Heat Rate curves for operations between Minimum Load and one hundred percent (100%) of Base Load, and (B) **[if applicable]** the Peak Load Guaranteed Heat Rate curves from one hundred percent (100%) of Base Load to Peak Load. The curve fit equations will be used for determination of all Guaranteed Heat Rates, with graphical format provided for information purposes only.

4.3 Product Compensation.

(a) Compensation Rates. Each of the compensation rates to be paid by Buyer to Seller for Product delivered under this Agreement are set forth below **[Buyer to populate tables based on _____]**:

(i) The Capacity Payment Rate (“CPR”) in each Contract Year shall be as follows:

Contract Year	CPR (\$/MW-year)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

(ii) The Fixed O&M Rate (“FOMR”) shall be as follows:

Contract Year	FOMR (\$/MW-year)
1	
2	
3	
4	
5	
6	
7	
8	

Contract Year	FOMR (\$/MW-year)
9	
10	

(iii) The Variable O&M Rate (“VOMR”) shall be as follows:

Contract Year	VOMR (\$/MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

(iv) The Fired Hour Charge (“FHC”) shall be as follows:

Contract Year	FHC (\$/fired hour for each unit)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

(b) Product Payment Obligations. During each month of the Delivery Term, Buyer shall pay Seller, in arrears, total compensation (TC_m) calculated pursuant to the equation below using the component parts described in detail in Section 4.3 through 4.6:

$$TC_m = MFP_m + MVP_m + \text{Start-Up Payment}_m - \text{Failed Start Penalty}_m + \text{Other Payment Adjustments}$$

(i) Monthly Fixed Payment. During each month of the Delivery Term, Buyer shall pay Seller, in arrears, a monthly fixed payment (“Monthly Fixed Payment” or “MFP”) for the Units, as full payment for the right to receive the Products and the delivery of the Products associated with the Units, determined as follows.

$$MFP_m = [[(CPR + FOMR) \times MAF_m \times MCC_m] \times AA_m]$$

where,

MFP_m is the Monthly Fixed Payment for the subject month;

CPR is the Capacity Payment Rate;

FOMR is the Fixed O&M Rate;

MAF_m is the monthly allocation factor set forth in Appendix XVI for such month; provided that ninety (90) days prior to a start of a full calendar year, Buyer may Notify Seller of modifications to Appendix XVI. Buyer may not modify Appendix XVI such that any individual month has a percentage allocation of less than four percent (4%) or greater than fifteen percent (15%); or such that the sum of the twelve products of the MFP for each month multiplied by the applicable MCC for that month is less than it would have been prior to the modification. The sum of the twelve (12) monthly allocation factors in any calendar year must equal one hundred percent (100%).

MCC_m is the Monthly Contract Capacity for such month; and

AA_m is the Availability Adjustment for such month, determined pursuant to Section 4.1(c).

Examples of the calculation of the Monthly Fixed Payment are provided in Appendices XIV and XVII.

(ii) Monthly Variable Payment. During each month of the Delivery Term, Buyer shall pay Seller, in arrears, a monthly variable payment ("Monthly Variable Payment" or "MVP") for each Unit, as full payment for the Tolling Services and all of the Energy provided from the Unit by Seller with respect to Scheduled Operations during the subject month, equal to the Variable O&M ("VOM") payment plus payment for Fired Hours as follows.

$$MVP_m = \text{VOM payment} + \text{Fired Hours payment}$$

where,

(A) Variable O&M Payment Calculation.

$$\text{VOM payment}_m = \sum \min(\text{Delivered Energy}_i, \text{Scheduled Operations}_i) \times \text{VOMR}_y$$

where,

\sum is from $i=1$ to n ;

m = relevant month "m" in which a VOM payment is made;

i = the Settlement Interval in month "m" ;

n = total number of Settlement Interval in month "m" ;

VOMR_y = the VOMR in Contract Year "y" corresponding to month "m".

An example of the VOM payment calculation is provided in Appendix XVIII.

(B) Fired Hours Payment Calculation.

$$\text{FH payment}_m = \text{FHC}_y \times \sum \text{Fired Hour}$$

where,

\sum is from $h=1$ to n ;

n = number of hours in month “ m ”;

Fired Hour = an hour in which a given Unit was generating at Minimum Load or higher from the time of Start-Up until the initiation of Shut-Down as required pursuant to Scheduled Operations. If Delivered Energy at or above Minimum Load pursuant Scheduled Operations reflects a partial hour on-line time, the Fired Hour shall be accounted for as a percentage of that full hour, rounded to two decimal places.

FHC_y = the FHC in Contract Year “ y ” corresponding to month “ m ” .

An example of the Fired Hours payment calculation is provided in Appendix XIX.

4.4 **Start-Up Payment.** Each month of the Delivery Term, Buyer shall pay Seller in arrears, a payment only for Start-Ups that have been verified to be Successful Scheduled Start-Ups (the “Start-Up Payment”). The Start-Up Payment shall be the Start-Up Rate specified below for each type of Start-Up multiplied by the number of Successful Scheduled Start-Ups for each type of Start-Up. The “Start-Up Rate” is as follows: \$ [redacted] per Hot Scheduled Start-Up; \$ [redacted] per Warm Scheduled Start-Up; and \$ [redacted] per Cold Scheduled Start-Up. The Start-Up Rates shown above shall apply commencing in the first Contract Year and be indexed annually thereafter at the beginning of each successive Contract Year by [redacted] percent ([redacted]%). An example of the calculation of a Start-Up Payment is provided in Appendix XX.

4.5 **Failed Start Penalty.** A Failed Start Penalty shall be payable by Seller to Buyer and determined in accordance with this Section. Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this Section 4.5 shall be done pursuant to Article VI. A “Failed Start” shall be deemed to occur for each Scheduled Start-Up of a Unit that is not a Successful Scheduled Start-Up. **[For Existing Facilities: Seller is allowed two (2) Excused Failed Starts for the Facility in any Contract Year.] [For New Facilities: Seller is allowed five (5) Excused Failed Starts for the Facility in the first Contract Year, three (3) Excused Failed Starts for the Facility in the second Contract Year, and two (2) Excused Failed Starts in any Contract Year after the second Contract Year for the Facility.]**

(a) **Failed Start Penalty Calculation.** For each subsequent Failed Start after Seller has exceeded the allowed number of Excused Failed Starts in a given Contract Year, Seller shall pay to Buyer, for the Unit that had a Failed Start, an amount equal to the Failed Start Rate multiplied by the Monthly Contract Capacity (in MWs) for the calendar month in which the Failed Start occurred (“Failed Start Penalty”); provided that, if the Seller notifies Buyer that the Unit that experienced a Failed Start is available for operation commencing in an hour no later than the second hour following the hour in which the Failed Start occurred, and if the Buyer or the CAISO calls upon that Unit during the day in which the Failed Start occurred (following the Failed Start) and the Unit has a Successful Scheduled Start-Up, then the amount due to Buyer from Seller for the Failed Start immediately preceding such Successful Scheduled Start-Up shall

be discounted by seventy-five percent (75%). If events of the preceding proviso occur, such events shall not be considered an Excused Failed Start.

(b) Annual Failed Start Penalty. The sum of all Failed Start Penalties for the Facility in a given Contract Year shall be the "Annual Failed Start Penalty." Buyer shall invoice Seller for the Annual Failed Start Penalty following the end of each Contract Year, if applicable, and Seller shall pay the Annual Failed Start Penalty to Buyer, or Buyer may offset that amount against subsequent invoices to Seller pursuant to Article VI, in equal monthly installments over a period of twelve (12) months (or such shorter number of months as are then remaining in the Delivery Term) on the Monthly Payment Date beginning with the month in which the first such invoice is rendered.

An example of the calculation of the Failed Start Penalty and the Annual Failed Start Penalty is provided in Appendix XXI.

(c) Payment Upon Termination. If Seller owes all or a portion of any Failed Start Penalty payment to Buyer as of the Early Termination Date or the end of the Delivery Term, as applicable, Seller shall pay Buyer the remaining balance as part of the applicable Termination Payment.

4.6 Other Payment Adjustments. "Other Payment Adjustments" include other compensatory requirements listed in Section 6.1.

ARTICLE V. EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a "Seller's Event of Default"):

(i) Any asset of Seller that is material to its performance under this Agreement is taken by or is subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within twenty-one (21) days after its levy.

(ii) Seller's Guarantor applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets, or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, and Seller fails to provide alternate collateral acceptable to Buyer within ten (10) Business Days of Buyer's demand therefor pursuant to Article VIII.

(iii) Absent the consent or acquiescence of Seller's Guarantor, appointment of a trustee, receiver or custodian of Seller's Guarantor's assets, or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws with respect to Seller's Guarantor, which in either case, is not dismissed within sixty (60) days and Seller fails to provide alternate collateral acceptable to Buyer within ten (10) Business Days of Buyer's demand therefor pursuant to Article VIII.

(iv) Seller fails to satisfy the creditworthiness and collateral requirements pursuant to Article VIII.

(v) Upon the occurrence of any material misrepresentation or omission in any metering (or submetering), Performance Test results, or any report or Notice of a Unit's availability and capability or Outage required to be made or delivered by Seller to Buyer, or undue delay or withholding of such data, report or Notice of a Unit's availability and capability or Outage, which misrepresentation, omission or undue delay or withholding is not cured within ten (10) Business days of Buyer's demand therefor.

(vi) The Conditions Precedent to the Initial Delivery Date are not satisfied or waived on or before ***[For New Facilities: three hundred and sixty five (365) days; for Existing Facilities: three (3) months]*** after the Expected Initial Delivery Date, or, ***[for New Facilities: a delay of more than three hundred and sixty five (365) days in completing any Critical Milestone]***, in each case, as extended due to Force Majeure in accordance with Section 11.5, if applicable, or due to Buyer's failure to obtain CPUC Approval on the merits in response to the Approval Application in accordance with Section 11.1 and providing that termination for a Force Majeure delay or failure to obtain CPUC Approval shall not result in a Termination Payment;

(vii) Seller fails to comply with Resource Adequacy Requirement provisions of this Agreement.

(viii) During the Delivery Term, the Units' Availability, measured exclusive of unavailability due to Force Majeure, averages less than seventy percent (70%) over a rolling twelve (12) month period;

(ix) The Tested Capacity of all the Units (cumulatively) adjusted to ISO Conditions is less than eighty percent (80%) of the applicable Design Capacity (for a reason other than Force Majeure), unless Seller is able to demonstrate a Tested Capacity for all of the Units (cumulatively) in excess of eighty-five percent (85%) of the Design Capacity within six (6) months of the date on which the Tested Capacity of less than eighty percent (80%) was established. ***[subject to modification based on PMin of Unit]***;

(x) The Tested Capacity of the Units adjusted to ISO Conditions shall not be less than ninety-five percent (95%) of the Tested Capacity as determined in the last Performance Test in the previous Contract Year (adjusted to ISO Conditions).

(xi) The Actual Tested Heat Rate of a Unit at one hundred percent (100%) of Base Load is five percent (5%) greater than the Guaranteed Heat Rate Point at one hundred percent (100%) of Base Load unless Seller is able to cure the deviation and demonstrate within the following thirty (30) days that the Actual Tested Heat Rate of such Unit at one hundred percent (100%) of Base Load is no more than five percent (5%) greater than the Guaranteed Heat Rate Point at one hundred percent (100%) of Base Load.

[For Facilities with duct firing, add:]

[(xii) The Actual Tested Heat Rate of a Unit at Peak Load is five percent (5%) greater than the Guaranteed Heat Rate Point at Peak Load unless Seller is able to cure the deviation and demonstrate within the following thirty (30) days that the Actual Tested Heat Rate of such Unit at Peak Load is no more than five percent (5%) greater than the Guaranteed Heat Rate Point at Peak Load.]

(b) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a “Party’s Event of Default”):

(i) A Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller, for a substantial part of the Units), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.

(ii) Absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Units), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days.

(iii) A Party fails to pay an amount when due and such failure continues for ten (10) Business Days after Notice thereof is received by the Party failing to make such payment.

(iv) Upon the occurrence of any material breach of any representation or warranty made by a Party in this Agreement, if not cured within thirty (30) days after delivery of Notice from the other Party that any material representation or warranty made in this Agreement is false, misleading or erroneous in any material respect.

(v) With the exception of CPUC Approval, any Governmental Approval necessary for a Party to be able to perform any of its obligations as set forth in this Agreement expires or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party; provided that, failure to obtain Governmental Approval, or its expiration, revocation or suspension creates or results in a material adverse impact on the other Party.

(vi) A Party fails to perform any of its material obligations under this Agreement not otherwise addressed in this Section 5.1, and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) days after Notice thereof is received, specifying the failure; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action, reasonably calculated to cure the default within a reasonable period of time, is instituted by the Defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected, not to exceed one hundred twenty (120) days.

5.2 Declaration of Early Termination Date and Calculation of Termination Payment. If and for as long as an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the right to (a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 13.1) and no later than twenty (20) days after such Notice is deemed to be received (as provided in Section 13.1), as an early termination date of this Agreement (“Early Termination Date”), to accelerate all amounts owing between the Parties, terminate the Delivery Term effective as of the Early Termination Date and collect liquidated damages as specified below (“Termination Payment”); (b) withhold any payments due to the Defaulting Party under this Agreement; (c) suspend performance; and/or (d) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement. The Termination

Payment will be the aggregate of the Losses and Costs of the Non-Defaulting Party, offset by its Gains, if any, calculated by the Non-Defaulting Party as of the Early Termination Date, expressed in U.S. dollars, which the Non-Defaulting Party incurs as a result of the liquidation of the transaction and which shall never be less than zero ("Settlement Amount"); provided that:

(i) if the Event of Default occurs prior to the Commercial Operation Date and the Seller is the Defaulting Party, then Seller's Termination Payment shall be considered liquidated damages and not a penalty, in accordance with Article VII, and shall be designated as the "Pre-COD Settlement Amount." The Pre-COD Settlement Amount shall be twenty thousand dollars (\$20,000.00) per MW multiplied by the Maximum Contract Capacity if the Event of Default occurs prior to the end of the third full month following the CPUC Approval, and shall thereafter increase by four thousand dollars (\$4,000.00) per MW (multiplied by the Maximum Contract Capacity) each calendar month;

(ii) in no event shall the Non-Defaulting Party be required to make Termination Payment. The Termination Payment, if any, shall be paid by the Defaulting Party to the Non-Defaulting Party. The Termination Payment shall be payable in accordance with Article VI. Disputes regarding the Termination Payment shall be resolved in accordance with Article XII; and

(iii) In the event that an Early Termination Date is declared pursuant to Article V, the Non-Defaulting Party, as calculation agent, shall determine the amount of the Termination Payment, and either (i) if Seller is the owing Party, provide Seller an invoice within ten (10) Business Days of the Early Termination Date, which shall be due no later than ten (10) Business Days after receipt; or (ii) if Buyer is the owing Party, pay Seller the Termination Payment no later than twenty (20) Business Days after the Early Termination Date.

(iv) In the event that an Early Termination Date is declared pursuant to Section 3.9(d), the Termination Payment shall be zero (0).

5.3 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article V shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement; provided that the Termination Payment shall be the sole remedy for damage due to termination of this Agreement (but shall not preclude recovery by a Party for other damages sustained as a result of an Event of Default).

5.4 Waiver. The Non-Defaulting Party shall be deemed to have waived its rights to declare an Early Termination Date and to demand remedies under Section 5.2, if (a) the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) days of the date on which the Event of Default becomes known, or reasonably knowable, to the Non-Defaulting Party and (b) the cause of the Event of Default is no longer continuing as of the date on which the Non-Defaulting Party issues its Notice declaring an Early Termination Date; provided, however, that the time period for providing Notice of an Early Termination Date and a demand for remedies will not be deemed waived if (i) the Defaulting Party has consented to an extension of time or (ii) the Non-Defaulting Party has provided Notice of the breach and the Defaulting Party has represented that it is seeking to cure and the delay in providing such Notice is in reliance by the Non-Defaulting Party on the good faith attempt by the Defaulting Party to cure. A Party may not withhold payments or suspend performance under Section 5.2 for a period of more than twenty (20) Business Days unless an Early Termination Date has been declared, and Notice thereof given, in accordance with Section 5.2.

ARTICLE VI. PAYMENT AND NETTING

6.1 Billing and Payment.

(a) Seller shall provide Buyer with Seller's calculation of the Emissions Quantity for the preceding calendar month with Seller's invoice. If data required pursuant to Section 3.7(g) is not provided by Seller in a format accepted by Buyer or is not provided to Buyer in the timeline specified herein, Buyer will use the Guaranteed Heat Rate Point for ISO Conditions *[for the applicable Configuration]* as specified in Appendix II for the purposes of the Gas True-up Payment and Emissions Quantity calculations.

(b) On or before the 15th calendar day following each month of the Delivery Term, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller under this Agreement, including, as applicable:

- (i) the MFP,
- (ii) MVP,
- (iii) Start-Up Payment,
- (iv) Gas Reimbursements,
- (v) Gas True-Up Payments,
- (vi) OFO Charges,
- (vii) Failed Start Penalty,
- (viii) Additional Test Costs,
- (ix) Governmental Charges Payment,
- (x) Emissions Quantity,
- (xi) AB 32 Compensation (as applicable and based on Buyer's election in the preceding month),
- (xii) New Carbon Program Costs, and
- (xiii) other compensatory adjustments required by this Agreement; including adjustments for Performance Tests;
- (xiv) less Third Party Payments, and
- (xv) less Reductions.

(c) On or before the 15th calendar day following each month of the Delivery Term (unless otherwise noted below), Buyer shall invoice Seller, in arrears, for all amounts due from Seller to Buyer (or credited by Buyer to Seller) under this Agreement, including, as applicable:

- (i) Delay Damages (which will be invoiced monthly prior to the Initial Delivery Date in accordance with Section 11.4),
- (ii) Other Products Charges and Deviation Charges, including those CAISO charges which have been charged to Buyer and not previously invoiced to Seller for which Seller is responsible for paying to Buyer pursuant to this Agreement,
- (iii) Forced Outage Compensation,
- (iv) other compensatory adjustments required by this Agreement, including adjustments for Performance Tests, and
- (v) Governmental Charges Payment;

provided that the invoice may include a statement of the Carbon Dioxide Emissions Payment calculated in accordance with Section 9.3. For the avoidance of doubt, Settlement Data from the CAISO for the Units shall be used to represent Scheduled Operations, as applicable, in all payment calculations performed pursuant to this Section 6.1. If Seller does not have access to this data, Buyer shall provide Seller with such data no later than five (5) Business Days after the close of each calendar month. If, in any Settlement Interval, Settlement Data is unavailable, the Parties shall base Scheduled Operations for that Settlement Interval, if applicable, on (A) any oral or electronic record of dispatch instructions from Buyer or the CAISO, or if the records of this subsection (A) are not available, then Scheduled Operations shall be based on (B) ADS dispatch instructions, or if the records and instructions of both subsections (A) and (B) are not available, then Scheduled Operations shall be based on (C) Delivered Energy for the Units. In each case, invoices shall include amounts accrued under this Agreement in the preceding month, provided that to the extent the determination of amounts due under this Agreement are based on invoices rendered by the CAISO, Gas pipelines, LDCs, or Governmental Authorities in the preceding month, the Parties acknowledge and agree that such amounts may relate to prior calendar months, as adjusted from time to time.

6.2 Netting. If each Party is required to pay the other an amount in the same month pursuant to this Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Buyer is expressly authorized to set off from any of its payments hereunder an amount owed by Seller to Buyer in accordance with this Agreement.

6.3 Payment. Payment of all undisputed amounts owed shall be due by the later of ten (10) days after delivery of the owed Party's invoice or the twentieth day of the month ("Monthly Payment Date"). If either the invoice due date or Monthly Payment Date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date to but excluding the date the delinquent amount is paid in full.

6.4 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the

basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with the provisions of Article XII (Dispute Resolution). Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date on which the payment is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent invoices, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is Notified in accordance with this Section 6.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred (or in the case of amounts based on CAISO or Gas supplier or Gas transporter invoices, within twelve (12) months after the close of the month during which such invoice or revised invoice giving rise to the payment obligation was rendered), the right to payment for such performance is waived. Seller waives the right to dispute Buyer's calculation of the Gas True-up Payment and the Emissions Quantity if Seller has not provided Buyer with data as specified in Sections 3.7(g) and 6.1.

ARTICLE VII. LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY KIND, INCLUDING WITH RESPECT TO ANY UNIT, PRODUCT OR SERVICE PROVIDED BY EITHER PARTY HEREUNDER, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER

SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING FORFEITURES OF DEPOSITS, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE VIII. CREDIT AND COLLATERAL REQUIREMENTS

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

8.2 Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles.

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

8.4 Performance Assurance.

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

(i) Project Development Security [for New Facilities]. Pursuant to this Section 8.4(a)(i) Seller shall post Project Development Security in the amount of [REDACTED] dollars (\$ [REDACTED].00) *[insert dollar amount equal to \$15.00/kW multiplied by the Maximum Contract Capacity]* within ten (10) Business Days following the Execution Date. Seller shall post additional Project Development Security in the amount of [REDACTED] dollars (\$ [REDACTED].00) *[insert dollar amount equal to \$85.00/kW multiplied by the Maximum Contract Capacity]* (for a total posted amount of one hundred dollars (\$100.00) per kW multiplied by the Maximum Contract Capacity) within ten (10) Business Days following CPUC Approval. The Project Development Security shall be in the form of *[specify cash or Letter of Credit]*.

(ii) Pre-Delivery Term Security [for Existing Facilities only]. Pursuant to this Section 8.4(a)(ii), Seller shall post Pre-Delivery Term Security in the amount of [REDACTED] dollars (\$ [REDACTED].00) *[insert dollar amount equal to \$15.00/kW multiplied by the Maximum Contract Capacity]* within ten (10) Business Days following the Execution Date. Seller shall post additional Pre-Delivery Term Security of [REDACTED] dollars (\$ [REDACTED].00) *[insert dollar amount equal to \$20.00/kW multiplied by the Maximum Contract Capacity]* (for a total posted amount equal to thirty five dollars (\$35.00) per kW multiplied by the Maximum Contract Capacity) within ten (10) Business Days following the CPUC Approval. The Pre-Delivery Term Security shall be in the form of *[specify cash or Letter of Credit]*.

(iii) Delivery Term Security. Pursuant to this Section 8.4(a)(iii) and prior to the Initial Delivery Date, Seller shall post Delivery Term Security in the amount equal to the sum of Mark-to-Market Value and Independent Amount of *[insert amount; Independent Amount is applicable to Sellers and/or (their Guarantor's) who are not rated or have a Credit Rating below BBB- or Baa3 by S&P and Moody's respectively. This amount shall be calculated as five (5%) percent of the notional value of expected capacity payments under the Agreement.]*, and in the form of *[specify cash, Letter of Credit or Guaranty]*; provided that, with Buyer's consent, Seller may elect to apply the **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]** posted pursuant to Section **[8.4(a)(i) for New Facilities][8.4(a)(ii) for Existing Facilities]** toward the Delivery Term Security posted pursuant to this Section 8.4(a)(iii).

(A) Beginning on the Initial Delivery Date, and throughout the Delivery Term, Buyer will calculate the Mark-to-Market Value according to the formula set forth in Appendix XXII for the remainder of the Delivery Term.

(B) If Seller's or Seller's Guarantor has a Credit Rating at or above BBB- or Baa3 by S&P and Moody's, respectively, the Independent Amount is \$0.

(C) If Seller's or Seller's Guarantor has a Credit Rating below BBB- or Baa3 by S&P and Moody's, respectively, the Independent Amount is five (5%) percent of the notional value of expected capacity payments remaining under the Agreement.

(D) Seller shall meet the collateral requirement within three Business Days of such Notice from Buyer.

(E) The Delivery Term Security shall be no less than zero and no more than [REDACTED] dollars (\$ [REDACTED].00) *[Insert appropriate amount depending on type of facility: \$250,000.00 per MW for combined cycle facilities or \$125,000.00 per MW if the Unit is a peaker]* for the Maximum Contract Capacity for all the Units.

(iv) The amount of Performance Assurance required under this Agreement is not a limitation of damages.

For the avoidance of doubt, Buyer has no obligation to post collateral under this Agreement.

(b) Use of [Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]. Buyer shall be entitled to draw upon the [Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities] posted by Seller for Delay Damages in accordance with Section 11.4 until such time as the [Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities] is exhausted. Buyer shall also be entitled to draw upon the [Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities] for any damages arising upon Buyer's declaration of an Early Termination Date.

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

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Performance Assurance at the Interest Rate and on the Interest Payment Date. Buyer shall transfer to Seller all accrued interest on the unused cash Performance Assurance to in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in Appendix XXIX, Notices.

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any interest due thereon, pursuant to Section 8.4(d) above, to Seller promptly after the following has occurred: (i) the Contract Term has

ended, or subject to Section 5.2, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including but not limited to the Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

8.5 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit (see Appendix XXIII) shall be subject to the following provisions:

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

(b) In the event the issuer of such Letter of Credit at any time (x) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (y) indicates its intent not to renew such Letter of Credit, or (z) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either subsections 8.5(b)(i) or (ii) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either subsections (i) or (ii) below is considered the "Cure"):

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

(ii) posting cash.

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

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

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

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

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

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

(d) In all cases, Seller will bear the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit.

8.6 Guaranty. Performance Assurance provided in the form of a Guaranty shall be subject to the following provisions:

(a) If Seller's Guarantor fails to maintain a Credit Rating at or above BBB- by S&P or Baa3 by Moody's to Buyer during the Term, Seller should provide alternate collateral acceptable to Buyer within ten (10) Business Days from the date of Buyer's Notice.

(b) In all cases, Seller will bear the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Guaranty.

ARTICLE IX. GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Products or the Tolling Services arising before and at the Electrical Delivery Point and with respect to Gas, after the Gas Delivery Point, including (i) ad valorem taxes, (ii) taxes related to the operation or maintenance of the Units, the Facility, or the Site, (iii) taxes related to the provision of Tolling Services or the use or consumption of Gas or other Fuels, and (iv) other taxes attributable to the Units, land, land rights or interests in land for the Units or the Facility. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Products from the Electrical Delivery Point and with respect to Gas before and at the Gas Delivery Point. In the event a Party is required by Law to remit or pay Governmental Charges which are the other Party's responsibility hereunder, the Party that is assessed shall provide Notice to the Party that is responsible for such amounts due (together with supporting documentation), the assessed Party shall promptly pay such Governmental Charges when due and invoice the responsible Party in accordance with Article VI and the responsible Party shall reimburse the assessed Party in full in accordance with Article VI no later than the next Monthly Payment Date, with interest at the Interest Rate from and including the date on which the assessed Party pays the Governmental Charges until (but excluding) the date on which the responsible Party reimburses the assessed Party (cumulatively, the "Governmental Charges Payment"). Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges from which it is exempt under the

Law; provided that an exempt Party shall bear the responsibility of proving its exemption as necessary to avoid the unjust imposition of the tax on the other Party.

9.3 Carbon Dioxide.

(a) AB 32 Carbon Dioxide Costs. As an exception to Sections 9.1 and 9.2, during the Delivery Term and in accordance with Article VI, Buyer shall compensate Seller towards Seller's AB 32 Carbon Dioxide Costs in accordance with this Section 9.3, and Seller agrees to apply such compensation towards Seller's AB 32 Carbon Dioxide Costs. Buyer, in its sole discretion, may satisfy its obligation to compensate Seller towards Seller's AB 32 Carbon Dioxide Costs either financially through the Carbon Dioxide Emissions Payment or physically through the transfer of Compliance Instruments (individually and/or collectively "AB 32 Compensation"). This Section 9.3 is the exclusive and sole means for calculating and compensating Seller for its AB 32 Carbon Dioxide Costs and Buyer shall not have any responsibility, further compensate or make any payments to Seller or any other party, or in any way be obligated to Seller or for the Facility, for any and all other emissions related costs, charges, taxes, or fees as between Buyer and Seller. For the avoidance of doubt, the Parties acknowledge and agree that Buyer's AB 32 Compensation to Seller in this Section 9.3 (x) may be greater than or less than Seller's AB 32 Carbon Dioxide Costs and (y) is reflective of and compensates Seller's for its AB 32 Carbon Dioxide Costs, even if the AB 32 Compensation may not be equivalent to Seller's AB 32 Carbon Dioxide Costs.

(i) Carbon Dioxide Emissions Payment Calculation. If Buyer elects by Buyer's sixty (60) days' Notice to Seller or if Buyer makes no initial election, then Buyer shall financially compensate Seller towards the AB 32 Carbon Dioxide Costs with a Carbon Dioxide Emissions Payment, made on a monthly basis and payable to Seller in accordance with Article VI, which shall be calculated and provided by Seller in accordance with this Section 9.3 and Article VI for each Unit(s) and on each day of the month as follows:

Emissions Quantity (metric tons) = (Daily GHG Gas) × 0.05302 metric tons per MMBtu;

Carbon Dioxide Emissions Payment = (Emissions Quantity) × (GHG Price).

"Daily GHG Gas" (MMBtu) shall equal the lesser of (x) Daily Actual Gas minus Additional Gas, or (y) Daily Qualified Gas, for a given day, by Unit.

(A) "GHG Price" (\$ / metric ton) shall be the price of an Allowance using (x) the vintage year of Scheduled Operations, provided that if trading of Allowances for the vintage year of the date of Scheduled Operations has expired, then the next vintage year, and (y) the delivery date of December of such vintage year, or a nearer delivery date on or following the date of Scheduled Operations if such date is within sixty (60) days of Buyer's Notice to Seller. The price of the Allowance used to derive the GHG Price shall be selected by Seller and reasonably acceptable to Buyer based upon published availability of Allowance prices in the following sequential order:

(I) Index Provider. The volume weighted average price of Allowances for contracts executed for the Allowance Trade Date as published by a bona fide exchange and/or Allowance index provider, as selected and compiled by Seller and reasonably acceptable to Buyer. If there is no index price publication for the Allowance Trade Date, then use

(II) Settlement Prices. The end of day settlement prices published by a bona fide exchange and/or provider of tradable Allowance products corresponding to the Allowance Trade Date, as selected and compiled by Seller and reasonably acceptable to Buyer. If there is no settlement price publication for the Allowance Trade Date, then use,

(III) End of Day Broker Quotes. The volume weighted average of the end of day Allowance prices, which may be indicative, published by at least two bona fide Allowance brokers, as selected and compiled by Seller and reasonably acceptable to Buyer, corresponding to the Allowance Trade Date.

Appendix XXIV provides an illustrative example of a Carbon Dioxide Emissions Payment calculation.

(ii) Compensation Mechanisms.

(A) Physical Compensation. Buyer may elect, upon sixty (60) days' Notice to Seller, to physically compensate Seller towards its AB 32 Carbon Dioxide Costs by transferring Compliance Instruments to Seller. During the time period for which Buyer has elected to physically compensate Seller according to Buyer's Notices in this Section 9.3, Seller shall calculate the amount of Emissions Quantity for such time period and shall provide such calculation to Buyer according to Article VI. Subject to Article VI, Buyer shall transfer the amount of Compliance Instruments equal to the amount of Emissions Quantity rounded to the nearest metric ton for the period in which Buyer has elected by its Notice to physically compensate Seller. Buyer will have no obligation to make Carbon Dioxide Emissions Payments during the period that Buyer has elected to physically compensate Seller towards its AB 32 Carbon Dioxide Costs. In the event Buyer elects to physically compensate Seller and subject to Sections 9.3(a)(ii)(B) and 9.3(a)(ii)(C), Seller shall (I) cooperate to effect such transfers by confirming such transfers of Compliance Instruments from Buyer, or a third party account holder designated by Buyer, to Seller's Holding Account, and (II) consent to allocate a proportional percentage of its CARB Holding Limit to Buyer, or a third party account holder designated by Buyer, to the extent possible under the Law, until such time as Compliance Instruments are transferred to Seller's Holding Account.

(B) Transfer. If Buyer has elected to physically compensate Seller towards its AB 32 Carbon Dioxide Costs pursuant to Section 9.3(a)(ii)(A) above, then Buyer shall transfer, or cause a designated third party account holder to transfer, the amount of Compliance Instruments described in Section 9.3(a)(ii)(A) and subject to Article VI in accordance with the deadlines specified in the Cap-and-Trade Regulations for timely surrender of Compliance Instruments. The number of Offset Credits transferred by Buyer to meet any Annual Compliance Obligation or Triennial Compliance Obligation shall in no event exceed the Quantitative Usage Limitation, as a percentage of the total Emissions Quantity for which Buyer has elected to directly discharge the AB 32 Carbon Dioxide Costs for any given Reporting Year. Any Offset Credits transferred by Buyer pursuant to this Section 9.3(a) shall be subject to the obligations in Section 9.3(a)(ii)(B)(II).

(I) Confirmation. Upon Seller's confirmation of a transfer of Compliance Instruments from Buyer, or a third party account holder designated by Buyer, Buyer thereby transfers to Seller title to, and risk of loss, theft or removal of such Compliance Instrument delivered. In the event that the Compliance Instruments are not confirmed into Seller's Holding Account according to the Cap-and-Trade Regulations due to the

fault of any party other than Buyer or its designated third party account holder, Buyer shall be deemed to have compensated Seller towards its AB 32 Carbon Dioxide Costs and Buyer shall not be obligated to further attempt to transfer such Compliance Instruments. Without limiting the prior sentence, if the failure to accept or confirm the Compliance Instruments is caused solely by an error or omission of CARB or its agents, the Parties shall cooperate to cause CARB or its agent to correct the error or omission.

(II) Invalidation. In the event CARB notifies Seller of an Initial Determination of Invalidation of any Compliance Instrument(s) that Buyer transferred to Seller's Holding Account pursuant to Section 9.3(a), Seller shall provide Notice to Buyer no later than five (5) Business Days from receipt of such notice. In the event CARB notifies Seller in writing of the Final Determination of Invalidation of Compliance Instrument(s) which Buyer transferred to Seller and Seller confirmed such transfer, pursuant to this Section 9.3(a) ("Invalidation Notice"), Seller shall provide Notice to Buyer no later than ten (10) Business Days from receipt of such Invalidation Notice. Seller's Notice to Buyer shall include specific written documentation to establish that (1) the Compliance Instruments received by Seller from Buyer pursuant to this Section 9.3 are the Compliance Instruments deemed invalidated by CARB and (2) in the event that such Compliance Instruments have been retired by Seller, then Seller shall also include evidence that CARB requires such Compliance Instruments to be replaced by Seller. Following Buyer's reasonable review and acceptance of Seller's Notice and documentation as to the CARB invalidated Compliance Instruments which reasonably establishes that the Compliance Instruments received by Seller from Buyer pursuant to this Section 9.3 were in fact invalidated by CARB and, in the event of subsection (2) above, require replacement by Seller, Buyer shall only be required to replace the invalidated Compliance Instruments by transferring to Seller the quantity of Compliance Instruments reflected in the Final Determination of Invalidation requiring replacement as determined by CARB no later than ten (10) Business Days prior to Seller's deadline for replacement of the invalidated Compliance Instruments as specified by Cap-and-Trade Regulations. Buyer shall not be obligated to pay or reimburse Seller for any costs, fees or penalties incurred or assessed by Seller resulting from such invalidated Compliance Instruments.

(III) Failure to Transfer or Replace. Buyer acknowledges that timely satisfaction of its obligations pursuant to this Section 9.3(a)(ii)(B) is necessary for Seller to satisfy the Compliance Obligation for the Unit(s). If Buyer fails to (a) transfer the number of Compliance Instruments in accordance with this Section 9.3(a)(ii)(B), or (b) replace any invalidated Compliance Instruments in accordance with Section 9.3(a)(ii)(B) (either of the failures in subsection (a) or (b) a "Shortfall") and (c) after Seller has fulfilled its obligations in Section 9.3(a)(ii)(B), then Seller may take reasonable actions to mitigate or avoid any excess emissions obligation or other penalties, fees or fines, including retiring Compliance Instruments to meet a Compliance Obligation to which the Shortfall applied. In the event that Seller takes reasonable actions pursuant to this Section 9.3(a)(ii)(B), and Buyer's failure to transfer or replace was due to the fault of Buyer or its designated third party account holder (and after Seller has fulfilled its obligations in Section 9.3(a)(ii)(B) as applicable), then Buyer shall reimburse Seller for Seller's documented costs in obtaining Compliance Instruments needed to mitigate the Shortfall in a quantity up to, but no greater than, the amount of such Shortfall.

(C) Change of Election. At any time following an election to physically compensate Seller towards its AB 32 Carbon Dioxide Costs, Buyer may elect to financially compensate Seller upon sixty (60) days' Notice, in which case the provisions relating to financial compensation towards AB 32 Carbon Dioxide Costs in Section 9.3(a)(i) shall apply

and Buyer shall no longer be obligated to directly transfer Compliance Instruments pursuant to this Section 9.3.

(iii) Remittance of Credits. In the event that Buyer provides Seller with AB 32 Compensation, and Seller, or any of Seller's Affiliates, is allocated, issued or has the right to receive any credits, allowances, offsets or similar item of value with respect to carbon dioxide emissions during the Delivery Term related to the Facility ("Carbon Dioxide Emissions Credit") which could be used to satisfy a Compliance Obligation, including Carbon Dioxide Emissions Credits for a portion of, or Seller's entire fleet of, generating units (all or some of the generating units owned, managed, or controlled by Seller that are subject to the Cap-and-Trade Regulations), then Seller shall transfer or cause the transfer of such Carbon Dioxide Emissions Credit or a proportional amount of such Carbon Dioxide Emissions Credits in the case of a fleet of generating units, to Buyer, at no cost to Buyer, promptly upon receipt by Seller or Seller's Affiliate (to the extent possible under Law). Within ten (10) days of Buyer's request, Seller shall provide to Buyer sufficient written evidence, as reasonably determined by Buyer, that Seller has transferred to Buyer a proportional amount of the Carbon Dioxide Emissions Credits in the case of a fleet of generating units.

(iv) Documentation. During the Delivery Term, Seller shall provide Buyer with the following:

- (A) Sufficient written evidence on an annual basis, as reasonably determined by Buyer, that Seller actually has a Compliance Obligation for the Facility;
- (B) Facility Emissions Report on an annual basis and when filed by Seller with CARB; and
- (C) Seller's calculation of the Emissions Quantity, to be provided for each calendar month and with Seller's invoice for purposes of Buyer's calculation and invoice of the AB 32 Compensation in Article VI.

(v) Adverse Legal Determination. Upon the occurrence of an Adverse Legal Determination during the Delivery Term, Buyer will immediately cease providing AB 32 Compensation to Seller. If at any time following an Adverse Legal Determination, Seller receives any payment, reimbursement, credit, or similar item of value from a Governmental Authority for any Compliance Instrument purchased by Seller based on a Carbon Dioxide Emissions Payment or transferred Compliance Instrument to Seller by Buyer pursuant to this Section 9.3(a) ("AB 32 Settlement"), then Seller shall remit within ten (10) Business Days any such AB 32 Settlement to Buyer and Seller's obligation to remit any such AB 32 Settlement to Buyer shall survive the termination or expiration of this Agreement. In the event that (A) an Adverse Legal Determination is partially or fully reversed (including, without limitation, reinstatement of previously suspended Cap-and-Trade Regulations), (B) Seller has surrendered Compliance Instruments to CARB during the time period between the Adverse Legal Determination and the reversal of such Adverse Legal Determination and (C) Buyer has not compensated Seller for such Compliance Instruments, then Buyer shall provide AB 32 Compensation to Seller for any Compliance Instruments surrendered to CARB to cover such prior period affected by the Adverse Legal Determination.

(b) Change-in-Law of the Cap and Trade Program. If a Change-in-Law occurs after the Execution Date ("New Carbon Program"), then Buyer will compensate Seller

towards its costs actually incurred by Seller and required by and payable to a Governmental Authority to meet the compliance obligation for the Unit(s) pursuant to the New Carbon Program (“New Carbon Program Costs”) in accordance with this Section 9.3(b). Buyer shall satisfy its obligation to compensate Seller towards Seller’s New Carbon Program Costs by providing compensation in the form and manner specified in subsections 9.3(b)(i) and (ii) below (“New Carbon Program Cost Compensation”) for the remainder of the Delivery Term and Seller shall apply the New Carbon Program Cost Compensation towards Seller’s New Carbon Program Costs.

(i) If the New Carbon Program is a market-based mechanism, such as cap-and-trade, then the provisions of Section 9.3 shall remain in force and Buyer shall provide to Seller the New Carbon Program Cost Compensation calculated and delivered in the same manner as set forth in Section 9.3 for the AB 32 Carbon Dioxide Compensation, except that the compliance instrument index in Section 9.3(a)(i)(A)(I) shall be replaced by a similarly representative market-based benchmark, as mutually agreed upon between the Parties, or

(ii) If the New Carbon Program is not a market based mechanism, such as in the form of a tax on carbon dioxide emissions, then Buyer shall provide to Seller the New Carbon Program Cost Compensation equal to the tax rate designated under the New Carbon Program for Carbon Dioxide applied to the Emissions Quantity as calculated in Section 9.3(a)(i).

Notwithstanding the foregoing in Section 9.3(b), in no event shall Buyer compensate Seller in any manner for New Carbon Program Costs which are brokerage or similar costs, filing, verification or implementation fees or other administrative costs that Seller has incurred or may incur as a result of or related to the New Carbon Program or related to Other Emissions. The Parties recognize that Seller’s actual costs of the New Carbon Program (“Actual Cost”) may be greater than or less than Buyer’s New Carbon Program Cost Compensation. Seller shall make available to Buyer and/or its auditors, upon reasonable request, books and records as necessary to demonstrate its Actual Cost.

(c) Compliance Requirements. Notwithstanding the other provisions of this Section 9.3 or this Agreement, Seller is and shall continue to be solely responsible for meeting or satisfying its Compliance Obligation and all of its other obligations, costs, or fees associated with any Law, the New Carbon Program or regulation of emissions, known or unknown (whether in accordance with AB 32 or any other federal, state or local legislation to offset or reduce emissions regulated by an authorized Governmental Authority) with respect to the Unit(s), Facility, or Buyer’s dispatch of the Unit(s). Furthermore, nothing contained in this Section 9.3 removes from Seller the obligation to (i) comply with any emissions-related compliance requirements, including, but not limited to, reporting, storage of emissions-related data (currently ten (10) years), registering, tracking, allocating for or accounting for emissions from the Facility, and (ii) pay the costs or fees to meet compliance requirements or the costs, taxes, charges, or fees incurred in the normal course of Seller’s business in constructing, operating, and maintaining the Facility, including, but not limited to, compliance fees, verification fees, administrative or implementation fees and execution costs or similar costs, such as those stemming from transaction credit and collateral requirements, clearing, exchanges and/or brokers.

(d) Further Cooperation. Seller acknowledges that a Governmental Authority may require or allow certain actions with respect to emissions or credits attributable to the generation of Energy from the Facility, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions or credits. Seller agrees, within ten (10) Business Days following Buyer’s Notice, to take all commercially reasonable actions and execute

or provide any and all documents, information or instruments with respect to the generation of Energy from the Unit(s) reasonably necessary to permit Buyer to comply with such requirements or to allow Buyer to manage its obligations pursuant to this Agreement or applicable Law.

ARTICLE X. GENERAL PROVISIONS

10.1 Representations, Warranties, and Covenants.

(a) Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that as of the Execution Date:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in the State of California and in all jurisdictions where the ownership of its properties or its operations require such qualification, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(ii) except for receipt of the CPUC Approval, in the case of Buyer, **[for New Facilities: and the Governmental Approvals necessary to install, operate and maintain the Project, in the case of Seller with a New Facility,]** it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(iii) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement, and 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 Law, rule, regulation, order or the like applicable to it;

(iv) execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any lien upon its properties, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of any agreement to which it is a party or by which any of its respective properties is bound or affected;

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

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

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

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

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

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

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

(b) General Covenants. Each Party covenants that throughout the Contract Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and qualified to conduct business in the State of California and in all jurisdictions where ownership of its properties or its operations require such qualifications, except where the failure to do so would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

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

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

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

(c) Covenants of Seller. Seller covenants to and for the benefit of Buyer that throughout the Contract Term (unless another time period is specified):

(i) it will deliver the Products to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person;

(ii) the Unit(s) shall at all times during the Contract Term be free and clear of all liens, security interests, claims and encumbrances or any interest thereto or therein by any Person except for purposes of Project financing or as otherwise agreed by Buyer as evidenced by its written consent;

(iii) it will take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer’s ability to rely on the Units in order to satisfy its Resource Adequacy Requirement;

(iv) it will report the emissions output from the Unit(s) to CARB for each emitting year as required by the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Title 17, California Code of Regulations, Sections 95100 to 95133) or any other authorized Governmental Authority having jurisdiction;

(v) if any of the Units qualify for Regulatory Must-Take Generation status, Seller and Buyer stipulate that each Unit shall have an RMTmax value of zero (0) MW, and Seller will not seek any scheduling priority or RMTmax value above zero (0) MW during the Delivery Term;

(vi) it shall, upon the request of Buyer, submit a letter of concurrence in the form attached hereto as Appendix XXV indicating that with this Transaction Seller does not intend to 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 § 35.42, as in effect on the Execution Date;

(vii) it shall cooperate with Buyer to meet CAISO Tariff requirements; and

(viii) it shall operate the Units for the full Delivery Term in accordance with Appendix II.

(ix) it shall maintain in full force and effect any gas transportation agreements specified in Appendix V.

(d) Representations and Warranties of Buyer. Buyer represents and warrants to Seller that throughout the Delivery Term it will make Gas available for Scheduled Operations and Additional Gas for Unit testing free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

10.2 Indemnities.

(a) Indemnity by Seller. Seller shall release, defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, representatives and Affiliates ("Buyer Group") against and from any and all Indemnifiable Losses, which arise out of or relate to or are in any way connected with (i) the Tolling Services after the Gas Delivery Point and prior to and at the Electrical Delivery Point; (ii) the Products prior to and at the Electrical Delivery Point or Gas after the Gas Delivery Point; (iii) Seller's ownership, development, construction, operation and/or maintenance of the Units, the Facility or the Site; (iv) Third Party Claims arising from Seller's actions or inactions, (v) Third Party Claims arising from Seller's breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Facility; (vi) any environmental matters associated with the Facility or the Site, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement; or (vii) resulting from Seller's violation of any applicable Law, or Transmission Provider, NERC or WECC or Reliability Organization requirements; in each case including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, or others, excepting only such Indemnifiable Losses, to the extent caused by the willful misconduct or gross negligence of a member of the Buyer Group.

(b) Indemnity by Buyer. Buyer shall release, defend, indemnify and hold harmless Seller, its directors, officers, agents, attorneys, representatives and Affiliates (“Seller Group”) against and from any and all Indemnifiable Losses, which arise out of or relate to or are in any way connected with (i) the Products after the Electrical Delivery Point or the Gas before or at the Gas Delivery Point; (ii) Third Party Claims resulting from Buyer’s actions or inactions; (iii) Third Party Claims arising from Buyer’s breach of this Agreement; or (iv) resulting from Buyer’s violation of any applicable Law, or Transmission Provider, NERC or WECC or Reliability Organization requirements; in each case including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, or others, excepting only such Indemnifiable Losses, to the extent caused by the willful misconduct or gross negligence of a member of the Seller Group. Notwithstanding any other provision of this Agreement, Buyer shall not indemnify the Seller Group for any actions or inactions of PG&E Transmission; provided that, subject to the understanding that nothing in this Agreement shall be construed as conferring on Seller or any member of the Seller Group any right or remedies with respect to PG&E Transmission, and nothing herein shall impair or limit Seller from exercising at any time any and all rights and remedies as it may have with respect to matters relating to PG&E Transmission.

(c) Notice of Claim.

(i) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Section 10.2, the Party seeking indemnification hereunder (the “Indemnitee”) will promptly Notify the Party against whom indemnification is sought (the “Indemnitor”) in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to an Indemnifiable Loss under Section 10.2 (a) or (b). (The Notice is referred to as a “Notice of Claim”). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the Indemnifiable Loss.

(ii) Notice of Third Party Claim. If an Indemnitee receives Notice of the assertion or commencement of a Third Party Claim against it with respect to which an Indemnitor is obligated to provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) calendar days after such Indemnitee’s receipt of Notice of such Third Party Claim. Such Notice of Claim will describe the Third Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if reasonably practicable, the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving Notice to the Indemnitee, to assume the defense of any Third Party Claim at such Indemnitor’s own expense and by such Indemnitor’s own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.

(iii) Direct Claim. Any Direct Claim must be asserted by giving the Indemnitor Notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) calendar days from receipt of such Notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty-day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.

(iv) Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 10.2(c) will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

(d) Defense of Third Party Claims. If, within ten (10) calendar days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 10.2(c)(ii), an Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 10.2(c)(ii), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) calendar days after receiving Notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give Notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such Notice.

(e) Subrogation of Rights. Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (i) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

(f) Rights and Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Section 10.2 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

10.3 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.4 Assignment.

(a) General Assignment. Except as provided in Sections 10.4(b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix XXVI provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix XXVI, including extension of any cure periods or additional remedies for financing providers, and (ii) Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, attorneys' fees.

(c) Assignment in Connection with a Change in Control. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld.

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.4 is void.

10.5 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.6 General. This Agreement constitutes the entire agreement between the Parties relating to its subject matter. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties; provided that, Appendix II shall be supplemented from time to time by Seller as expressly contemplated herein, Appendices III and XIII may be revised unilaterally by Buyer in its sole discretion and Appendix XVI may be revised by Buyer unilaterally in accordance with Section 4.3. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. All indemnity rights shall survive the termination or expiration of this Agreement for twelve (12) months. All provisions relating to limitations of liability shall survive without limit. The survival of rights and obligations of the Parties with respect to Confidential Information are governed by Section 10.7. All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution shall survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. This Agreement shall be binding on each Party's successors and permitted assigns. Absent agreement of the Parties to a proposed modification or amendment of this Agreement, neither Party shall seek to modify or amend this Agreement pursuant to Sections 205 and 206 of the Federal Power Act. The standard of review for changes to any rate, term or condition of this Agreement proposed by a Party (acting unilaterally in violation of the prior sentence), a non-Party or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

10.7 Confidentiality.

(a) Confidential Information. Throughout the Contract Term, neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder (the "Confidential Information") to a third party.

(b) Permitted Disclosures. However, a Party may disclose Confidential Information to: (i) the Party's Affiliates and the Party's and its Affiliate's employees, lenders, counsel, accountants, advisors, equity investors, potential lenders or potential equity investors who have a need to know such information and have agreed to keep such terms confidential; (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision (D.) 02-08-071 and made applicable to this Agreement by D.04-06-015, subject to a confidentiality agreement; (iii) to the CPUC under seal for purposes of review; (iv) disclosure of terms specified in and pursuant to this Section 10.7 of this Agreement; (v) in order to comply with any applicable Law or any exchange, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC; or (vii) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized Governmental Authority including the CPUC or any division thereof.

(c) Procedure for Permitted Disclosures. In connection with requests made pursuant to Section 10.7(b)(v) ("Disclosure Order") and disclosures pursuant to Sections

10.7(b)(vi) or 10.7(b)(vii) (“Regulatory Disclosures”) each Party shall, to the extent practicable, use reasonable efforts to: (i) notify the other Party prior to disclosing the Confidential Information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (A) prohibited from complying with a Disclosure Order or making the Regulatory Disclosures or (B) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the confidential information.

(d) Remedies. Except as provided in Section 10.7(c), the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

(e) Exceptions. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section. Further, notwithstanding any other provision of this Section 10.7, at any time on or after the date on which the Buyer files its Approval Application seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following, which shall not be considered to be Confidential Information: Party names, resource/fuel/technology type, Contract Term, Delivery Term, Site, Maximum Contract Capacity, Expected Initial Delivery Date, and Electrical Delivery Point.

(f) Return of Confidential Information. Upon termination or expiration of this Agreement, each Party will promptly return or certify the destruction of, if so requested by the other Party, any Confidential Information provided to it and will use commercially reasonable efforts to return any copies thereof that may have been provided to others in accordance with this Section 10.7.

(g) Termination of Obligation. The obligations of the Parties with respect to Confidential Information set forth in this Section 10.7 will remain in effect for a period of three (3) years from the Initial Delivery Date.

10.8 Insurance. Throughout the Contract Term, Seller shall, at its sole cost and expense, procure and maintain the following insurance coverage and be responsible for its subcontractors maintaining sufficient limits of the appropriate insurance coverage. For the avoidance of doubt, the obligations of the Seller in this Section 10.8 constitute a material obligation of the Agreement.

(a) Workers’ Compensation and Employers’ Liability.

(i) Workers’ Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers’ Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “occurrence” form, with no alterations to the coverage form.

(ii) The limit shall not be less than ten million dollars (\$10,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy.

(iii) Coverage shall:

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

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

(C) include a severability of interest clause.

(c) Business Auto.

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

(ii) The limit shall not be less than five million dollars (\$5,000,000.00) each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) All Risk Property Insurance.

(i) During construction, an All Risk Property insurance policy including earthquake and flood (with sublimits as appropriate) shall be maintained during the course of Work being performed and include start-up and testing for installed equipment and delayed opening coverage. Policy shall include coverage for materials and equipment while under the care, custody and control of the Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(ii) Coverage shall be written to cover the full replacement cost of the property (with sublimits as appropriate).

(e) Additional Insurance Provisions.

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

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

(iii) Buyer currently uses a third-party vendor, Exigis, to confirm and collect insurance documents. Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and submitted via email or fax to Exigis or another vendor as Noticed by Buyer:

Certificate Holder: Pacific Gas and Electric Company
c/o Exigis, LLC
support@exigis.com
Fax: (646) 755-3327

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis.

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

(f) Form And Content. All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

10.9 Records and Audit.

(a) Records and Audit. Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Seller shall provide access to financial records and personnel required by Buyer to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Contract Term:

(i) Seller's unaudited financial statements and notes to financial statements; and

(ii) Financial schedules underlying the financial statements, all within forty-five (45) days after the end of each fiscal quarter.

(b) Any information provided to Buyer pursuant to this Section 10.9 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other entities for which Buyer has power purchase agreements. Buyer shall use this information only for financial statement purposes and shall share such information with (i) internal or external parties or (ii) regulatory, administrative or legal entities or authorities only as necessary in connection with the preparation and audit of Buyer's financial statements.

(c) The Parties shall, for five (5) years after creation or such longer period as may be required by applicable Law, each keep and maintain accurate and detailed records relating to the Units' hourly deliveries of Products and Gas consumption and such other information as

required to support the amounts due and payable as between the Parties pursuant to this Agreement. Such records shall be made available by the Party holding such records to the other Party for inspection during normal business hours upon reasonable Notice.

(d) Confidentiality. Any information provided to Buyer pursuant to this Section 10.9 shall be considered Confidential Information in accordance with the terms of Section 10.7.

(e) General Audit Right. Each Party has the right, at its sole expense, during normal working hours, and after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge, or computation made pursuant to this Agreement. If such examination reveals any inaccuracy in any statement, the necessary adjustments shall be made promptly; provided that, if the examining Party raises its objection more than twelve (12) months after the date of the statement in question, that objection shall be deemed waived.

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

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

ARTICLE XI. CONDITIONS PRECEDENT TO INITIAL DELIVERY DATE, DELAY DAMAGES

The conditions precedent, which are set forth in Sections 11.1, 11.2, and 11.3 below (the "Conditions Precedent"), must be satisfied or waived in writing by both Parties before the Initial Delivery Date. If those Conditions Precedent are not satisfied or waived within twenty-four (24) months of Buyer's Approval Application filing date, this Agreement shall, at the sole discretion of Buyer, be null and void.

11.1 Condition Precedent of CPUC Approval

(a) Buyer shall file this Agreement with the CPUC seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval ("Approval Application"). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer.

(b) If the CPUC has not issued any decision on the merits in response to the Approval Application within three-hundred and sixty-five (365) days of the date on which Buyer files the Approval Application, then either Party may elect to terminate this Agreement by providing Notice of termination to the other Party, to be effective upon receipt of such Notice as provided in Article XIII, provided that the CPUC has not issued a decision on the merits in

response to the Approval Application prior to the date on which the Notice is received. In the event the Agreement is terminated pursuant to this Section 11.1(b), Buyer shall, within ten (10) Business Days of such termination, return to Seller its **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]** and the Agreement will terminate without further liability or obligation of the Parties to one another.

(c) If the CPUC, or an applicable appellate body reviewing the CPUC order issued in response to the Approval Application, issues an order that with the passage of time necessary for such order to be deemed final and non-appealable constitutes a CPUC Approval, without condition or modification, then neither Party nor its Affiliates, directly or in cooperation with others, shall seek further review of the order.

(d) If the CPUC order issued in response to the Approval Application denies the relief requested, grants it with conditions or requires modification of the Agreement in a manner that has a material adverse effect on a Party, then the Party that is adversely affected may seek judicial review of the decision pursuant to the California Public Utilities Code. In the event that judicial review is sought pursuant to the prior sentence or by a third party, then each of the Parties agrees that it will remain bound to this Agreement for the additional period of one year from the date the petition for judicial review is filed. In the event that a final, non-appealable order (of the CPUC, on remand, or an appellate body) denies the relief requested in the Approval Application, conditions its approval, or requires modification of the Agreement in a manner that has a material adverse effect on a Party, then each Party that is materially adversely affected may (in its sole discretion) elect to Notify the other Party within ten (10) Business Days of the issuance of such order that it will accept the terms of this Agreement as so conditioned or modified; and if each Party that is materially adversely affected delivers such Notice, then the order shall be deemed to be a CPUC Approval. Absent delivery of such Notice by each materially adversely affected Party within ten (10) Business Days of such order or receipt of an order within the one year period, this Agreement shall terminate automatically without further liability or obligation of the Parties to one another. Within ten (10) Business Days of such termination, Buyer shall return to Seller its **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]**.

(e) Buyer shall provide Seller with Notice of the date on which the CPUC order becomes a CPUC Approval, and within ten (10) Business Days following the CPUC Approval, Seller shall post the **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]** as required pursuant to Section **[8.4(a)(i) for New Facilities][8.4(a)(ii) for Existing Facilities]**.

(f) If the CPUC has not issued any decision on the merits in response to the Approval Application within two-hundred and forty (240) days of the date on which Buyer files the Approval Application, or if a petition for judicial review as described in Section 11.1(d) of the CPUC's decision on the merits is filed (before, on or after such date) ("CPUC Delay"), then each Critical Milestone and the Expected Initial Delivery Date shall be extended day for day for each day commencing on the date that is two-hundred and forty (240) days after the date on which the Buyer files the Approval Application and ending on the earlier of (i) the date on which an order on the merits becomes final and non-appealable, or (ii) 365 days after the start of the CPUC Delay. The Expected Initial Delivery Date will occur on the first day of the calendar month following the applicable day-for-day extension due to CPUC Delay.

11.2 Conditions Precedent Covering Construction [For New Facilities].

(a) Design, Development and Construction. As between Buyer and Seller, Seller shall have sole responsibility for designing and constructing (or causing the design and construction) of the Facility, Transmission Upgrades (if any) and all related metering and submetering facilities, including the obligation to perform all studies, including environmental studies, pay all fees, obtain all necessary Governmental Approvals and execute all necessary agreements with the Transmission Provider and the Participating Transmission Owner for the Electrical Interconnection Facilities, Transmission Upgrades **[and with the applicable Gas pipeline or LDC for the Gas Interconnection Facilities]** necessary for the ownership, construction, operation and maintenance of the Units and delivery of Seller's Product. All Electrical Interconnection Facilities **[and Fuel Handling Facilities]**, including metering and submetering facilities and Transmission Upgrades must be of sufficient capacity as of the Initial Delivery Date to permit the Units to operate at all times during each month at the Maximum Contract Capacity (in addition to such capacity as required for units located at the Facility that are not committed to Buyer). Metering and submetering facilities must meet such additional specifications as set forth in Section 3.7. *[Include the first bracketed phrase for all gas-fired facilities. Include the second bracketed phrase for all fossil-fired facilities.]*

(b) Critical Milestones. Seller shall use commercially reasonable efforts to cause the development and construction of the Facility to meet each of the Critical Milestones by the dates set forth in Appendix XXVII.

Seller shall provide Buyer with any requested documentation to support the achievement of Critical Milestones within ten (10) Business Days of receipt of such request by Seller. If Seller misses any Critical Milestone by more than thirty (30) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Critical Milestone completion date, a remedial action plan ("Remedial Action Plan"), which is outlined in the Monthly Construction Progress Report (Appendix XXVIII) and requires Seller to provide a detailed description of its proposed course of action to achieve the missed Critical Milestones and all subsequent Critical Milestones by the Initial Delivery Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Critical Milestones and the Expected Initial Delivery Date.

(c) At least three months prior to issuance of the notice to proceed by Seller to its EPC Contractor, Seller shall submit to Buyer in writing a proposed amendment to Appendix XXVII which shall set forth a detailed schedule of additional construction milestones, each of which is consistent with the Critical Milestones set forth as of the Execution Date in Appendix XXVII. If Buyer consents in writing by executing the proposed amendment, such consent not to be unreasonably withheld or delayed, then each such new milestone shall be a Critical Milestone and this Agreement shall be so amended. If Buyer does not consent, the Parties shall resolve the dispute in accordance with Article XII.

(d) Reports. Within five (5) Business Days after the close of each calendar month between the Execution Date and the Initial Delivery Date, Seller shall provide to Buyer a Monthly Construction Progress Report addressing each of the Critical Milestones and such other Milestones as set forth pursuant to the Monthly Construction Progress Report including projected time to completion, and the Parties agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Buyer shall have the right, during business hours and upon at least twenty-four (24) hours'

Notice, to inspect the Site and/or on-Site Seller data and information pertaining to the Units and otherwise inspect or audit to enforce its rights pursuant to this Section 11.2.

11.3 Other Conditions Precedent to the Initial Delivery Date. In addition to the conditions set forth in Section 11.1:

(a) Seller's Obligations. Seller shall have provided Buyer with Notice of the expected occurrence of the Initial Delivery Date no later than thirty days prior to the Initial Delivery Date, and again immediately prior to the date it occurs.

(i) At Seller's expense, Seller shall construct or cause to be constructed the Facility, which shall include the equipment and characteristics as described in Appendix II, and which can reasonably be expected to enable Seller to satisfy the obligations of the Seller herein.

(ii) At Seller's expense, Seller shall construct or cause to be constructed the Electrical Interconnection Facilities such that the Electrical Interconnection Facilities are capable of delivering the Maximum Contract Capacity to and at the Electrical Delivery Point during each month of the Delivery Term (in addition to any other output of the Facility as the Electric Interconnection Facilities are required to transmit) and shall cause them to be placed into service, in each case, in accordance with the requirements of the interconnecting transmission owner and/or operator, and applicable rules, if any, of FERC, Transmission Provider, WECC and any other organization charged with reliability responsibilities or Governmental Authority.

(iii) At Seller's expense, Seller shall cause any and all Transmission Upgrades required to enable the grid to accept delivery of the Maximum Contract Capacity (in addition to any other output of the Facility) at all times during each month of the Delivery Term, to be constructed and placed into service, including, to the extent necessary, by funding the Transmission Upgrades. As required in Sections 3.1(b) and 3.4(c), Seller's interconnection, and/or transmission arrangements shall provide for Full Capacity Deliverability Status as of Initial Delivery Date and throughout the Delivery Term.

(iv) At Seller's expense, Seller shall construct or cause to be constructed the Fuel Handling Facilities, **[including the Gas Interconnection Facilities]** as necessary to deliver **[Gas to and at the Gas Delivery Point]** in quantities **[and at pressures]** that enable the Units to generate Energy utilizing the Maximum Contract Capacity at all times during each month of the Delivery Term (in addition to such other quantities of Fuel as the Fuel Handling Facilities are required to deliver to the Facility), and shall cause them to be placed into service. ***[For Gas fired facilities, include bracketed language. For other fossil-fuel fired facilities, substitute "Fuel" for the phrase "Gas to and at the Gas Delivery Point" and omit all other bracketed language.]***

(v) At Seller's expense, Seller shall secure all Governmental Approvals required for the lawful operation and maintenance of the Facility, inclusive of the Electrical Interconnection Facilities **[and Fuel Handling Facilities]**, including all those related to environmental matters, as necessary to permit each Unit to operate according to the specifications described in Appendix II; and to demonstrate that Seller possesses emission credits necessary for such operation of the Units.

- (vi) Seller shall have posted collateral as required by Section 8.4(a)(ii) and Section 8.4(a)(iii).
- (vii) No default shall have occurred and remain uncured as of the Initial Delivery Date.
- (viii) Seller shall have executed a CAISO Participating Generator Agreement (PGA) and a Meter Service Agreement (MSA) (or successor or similar forms of agreement providing for interconnected operation with the CAISO), which shall be in full force and effect.
- (ix) Seller shall have all necessary systems in place and demonstrated ability to provide Buyer with invoice settlement related meter data as required in Section 3.7(g).
- (x) At least one hundred and eighty (180) days prior to the Initial Delivery Date, Seller must submit an update to Appendix II ("Operational Limitations") that is acceptable to Buyer in its reasonable discretion for use in the Master File. ***[For Existing Facilities add this additional requirement: Seller shall provide Buyer a copy of the most recent Facility Emissions Report filed by Seller with CARB.]***
- (xi) At least one hundred and twenty (120) days prior to the Initial Delivery Date, the CAISO shall have approved the Operational Limitations submitted by Seller for use in an updated Master File to represent the operational characteristics of the Units. If the CAISO does not approve all changes, the Parties shall work together to provide the CAISO of any documentation or certification that would enable CAISO's approval of the Operational Limitations to be used in an updated Master File for the Units. If the process to obtain CAISO approval of Master File data causes a delay to the Initial Delivery Date, Seller shall be subject to Delay Damages and termination pursuant to Section 11.4. If requested by Buyer, Seller shall provide to Buyer a copy of its existing Master File data related to the Unit's Operational Limitations if Buyer is not the current SC for the Units.
- (xii) Prior to the Initial Delivery Date, Seller shall have achieved its CAISO Commercial Operation Date, completed a PMax Test, and received CAISO certification of any Other Products specified in Appendix II.
- (xiii) At least thirty (30) days before the Initial Delivery Date, the Commercial Operation Date shall have occurred and Seller shall have completed the provisions of Section 3.5(a) for designating Buyer or Buyer's Third Party SC, as Seller's SC.
- (xiv) Pursuant to Section 3.3(c), Seller shall have completed the assignment of the Gas Transportation Agreement to Buyer prior to the Initial Delivery Date.
- (xv) The Parties shall have finalized the mutually acceptable Test Procedures at least thirty (60) days prior to the Initial Delivery Date.
- (xvi) Seller shall have provided the correction curves per Section 4.2(d).
- (b) Return of Security. Provided that Seller is not in breach of its obligations hereunder, within ten (10) Business Days following the Initial Delivery Date, Buyer will return

any undrawn portion of the **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]** to Seller, if applicable, unless, with Buyer's consent, Seller elects to apply the **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]** posted pursuant to Section 8.4(a)(i) or 8.4(a)(ii) toward the Delivery Term Security posted pursuant to Section 8.4(a)(iii).

11.4 Delay Damages; Termination Upon Delay.

(a) **Delay Damages.** In the event that the Initial Delivery Date occurs after the Expected Initial Delivery Date, Seller will be required to pay to Buyer liquidated damages in the amount of three hundred and sixty-five dollars per day (\$365.00/day) multiplied by the Monthly Contract Capacity (measured in MWs) during the Summer Months and seventy-five dollars per day (\$75.00/day) multiplied by the Monthly Contract Capacity (measured in MWs) during the Non-Summer Months, for each day beginning with the day after the Expected Initial Delivery Date through and including the date on which the Initial Delivery Date occurs up to a maximum of **[twelve (12) months for New Facilities; three (3) months for Existing Facilities]** (any portion of which, or all, such payments are "Delay Damages"). Delay Damages shall be separate from and in addition to any Termination Payment, if any, owed by Seller. If Delay Damages are due, then Buyer shall provide Notice to Seller of the amounts due and Buyer may draw such amounts due from the **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]**, provided that if the **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]** is not adequate to compensate Buyer for Delay Damages, Buyer shall invoice Seller for the amount still owed to Buyer on a monthly basis during the period of the delay.

(b) Termination Upon Delay. The Seller's failure to achieve the Initial Delivery Date within **[for New Facilities: three hundred and sixty-five (365) days; for Existing Facilities: three (3) months]** after the Expected Initial Delivery Date will constitute an Event of Default pursuant to Section 5.1(a)(vi) of this Agreement. If such an Event of Default occurs, then any time prior to the occurrence of the Initial Delivery Date, Buyer may elect to exercise the remedies that are available upon an Event of Default pursuant to Article V, or in the alternative, Buyer may extend the end date of the Delivery Term by a period equal to the difference between the Expected Initial Delivery Date and actual Initial Delivery Date.

11.5 Effect of Force Majeure. Each Critical Milestone (see, Appendix XXVII) and the Expected Initial Delivery Date shall be extended on a day-for-day basis without the payment of Delay Damages, not exceeding an aggregate extension of **[for New Facilities: three hundred and sixty-five (365) days; for Existing Facilities: three (3) months]**, to the extent that such **[for New Facilities: Critical Milestone or]** Expected Initial Delivery Date is delayed as a result of an event of Force Majeure invoked by the Seller in accordance with Section 3.9, provided that the Initial Delivery Date, if extended, shall be the first day of the calendar month following the end of the event of Force Majeure and the foregoing extension of the Expected Initial Delivery Date shall continue until such day.

ARTICLE XII. DISPUTE RESOLUTION

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article XII. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable

harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of this procedure.

12.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive(s)"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) calendar days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(d) If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (b) above, refuses or does not meet within the thirty (30) calendar day period specified in subpart (b) above, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by JAMS. As the first step the Parties agree to mediate any controversy before a mediator from the JAMS panel, pursuant to JAMS's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a retired judge or justice from the JAMS panel conducted in San Francisco, California, administered by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

12.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two “last and best” offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator’s award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4th 362 (1994), and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys’ fees.

(d) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him.

(e) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

ARTICLE XIII. NOTICES

13.1 Notices. Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “Notify”), the Party with such right or obligation shall provide a written communication in the manner specified below; provided, however, that Notices of Outages or other intra-day information regarding the Units’ operations or availability are to be provided as required pursuant to Sections 3.5 and 3.8, and Appendix III; and provided further, that any scheduling and dispatching shall be done pursuant to the Operating Procedures. Invoices may be sent by e-mail. A Notice sent by e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or

courier shall be deemed to have been received two Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior verbal communication, in which case any such Notice shall be deemed received on the day sent. Appendix XXIX contains the names and addresses to be used for Notices.

SIGNATURES

Agreement Execution

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

[SELLER, a *(include place of formation and business type)*]

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation

Signature: _____	Signature: _____
Name: _____	Name: _____
Title _____	Title _____
Date: _____	Date: _____

REFERENCE EXAMPLE ONLY

**APPENDIX I
GENERAL DEFINITIONS**

“AB 32” means the Global Warming Solutions Act of 2006 enacted under California Health and Safety Code 38500 et seq.

“AB 32 Carbon Dioxide Costs” means the costs actually incurred by Seller in meeting Seller’s Compliance Obligations for the Unit(s) as required by and due to CARB to comply with the Cap-and-Trade Regulations. AB 32 Carbon Dioxide Costs shall not include taxes, charges, fees or other costs which stem from the Other Emissions.

“AB 32 Compensation” has the meaning set forth in Section 9.3(a).

“AB 32 Settlement” has the meaning set forth in Section 9.3(a)(v).

“Abs” means absolute value.

“Actual Cost” has the meaning set forth in Section 9.3(b).

“Actual Tested Heat Rate” has the meaning set forth in Section 3.11(b)(viii).

“Additional Gas” has the meaning set forth in Section 3.3(e).

“Additional Gas Payment” has the meaning set forth in Section 3.3(e).

“Additional Test Costs” has the meaning set forth in Section 3.11(e).

“Adjusted Guaranteed Heat Rate” has the meaning set forth in Section 4.2(a)(ii).

“Adjusted Base Load Guaranteed Heat Rate” has the meaning set forth in Section 4.2(b)(v).

“Adjusted Peak Load Guaranteed Heat Rate” has the meaning set forth in Section 4.2(c)(iii).

“Adverse Legal Determination” means (a) an action by a Governmental Authority that renders the Cap-and-Trade Regulations illegal, unconstitutional or unenforceable, including the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal effectiveness and implementation of the Cap-and-Trade Regulations such that Seller does not have a Compliance Obligation, (b) the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal ability of CARB to implement the Cap-and-Trade Regulations or that as a result of such restraint on CARB makes it impossible for Seller to purchase or transfer Compliance Instruments, other than a sanction or penalty imposed for the failure to comply with AB 32, or (c) the California state legislature or U.S. Congress promulgates or enacts a Law that repeals or otherwise amends AB 32 such that Seller is no longer obligated to comply with the Cap-and-Trade Regulations or CARB is unable to implement or enforce the Cap-and-Trade Regulations.

“Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or

indirectly, through one or more intermediaries, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

“AGC” or “Automatic Generation Control” has the meaning set forth in the CAISO Tariff.

“Agreement” has the meaning ascribed in Section 1.1.

“Allowance” has the meaning set forth in the Cap-and-Trade Regulations.

“Allowance Trade Date” means the date corresponding to the date of Scheduled Operations, and if such date is not a Business Day, then the next Business Day.

“Ancillary Services” means regulation (including load following), spinning reserves, non-spinning reserves, and replacement reserves associated with the Units (in each case as defined by the CAISO Tariff), and all other similar products that may be developed by the CAISO and/or FERC as of the Execution Date or a future date during the Contract Term to maintain reliable operation of the CAISO grid.

“Annual Compliance Obligation” means the annual compliance obligation described at Section 98555 of the Cap-and-Trade Regulations or any successor provision thereto.

“Annual Failed Start Penalty” has the meaning set forth in Section 4.5.

“Approval Application” has the meaning set forth in Section 11.1(a)(i).

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

“Authorized Representative” has the meaning set forth in Section 1.4.

“Availability” has the meaning set forth in Section 4.1(b).

“Availability Adjustment” or “AA” has the meaning set forth in Section 4.1(c).

“Available Capacity” means the maximum amount of Capacity that is expected to be available for Scheduled Operations as reasonably determined at the time which may be higher than the Maximum Contract Capacity.

“Average Monthly Conditions” means, in relation to any month, the ambient conditions (temperature and humidity for the Site) based on the average of the monthly average temperatures and corresponding humidity conditions of the 10 years prior to the latest available date in the current year for such month as provided by the National Climatic Data Center (“NCDC”) at <http://gis.ncdc.noaa.gov/map/viewer/#app=cdo&cfg=cdo&theme=hourly&layers=00000001&extent=-125.0:30.0:-120.0:45.0&node=gis>. The Average Monthly Conditions for the Facility are specified in Appendix II.

“Base Load” means, when used in relation to a Unit or Facility, that the combustion turbine is operating on its base load temperature control curve with inlet cooling in service, as applicable to the ambient temperature conditions, and with zero power augmentation, zero duct firing, and net of auxiliary loads and station electrical uses at the Facility.

“Business Day” means any day except Saturday, Sunday, or a Federal Reserve member bank holiday.

“Buyer” means PG&E in its capacity as a purchaser of Products and Tolling Services and other merchant functions, as distinct from the function of PG&E as a transmission owner. For avoidance of doubt, PG&E is subject to regulations requiring the separation of its transmission and merchant functions pursuant to FERC’s Standards of Conduct requirements as set forth at 18 C.F.R. Part 358. Accordingly, as set forth in Section 3.1(f), the Parties acknowledge that the Parties have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as an owner or provider of electrical interconnection or transmission service or as a Gas pipeline or local distribution company.

“Buyer Group” has the meaning set forth in Section 10.2(a).

“Buyer’s Gas” has the meaning set forth in Section 3.3(b).

“Buyer’s Performance Test” has the meaning set forth in Section 3.11(e). A Buyer’s Performance Test shall include both a Capacity and a Heat Rate test.

“Buyer’s Schedule” has the meaning set forth in Section 3.5(c)(v).

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

“CAISO Commercial Operation Date” means “Commercial Operation Date” as it is set forth in the CAISO Tariff.

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

“CAISO Interconnection Point” means, for Unit(s) interconnected directly to the CAISO Grid or to a Participating Transmission Owner, the Electrical Delivery Point, and for Unit(s) interconnected with a Transmission Provider other than the CAISO or a Participating Transmission Owner, the point at which the Products from the Unit(s) are delivered to the CAISO Grid.

“CAISO Tariff” means the CAISO Fifth Replacement FERC Electric Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

“Capacity” means the maximum capability of a Unit to generate electric energy measured in megawatts, after deduction for auxiliary loads and station electrical uses, including any variation in the form of capacity including installed capacity, locational capacity or similar products.

“Capacity Attributes” means any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services and ramp up or down at a given rate), certificate, tag, credit, flexibility, or dispatch-ability attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to commoditize or otherwise attribute value to any aspect of the Capacity of the Project to produce any and all Products, including, but not limited to, any accounting construct so that the Capacity subject to the Operational Limitations as specified in Appendix II may be counted toward a Resource

Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such products.

"Capacity Payment Rate" or "CPR" is set forth in Section 4.3(a)(i).

"Cap-and-Trade Program" has the meaning set forth in the Cap-and Trade Regulations.

"Cap-and-Trade Regulations" means "California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms," (California Code of Regulations, Title 17, Subchapter 10, Climate Change, Article 5, Sections 95800 – 96023) of as it may be amended, supplemented or replaced (in part) from time to time.

"CARB" means the California Air Resources Board or successor entities with similar functions.

"Carbon Dioxide Emissions Credit" has the meaning set forth in Section 9.3(a)(iii).

"Carbon Dioxide Emissions Payment" has the meaning set forth in Section 9.3(a)(i)

"CEC" means the California Energy Commission.

"Change-in-Law" means the adoption, imposition, promulgation or modification by a Governmental Authority of any Law, that (a) has the purpose of replacing in its entirety the Cap-and-Trade Program or to succeeding, superseding, or supplanting in its entirety the Cap-and-Trade Program, (b) is specifically applicable to Seller and all generation units located in California that use the same fuel and/or same technology as the Unit, and (c) governs the emissions of carbon dioxide from the operation of the Unit(s). A Change-in-Law shall be deemed to occur on the date on which it becomes effective with jurisdiction over Seller, without regard to the date on which the adoption, imposition, promulgation, modification or issuance occurs. Either Party may Notify the other Party of the occurrence of a Change-in-Law.

"CHP Settlement Agreement" means the agreement dated September 17, 2010 and approved by CPUC Decision 10-12-035 and subsequent related CPUC decisions.

"Cold Scheduled Start-Up" means a Cold Start-Up required for Scheduled Operations following a Scheduled Shut-Down.

"Cold Start-Up" has the meaning set forth in Appendix II.

"Commercial Operation Date" the date on which all Units at the Facility have become Commercially Operable.

"Commercially Operable" with respect to the Facility, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, the Facility has been shown by an Initial Performance Test, adjusted to ISO Conditions, to be capable of delivering at least ninety-nine percent (99%) of the Design Capacity as set forth in Appendix II to the grid on a sustained basis, and the Facility (including each and every Unit) has been released by the EPC Contractor to Seller for commercial operations.

"Compliance Instruments" has the meaning set forth in the Cap-and-Trade Regulations referring to allowances, CARB approved offsets or credits used to fulfill a Compliance Obligation.

“Compliance Obligation” has the meaning set forth in the Cap-and-Trade Regulations referring to the quantity of verified reported emissions or assigned emissions of carbon dioxide for which an entity must submit Compliance Instruments to CARB under the Cap and Trade Program.

“Conditions Precedent” has the meaning set forth in Article XI.

“Construction Start Date” is the date specified in Appendix XXVII.

“Contract Term” has the meaning set forth in Section 2.1(a).

“Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date. In the event of an Early Termination Date, the final Contract Year may be a period of less than twelve (12) consecutive months, and shall be the period commencing on the anniversary of the Initial Delivery Date last preceding the Early Termination Date through and including the Early Termination Date.

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

“CPUC” or “Commission” means the California Public Utilities Commission.

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

(a) approves this Agreement in its entirety and authorizes Buyer to collect all related payments in rates, subject only to CPUC review of the Buyer’s administration of the Agreement;

(b) a finding that the Capacity procured by Buyer under this Agreement counts toward Buyer’s CHP procurement obligation under the CHP Settlement Agreement as calculated by Buyer; and

(c) a finding that procurement under this Agreement counts toward Buyer’s GHG emissions reduction target pursuant to the CHP Settlement Agreement by the amount calculated by Buyer.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable. ***[Note: only include the relevant findings for the Agreement. I.e., either part (b) or (c) of this definition, or both parts (b) and (c.) may apply to the Agreement.]***

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

“Critical Milestones” are specified in Appendix XXVII.

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

“Current MIV” is the current monthly intrinsic value of the transaction contemplated in this Agreement as calculated in accordance with Appendix XXII.

“Daily Actual Gas” has the meaning set forth in Section 3.3(f).

“Daily GHG Gas” has the meaning set forth in Section 9.3(a)(i).

“Daily Imbalance Amount” has the meaning set forth in Section 3.3(f).

“Daily Qualified Gas” has the meaning set forth in Section 3.3(f).

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Price” means the LMP specific to a given Unit for a given hour for the Day-Ahead Market.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff that refers to the quantity of Energy cleared through the Day-Ahead Market for the Unit(s) that is issued one day prior to the operating day.

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

“Delay Damages” has the meaning set forth in Section 11.4.

“Delivered Energy” means all Energy produced from a given Unit as measured in MWh at the CAISO revenue meter of a given Unit based on a power factor of precisely one (1) and net of all Electrical Losses.

“Delivery Term” has the meaning set forth in Section 2.1(b).

“Delivery Term Security” means the collateral required of Seller, as specified and referred to in Article VIII.

“Design Capacity” means, for the Facility (including each and every Unit), one hundred percent (100%) of Base Load *for, if applicable: the Peak Load* that the Facility can be expected to reliably and safely generate on a sustained basis as of the Execution Date, as measured at the Electrical Delivery Point, at ISO Conditions, which is set forth in Appendix II. The Design Capacity includes the maximum use of duct firing, if applicable.

“Deviation Charges” has the meaning set forth in Section 3.5(d).

“Direct Claim” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

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

“Disclosure Order” has the meaning set forth in Section 10.7.

“Dispatch Instruction” has the meaning set forth in the CAISO Tariff that refers to an instruction by the CAISO for the Unit(s) to increase or decrease from a current operating level during Real-Time Market or any intra-day operations.

“Dispatch Quantity” has the meaning set forth in Appendix II.

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

“Effective Date” has the meaning set forth in Section 2.2.

“Electric Revenue Meter” means the measurement device(s) used by the interconnecting Transmission Provider to measure deliveries of any and all Products for purposes of billing.

“Electrical Delivery Point” has the meaning set forth in Section 3.4(a).

“Electrical Interconnection Facilities” means the apparatus required to safely and reliably interconnect with and deliver the Products at the Maximum Contract Capacity to the Electrical Delivery Point by means of either the electric distribution system or the CAISO Grid, including connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the electric systems of the Transmission Provider and electric distribution provider (or other transmission systems directly or indirectly interconnected to the electric distribution provider and/or the Transmission Provider) and the electric distribution provider’s customers from faults occurring at the Units, and (b) the Units from faults occurring on the electric systems of the electric distribution provider or the Transmission Provider, or on other directly or indirectly interconnected transmission systems.

“Electrical Losses” means all applicable losses, including, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Electrical Delivery Point.

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

“Emergency” means an actual or imminent condition or situation, which jeopardizes PG&E electric system integrity or the integrity of other systems to which PG&E is connected, as determined by PG&E in its sole discretion, or any condition so defined and declared by the Transmission Provider.

“Emissions Quantity” has the meaning set forth in Section 9.3(a)(i).

“Energy” means electric energy, measured in MWhs and net of auxiliary loads and station electrical uses (unless otherwise specified).

“EPA” means the U.S Environmental Protection Agency.

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

“EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.

“Equitable Defenses” means any bankruptcy, insolvency, reorganization and 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.

“Equivalent Operating Hours” shall equal Fired Hours. *[Note: Fired Hours should work for simple-cycle facilities. This may need revision or further discussion with combined-cycle facilities.]*

“Event of Default” means a Seller’s Event of Default and/or a Party’s Event of Default.

“Exceptional Case Agreement” means an agreement between PG&E, as the Seller's LDC or Gas pipeline, and Seller (or its representative) for Gas LDC service that contains negotiated terms and conditions approved by the CPUC, such as may be done when the costs of a Gas service connection, including reinforcement, for a specific customer's project exceeds the revenue expected to be collected from the customer under the LDC's standard tariff.

“Excused Event” means (a) Buyer’s failure to cause Gas to be available to Seller at the Gas Delivery Point, (b) the Buyer’s failure to take Energy from and after the Electrical Delivery Point, and (c) an event of Force Majeure that is claimed by Buyer.

“Excused Failed Starts” means the number of Failed Starts allowed pursuant to Section 4.5 before Seller starts incurring a Failed Start Penalty for the given Contract Year.

“Excused Hours” means the number of hours equal to (a) the maximum number of Excused Scheduled Maintenance Outage hours permitted pursuant to Section 3.8(e)(iii) beginning with the Initial Delivery Date and continuing through the date on which the determination is made less the number of hours used for Excused Scheduled Maintenance Outages or Force Majeure during such period; plus (b) at Seller’s option and upon Notice by Seller to Buyer, an additional number of “borrowed” hours to be designated by Seller that does not exceed a cumulative amount of one thousand (1000) hours per Force Majeure event, nor, cumulatively, the number of hours for Excused Scheduled Maintenance Outages available under Section 3.8(e)(iii) remaining, as of the date of the Notice, in the lesser of the five (5) years following the date of the Notice or the remaining years of the Contract Term, provided that the number of hours permitted pursuant to Section 3.8(e)(iii) for Excused Scheduled Maintenance Outages in each of the five (5) calendar years following the date on which such Notice is received by Buyer shall be reduced by (i) one-fifth of the total amount of “borrowed” hours as set forth in such Notice or, (ii) if less than five (5) years are remaining in the Contract Term as of the date of such Notice, then by one (1) divided by the remaining years in the Contract Term as of the date of the Notice.

“Excused Scheduled Maintenance Outage” is a Scheduled Maintenance Outage taken by Seller that (a) complies with the requirements set forth in Section 3.8(b) through 3.8(f), (b) Buyer has approved via Notice as described in Appendix III, Part D, (c) was not modified less than ninety (90) days prior to the calendar month of delivery except (i) as permitted under Section 3.8(d) or (ii) if shortened within the Excused Scheduled Maintenance Outage window as scheduled and approved on ninety (90) days prior to the calendar month of delivery. Any Scheduled

Maintenance Outage that is not an Excused Scheduled Maintenance Outages shall be considered an Unexcused Scheduled Maintenance Outage.

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

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

“Existing Facility” means an existing Facility that is not proposed to be upgraded or repowered.

“Expected Initial Delivery Date” has the meaning set forth in Section 2.1(c).

“Facility” means the generation facility described in Appendix II, consisting of one or more Units committed to Buyer and the Electrical Interconnection Facilities and Fuel Handling Facilities including other Units, that generate, consume or store energy in any form, and any and all other Units (whether complete or under construction) that are owned, operated or controlled by Seller or any Affiliate of Seller and located on the same Site or adjacent sites and/or use the same Electrical Interconnection Facilities and/or Fuel Handling Facilities; provided that for purposes of Section 3.1(e), a “Facility” shall further include any electrical generating facilities that are deemed by any Governmental Authority to be part of the same facility or at the same location as the Units.

“Facility Emissions Report” is the verified, detailed, non-public emission data report filed with CARB on an annual basis for the Facility as required by the “Regulation for the Mandatory Reporting of Greenhouse Gas Emissions” (California Code of Regulations, Title 17, Subchapter 10 Climate Change, Article 5, §§ 95100 -95133) as it may be amended, supplemented or replaced (in part) from time to time.

“Failed Start” has the meaning set forth in Section 4.5.

“Failed Start Penalty” has the meaning set forth in Section 4.5.

“Failed Start Rate” means one thousand dollars (\$1000.00) per MW in the first Contract Year, and thereafter shall be one thousand dollars (\$1000.00) per MW increased by two and a half percent (2.5%) at the start of each successive Contract Year.

“FERC” means the Federal Energy Regulatory Commission.

“Fired Hour” as applied to a Unit, is an hour or partial hour in which a given Unit was generating at Minimum Load or higher from the time of Start-Up until Shut-Down is initiated as required pursuant to Scheduled Operations.

“Fired Hours Charge” or “FHC” is set forth in Section 4.3(a)(iv).

“Final Determination of Invalidation” has the meaning set forth in the Cap-and-Trade Regulations, Subarticle 12, Section 95985(f).

“Fixed O&M Rate” or “FOMR” is set forth in Section 4.3(a)(ii).

“Force Majeure” shall mean 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, including but not limited to: (a) acts of God, including but not limited to landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events affecting an entire region which caused failure of performance; (b) fire or explosions; (c) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Commercial Operation Date; (d) sabotage, riot, acts of terrorism, war and acts of public enemy; or (e) restraint by court order or other Governmental Authority. Force Majeure shall not include (i) a failure of performance of any Third Party, including any party providing electric transmission service or Gas transportation, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above, (ii) failure to timely apply for or obtain Permits, (iii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above) or (iv) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's affiliates, the EPC contractor or subcontractors thereof or any other Third Party employed by Seller to work on the Project. A Party shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that the failure or delay of its performance is due to an event of Force Majeure; and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the forgoing, (x) a failure to make payments accrued prior to the event of Force Majeure when due shall not be excused; and (y) the unavailability of the Capacity of the Units due to Force Majeure declared by Seller shall be deemed to be unavailable for purposes of determining Availability and the Availability Adjustment as specified in Section 4.1.

“Force Majeure Development Failure” has the meaning set forth in Section 3.9(d)(ii).

“Forced Outage” means (a) any unplanned reduction or suspension of the electrical output from a Unit or unavailability of a Product in whole or in part from a Unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction or (b) any other unavailability of a Unit for operation, in whole or in part, for maintenance or repair that is not a Scheduled Maintenance Outage and not the result of Force Majeure.

“Forced Outage Compensation” has the meaning set forth in Section 3.5(e).

“Forced Outage Evaluation Period” means the period starting from the beginning of the Forced Outage event (as specified in SLIC) and continuing (a) through to the end of the first calendar day of the Forced Outage if the Forced Outage was reported prior to 5:00 a.m. on that day, or (b) through the end of the second calendar day of the Forced Outage if the Forced Outage was reported after 5:00 a.m. on the day the Forced Outage began.

“Fuel” means Gas.

“Fuel Handling Facilities” means all equipment and facilities necessary in connection with the delivery, receipt, handling, processing and disposal of Fuel or Fuel by products, including the Gas Interconnection Facilities.

“Fuel Manager Fee” has the meaning set forth in Section 3.3(e).

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff such that Seller has the ability to deliver at the Electrical Delivery Point all of the Products associated with

the Unit(s) and the Buyer can receive all the market value of the Products, including Capacity and Capacity Attributes, associated with the Unit(s). Seller is responsible for any and all costs associated with the Full Capacity Deliverability Status of the Unit(s).

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner.

“Gas” means natural gas, which will be any mixture of hydrocarbons or of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.

“Gas Delivery Point” is the outlet flange of the Gas Meter Set.

[Note for transactors: modify the Gas Index Price if the Facility does not connect to the PG&E Gas Transmission System.]

“Gas Index Price, High” means the daily index cost of Gas as published by Platt’s Gas Daily (in the Internet publication currently accessed through www.platts.com), or its successor, in the table entitled “Daily price survey” under the heading “Common High” for the applicable date of delivery for PG&E Citygate (or another point as applicable) or in the event of an Index Disruption Event, the applicable Gas trading point, to be designated.

“Gas Index Price, Low” means the daily index cost of Gas as published by Platt’s Gas Daily (in the Internet publication currently accessed through www.platts.com), or its successor, in the table entitled “Daily price survey” under the heading “Common Low” for the applicable date of delivery for PG&E Citygate (or another point as applicable) or in the event of an Index Disruption Event, the applicable Gas trading point, to be designated.

“Gas Index Price, Midpoint” means the daily index cost of Gas as published by Platt’s Gas Daily (in the Internet publication currently accessed through www.platts.com), or its successor, in the table entitled “Daily price survey” under the heading “Midpoint” for the applicable date of delivery for PG&E Citygate (or another point as applicable) or in the event of an Index Disruption Event, the applicable Gas trading point, to be designated.

“Gas Interconnection Facilities” means the apparatus between the Units and the downstream flange of the Gas Meter Set (owned by Seller) and from the outlet flange of the Gas Meter Set to the existing transmission or distribution system (owned by the interconnecting pipeline or LDC but constructed or improved for the purpose of serving the Unit) required to safely and reliably deliver Gas in volumes and at pressures sufficient to permit the Units to operate at the Maximum Contract Capacity.

“Gas Meter” means the measurement device used by the interconnecting pipeline or LDC to measure Gas deliveries for purposes of billing.

“Gas Meter Set” means the Gas meter, service regulator, overpressure protection devices and all associated piping and fittings of the LDC or interconnecting pipeline.

“Gas Reimbursements” has the meaning set forth in Section 3.3(d).

“Gas True-Up Payment” has the meaning set forth in Section 3.3(f)(iii).

“GHG Price” has the meaning set forth in Section 9.3(a)(i)(A).

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, Permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating Permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Units or related Project.

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

“Governmental Charges” has the meaning set forth in Section 9.2.

“Governmental Charges Payment” has the meaning set forth in Section 9.2.

“Greenhouse Gas” or “GHG” means carbon dioxide (CO₂), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆) and other fluorinated greenhouse gases as defined in the Cap-and-Trade Regulations.

“Guaranteed Availability” has the meaning set forth in Section 4.1(a).

“Guaranteed Heat Rate” has the meaning set forth in Section 4.2(a).

“Guaranteed Heat Rate Curve” has the meaning set forth in Section 4.2(a)(ii) and is provided in Appendix II.

“Guaranteed Heat Rate Correction Curves” has the meaning set forth in Section 4.2(d) and is provided in Appendix II.

“Guaranteed Heat Rate Point(s)” means the Heat Rate point identified as such and provided in Appendix II.

“Guaranty” means a guaranty agreement issued by an entity acceptable to Buyer and in a form acceptable to Buyer in its sole discretion.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls (“PCBs”), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“Heat Rate” means the efficiency of a Unit’s ability to convert fuel into power. Heat Rates applicable to this Agreement are all expressed in terms of Higher Heating Value

“Heat Rate Degradation Factor” or “HDF” has the meaning set forth in Section 4.2(b)(iv).

“High Inventory OFO” means an order issued by the LDC or Gas pipeline to deter excessive Gas supply on the pipeline compared to actual Gas usage.

“High Inventory OFO Tolerance Band” is a daily tolerance band specified by the LDC or Gas pipeline during a High Inventory OFO in which Buyer will use to assess any OFO Charge to Seller in accordance with Section 3.3(g).

“Higher Heating Value” or “HHV” means the total heat content, expressed in Btus per cubic foot (Btu/ft³), produced by the complete combustion of 1 cubic foot of Gas at a temperature of 60° Fahrenheit with the Gas free of water vapor and at a pressure of 14.73 pounds per square inch absolute with the products of combustion to be cooled to the initial temperature of the Gas and the water formed by the combustion reaction condensed to the liquid state.

“Holding Account” has the meaning ascribed by the Cap-and-Trade Regulations and is the account designated by Seller into which all Allowances shall initially be deposited to satisfy the Compliance Obligation attributable to operation of the Unit(s) to generate Delivered Energy.

“Holding Limit” has the meaning set forth in the Cap-and-Trade Regulations, Subarticle 11, Section 95920.

“Hot Scheduled Start-Up” means a Hot Start-Up required for Scheduled Operations following a Scheduled Shut-Down.

“Hot Start-Up” has the meaning set forth in Appendix II.

“Incremental Duct Fired Guaranteed Heat Rate” or “IDFHR” has the meaning set forth in Section 4.2(a)(ii).

“Indemnifiable Loss” means any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

“Indemnitee” has the meaning set forth in Section 10.2(c).

“Indemnitor” has the meaning set forth in Section 10.2(c).

“Independent Amount” has the meaning set forth in Section 8.4(a)(iii).

“Index Disruption Event” means an event which results in the unavailability of a Platts’ Gas Daily PG&E Citygate (or another point as applicable) Midpoint, Common High or Common Low price for the applicable day (exclusive of days which are not customarily reported) including unavailability resulting from the following: (a) failure of Platts’ Gas Daily to announce or publish the PG&E Citygate midpoint price for the applicable day, (b) the temporary or permanent discontinuance or unavailability of the Platts’ Gas Daily PG&E Citygate price index, (c) the temporary or permanent suspension or discontinuance of Gas trading or reporting of Gas prices at the location identified as of the Execution Date as the PG&E Citygate, (d) a material change in the content, composition or constitution of the Gas traded at the location identified as of the Execution Date as the PG&E Citygate, (e) a substantial reduction in the volume of reported trades at the PG&E Citygate, whether temporary or permanent, such that the reported price cannot reasonably be deemed a reliable indicator of the market price of Gas at that location for the applicable day. In the event of an Index Disruption Event the applicable Gas Index Price will be determined in accordance with whichever of the following four events is the first to occur: (i) for a period of no more than two consecutive weeks, the Gas Index Price shall be the average of the

comparable prices reported by Platt's Gas Daily for Gas delivered at Topock and at Malin, plus the average of the cost of transportation at as available rates from Topock to PG&E Citygate and Malin to PG&E Citygate (if available); (ii) in the event of a long-term or permanent disruption to the Platt's Gas Daily Index, such other index for daily Gas prices as the Parties agree has been commonly accepted in the industry as a leading price index for Gas trading in or around California; (iii) a methodology agreed to by the Parties' Authorized Representatives; or (iv) by reference to an index price or methodology based on a reported index price that is determined by Arbitration conducted in accordance with Article XII to most closely approximate the pricing that would be expected if the Index Disruption Event had not occurred. *[Note for transactors: modify the referenced index price if the Facility does not connect to the PG&E Gas Transmission System.]*

"Ineligible LC Bank" has the meaning set forth in Section 8.5(c)(i)(A).

"Ineligible LC Bank Notice Period" has the meaning set forth in Section 8.5(c)(i).

"Initial Delivery Date" is the date that will occur as specified in Section 2.1(c).

"Initial MIV" is the initial monthly intrinsic value of the transaction contemplated in this Agreement and calculated in accordance with Appendix XXII.

"Initial Determination of Invalidation" has the meaning set forth in the Cap-and-Trade Regulations, Subarticle 12, Section 95985(c).

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

"Initial Performance Test" is a test of the Units' capability to deliver Energy conducted prior to the Initial Delivery Date in the case of new resources, or in the case of other resources, before or after the Initial Delivery Date as determined by Buyer, in each case in accordance with the Test Procedures and Section 3.11. An Initial Performance Test shall include both a Capacity and a Heat Rate test.

"Instructed Imbalance Energy" or "IIE" shall mean the Unit's deviation from its market award or schedule in either the Day-Ahead Market or Real-Time Market, positive or negative, as measured by Settlement Data from CAISO. Instructed Imbalance Energy shall be calculated as Settlement Data minus the applicable market award or schedule from the Day-Ahead Market or Real-Time Market.

"Instructed Operation(s)" means (a) an Operational Order, (b) a mandatory direction of the Transmission Provider (c) as required pursuant to the Seller's CAISO Participating Generator Agreement (explicitly incorporating the CAISO Tariff), or (d) a directive from the CAISO, Reliability Coordinator, Scheduling Coordinator, or any other entity having similar authority or performing similar functions during the Delivery Term, to curtail or increase output for reasons including, but not limited to, (i) Emergencies, (ii) System Emergencies, (iii) reliability needs including voltage support, or (iv) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, such as an overgeneration, which jeopardizes the CAISO's electric system integrity or the integrity of other systems to which the CAISO is connected.

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

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

“Invalidation Notice” has the meaning set forth in Section 9.3(a)(ii)(B)(II).

“ISO Conditions” means 59 degrees Fahrenheit and sixty percent (60%) relative humidity and the associated Site standard barometric pressure at the Site elevation specified in Appendix II.

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

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Contract Term; or any binding interpretation of the foregoing.

“LC Notice” has the meaning set forth in Section 8.5(c).

“LDC” means a local distribution company that is the distributor of Gas for consumption at the Facility.

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

“Locational Marginal Price (LMP)” 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), resulting from termination of this Agreement, determined in a commercially reasonable manner.

“Low Inventory OFO” means an order issued by the LDC or Gas pipeline to deter excessive actual Gas usage as compared to Gas supply on the pipeline.

“Low Inventory OFO Tolerance Band” is a daily tolerance band specified by the LDC or Gas pipeline during a Low Inventory OFO in which Buyer will use to assess any OFO Charge to Seller in accordance with Section 3.3(g).

“LSEs” means load-serving entities.

“Maintenance Outage” means removing the equipment, or any portion thereof, from service availability, in whole or in part, for inspection and/or general overhaul of one or more major equipment groups of the type that is (a) necessary to reliably maintain the Units, (b) cannot be reasonably conducted during the Units’ operations, (c) causes the Available Capacity for the Units to be reduced to less than one hundred percent (100%) of its Monthly Contract Capacity.

“Major Maintenance” is defined as any hours or starts based Scheduled Maintenance on the major equipment and systems as further described and limited in Appendix II.

[For combined cycles, include the following: Major equipment and systems include but are not limited to: gas turbine and generator, steam turbine and generator, heat recovery steam generator, and high voltage electrical systems and transformers. Major Maintenance includes but is not limited to combustion inspections, hot gas path inspections, major overhaul/inspections, steam path audits, retaining ring inspect/replacement, high voltage equipment inspections and predictive/preventative maintenance testing.]

[For combustion turbine facilities, include the following: Major equipment and systems include but are not limited to: gas turbine/generator, heat recovery steam generator, and high voltage electrical systems and transformers. Major Maintenance includes but is not limited to combustion inspections, hot gas path inspections, major overhaul and inspections, retaining ring inspection and replacement, high voltage equipment inspections and predictive and preventative maintenance testing.]

[For reciprocating engines, include the following: Major Maintenance includes but is not limited to piston and liner replacement, crankshaft inspection, bearings, and seals, high voltage equipment inspections and predictive and preventative maintenance testing.]

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

“Mark-to-Market Value” shall equal the difference between the Current MIV and Initial MIV determined over the remainder of the Delivery Term, but not more than thirty-six (36) months, in accordance with Appendix XXII and shall never be less than zero.

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

“Maximum Contract Capacity” shall mean the greatest Monthly Contract Capacity committed to Buyer by Seller from the Units for any month during the Delivery Term as described in Appendix II.

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

“Mechanical Completion” means, as to a Unit, when, except for minor items of work that would not affect the safety and/or performance or operation of the Facility such as painting, landscaping and so forth, (a) all materials and equipment required to be installed by the EPC Contractor for the Unit have been installed, calibrated, loop checked and checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity; (b) all systems required to be installed by the EPC Contractor have been installed and tested at significant loads; (c) such systems have been flushed and cleaned out as necessary; (d) all such equipment and systems have been fully operated in a safe and prudent manner at nominal ratings and have been installed in a manner that does not (i) void any subcontractor or vendor equipment, system or other warranties or (ii) violate any Governmental Approvals; and (e) all systems required to be installed by the EPC Contractor and necessary for power generation are ready to commence testing and operations, the distributed

control system for the Facility is operational and the continuous emissions monitoring system has been installed.

“Meter Service Agreement (MSA)” has the meaning set forth in the CAISO Tariff.

“Minimum Down Time” shall mean the amount of time that a Unit must stay off-line after a Shut-Down prior to the next Start-Up, as specified in Appendix II (Operational Limitations).

“Minimum Load” means, for a Unit, the minimum operating level at which it can operate at a continuous sustained level as specified in Appendix II.

“Minimum Run Time” shall mean the amount of time that a Unit must stay on-line after a Start-Up prior to being Shut-Down as specified in Appendix II (Operational Limitations).

“Monthly Construction Progress Report” means the report similar in form and content attached hereto as Appendix XXVIII.

“Monthly Contract Capacity” or “MCC” means the maximum amount of Capacity from the Units that Seller has committed to sell to Buyer during such month. Prior to the Initial Delivery Date, the Monthly Contract Capacity for the Units shall be equal to the megawatt amount that is applicable in such month as set forth in Appendix II, which shall be equal to the Design Capacity of the Units, reasonably adjusted (if necessary due to the technology of the Units) for Average Monthly Conditions. On and after the Initial Delivery Date, the Monthly Contract Capacity for the Units shall be established pursuant to Section 3.11.

“Monthly Fixed Payment” or “MFP” has the meaning set forth in Section 4.3(b)(i).

“Monthly Payment Date” has the meaning set forth in Section 6.3.

“Monthly Variable Payment” or “MVP” has the meaning set forth in Section 4.3(b)(ii).

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

“MRTU” means Market Redesign and Technology Upgrade, as such term is used by the CAISO to describe new market structures and rules expected to become effective in 2008, or a successor program.

“MW” means megawatts.

“NERC” means the North American Electric Reliability Corporation.

“New Carbon Program” has the meaning set forth in Section 9.3(b).

“New Carbon Program Costs” has the meaning set forth in Section 9.3(b).

“New Carbon Program Costs Compensation” has the meaning set forth in Section 9.3(b).

“New Facility” means a new, upgraded or repowered Facility.

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

“Non-Spinning Reserves” has the meaning set forth in the CAISO Tariff.

“Non-Summer Months” means the calendar months of January, February, March, April, October, November and December.

“Notice” unless otherwise specified in the Agreement, means a written communication which is delivered by hand delivery, United States Mail, overnight courier service, facsimile, or electronic messaging (e-mail), and in the manner required by Section 13.1, as applicable to a given communication.

“Notice of Claim” has the meaning set forth in Section 10.2(c)(i).

“Notify” means to provide a Notice.

“Offset Credits” has the meaning set forth in the Cap-and Trade Regulations.

“OFO Charge” has the meaning set forth in Section 3.3(g).

“OFO Noncompliance Rate” means the per unit charge (in \$/MMBtu) specified by the LDC or Gas pipeline during an OFO that Buyer will use to assess any OFO Charge to Seller in accordance with Section 3.3(g).

“OFO Tolerance Band” is a daily tolerance band specified by the LDC or pipeline during an OFO in which Buyer will use to assess any OFO Charge to Seller in accordance with Section 3.3(g).

“Operating Procedures” has the meaning set forth in Section 3.12 and are provided in Appendix XIII.

“Operational Balancing Agreement” or “OBA” means the terms and conditions for the resolution of Gas imbalances incurred on a specific Gas transportation system.

“Operational Flow Order” or “OFO” means a mechanism to protect the operational integrity of the Gas pipeline. A LDC or pipeline may issue and implement an OFO in the event of high or low pipeline inventory.

“Operational Limitations” of a Unit are the parameters set forth in Appendix II, describing the physical capabilities of the Unit, including the time required for Start-Up, ramp rate, the limitation on the number of Scheduled Start-Ups per Contract Year and the minimum operating limits for the Units.

“Operational Limitations Test Penalty” has the meaning set forth in Section 3.11(g).

“Operational Limitations Tests” has the meaning set forth in Section 3.11(g).

“Operational Order” means a mandate issued by a Governmental Authority which the Seller has no discretion to ignore or avoid, to offer or provide a Product or to Start-Up, Shut-Down, curtail or operate a Unit. An Operational Order would include, for example, a mandate issued by the U.S. Secretary of Energy to offer Capacity or Energy or to operate a Unit during an Emergency. In contrast, by way of further example, a legal obligation to test a Unit for the purpose of maintaining its Governmental Approvals is not considered an Operational Order.

“Other Emissions” means the emissions of carbon monoxide (CO), nitrous oxide (N₂O), methane (CH₄), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF₆), or any other non-CO₂ gases from the operation of the Unit(s).

“Other Products” shall mean, for each Unit, if applicable as set forth in Appendix II: (a) all Ancillary Services that a Unit is capable of producing; (b) black start capability; (c) rights associated with Resource Adequacy Requirements; (d) all thermal and/or mechanical energy produced by the Units **[For qualifying cogeneration facilities only, add: exclusive of [redacted] MMBTU of thermal energy and/or [redacted] joules of mechanical energy]**; (e) flexible ramping product; and (f) all products or services similar to the foregoing which can be produced by or are associated with the Capacity or Capacity Attributes of the Unit, as those Products are defined, during the Delivery Term.

“Other Products Charge” has the meaning set forth in Section 3.5(f).

“Outage” means the partial or full unavailability or inability of the Units to operate at one hundred percent (100%) of its Monthly Contract Capacity, including any derating or inability to produce or make available a Product (other than as disclosed in Appendix II as an Operational Limitation).

“Outage Reporting Protocols” means outage reporting procedures as outlined in Appendix III.

“Participating Generator Agreement (PGA)” has the meaning set forth in the CAISO Tariff.

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

“Party’s Event of Default” has the meaning set forth in Section 5.1(b).

“Peak July Conditions” means the ambient conditions (temperature and humidity for the Site) based on the average of the monthly maximum peak temperatures and corresponding humidity conditions of the ten years prior to the current year for the month of July as provided by the National Climatic Data Center (“NCDC”) at <http://gis.ncdc.noaa.gov/map/viewer/#app=cdo&cfg=cdo&theme=hourly&layers=00000001&extent=-125.0:30.0:-120.0:45.0&node=gis>. Peak July Conditions for the Facility are specified in Appendix II.

[if applicable: “Peak Load” means the maximum rate of Energy production, net of auxiliary loads and station electrical uses at a Unit or the Facility, which will include all turbines operating simultaneously at the maximum rate of duct firing, if applicable. Peak Load for the Facility and each Unit is specified in Appendix II.]

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes **[Project Development Security for New Facilities][Pre-Delivery Term Security for Existing Facilities]** and Delivery Term Security. Buyer only accepts three forms of collateral to satisfy the Performance Assurance obligations: (a) cash via wire transfer in immediately available funds, (b) Letter of Credit, or (c) Guaranty.

“Performance Test” has the meaning set forth in Section 3.11.

“Permit” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“PG&E” means Pacific Gas and Electric Company.

“PG&E Transmission” means PG&E in its capacity as a provider of electric transmission, Gas transportation or LDC services, including matters related to interconnection for such services.

“PG&E’s Outage Reporting Protocols” means the instructions and procedures to be established by PG&E from time to time for reporting Outages and Available Capacity of the Unit(s). PG&E’s Outage Reporting Protocols as in effect as of the Execution Date are attached hereto as Appendix III and may be revised unilaterally by PG&E from time to time with reasonable advance Notice to Seller.

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

“Pre-COD Settlement Amount” has the meaning set forth in Section 5.2(i).

“Pre-Delivery Term Security” is the collateral required of Seller, as specified and referred to in Article VIII.

“Product” shall mean each and all of Energy, Capacity, Capacity Attributes, and, to the extent applicable as set forth in Appendix II, each and all of the Other Products, as defined herein, all of which shall be delivered for Buyer’s exclusive use on a real-time basis net of real-time station load and auxiliary load pursuant to the terms of this Agreement.

“Project” means the Facility and all rights, obligations and assets associated with ownership and operation of the Facility.

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

“Prudent Electrical Practices” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

“Qualified Gas” means, for a given Settlement Interval, the lesser of

- (a) (Scheduled Operations for the Settlement Interval) × (GHR at (Scheduled Operations for the Settlement Interval × number of Settlement Interval in one hour)); or
- (b) (Delivered Energy for the Settlement Interval) × (GHR at (Delivered Energy for the Settlement Interval × number of Settlement Interval in one hour));

provided that Qualified Gas shall be zero during the Settlement Intervals in which the Unit(s) are ramping from non-operation to Minimum Load or ramping from Minimum Load to non-operation (as specified in Appendix II), and GHR shall refer to the most recent applicable Guaranteed Heat Rate curve.

“Quantitative Usage Limitation” has the meaning set forth by the Cap-and-Trade Regulations.

“RA Capacity” means Capacity that is available to Buyer to satisfy its Resource Adequacy Requirement, or successor Capacity value mechanism administered by the CPUC and/or the CAISO.

“RA Monthly Compliance Showing” means the earlier of (i) the monthly RAR compliance or advisory showings (or similar or successor showings) and (ii) monthly compliance or advisory showings (or similar or successor showings) for other Capacity Attributes, in each case, an LSE is required to make to the CPUC pursuant to CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Body having jurisdiction for RA.

“Real-Time Desk” means PG&E’s merchant generation desk that supervises the operation of PG&E’s portfolio within the Real-Time Market. The contact information for the Real-Time Desk is specified in Appendix III.

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

“Real-Time Price” means the LMP specific to a given Unit at a given Settlement Interval within the Real-Time Market.

“Recording” has the meaning set forth in Section 1.3.

“Reductions” has the meaning set forth in Section 3.4(e).

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

“Regulation” has the meaning set forth in the CAISO Tariff.

“Regulatory Disclosures” has the meaning set forth in Section 10.7(c).

“Regulatory Must-Run Generation” has the meaning set forth in the CAISO Tariff.

“Regulatory Must-Take Generation” has the meaning set forth in the CAISO Tariff.

“Reliability Organization” means an “Electric Reliability Organization” as defined in Section 215(a)(2) of the Federal Power Act or a “regional entity” as defined in Section 215(a)(7) of the Federal Power Act.

“Reporting Year” has the meaning set forth in the Cap-and-Trade Regulations.

“Resource Adequacy Requirement” or “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC decisions, or by any other governmental body having jurisdiction.

“RMR” means Reliability Must-Run or similar reliability requirements set forth by the CAISO Tariff regarding the operations of the Unit(s).

“RMTmax” is the maximum capacity eligible for Regulatory Must-Take Generation scheduling after qualifying per CAISO Tariff requirements.

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

“Scheduled Energy” means Energy generated in response to Scheduled Operations and delivered to Buyer at the Electrical Delivery Point for its account.

“Scheduled Maintenance” means a Maintenance Outage that has been Noticed to Buyer prior to the CAISO deadline for planned outage submittals, and approved by the CAISO as a planned outage.

“Scheduled Maintenance Outage” is the period in which there is Scheduled Maintenance. A Scheduled Maintenance Outage can be either an Excused Scheduled Maintenance Outage or an Unexcused Scheduled Maintenance Outage.

“Scheduled Operations” means operation of a Unit as required to (i) satisfy Buyer’s Schedule (including Instructed Operations); and/or (ii) perform an a Standard Performance Test, a Buyer’s Performance Test, or an Operational Limitations Test. Settlement Data shall be used to represent Scheduled Operations for any settlement related purposes.

“Scheduled Shut-Down” means a Shut-Down required by Scheduled Operations. Cessation of operations due to Outages or an action of Seller that is not required for Scheduled Operations is not a Scheduled Shut-Down.

“Scheduled Start-Up” means a Start-Up required for Scheduled Operations following a Scheduled Shut-Down. “Scheduled Start-Up” includes a Hot Scheduled Start-Up, Warm Scheduled Start-Up or Cold Scheduled Start-Up.

“Scheduling Coordinator” or “SC” has the meaning set forth the CAISO Tariff. Under the terms of this Agreement, the SC may be Buyer or Buyer’s designated agent (i.e., third-party).

“Seller Group” has the meaning set forth in Section 10.2(b).

“Seller’s Event of Default” has the meaning set forth in Section 5.1(a).

“Seller’s Guarantor” means the issuer of a Guaranty from the Seller to the Buyer.

“Seller’s Performance Test” has the meaning set forth in Section 3.11(f). A Seller’s Performance Test shall include both a Capacity and a Heat Rate test.

“Settlement Amount” has the meaning set forth in Section 5.2.

“Settlement Data” means settlement data used by CAISO to represent total Energy that is expected to be generated by Unit for a given period in real-time, and is currently referred to as total Expected Energy (per CAISO Tariff).

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

“Shortfall” has the meaning set forth in Section 9.3(a)(ii)(B)(III).

“Shut-Down” means the action of causing the Units to cease producing Energy and/or Other Products.

“Site” means the real property on which the Facility is located, as identified in Appendix II.

“SLIC” means Scheduling and Logging for the ISO of California, or any successor applications that allow Scheduling Coordinators to notify CAISO of unit availability and Outages.

“Spinning Reserves” has the meaning set forth in the CAISO Tariff.

“Standard Performance Test” has the meaning set forth in Section 3.11.

“Start-Up” means the action of bringing a Unit from non-operation to operation at the Unit’s Minimum Load, as specified in Appendix II, and the Unit operates at steady state mode for a minimum of the lesser of one hour or Minimum Run Time (per Appendix II). “Start-Up” includes a Hot Start-Up, Warm Start-Up or Cold Start-Up.

“Start-Up Payment” has the meaning set forth in Section 4.4.

“Start-Up Rate” means the amount per MW payable by Buyer to Seller for a Successful Scheduled Start-Up, by type of Scheduled Start-Up, as set forth in Section 4.4.

“Substitute Bank Period” has the meaning set forth in Section 8.5(c).

“Substitute Letter of Credit” has the meaning set forth in Section 8.5(c).

“Successful Scheduled Start-Up” means a Start-Up which meets the requirements of a Successful Start-Up and a Scheduled Start-Up.

“Successful Start-Up” means that the combustion turbine has completed Start-Up no later than 30 minutes after the time required by Scheduled Operations and operates at steady state mode for a minimum of the lesser of one hour or Minimum Run Time as defined for a given Unit per Appendix II.

“Summer Month” means the calendar months of May, June, July, August and September.

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

“Termination Payment” has the meaning used in Section 5.2.

“Test Period” has the meaning set forth in Section 3.11(b)(ii).

“Test Procedures” has the meaning set forth in Section 3.11(b).

“Test Results Deadline” has the meaning set forth in Section 3.11(b)(vi).

“Tested Capacity” has the meaning set forth in Section 3.11(b)(v).

“Third Party” means a Person that is not a member of the Buyer Group or the Seller Group.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

“Third Party Payments” has the meaning set forth in Section 3.1(d)(v).

“Tolling Services” means the process whereby Buyer makes Gas available to the Units at the Gas Delivery Point, Seller accepts such Gas and utilizes it to operate its Units to convert the Gas into Products (as required in accordance with the terms of the Agreement) and the converted Gas is redelivered to Buyer in the form of Products at the Electrical Delivery Point.

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

“Transmission Provider” means the CAISO or such other electric utility or transmission operator to which the Unit(s) interconnect.

“Transmission Upgrades” are any additions and/or reinforcements to an electric transmission system that are required as a result of the interconnection of the Units to that transmission system or an interconnected transmission system and/or to permit delivery of the Products into the electric transmission system at the Electrical Delivery Point safely and reliably, in the quantities and at the times at which delivery of such Products may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Maximum Contract Capacity, including upgrades to the network at points beyond the Electrical Delivery Point.

“Triennial Compliance Obligation” has the meaning set forth in the Cap-and-Trade Regulations.

“Unexcused Scheduled Maintenance Outage” has the meaning set forth in Section 3.8(g).

“Uninstructed Deviation” has the meaning set forth in the CAISO Tariff.

“Unit” means a **[combustion turbine, duct burner and associated output from a steam turbine]** as more particularly described in Appendix II from which Seller has agreed to provide Products to Buyer pursuant to this Agreement. *[Modify as appropriate to the Facility.]*

“Units” means the Units, as more particularly described in Appendix II, and all appurtenant facilities and equipment.

“Variable O&M Rate” or “VOMR” is set forth in Section 4.3(a)(iii).

“Warm Scheduled Start-Up” means a Warm Start-Up required for Scheduled Operations following a Scheduled Shut-Down.

“Warm Start-Up” has the meaning set forth in Appendix II.

“Watch” has the meaning set forth in Section 8.5(c).

“WECC” means the Western Electricity Coordinating Council or successor entities with similar functions.

“Winter Months” means the calendar months of December and January.

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

REFERENCE EXAMPLE ONLY

APPENDIX II
DESCRIPTION OF FACILITY, UNITS AND OPERATIONAL LIMITATIONS

FACILITY DESCRIPTION

Facility name:

Facility Site name:

Facility physical address:

Total number of units at the Facility (committed and not committed to Buyer):

Number of Units at the Facility committed to Buyer: [REDACTED] (with associated facilities, as described below)

Site elevation: [REDACTED] feet above sea level

Facility latitude: [REDACTED] (decimal form)

Facility longitude: [REDACTED] (decimal form)

UNIT(S) DESCRIPTION

Units (for each unit committed to Buyer):

Unit name:

Technology type:

Specific Unit description: *[Provide detailed Unit(s) description]*

Design Capacity: Refer to Design Capacity listed in the table at the end of this Appendix II.
[The assumptions for the Design Capacity should be stated, including items such as: whether inlet cooling, if applicable, is on/off, the maximum use of duct firing, and for Facilities with cogeneration, exclude steam for a steam host, etc.]

Maximum Contract Capacity: [REDACTED] MW

Minimum Load of Each Unit (at ISO Conditions): [REDACTED] MW

Interconnection. The Electrical Delivery Point for the Units is described as follows:

Distribution Area: PG&E Transmission System

Congestion Zone: NP-15

Demand Zone: NP-15

Delivery Point: [REDACTED]

CAISO Resource ID: [REDACTED] Delivery Point Address: [REDACTED]

Gas interconnection information for the Unit:

LDC or interconnecting utility: [REDACTED]

Gas Meterset Number: [REDACTED]

Additional Information:

OPERATIONAL LIMITATIONS

Starts

The terms “Start-Up”, “Cold Start-Up”, “Warm Start-Up”, and “Hot Start-Up” are defined terms with the meaning set forth below:

“Cold Start-Up” means a Start-Up that occurs [REDACTED] hours or more after a Shut-Down.

“Hot Start-Up” means a Start-Up that occurs [REDACTED] hours or less after a Shut-Down.

“Warm Start-Up” means a Start-Up that occurs more than [REDACTED] hours and less than [REDACTED] hours after a Shut-Down.

[For the purpose of filling out this Appendix, the Start-up Fuel Requirement and Shut-Down Fuel Requirement shall be the amount of fuel utilized in the act of bringing a Unit from non-operation to operation at Minimum Load or vice versa. If applicable, provide details of fuel used for each Unit’s Start-Up and Shut-Down.]

Start-up Fuel Requirement:

Cold Start-Up – [REDACTED] MMbtu

Warm Start-Up – [REDACTED] MMbtu

Hot Start-Up – [REDACTED] MMbtu

Shut-Down Fuel Requirement: [REDACTED] MMbtu

[For the purpose of filling out this Appendix, Start-up Time is the amount of time needed to bring a Unit from non-operation to operation at its Minimum Load. If applicable, provide start-up time for each Unit.]

Start-Up Time:

Cold Start-Up – [REDACTED] minutes

Warm Start-Up – [REDACTED] minutes

Hot Start-Up – [REDACTED] minutes

Start and Run Hours Limitations

[Describe Start Limitations for each Unit operating independently and for all Units simultaneously. Include any daily and/or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s). If possible, Seller shall provide a formula for annual dispatch purposes that provides Buyer more flexibility to operate the Facility.]

Start Limitations: [redacted]

Run Hour Limitations: [redacted]

Operational limitation formula:

X = Combined starts of all Units
Y = Combined operating hours of all Units
 $(X * [redacted]) + (Y * [redacted]) \leq \text{Dispatch Quantity}$
Dispatch Quantity = [redacted]

Ramp Rates

[Describe ramp rates for each Unit operating independently and for all Units operating simultaneously. If Unit ramp rates vary based on Unit loading level, please provide a ramp rate for each segment within the operational range in which it differs.]

The maximum operational ramp rate is [redacted] MW/minute.

Under AGC (if applicable):

The maximum AGC ramp rate is [redacted] MW/minute.

Under Other Products (if applicable and differs from ramp rates listed above):

The maximum ramp rate is [redacted] MW/minute.

Minimum Times

[Describe Minimum Times for each Unit operating independently and for all Units operating simultaneously.]

The Minimum Run Time after a start is [redacted] minutes.

The Minimum Down Time after a shutdown is [redacted] minutes.

Other Products, including Ancillary Services

Other Products, at ISO conditions, normal efficiency mode:

Spinning Reserves: [redacted] MWs; Range: [redacted]
Non Spinning Reserves: [redacted] MWs; Range: [redacted]
Regulation Up: [redacted] MWs; Range: [redacted]

Regulation Down: MWs; Range:
 Other:

[Seller must provide CAISO certification (if required) for all Other Products specified in this section prior to the Initial Delivery Date.]

Other Restrictions:

[Provide a description of any other operational limitations not covered above, including but not limited to Major Maintenance requirements, and forbidden operating regions]

Design Capacity Table				
	Dry Bulb Temperature °F	Relative Humidity (%)	Barometric Pressure (psia)	Design Capacity (at one hundred percent (100% of Base Load [or Peak Load, if applicable]) (MW)
ISO Conditions (at Facility elevation)	59	60		
Peak July conditions (at Facility elevation)				

Average Monthly Conditions				
Month	Dry Bulb Temperature (deg. F)	Wet Bulb Temperature (deg. F)	Relative Humidity (%)	Monthly Contract Capacity (MW)
January				
February				
March				
April				
May				
June				
July				
August				
September				

Average Monthly Conditions				
Month	Dry Bulb Temperature (deg. F)	Wet Bulb Temperature (deg. F)	Relative Humidity (%)	Monthly Contract Capacity (MW)
October				
November				
December				

Guaranteed Heat Rate				
ISO Conditions				
	All Units Operating		Single Unit Operating	
	Guaranteed Heat Rate Points, HHV (btu/kWh)	Expected Output (MW)	Guaranteed Heat Rate Points, HHV (btu/kWh)	Expected Output (MW)
Minimum Load				
50% of Base Load				
75% of Base Load				
100% of Base Load				
<i>If Applicable, for Facilities with duct firing:</i>				
	IDFHR (incremental btu/kWh)	<u>Incremental Output (MW)</u>	<u>IDFHR (incremental btu/kWh)</u>	<u>Incremental Output (MW)</u>
Between 100% of Base Load and Peak Load				

*Note: all values in this table are at the Delivery Point.

Guaranteed Heat Rate Curve and Guaranteed Heat Rate Correction Curves

[To be inserted by Seller in accordance with Section 4.2(a) and 4.2(d). For a Facility with duct firing, there will be two separate curves: one that shows the Guaranteed Heat Rate up to one hundred percent (100%) of Base Load and another that shows the Guaranteed Heat Rate from one hundred percent (100%) of Base Load to Peak Load.]

[To be inserted by Seller in accordance with Section 4.2(a) and 4.2(d). Seller shall provide no later than one hundred and twenty (180) days prior to the Initial Delivery Date (i) the correction curves for power and Heat Rate to correct for changes in ambient dry bulb temperature from the ISO Conditions, (ii) the correction curves for power and Heat Rate to correct for changes in ambient relative humidity from the ISO Conditions, and (iii) the correction curves for power and Heat Rate to correct for changes in ambient barometric pressure from ISO Conditions (collectively with the Guaranteed Heat Rate Curve tables set forth in Appendix II, the “Guaranteed Heat Rate Correction Curves”), which will be deemed incorporated into Appendix II when provided.]

Heat Rate Degradation Factor

Heat Rate Degradation Factor (“HDF”) = *[To be inserted by Seller, and shall be expressed as a percentage (%).]*

REFERENCE EXAMPLE ONLY

APPENDIX III PG&E OUTAGE REPORTING PROTOCOLS

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify the applicable Participating Transmission Owner's (PTO) local switching center as follows:

- Call the applicable PTO local switching center to advise of the intent to parallel before any Start-Up.
- Call the applicable PTO local switching center after the unit has been paralleled and report the parallel time and intended unit output.
- Call the applicable PTO local switching center after any separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND SCHEDULED MAINTENANCE OUTAGES

1. Submit information by posting to PG&E's web-based system, which is located at www.pge.com under "Business to Business," or other PG&E-approved website. Once directed to the appropriate page, enter the username and password assigned by PG&E's bilateral settlements group.
2. If the website is unavailable, then implement the procedures set forth below:
 - a. For all email correspondence, enter the following in the email subject field: Delivery Date Range, Contract Name, Email Purpose (For example: "dd/mm/yyyy through dd/mm/yyyy XYZ Company Project #2 Daily Available Capacity").
 - b. For the Annual Forecasts of Available Capacity, email to DAenergy@pge.com and Bilat_Settlements@pge.com.
 - c. For Monthly and Daily Forecasts of Available Capacity s, email to DAenergy@pge.com.
 - d. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to DAenergy@pge.com.
 - e. For Hourly Forecasts of Available Capacity, call PG&E's Real-Time Desk at (415) 973-4500 and email to RealTime@pge.com.

- f. For Scheduled Maintenance Outages, complete the specifics below and submit by email to MerchantOutages@pge.com, DAenergy@pge.com and Bilat_Settlements@pge.com.
- i. Email subject Field: dd/mm/yyyy through dd/mm/yyyy XYZ Company Project #2 Outage Notification
- ii. Email body:
1. Type of Outage: Scheduled Maintenance Outage including whether Seller considers the Outage to be eligible as an Excused Scheduled Maintenance Outage. Confirmation of Excused Scheduled Maintenance Outages will be provided in writing by Buyer in accordance with Section 3.8(c).
 2. Outage start date and time
 3. Estimated or actual end date and time for Outage
 4. Primary and secondary causes of Outage
 5. Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System (GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available (e.g., West boiler feed pump versus East or Center boiler feed pump.)
 6. Contact name: first and last name of the individual at the Unit
 7. Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted
 8. Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.

C. FORCED OUTAGE REPORTING

1. Forced Outages – Seller shall notify PG&E Real-Time Desk orally at (415) 973-4500 within 10 minutes.
 - a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.

2. After orally notifying PG&E Real-Time Desk of the Forced Outage, Seller shall also put forth commercially reasonable efforts to notify PG&E settlements via PG&E's electronic website, which is located at www.pge.com under "Business to Business," or other PG&E approved website. Once directed to the appropriate page, Seller will be required to enter a username and password, which will be assigned by PG&E's bilateral settlements group.
3. If the website is unavailable, submit the following information via email to Bilat_Settlements@pge.com and MerchantOutages@pge.com.
 - a. Email subject Field: dd/mm/yyyy through dd/mm/yyyy XYZ Company Project #2 Outage Notification
 - b. Email body:
 1. Type of Outage: Forced Outage
 2. Outage start date and time
 3. Estimated or actual end date and time for Outage
 4. Primary and secondary causes of Forced Outage, including a detailed description of specific equipment involved and the nature of the problem or condition.
 5. Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System (GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available (e.g., West boiler feed pump versus East or Center boiler feed pump.)
 6. Contact name: first and last name of the individual at the Unit
 7. Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted
 8. Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.
 9. Associated events, e.g. operation of Special Protection Schemes
 10. Impact on CAISO-controlled Grid

D. APPROVAL OF EXCUSED SCHEDULED MAINTENANCE OUTAGES

For an Outage to be deemed an Excused Scheduled Maintenance Outage, Seller must have received a Notice from Buyer's Outage Coordinator indicating Buyer's approval. The approval Notice from Buyer to Seller will confirm:

1. The requested Outage meets all of the criteria for Excused Scheduled Maintenance Outages specified in Section 3.8; and
2. The Outage must take place within the approved window of time starting [] and ending []. Any hours or partial hours outside of the requested and approved Outage window will not be Excused Hours.
3. Any change made to the approved Excused Scheduled Maintenance Outage outside of the approved window of time listed above is deemed a new Outage request and is subject to re-approval from Buyer.

REFERENCE EXAMPLE ONLY

APPENDIX IV

INITIAL DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), and Section 2.1(c) of that Agreement, this letter (“Initial Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that the Conditions Precedent to the occurrence of the Initial Delivery Date have been satisfied or waived in writing by Buyer. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Additionally Seller provides the following FERC Tariff information for reference purposes only:

Tariff: _____ Dated: _____ Docket Number: _____

IN WITNESS WHEREOF, each Party has caused this Initial Delivery Date Confirmation Letter to be duly executed by its authorized representative as of the date of last signature provided below:

SELLER

PACIFIC GAS AND ELECTRIC COMPANY

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

REFERENCE EXAMPLE ONLY

**APPENDIX V
GAS TRANSPORTATION CONTRACTS**

[Seller to list any Gas transportation contracts, including:

title of contract

name of counterparty, and

execution, effective, and expiration dates of each contract]

REFERENCE EXAMPLE ONLY

10/9/2015 PG&E - Example form of Tolling Agreement for consideration under CAES Protocol
Subject to revision, change or adaptation for CAES

APPENDIX VI -- EXAMPLE OF SECTION 3.3(f) GAS TRUE-UP

Example 1: Unit A was scheduled to run from HE 7 through HE 10 for the day.
 In HE 7 (Interval 3-6), the unit had a positive uninstructed deviation of 1 MWh in each interval.
 In HE 9 (Interval 1-3), the unit had a negative uninstructed deviation of 5 MWh in each interval.
 Seller requested 500MMBtu of Additional Gas for Seller's testing purposes in HE 20 - 24 (not shown).

GHR *	
MW	btu/KWh
48	15,827
156	10,715
186	10,343
192	10,269

Gas Daily Index Price High = \$5.00 per MMBtu
 Gas Daily Index Price Low = \$4.50 per MMBtu
 Transportation Cost = \$0.50 per MMBtu

Hour Ending (HE)	Settlement Interval	Buyer's Schedule (MWh)	(Buyer's Schedule x 6) (MWh)	GHR at (Buyer's Schedule x 6) (MMBtu/MWh)	Delivered Energy (MWh)	(Delivered Energy x 6) (MWh)	GHR at (Delivered Energy x 6) (MMBtu/MWh)	Qualified Gas (Mmbtu)
7	1	31	186	10.343	31	186	10.343	320.63
7	2	31	186	10.343	31	186	10.343	320.63
7	3	31	186	10.343	32	192	10.269	320.63
7	4	31	186	10.343	32	192	10.269	320.63
7	5	31	186	10.343	32	192	10.269	320.63
7	6	31	186	10.343	32	192	10.269	320.63
8	1	31	186	10.343	31	186	10.343	320.63
8	2	31	186	10.343	31	186	10.343	320.63
8	3	31	186	10.343	31	186	10.343	320.63
8	4	31	186	10.343	31	186	10.343	320.63
8	5	31	186	10.343	31	186	10.343	320.63
8	6	31	186	10.343	31	186	10.343	320.63
9	1	31	186	10.343	26	156	10.715	278.59
9	2	31	186	10.343	26	156	10.715	278.59
9	3	31	186	10.343	26	156	10.715	278.59
9	4	31	186	10.343	31	186	10.343	320.63
9	5	31	186	10.343	31	186	10.343	320.63
9	6	31	186	10.343	31	186	10.343	320.63
10	1	31	186	10.343	31	186	10.343	320.63
10	2	31	186	10.343	31	186	10.343	320.63
10	3	31	186	10.343	31	186	10.343	320.63
10	4	31	186	10.343	31	186	10.343	320.63
10	5	31	186	10.343	31	186	10.343	320.63
10	6	31	186	10.343	31	186	10.343	320.63

* GHR (Guaranteed Heat Rate) table shown for illustrative purposes only. Determination of GHR for Gas True Up purposes should conform to requirements set forth in Section 3.3(f).

Sum of Qualified Gas for all Settlement Intervals (MMBtu):	7,569.06
Start Up Fuel (MMBtu) per Appendix II:	100
Shut Down Fuel (MMBtu) per Appendix II:	0
Daily Qualified Gas (MMBtu):	7,669.06
Additional Gas (MMBtu):	500

Sample Qualified Gas calculation for HE 7 (Interval 4):

(i) (Buyer's Schedule) x (GHR at Buyer's Schedule x 6) =	320.63	MMBtu
(ii) (Delivered Energy) x (GHR at Delivered Energy x 6) =	328.60	MMBtu
Qualified Gas HE 7, Interval 3 = MIN (320.63 ,328.6) = 320.63		

Scenario 1: Daily Actual Gas = 9,000 MMBtu

$$\text{Daily Imbalance Amount} = (9,000 \text{ MMBtu}) - (7,669.06 \text{ MMBtu}) - (500 \text{ MMBtu}) = 830.94 \text{ MMBtu}$$

Since Daily Imbalance Amount is positive, **Seller owes Buyer** the following for the day:

$$830.94 \text{ MMBtu} \times (\$5.00/\text{MMbtu} + \$0.50/\text{MMbtu}) = \quad \quad \quad \mathbf{\$4,570.15}$$

Scenario 2: Daily Actual Gas = 7,300 MMBtu

$$\text{Daily Imbalance Amount} = (7,300 \text{ MMBtu}) - (7,669.06 \text{ MMBtu}) - (500 \text{ MMBtu}) = -869.06 \text{ MMBtu}$$

Since Daily Imbalance Amount is negative **Buyer owes Seller** the following for the day:

$$869.06 \text{ MMBtu} \times (\$4.50/\text{Mmbtu}) \times 0.15 = \quad \quad \quad \mathbf{\$586.62}$$

REFERE

APPENDIX VII -- EXAMPLE OF SECTION 3.3(g) OFO CHARGES

Example 1: High Inventory OFO issued for the day

Scenario A:

Daily Actual Gas	9,200 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
High Inventory OFO Tolerance Band	10%
Non-compliance Rate	\$ 0.25 per MMBtu

$$\text{OFO Charge} = \text{Max} [(((1 - 0.10) \times 10,000 \text{ MMBtu}) - 9,200 \text{ MMBtu}), 0] \times (\$0.25 / \text{MMBtu})$$

$$= \$ - \text{ No Payment}$$

Scenario B:

Daily Actual Gas	11,100 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
High Inventory OFO Tolerance Band	10%
Non-compliance Rate	\$ 0.25 per MMBtu

$$\text{OFO Charge} = \text{Max} [(((1 - 0.10) \times 10,000 \text{ MMBtu}) - 11,100 \text{ MMBtu}), 0] \times (\$0.25 / \text{MMBtu})$$

$$= \$ - \text{ No Payment}$$

Scenario C:

Daily Actual Gas	8,900 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
High Inventory OFO Tolerance Band	10%
Non-compliance Rate	\$ 0.25 per MMBtu

$$\text{OFO Charge} = \text{Max} [(((1 - 0.10) \times 10,000 \text{ MMBtu}) - 8,900 \text{ MMBtu}), 0] \times (\$0.25 / \text{MMBtu})$$

$$= \$ 25.00 \text{ Payment from Seller to Buyer}$$

Example 2: Low Inventory OFO issued for the day

Scenario A:

Daily Actual Gas	9,100 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
Low Inventory OFO Tolerance Band	8%
Non-compliance Rate	\$ 0.20 per MMBtu

$$\text{OFO Charge} = \text{Max} [(9,100 \text{ MMBtu} - ((1 + 0.08) \times 10,000 \text{ MMBtu})), 0] \times (\$0.20 / \text{MMBtu})$$

$$= \$ - \text{ No Payment}$$

Scenario B:

Daily Actual Gas	10,700 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
Low Inventory OFO Tolerance Band	8%
Non-compliance Rate	\$ 0.20 per MMBtu

$$\text{OFO Charge} = \text{Max} [(10,700 \text{ MMBtu} - ((1 + 0.08) \times 10,000 \text{ MMBtu})), 0] \times (\$0.20 / \text{MMBtu})$$

$$= \$ - \text{ No Payment}$$

Scenario C:

Daily Actual Gas	11,100 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
Low Inventory OFO Tolerance Band	8%
Non-compliance Rate	\$ 0.20 per MMBtu

$$\text{OFO Charge} = \text{Max} [(11,100 \text{ MMBtu} - ((1 + 0.08) \times 10,000 \text{ MMBtu})), 0] \times (\$0.20 / \text{MMBtu})$$

$$= \$ 60.00 \text{ Payment from Seller to Buyer}$$

10/9/2015 PG&E - Example form of Tolling Agreement for consideration under CAES Protocol
Subject to revision, change or adaptation for CAES

Example 3: Both High and Low Inventory OFO issued for the day

Scenario A:

Daily Actual Gas	9,400 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
High Inventory OFO Tolerance Band	7%
Low Inventory OFO Tolerance Band	7%
Non-compliance Rate	\$ 0.30 per MMBtu

$$\begin{aligned} \text{OFO Charge (High)} &= \text{Max } [(((1 - 0.07) \times 10,000 \text{ MMBtu}) - 9,400 \text{ MMBtu}), 0] \times (\$0.30 / \text{MMBtu}) \\ &= \$ \quad - \quad \text{No Payment} \\ \text{OFO Charge (Low)} &= \text{Max } [(9,400 \text{ MMBtu} - ((1 + 0.07) \times 10,000 \text{ MMBtu})), 0] \times (\$0.30 / \text{MMBtu}) \\ &= \$ \quad - \quad \text{No Payment} \end{aligned}$$

Scenario B:

Daily Actual Gas	9,200 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
High Inventory OFO Tolerance Band	7%
Low Inventory OFO Tolerance Band	7%
Non-compliance Rate	\$ 0.30 per MMBtu

$$\begin{aligned} \text{OFO Charge (High)} &= \text{Max } [(((1 - 0.07) \times 10,000 \text{ MMBtu}) - 9,200 \text{ MMBtu}), 0] \times (\$0.30 / \text{MMBtu}) \\ &= \$ \quad 30.00 \quad \text{Payment from Seller to Buyer} \\ \text{OFO Charge (Low)} &= \text{Max } [(9,200 \text{ MMBtu} - ((1 + 0.07) \times 10,000 \text{ MMBtu})), 0] \times (\$0.30 / \text{MMBtu}) \\ &= \$ \quad - \quad \text{No Payment} \end{aligned}$$

Scenario C:

Daily Actual Gas	10,100 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
High Inventory OFO Tolerance Band	7%
Low Inventory OFO Tolerance Band	7%
Non-compliance Rate	\$ 0.30 per MMBtu

$$\begin{aligned} \text{OFO Charge (High)} &= \text{Max } [(((1 - 0.07) \times 10,000 \text{ MMBtu}) - 10,100 \text{ MMBtu}), 0] \times (\$0.30 / \text{MMBtu}) \\ &= \$ \quad - \quad \text{No Payment} \\ \text{OFO Charge (Low)} &= \text{Max } [(10,100 \text{ MMBtu} - ((1 + 0.07) \times 10,000 \text{ MMBtu})), 0] \times (\$0.30 / \text{MMBtu}) \\ &= \$ \quad - \quad \text{No Payment} \end{aligned}$$

Scenario D:

Daily Actual Gas	11,000 MMBtu
Daily Qualified Gas + Additional Gas	10,000 MMBtu
High Inventory OFO Tolerance Band	7%
Low Inventory OFO Tolerance Band	7%
Non-compliance Rate	\$ 0.30 per MMBtu

$$\begin{aligned} \text{OFO Charge (High)} &= \text{Max } [(((1 - 0.07) \times 10,000 \text{ MMBtu}) - 11,000 \text{ MMBtu}), 0] \times (\$0.30 / \text{MMBtu}) \\ &= \$ \quad - \quad \text{No Payment} \\ \text{OFO Charge (Low)} &= \text{Max } [(11,000 \text{ MMBtu} - ((1 + 0.07) \times 10,000 \text{ MMBtu})), 0] \times (\$0.30 / \text{MMBtu}) \\ &= \$ \quad 90.00 \quad \text{Payment from Seller to Buyer} \end{aligned}$$

Note:

If the LDC or Gas pipeline operator for the Facility is PG&E, the internet publication to get access to OFO announcements is at:
<http://www.pge.com/pipeline/operations/ofo/ofoarch.shtml>
(or successor website)

If the LDC or Gas pipeline operator for the Facility is not PG&E, please refer to the applicable internet publication or pipeline operator contacts for information on daily OFO announcements.

APPENDIX VIII -- EXAMPLE OF SECTION 3.5(d) DEVIATION CHARGES

	Case 1	Case 2	Unit of Measure
Scheduled Operations	500	500	MWh
Delivered Energy	499	501	MWh
Real Time Price	\$ 50.00	\$ 50.00	\$/MWh
Amount of Uninstructed Deviation	-1	1	MWh
CAISO payment(charge) to Buyer for Uninstructed Deviation	\$ (50.00)	\$ 50.00	\$
Seller payment to Buyer (Buyer payment to Seller) of Deviation Charges under Section 3.5(d)	\$ 50.00	\$ (50.00)	\$
Net Impact to Buyer	\$ -	\$ -	\$

- Deviation Charges shall be determined on a Settlement Interval basis and based upon the CAISO Tariff.

- Above example is for illustrative purposes only and does not include all costs, charges, and penalties that fall under the Deviation Charges calculation.

REFEREN

10/9/2015 PG&E - Example form of Tolling Agreement for consideration under CAES Protocol
 Subject to revision, change or adaptation for CAES

APPENDIX IX
EXAMPLE OF SECTION 3.5(e) FORCED OUTAGE COMPENSATION

- Unit had a partial Forced Outage starting in Hour 3 (Settlement Interval 4) through Hour 4 (Settlement Interval 3) for 50% of its MCC.
- Unit had a full plant Forced Outage starting in Hour 4 (Settlement Interval 4) through Hour 7 (Settlement Interval 6).
- Forced Outage Evaluation Period is from (Hour 3 Settlement Interval 4) through Hour 8 (Settlement Interval 6).
- Seller only incurs Forced Outage compensation if RT Price > DA Price for a particular Settlement Interval.
- Unit had no other Forced Outages in the month.

Hour	Settlement Interval	Day Ahead Price (\$/MWh)	Day Ahead Schedule (MWh)	Real Time Price (\$/MWh)	Real-time Dispatch Instruction (MWh)	Instructed Imbalance Energy (MWh)	Real Time Price minus Day Ahead Price (\$/MWh)	Forced Outage Compensation (\$)
1	1	\$50	0	\$69	0	0	\$19	--
1	2	\$50	0	\$84	0	0	\$34	--
1	3	\$50	0	\$84	0	0	\$34	--
1	4	\$50	0	\$46	0	0	(\$4)	--
1	5	\$50	0	\$80	0	0	\$30	--
1	6	\$50	0	\$62	0	0	\$12	--
2	1	\$51	20	\$46	20	0	(\$5)	--
2	2	\$51	20	\$91	20	0	\$40	--
2	3	\$51	20	\$47	20	0	(\$4)	--
2	4	\$51	20	\$73	20	0	\$22	--
2	5	\$51	20	\$60	20	0	\$9	--
2	6	\$51	20	\$93	20	0	\$42	--
3	1	\$55	20	\$51	20	0	(\$4)	--
3	2	\$55	20	\$83	20	0	\$28	--
3	3	\$55	20	\$100	20	0	\$45	--
3	4	\$55	20	\$89	10	-10	\$34	\$340
3	5	\$55	20	\$93	10	-10	\$38	\$380
3	6	\$55	20	\$20	10	-10	(\$35)	\$0
4	1	\$54	20	\$60	10	-10	\$6	\$60
4	2	\$54	20	\$35	10	-10	(\$19)	\$0
4	3	\$54	20	\$82	10	-10	\$28	\$280
4	4	\$54	20	\$73	0	-20	\$19	\$380
4	5	\$54	20	\$45	0	-20	(\$9)	\$0
4	6	\$54	0	\$49	0	0	(\$5)	\$0
5	1	\$53	0	\$75	0	0	\$22	\$0
5	2	\$53	0	\$22	0	0	(\$31)	\$0
5	3	\$53	0	\$13	0	0	(\$40)	\$0
5	4	\$53	0	\$81	0	0	\$28	\$0
5	5	\$53	0	\$92	0	0	\$39	\$0
5	6	\$53	0	\$92	0	0	\$39	\$0
6	1	\$49	20	\$94	0	-20	\$45	\$900
6	2	\$49	20	\$61	0	-20	\$12	\$240
6	3	\$49	20	\$60	0	-20	\$11	\$220
6	4	\$49	20	\$18	0	-20	(\$31)	\$0
6	5	\$49	20	\$85	0	-20	\$36	\$720
6	6	\$49	20	\$24	0	-20	(\$25)	\$0
7	1	\$48	20	\$95	0	-20	\$47	\$940
7	2	\$48	20	\$26	0	-20	(\$22)	\$0
7	3	\$48	20	\$60	0	-20	\$12	\$240
7	4	\$48	0	\$90	0	0	\$42	\$0
7	5	\$48	0	\$96	0	0	\$48	\$0
7	6	\$48	0	\$79	0	0	\$31	\$0

Total Forced Outage Compensation: \$4,700

* Settlement Data, as defined in Appendix I, shall be used to calculate Instructed Imbalance Energy.

APPENDIX X -- EXAMPLE OF AMBIENT DATA FORMAT

As noted in Sections 3.3(f), 3.7(g), 6.1 and 6.4, Seller must provide ambient data in a format acceptable to Buyer for purposes of the Gas True-up calculation. An example format acceptable to Buyer is below, provided that the ambient data format specific to the Unit is subject to change. As noted in Section 3.7(g), Seller should begin coordination with Buyer for the ambient data systems and format at least ninety (90) days prior to the Initial Delivery Date.

Example of ambient data file format for a simple cycle facility:

Tolling Agreement Settlements (Ambient Performance) Data for Units with Combustion Turbine (CT) Engines
 Version: CT-2010/07/07

Interface example with all generator units shown on the same rows.

AMBIENT PERFORMANCE	FILE SERIAL NUMBER:	90206006	CONTACT NAME:	John Smith	CONTACT EMAIL:	jsmith@aol.com	NUMBER OF GENERATING UNITS:	1 to m	NUMBER OF AUX METERS:	1 to n										
Facility Name	Resource ID	End Date/Time (PST)	Net Plant Output (CAISO Meter)	Facility Gas Consumption	Additional Gas	MSG Configuration ID	Barometric Pressure	Ambient Temperature	Relative Humidity	Unit1 Output	Unit1 Engine Startups	Unit1 Contract Operations	Unit1 Number of Engines	Unit (2-m) Output	Unit (2-m) Startups	Unit (2-m) Contract Operations	Unit (2-m) Number of Engines	Aux Load1 MWh	Aux Load (2-n) MWh	
		MM/DD/YYYY HH-MM	MWh	MMBTU	MMBTU		Specify Units Psa or in/Hg	degrees F	%	MWh		flag (Y/N)		MWh		flag (Y/N)	one digit, or k-n string	MWh	MWh	
Facility 1	Resource_PL1X1	06/11/2009 01:00		0.000000		Resource_PL1X1_01	30.08614	62.088387	65.242973	-0.018271	0		1-0	-0.018271			0	15.793692	15.793692	
Facility 1	Resource_PL1X1	06/11/2009 01:10		0.123400		Resource_PL1X1_01	30.08614	62.088387	65.242973	-0.017005	0		1-0	-0.017005			1-1	15.519026	15.519026	
Facility 1	Resource_PL1X1	06/12/2009 00:00		0.000000		Resource_PL1X1_02	30.08614	62.088387	65.242973	-0.017005	6-1		1-1	-0.017005			1-1	15.519026	15.519026	

Latest changes:

- Added **Additional Gas** column: the gas (in MMBtu) consumed by facility for testing purposes
- Added **MSG Configuration ID**: Multi-Stage Generation Configuration used by the Facility during the time interval; must be entered by MSG Facilities
- Modified **Facility Gas Flow** column: replaced "Flow" by "Consumption"; instead of MCF or lbm per time unit, will use MMBtu.
- Modified **Unit Startups** column:
 - changed the name to **Unit Engine Startups** - the info provided is for each engine rather than the whole unit
 - in case of a single-engine unit, the data is either 1 (started in this time interval) or zero;
 - in case of a multi-engine unit, it's a string of engine1-engine2... where engine1, engine2, etc. is either 0 or 1 (in the sample, engine 2 is started)
 - the engine order in a multi-engine unit is predefined as part of Contract info.
- Modified **Unit Number of Engines**:
 - in case of a single-engine unit, the data is either 1 (operating in this time interval) or zero (the unit is down)
 - in case of a multi-engine unit, it's a string of engine1-engine2... where engine1, engine2, etc. is either 0 (engine is down) or 1 (operating)
 - the engine order in a multi-engine unit is predefined as part of Contract info - it's the same as for Unit Engine Startups column.

NOTE: Therm Factor will be retrieved from ABS or GTS systems for a specific month, and inserted into AUDI database manually (in Phase II).
 Facility Gas Flow (now in MMBtu) provided by counterparty will be used for Accrual processing only;
 the ABS/GTS systems data will be manually inserted into AUDI in daily intervals for each counterparty.

10/9/2015 PG&E - Example form of Tolling Agreement for consideration under CAES Protocol
 Subject to revision, change or adaptation for CAES

Example of ambient data file format for a combined cycle facility:

Tolling Agreement Settlements (Ambient Performance) Data for Combined Cycle plant.
 Version: CB-2012/02/21

Interface example with all generator units shown on the same rows.

AMBIENT PERFORMANCE	FILE SERIAL NUMBER:	CONTACT NAME:	CONTACT EMAIL:	NUMBER OF GENERATING UNITS:	NUMBER OF AUX METERS:														
	90206006	John Smith	jsmith@aol.com	1 to m	1 to n														
Facility Name	Resource ID	End Date/Time (PST)	Scheduled Operations (MWh)	Facility Gas Consumption	Additional Gas	MSG Configuration ID	Barometric Pressure	Ambient Temperature	Relative Humidity	Unit1 Output	Unit1 Engine Startups	Unit1 Contract Operations	Unit1 Number of Engines	Unit (2-m) Output	Unit (2-m) Startups	Unit (2-m) Contract Operations	Unit(2-m) Number of Engines	Aux Load1 MWh	Aux Load (2-n) MWh
		MM/DD/YYYY HH:MM	MWh	MMBTU	MMBtu		Specify Units Psia or in/Hg	degrees F	%	MWh		flag (Y/N)		MWh		flag (Y/N)	one digit, or k-n string	MWh	MWh
Facility 1	Resource Unit 1	06/11/2009 01:00	0.000000	0.000000	0.000000		30.08614	62.088387	65.242973	0.000000	H	Y	D	0.000000	H	Y	D	0.000000	0.000000
Facility 1	Resource Unit 1	06/11/2009 01:10	0.000000	0.123400	0.123400		30.08614	62.088387	65.242973	0.000000	W	Y	B	0.000000	W	Y	B	0.003000	0.000000
Facility 1	Resource Unit 1	06/11/2009 01:20	1.000000	0.000000	0.000000		30.08614	62.088387	65.242973	1.000000	C	Y	0	0.000000	C	Y	0	0.000000	0.000000
Facility 1	Resource Unit 1	06/11/2009 01:30	2.000000	0.000000	0.000000		30.08614	62.088387	65.242973	2.000000	0	Y	0	0.000000	0	Y	0	0.000000	0.000000
Facility 1	Resource Unit 1	06/11/2009 01:40	3.000000	0.000000	0.000000		30.08614	62.088387	65.242973	3.000000	0	Y	0	0.000000	0	Y	0	0.000000	0.000000
Facility 1	Resource Unit 1	06/11/2009 01:50	0.000000	0.000000	0.000000		30.08614	62.088387	65.242973	0.000000	0	Y	0	0.000000	0	Y	0	0.000000	0.000000
Facility 1	Resource Unit 1	06/11/2009 02:00	0.000000	0.000000	0.000000		30.08614	62.088387	65.242973	0.000000	0	Y	0	0.000000	0	Y	0	0.000000	0.000000
Facility 1	Resource Unit 1	06/11/2009 02:10	0.000000	0.000000	0.000000		30.08614	62.088387	65.242973	0.000000	0	Y	0	0.000000	0	Y	0	0.000000	0.000000
Facility 1	Resource Unit 1	06/12/2009 00:00	0	0.000000	0.000000		30.08614	62.088387	65.242973	0.000000	0	Y	0	0.000000	0	Y	0	0.000000	0.000000

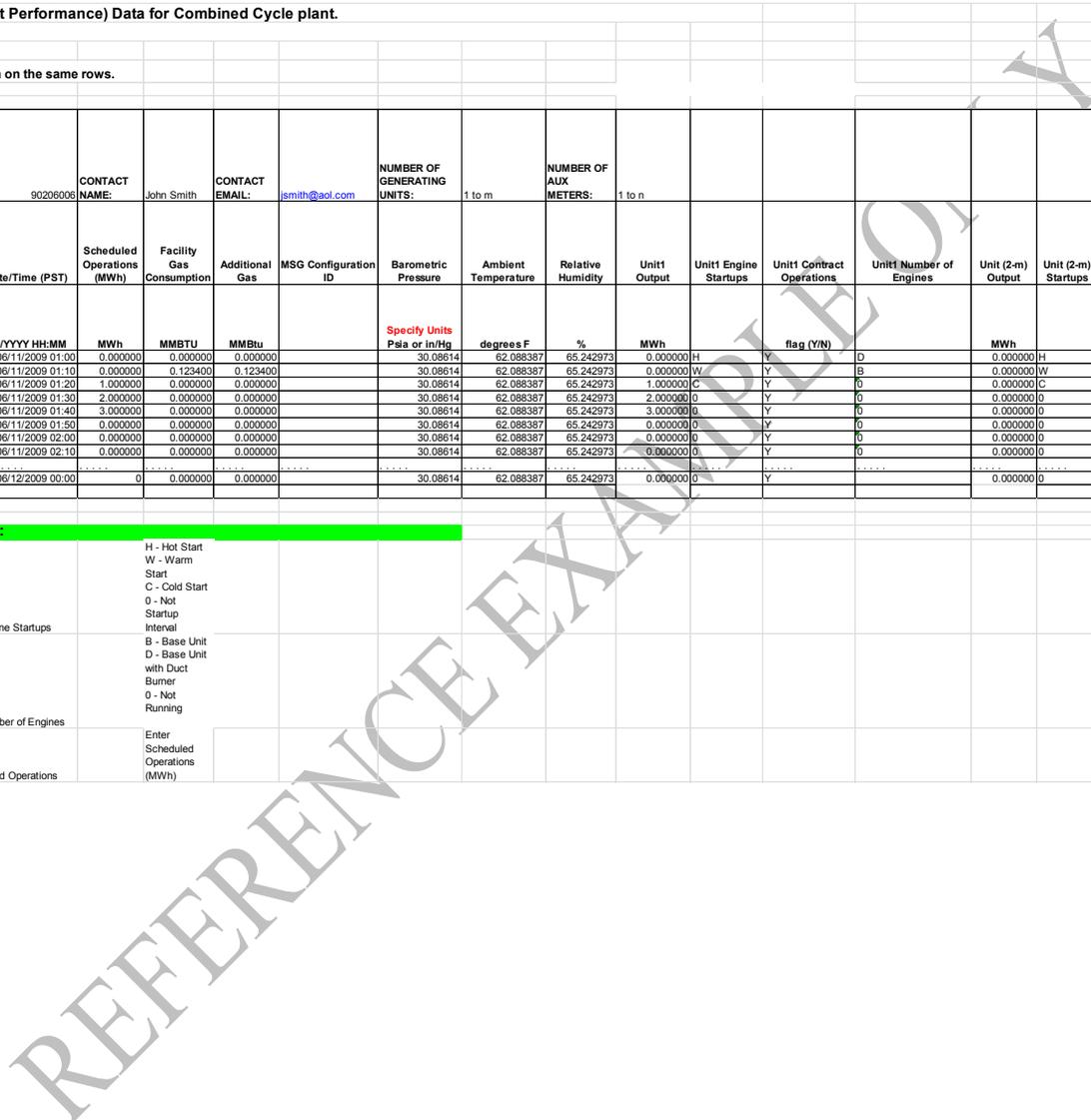
Notes:

H - Hot Start
 W - Warm Start
 C - Cold Start
 0 - Not Startup
 Internal
 B - Base Unit
 D - Base Unit with Duct Burner
 0 - Not Running

Unit Engine Startups

Unit Number of Engines

Scheduled Operations (MWh)



APPENDIX XI – PERFORMANCE TEST PROCEDURES OUTLINE

Additional Test Procedures

This document outlines items to be included in the additional Test Procedures related to Performance Testing pursuant to the Power Purchase Agreement between _____ and Pacific Gas and Electric Company for the _____ Facility with an Execution Date of _____ (“the Agreement”). The additional Test Procedures describe test related activities in sufficient detail for the Seller and Buyer to agree that a test conducted in strict adherence to the Test Procedures will deliver accurate and acceptable results.

Capitalized terms not otherwise defined herein retain the meaning in the Agreement. In the event of a conflict between the Agreement and any additional Test Procedures, the Agreement shall prevail.

Instructions for populating this document are shown italicized.

Test Procedure Development and Maintenance

The Test Procedures shall be developed and maintained by the Seller and approved by the Buyer. All revisions to the Test Procedures shall be documented in the table below:

Revision Number	Revision Date	Item(s) Revised
1		
2		
3		

Applicable Codes and Standards

The test and results correction process shall be conducted in accordance with *[Select applicable codes for the technology at the Facility]*:

- ASME PTC 46 – 1996, Performance Test Code on Overall Plant Performance
- ASME PTC 22 – 2005, Gas Turbines
- ASME PTC 17 – Reaffirmed 1985, Reciprocating Internal – Combustion Engines]

Performance Test Measurements

For the purposes of this Test Procedure, the Performance Test results will be measured using the engineering, performance testing, plant operations, and/or equipment and instrument labeling terminology as used at the Facility. *(Insert other terms as applicable)*

Delivery Point

Test Objective

[Specify the overall test objective(s), including as applicable, that the performance will be determined at maximum and/or part-load output capacity, full and/or part-load heat rate, at the

Unit and/or Facility level, unadjusted measurement and/or ambient adjusted, net and/or gross output, or as described by any other parameter necessary to accurately reflect the test objective (e.g. - Unit-adjusted net power output, Unit-adjusted net heat rate, etc.)]

Test Roles & Responsibilities

The Seller or its designated representative shall be responsible for the preparation, set-up, and conduct of the Performance Test, the reduction of test data, and the reporting of Performance Test results.

The Buyer has the right but not the obligation, to have its own representative and/or a third party testing specialist witness any or all activities related to the Performance Test.

Notifications and Communications

Specify roles & responsibilities regarding notifications between Seller and Buyer.

Establish the list of notifications required and any notification deadlines as appropriate.

Describe activities necessary to efficiently coordinate Performance Test planning, scheduling and other test related activities.

Unit/Facility Technical Description

Describe the Facility and/or Unit(s) and all major equipment (e.g., manufacturer and model of turbine, inlet air cooling, power augmentation, emission control equipment, fuel gas compression, etc.) in sufficient detail to provide background for the test.

General Test Requirements

Equipment Configuration: The Facility equipment will be configured as follows; *(Describe how the equipment will be configured for testing).*

Isolation: The Facility, Unit or Units shall be properly isolated in order to achieve the test objectives. *(Describe how the tested Unit will be checked for proper unit isolation; electrically, fuel, auxiliary loads, etc).*

Normal Operations: The tested Facility, Unit or Units shall be operated under normal operating conditions and in compliance with all emissions requirements. *(Describe the normal operating status of major equipment and the conditions under which that status is expected to change (e.g., the ambient temperature at which inlet air cooling is started)).*

Duration: The Performance Test shall be four (4) continuous hours in duration, including a one (1) hour stability run and six (6) thirty (30) minute data collection runs (Test Periods), unless otherwise approved by Buyer. Measurement data will be the averaged for the Test Period to calculate results. The overall test result will be the average of all Test Period results.

Primary Data Measurements

Primary Data Measurements include all instrumentation required to calculate corrected test results, and are listed in Table 1. *(Specify instrument ID, description (type, manufacturer and*

model number), measurement units, location (in terms of both process and physical location), data sampling interval and a statement of whether the instrument is a temporarily installed high accuracy test device or normal plant instrumentation.)

TABLE 1:

Primary Measurement	Instrument ID	Description (Type, Manufacturer, model)	Measurement Units	Location	Sampling Interval
Net Elec Output					
Ambient Dry Bulb					
Ambient Humidity					
Barometric Pressure					
Fuel Vol Flow					
Fuel Pressure					
Fuel Temp					
Other					

Secondary Data Measurements

Secondary Data Measurements include all instrumentation required to properly conduct the test, but not directly used to calculate corrected test results, and are listed in Table 2. Secondary Data Measurements are used to determine Unit stability, normal operation, and other test conditions. *(Specify instrument ID, description (type, manufacturer and model number), measurement units, location (in terms of both process and physical location), data sampling interval and a statement of whether the instrument is a temporarily installed high accuracy test device or normal plant instrumentation.)*

TABLE 2:

Secondary Measurement	Instrument ID	Description (Type, Manufacturer, model)	Measurement Units	Location	Sampling Interval
Compressor Inlet Temp					
Turbine Exhaust Temp					
CT Shaft Speed					
CEMS Data					
Wheel Space Temp					
Steam Flow					
Steam Pressure					
Other					

Instrument Calibration Requirement

All Primary Data Measurement instrumentation shall have been calibrated within the six (6) month period prior to the start of testing, unless otherwise specifically agreed to in writing by the Buyer.

All Secondary Data Measurement instrumentation shall have been calibrated within the twelve (12) month period prior to the start of testing, unless otherwise specifically agreed to in writing by the Buyer.

Seller shall provide to Buyer instrument calibration certification documentation at least two business days prior to the test day, unless otherwise specifically agreed to in writing by the Buyer.

Data Acquisition and Storage

Describe the process for data acquisition and storage, including device IDs, description (type, manufacturer and model number), performance parameters, location (in terms of both process and physical location), data sampling interval and a statement of whether the instrument is a temporarily installed or normal plant device.

Describe the source of weather data utilized for normal plant operations and the scheduling of generating output, and how that data will be reconciled with or used in the calculation of test results.

Fuel Gas Sampling

Describe the fuel gas sampling and analysis procedures, including the number of and timing of samples taken, location of sample tap, sampling procedure, sample labeling, and fuel gas analysis.

Uncertainty Analyses

A pre-test uncertainty analysis shall be initially conducted and included in the Test Procedures, and shall be updated for any subsequent changes to Primary Measurement Data devices or other elements of the Test Procedures. The analysis shall include the basis for all input data and assumptions (e.g., sensitivity, systematic uncertainty, spatial uncertainty, measurement standard deviation values, etc.) in sufficient detail for Buyer to verify the validity of the results.

For each Performance Test, Seller shall calculate both a pre-test and post-test uncertainty analysis in accordance with standards described in ASME PTC 19.1-2005, unless otherwise mutually agreed by both Parties. The results of the pre-test and post-test uncertainty analyses shall be included in the Test Report. All calculations and procedures to determine the value of the test uncertainties will be set forth in sufficient detail for Buyer to verify the validity of the results.

Uncertainty results shall be used only to confirm that the test is acceptable, not to adjust the test results.

Conduct of Test

Stability: For the one (1) hour prior to the start of and for the duration of the Performance Test, each Unit that is generating shall be operating in steady state mode with all Facility equipment in normal operating service. All non-generating units and plant equipment that affect auxiliary or station power usage shall be operating normally.

The Facility, Unit or Units shall meet the stability requirements and stability thresholds established by the applicable ASME Performance Test Code, for the duration of each Test Period.

If any stability measurement exceeds code requirements, then the Test Period will be deemed invalid unless otherwise agreed in writing by the parties.

Excursions: In the event of an un-anticipated operating excursion or other event that could potentially affect Unit operation, data collection, and/or test results, occurring during the conduct of the test, the Seller and Buyer shall confer and ascertain whether or not the test may continue with or without modification to the Test Procedures. The decision to continue or discontinue the test is at Buyers' sole discretion.

Data Reduction and Calculations

Specify all calculation procedures and equations, and include mathematical examples. Provide detailed calculations for adjusting the test results to ISO Design conditions using approved correction curve equations.

For multiple unit Facilities, describe methodology for the Unit allocation of net power output; e.g. - If all Units are tested concurrently, the net power output for each Unit shall be determined as an allocation of the Facility net power output based upon the gross electric output of each Unit measured at its generator terminals in accordance with the approved Test Procedures.

Describe the methodology for determination of HHV (e.g. - The fuel gas higher heating value (HHV) shall be calculated as the average of HHV from the fuel gas samples taken during the corresponding Performance Test).

For multiple unit Facilities, describe methodology for the Unit allocation of heat input (e.g. - If multiple Units are tested concurrently, the heat input for each Unit shall be determined by allocating the Facility heat input among the Units on the basis of the fuel gas volumetric flow to each Unit as measured at the applicable Unit(s) fuel gas flow sub-meters).

Provide equations for all approved correction curves used to adjust test results to the Design Capacity (which is adjusted to ISO Conditions).

Test Reporting

Immediately following completion of the Performance Test, Seller shall provide to Buyer all raw test data in electronic file format or copies of manual data sheets.

Following completion of the Performance Test, Seller shall prepare and deliver to Buyer a Test Report that includes the following contents;

- A list of personnel in attendance, including position titles and test roles,
- A narrative of activities associated with the test preparation, pre-test period, test period, and post-test period, including a description of all abnormal conditions, excursions, or significant events,
- A statement that the tested plant, unit or units, were operated normally for the duration of the test, with exceptions noted as appropriate,

- A statement that the test was conducted in compliance with all applicable ASME PTCs and the approved Test Procedures, with exceptions noted as appropriate,
- Final Performance Test results, as required by the Agreement, including capacity and heat rate values as appropriate,
- Instrument calibration logs, certificates and records,
- Test logs and records,
- Control operator's log,
- Pre- and post-test uncertainty analyses,
- All calculations from raw data to final results, including either detailed calculation sheets showing raw data and all calculated values (particularly intermediate calculated values) to six significant digits or electronic spreadsheets with active links between data and results.
- Gas sample constituent analysis documentation as applicable

Appendices

1. Correction curve graphs and equations

APPENDIX XII -- EXAMPLE OF SECTION 3.11(d)(ii) CAPACITY ADJUSTMENTS

Guarantee @ ISO	600.0	Test @ ISO	620.0	605.0	600.0	595.0	590.0	585.0
		Tested %	103.33%	100.83%	100.00%	99.17%	98.33%	97.50%
		Applied %	101.00%	100.83%	100.00%	100.00%	98.33%	97.50%
		Applied % = IF(Test%<0.99,Test%,IF(Test%<1,1,MIN(Test%,1.01)))						
	MCC	Adjusted MCC following Performance Test						
January	600.0	606.0	605.0	600.0	600.0	590.0	585.0	
February	594.0	599.9	599.0	594.0	594.0	584.1	579.2	
March	588.0	593.9	592.9	588.0	588.0	578.2	573.3	
April	588.0	593.9	592.9	588.0	588.0	578.2	573.3	
May	582.0	587.8	586.9	582.0	582.0	572.3	567.5	
June	576.0	581.8	580.8	576.0	576.0	566.4	561.6	
July	570.0	575.7	574.8	570.0	570.0	560.5	555.8	
August	570.0	575.7	574.8	570.0	570.0	560.5	555.8	
September	576.0	581.8	580.8	576.0	576.0	566.4	561.6	
October	582.0	587.8	586.9	582.0	582.0	572.3	567.5	
November	594.0	599.9	599.0	594.0	594.0	584.1	579.2	
December	600.0	606.0	605.0	600.0	600.0	590.0	585.0	
<p>If Test is less than 99% of Guarantee, then MCC is adjusted downward by the % decrease from Guarantee.</p> <p>If Test is between 99% and 100% of Guarantee, there is no adjustment to MCC.</p> <p>If Test is more than 100% of Guarantee, then MCC is adjusted upward by the % increase from Guarantee, but capped at 101%.</p> <p>Tested and Applied % will be calculated to two decimal place precision; resulting adjusted MCC values will be rounded to one decimal place (1/10th MW).</p>								

**APPENDIX XIII
OPERATING PROCEDURES**

[Pursuant to Section 3.12, the Operating Procedures shall be developed and added as Appendix XIII prior to the Initial Delivery Date.]

REFERENCE EXAMPLE ONLY

APPENDIX XIV - EXAMPLE OF SECTIONS 4.1(b), 4.1(c), AND 4.3(b) AVAILABILITY

Capacity Payment Rate (CPR)	\$	150.00	per KW-yr
Fixed O&M Rate (FOMR)	\$	50.00	per KW-yr
Monthly Allocation Factor (MAF) - Nov		9%	
Guaranteed Availability - Nov		96%	
Monthly Contract Capacity (MCC) - Nov	MCC=	600	MW
Num. Hours in Month	MNTHRS=	720	

$$\text{Availability} = \frac{\text{MCC} (\text{MNTHRS} - \text{MAINTHRS} - \text{UNAVAILHRS} - \text{UNAVAILPRODHRS})}{\text{MCC} (\text{MNTHRS} - \text{MAINTHRS})}$$

where TPE = $\text{MCC} (\text{MNTHRS} - \text{MAINTHRS} - \text{UNAVAILHRS} - \text{UNAVAILPRODHRS})$

Monthly Fixed Payment (MFP): $(\text{CPR} + \text{FOMR}) * \text{MAF} * \text{MCC} * \text{AA}$

The above data applies to Examples 1 through 3 below.

Example 1:

- | | | | |
|--|--------------|--------|----------------------|
| 1. Unit had a full plant Excused Scheduled Maintenance Outage from 11/01 0100 through 11/10 0130. | MAINTHRS = | 216.50 | (216.5 hours x 100%) |
| 2. Unit had a Force Majeure event where the Unit had a derate of 300MW (50%) from 11/12 0700 through 11/12 0830. | MAINTHRS = | 0.75 | (1.5 hours x 50%) |
| 3. Unit had a Forced Outage from 11/17 0245 through 11/30 0400 where the Unit had a derate of 60MW (10%). | UNAVAILHRS = | 31.32 | (313.25 hours x 10%) |

Seller has not exceeded the number of Excused Hours or the number of allowed Excused Scheduled Maintenance Hours for the year.

Monthly Totals

MAINTHRS =	217.25
UNAVAILHRS =	31.32
UNAVAILPRODHRS =	0.00

$$\text{Availability} = \frac{600 * (720 - 217.25 - 31.32 - .)}{600 * (720 - 217.25)}$$

$$\text{Availability} = 93.77\%$$

$$\text{Availability Adjustment (AA)} = 100\% - [(96\% - 93.77\%) * 2]$$

$$\text{AA} = 95.54\%$$

$$\text{MFP} = [(\$150,000/\text{MW-yr}) + (\$50,000/\text{MW-yr})] * 0.09 * 600 * 0.9554]$$

$$\text{MFP} = \$ 10,318,320.00$$

APPENDIX XIV Continued

Example 2:

- | | | | |
|--|--------------|-------|----------------------|
| 1. Unit had an extension of an Excused Scheduled Maintenance Outage from 11/20 0300 to 11/20 0345 where it was 100% out. | UNAVAILHRS = | 0.75 | (0.75 hours x 100%) |
| 2. Unit had a full plant Unexcused Scheduled Maintenance Outage from 11/02 0500 to 11/03 0745. | UNAVAILHRS = | 26.75 | (26.75 hours x 100%) |
| 3. Unit had a 150MW (25%) derate that was an Excused Scheduled Maintenance Outage from 11/25 1700 through 11/26 1815. | MAINTHRS = | 6.31 | (25.25 hours x 25%) |

Monthly Totals

MAINTHRS =	6.31
UNAVAILHRS =	27.50
UNAVAILPRODHRS =	0.00

$$\text{Availability} = \frac{600 * (720 - 6.31 - 27.5 - .)}{600 * (720 - 6.31)}$$

$$\text{Availability} = 96.15\%$$

Since an Availability of 96.15% is higher than the Guaranteed Availability of 96%, AA = 100%

$$\text{AA} = 100.00\%$$

$$\text{MFP} = [(\$150,000/\text{MW-yr}) + (\$50,000/\text{MW-yr})] * 0.09 * 600 * 1]$$

$$\text{MFP} = \$ 10,800,000.00$$

REFERENCE EX.

APPENDIX XIV Continued



Example 3:

- | | | | |
|--|------------------|-------|-------------------------|
| 1. Unit had a partial Forced Outage that derated the capacity 60MW (10% of MCC) which took place 11/15 0300 through 11/30 2200. | UNAVAILHRS = | 37.90 | (379 hours x 10%) |
| 2. During this same period of the Forced Outage, the Unit was also not able to provide 300MW of Reg Up service (50% of MCC). Since 10% of MCC will already be counted as unavailable for Energy, only 240MW (40%) will be counted as unavailable for Reg Up at only 20% penalty. | UNAVAILPRODHRS = | 30.32 | (379 hours x 40% x 20%) |
| 3. Unit had a Force Majeure event from 11/06 0700 through 11/07 1600 where 100% of unit was out. Seller has already surpassed it allowed Excused Hours for the Contract Year. | UNAVAILHRS = | 33.00 | (33 hours x 100%) |
| 4. Unit had lost its ability to provide Non-Spin (100% of MCC) due to issues with maintaining certification for the period of 11/1 0200 to 11/3 2200. | UNAVAILPRODHRS = | 13.60 | (140 hours x 20%) |

Monthly Totals

MAINTHRS =	0.00
UNAVAILHRS =	70.90
UNAVAILPRODHRS =	43.92

$$\text{Availability} = \frac{600 * (720 - 0 - 70.9 - 43.92)}{600 * (720 - 0)}$$

$$\text{Availability} = 84.05\%$$

$$\text{Availability Adjustment (AA)} = 100\% - [(96\% - 84.05\%) * 2]$$

$$\text{AA} = 76.10\%$$

$$\text{MFP} = [(\$150,000/\text{MW-yr}) + (\$50,000/\text{MW-yr})] * 0.09 * 600 * 0.761]$$

$$\text{MFP} = \$ 8,218,800.00$$

REFEREN

APPENDIX XV

EXAMPLES OF SECTION 4.2 GUARANTEED HEAT RATE CALCULATIONS

4.2 (a)(i) Guaranteed Heat Rate

Unit capacity = Design Capacity

Assume Design Capacity = 400 MW (Assumed)
 Assume Peak Capacity = 500 MW (Assumed)

Unit output (MW)*	% Base Load**	Guaranteed Heat Rate Points (btu/kWh)*	fuel (mmbtu/hr)
400.0	100%	7000	2800
300.0	75%	7200	2160
200.0	50%	7600	1520
175.0	44%	7731	1353

* Unit output and Guaranteed Heat Rate Point consistent with table provided in App. II

** % Load = Ratio of Unit output / Unit Capacity

4.2(a)(ii) Guaranteed Heat Rate Curve (equation) and IDFHR

$$HR_{Unit\ output} = 1600 \left(\frac{Unit\ output}{Design\ Capacity} \right)^2 - 3600 \left(\frac{Unit\ output}{Design\ Capacity} \right) + 9000$$

IDFHR = 12000 btu/kWh (the incremental heat rate associated with each kWh of duct firing; provided in App. II)

incremental output (MW) from 100% of Base Load to Peak Load	Unit output (MW) at Peak Load	incremental fuel between 100% of Base Load and Peak Load (mmbtu/hr)	fuel at 100% of Base Load + incremental fuel (mmbtu/hr)	Guaranteed Heat Rate Point at Peak Load (btu/kWh)
100.0	500.0	1200	4000	8000

4.2(b)(i) Initial Base Capacity (C_i)

C_i = 402.0 MW (Assumed)

4.2(b)(ii) Tested Base Capacity

C_b = 395.0 MW (Assumed)

4.2(b)(iii) Initial Base Load Guaranteed Heat Rates (HR_i), after a Performance Test

Unit capacity = Tested Base Capacity = C_b

Unit Output (MW)	% Base Load*	HR _i (btu/kWh)	Fuel (mmbtu/hr)
395.0	100%	7000	2765
296.3	75%	7200	2133
197.5	50%	7600	1501
172.8	44%	7731	1336

* Ratio of Unit output / Unit Capacity = % Load

4.2(b)(iv) Heat Rate Degradation Factor (HDF)

HDF = 58.0% (Assumed)

4.2(b)(v) Capacity Degradation Factor (CDF), Heat Rate Adjustment (HRA), and Adjusted Guaranteed Base Load Heat Rates (HR_c)

CDF = (1-C_b/C_i) 1.7%

HRA = CDF x HDF 0.01010

1 + HRA = 1.01010

HR_c = HR_i x (1 + HRA)

Unit Output (MW)	% Base Load*	HR _c (btu/kWh)	Fuel (mmbtu/hr)
395.0	100%	7071	2793
296.3	75%	7273	2155
197.5	50%	7677	1516
172.8	44%	7809	1350

4.2(c)(i) Initial Peak Capacity (PC_i)

PC_i = 505.0 MW (Assumed)

4.2(c)(ii) Tested Peak Capacity (PC_b)

PC_b = 495.0 MW (Assumed)

4.2(c)(iii) Adjusted Peak Load Guaranteed Heat Rate

Unit Output (MW)	Incremental Fuel between C _b and Unit Output (mmbtu/hr)	Fuel at C _b + Incremental Fuel (mmbtu/hr)	Adjusted Guaranteed Heat Rate Points (from 100% of Base Load to Peak Load), after a Performance Test (btu/kWh)
495.0	1200.0	3993	8067
470.0	900.0	3693	7857
445.0	600.0	3393	7625
420.0	300.0	3093	7364

APPENDIX XVI

MONTHLY ALLOCATION FACTORS

Month	Monthly Allocation Factor
January	8%
February	5%
March	4%
April	4%
May	4%
June	10%
July	15%
August	15%
September	12%
October	7%
November	7%
December	9%

REFERENCE EXAMPLE ONLY

**APPENDIX XVII -- EXAMPLE OF SECTION 4.3(b)(i) MONTHLY FIXED PAYMENT
 CALCULATION**

CPR = \$100.00 per KW-year
FOMR = \$50.00 per KW-year

Month	MCC (MW)	MAF	AA	MFP
January	612.8	8%	100.00%	\$7,353,600.00
February	607.9	5%	100.00%	\$4,559,250.00
March	607.9	4%	100.00%	\$3,647,400.00
April	600.7	4%	100.00%	\$3,604,200.00
May	595.8	4%	100.00%	\$3,574,800.00
June	589.2	10%	100.00%	\$8,838,000.00
July	585.7	15%	102.00%	\$13,441,815.00
August	585.7	15%	100.00%	\$13,178,250.00
September	589.1	12%	100.00%	\$10,603,800.00
October	594.1	7%	100.00%	\$6,238,050.00
November	605.1	7%	96.76%	\$6,147,694.98
December	612.8	9%	100.00%	\$8,272,800.00
Annual Total				\$89,459,659.98

The Monthly Fixed Payment (MFP) = [(CPR+FOMR) * MAF * MCC] * AA

REFERENCE EXAMPLE ONLY

APPENDIX XVIII

EXAMPLE OF SECTION 4.3(b)(ii)(A) VARIABLE O&M PAYMENT CALCULATION

For illustrative purposes, there are only five hours in the month.

Number of Settlement Interval in an hour = 6

Hour	Settlement Interval	Delivered Energy [MWh]	Buyer's Schedule [MWh]	Min (Delivered Energy, Buyer's Schedule) [MWh]	VOMR	VOM payment for each Settlement Interval
1	1	0	0	0	\$5.00	\$0
1	2	0	0	0	\$5.00	\$0
1	3	0	0	0	\$5.00	\$0
1	4	0	80	0	\$5.00	\$0
1	5	82	80	80	\$5.00	\$400
1	6	82	80	80	\$5.00	\$400
2	1	82	80	80	\$5.00	\$400
2	2	82	80	80	\$5.00	\$400
2	3	82	80	80	\$5.00	\$400
2	4	82	80	80	\$5.00	\$400
2	5	89	90	89	\$5.00	\$445
2	6	89	90	89	\$5.00	\$445
3	1	89	90	89	\$5.00	\$445
3	2	89	90	89	\$5.00	\$445
3	3	89	90	89	\$5.00	\$445
3	4	89	90	89	\$5.00	\$445
3	5	91	92	91	\$5.00	\$455
3	6	91	92	91	\$5.00	\$455
4	1	91	92	91	\$5.00	\$455
4	2	91	92	91	\$5.00	\$455
4	3	91	92	91	\$5.00	\$455
4	4	91	92	91	\$5.00	\$455
4	5	91	92	91	\$5.00	\$455
4	6	91	92	91	\$5.00	\$455
5	1	80	80	80	\$5.00	\$400
5	2	80	80	80	\$5.00	\$400
5	3	80	80	80	\$5.00	\$400
5	4	80	80	80	\$5.00	\$400
5	5	80	80	80	\$5.00	\$400
5	6	80	80	80	\$5.00	\$400

Total Monthly VOM Payment to Seller: \$11,110

REFERENCED

APPENDIX XIX

EXAMPLE OF SECTION 4.3(b)(ii)(B) FIRED HOURS PAYMENT CALCULATION

For illustrative purposes, the Unit(s) were only scheduled to be online for one day in the month.
 The Facility includes 3 units each with a minimum Load of 50MW and a maximum capacity of 100MW.

Based on Buyer' Schedule			Based on Delivered Energy				DFH: # of Fired Hours based on Delivered Energy	Min (SFH, DFH)
Hour	Schedule (MW)	Hours to meet Buyer's Schedule	Unit 1 (MW)	Unit 2 (MW)	Unit 3 (MW)			
1	0	0	0	0	0	0	0	
2	0	0	0	0	0	0	0	
3	0	0	0	0	0	0	0	
4	0	0	0	0	0	0	0	
5	100	1	0	0	0	0	0	
6	100	1	0	0	0	0	0	
7	150	2	100	50*	0	1.5	1.5	
8	150	2	100	50	0	2	2	
9	150	2	100	50	0	2	2	
10	300	3	100	100	100	3	3	
11	300	3	100	100	100	3	3	
12	300	3	100	100	100	3	3	
13	300	3	100	100	100	3	3	
14	300	3	100	100	100	3	3	
15	300	3	100	100	100	3	3	
16	300	3	100	100	100	3	3	
17	300	3	100	100	100	3	3	
18	300	3	100	100	100	3	3	
19	250	3	100	100	50	3	3	
20	250	3	100	100	50	3	3	
21	0	0	100	100	50	3	0	
22	0	0	0	0	0	0	0	
23	0	0	0	0	0	0	0	
24	0	0	0	0	0	0	0	
Total scheduled Fired Hours:		41	15	14.5	12	41.5	38.5	

Total metered Fired Hours: 41.5

Based on Min (Metered Fired Hours, Scheduled Fired Hours) on an hourly basis.

Payment Calculation:
Fired Hour Charge = \$100 / Fired Hour / unit (illustrative)
Total Fired Hours Payment = 38.5 Fired Hours x (\$100 / hour)
\$ 3,850.00 (Buyer to Seller)

* Unit 2 ran only half an hour in HE 7 at 50MW.

REFE

APPENDIX XX

EXAMPLE OF SECTION 4.4 START-UP PAYMENT CALCULATION

Start-Up data for January in the first Contract Year

Type of Start-Up	Start-Up Rate for Facility	# of Scheduled Start-Ups	# of Successful Scheduled Start-ups	Start-Up Payment
Hot Scheduled Start-Up	\$20,000	3	2	\$40,000
Warm Scheduled Start-Up	\$30,000	1	1	\$30,000
Cold Scheduled Start-Up	\$50,000	5	5	\$250,000

Total January Start-Up Payment to Seller:

Note: Although there were three Hot Scheduled Start-Ups in January, only two of the Scheduled Start-Ups met the qualifications of a Successful Scheduled Start-up. Hence, Buyer will only pay Seller the Start-Up rate for the two Successful Hot Scheduled Start-ups.

APPENDIX XXI -- EXAMPLE OF SECTION 4.5 FAILED START PENALTY CALCULATION

For this example, the number of Excused Failed Starts allowed is 2 for the first Contract Year.
 There is no Failed Start Penalty incurred until the month of April.

Table 1. Failed Start data for first Contract Year.

Month	MCC (MW)	# of Failed Starts	# of Failed Starts with subsequent Successful Scheduled Start-Ups*	Total # of Failed Starts	Failed Start Rate (\$/MW)	Failed Start Penalty
Jan	212	0	0	0	\$1,000	\$0
Feb	207	2	0	2	\$1,000	\$0
Mar	207	0	0	0	\$1,000	\$0
Apr	200	2	1	3	\$1,000	\$450,000
May	195	0	0	0	\$1,000	\$0
Jun	189	1	1	2	\$1,000	\$236,250
Jul	185	0	0	0	\$1,000	\$0
Aug	189	1	0	1	\$1,000	\$189,000
Sept	194	0	0	0	\$1,000	\$0
Oct	205	0	0	0	\$1,000	\$0
Nov	212	0	2	2	\$1,000	\$106,000
Dec	212	0	0	0	\$1,000	\$0
Total		6	4	10	Annual Failed Start Penalty	\$981,250
					(per month payment over 12 months)	\$81,770.83

*This column refers to only Successful Scheduled Start-ups that meet the requirements pursuant to Section 4.5 for a discount (ie. a Successful Scheduled Start-Up for the same Unit needs to occur no later than the second hour following the hour in which the Failed Start of a given Unit)

April:	(2 Failed Starts x 200 MW x \$1000/MW) + (1 Failed Start x 200 MW x \$1000/MW) x 0.25 =	\$	450,000
June:	(1 Failed Starts x 200 MW x \$1000/MW) + (1 Failed Start x 200 MW x \$1000/MW) x 0.25 =	\$	236,250
August:	1 Failed Starts x 189 MW x \$1000/MW =	\$	189,000
November:	(2 Failed Start x 212 MW x \$1000/MW) x 0.25 =	\$	106,000

Total Failed Start Penalty is \$981,250 for the first Contract Year, payable in 12 month increments of \$81,770.83 per month in the following year.
 If there remains less than 12 months in the Contract Term, then Failed Start Penalty shall be payable over the number of months remaining in Contract Term.

APPENDIX XXII

Determination of Mark To Market Value

Formula Definitions:

t_0 – Effective Date

t - ongoing Transaction date after Initial Delivery Date

$P_{peak}(i, t)$ - price of monthly forward NP-15 defined peak power, for month i as observed at the moment of time t measured in \$/MWh

$P_{off-peak}(i, t)$ - price of monthly forward NP-15 defined off-peak power, for month i as observed at the moment of time t measured in \$/MWh

$P_{gas}(i, t)$ - price of monthly forward Gas, for month i as observed at the moment of time t measured in \$/MMBtu at the appropriate Gas trading hub.

$GHG(i, t)$ – GHG Price, in \$/metric ton for year of current month i as observed at the moment of time t .

$VOMR(i)$, - Variable O&M Rate (measured in \$/MWh) for year of current month set forth in the Agreement for month i and shall include, if applicable, the Fired Hour Charge (FHC) adjusted to a \$/MWh basis.

HR – the Guaranteed Heat Rate Point at 100% of Base Load at ISO Conditions.

$HourlyVolume$ – Monthly Contract Capacity for the specific month

$NumberOfPeakHours(i)$ - number of WECC defined peak hours in month i

$NumberOfOff-PeakHours(i)$ - number of WECC defined off-peak hours in month i

Calculation of “Mark-to-Market Value”:

Mark-to-Market Value = max[0, Sum of each month (Change in Value(i))] individually over [insert lesser of number of remaining months of Delivery Term or thirty-six (36) months]

Change in Value(i) = $MIV(i, t) - MIV(i, t_0)$

Initial MIV calculation formula:

$MIV(i, t_0) = [NumberOfPeakHours(i) * \max[(P_{peak}(i, t_0) - HR * (P_{gas}(i, t_0) + GHG(i, t) * 0.05302 \text{ metric tons per MMBtu}) - VOMR(i)), 0] * HourlyVolume] + [NumberOfOff-PeakHours(i) * \max[(P_{off-peak}(i, t_0) - HR * (P_{gas}(i, t_0) + GHG(i, t) * 0.05302 \text{ metric tons per MMBtu}) - VOMR(i)), 0] * HourlyVolume]$

Initial MIV will be calculated once at t_0 for the expected delivery life of the Agreement.

Current MIV calculation formula:

$$\text{MIV}(i,t) = [\text{NumberOfPeakHours}(i) * \max[(\text{Ppeak}(i,t) - \text{HR} * (\text{Pgas}(i,t) + \text{GHG}(i,t) * 0.05302 \text{ metric tons per MMBtu}) - \text{VOMR}(i)), 0] * \text{HourlyVolume}] + [\text{NumberOfOff-PeakHours}(i) * \max[(\text{Poff-peak}(i,t) - \text{HR} * (\text{Pgas}(i,t) + \text{GHG}(i,t) * 0.05302 \text{ metric tons per MMBtu}) - \text{VOMR}(i)), 0] * \text{HourlyVolume}]$$

REFERENCE EXAMPLE ONLY

APPENDIX XXIII

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

Date: *[insert issue date]*

Beneficiary: Pacific Gas and Electric Company **Applicant:** [Insert name and address of Applicant]
77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Letter of Credit Amount: *[insert amount]*

Expiry Date: *[insert expiry date]*

Ladies and Gentlemen:

By order of *[insert name of Applicant]* ("Applicant"), we hereby issue in favor of Pacific Gas and Electric Company (the "Beneficiary") our irrevocable standby letter of credit No. *[insert number of letter of credit]* ("Letter of Credit"), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ *[insert amount in figures followed by (amount in words)]* ("Letter of Credit Amount"). This Letter of Credit is available with *[insert name of issuing bank, and the city and state in which it is located]* by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on *[insert expiry date]* (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary's signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. *[insert number]* and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. "Pursuant to the terms of that certain Power Purchase Agreement (the "Agreement"), dated *[insert date of the Agreement]*, between Beneficiary and *[insert name of Seller under the Agreement]*, Beneficiary is entitled to draw under Letter of Credit No. *[insert number]* amounts owed by *[insert name of Seller under the Agreement]* under the Agreement; or
 - B. "Letter of Credit No. *[insert number]* will expire in thirty (30) days or less and *[insert name of Seller under the Agreement]* has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment hereto for a period of one (1) year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at *[insert issuing bank's address for drawings]*.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to *[insert fax number]*, Attention: *[insert name of issuing bank's receiving department]*, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at *[insert phone number]* to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at *[insert number and any other necessary details]*.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ *[print or type name]*

Title: _____ *[print or type title]*

REFERENCE EXAMPLE ONLY

**Exhibit A to Appendix XXIII Form of Letter of Credit
SIGHT DRAFT**

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER *[INSERT NAME OF ISSUING BANK]* LETTER OF CREDIT NO.
XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY:

NAME AND TITLE

REFERENCE EXAMPLE ONLY

APPENDIX XXIV

EXAMPLE OF SECTION 9.3(a)(i)
 CARBON DIOXIDE EMISSIONS PAYMENT CALCULATION

Carbon Dioxide Emissions Factor (metric ton/MMBtu): 0.05302 (illustrative)

Date of Buyers Schedule	Allowance Trade Date	Allowance Trade Date Details	Daily GHG Gas (MMBtu)	Emissions Quantity (metric ton)	GHG Price (\$/metric ton)	CO2 Emissions Payment Calculation
Tue 01/01/2013	Tue 01/01/2013		27,404	1,453	\$17.25	\$25,064.25
Wed 01/02/2013	Wed 01/02/2013		40,646	2,155	\$17.00	\$36,635.00
Thu 01/03/2013	Thu 01/03/2013		41,442	2,197	\$16.75	\$36,799.75
Fri 01/04/2013	Fri 01/04/2013		41,797	2,216	\$16.00	\$35,456.00
Sat 01/05/2013	Mon 01/07/2013	<i>Sat 1/5/2013 and Sun 1/6/2013 are not Business Days. Next Business Day is Mon 1/7/2013.</i>	33,530	1,778	\$16.00	\$28,448.00
Sun 01/06/2013	Mon 01/07/2013		35,425	1,878	\$16.00	\$30,048.00
Mon 01/07/2013	Mon 01/07/2013		42,706	2,264	\$16.50	\$37,356.00
Tue 01/08/2013	Tue 01/08/2013		38,556	2,044	\$17.00	\$34,748.00
Wed 01/09/2013	Wed 01/09/2013		59,277	3,143	\$17.25	\$54,216.75
Thu 01/10/2013	Thu 01/10/2013		71,408	3,786	\$17.50	\$66,255.00
Fri 01/11/2013	Fri 01/11/2013		73,084	3,875	\$17.75	\$68,781.25
Sat 01/12/2013	Mon 01/14/2013	<i>Sat 1/12/2013 and Sun 1/13/2013 are not Business Days. Next Business Day is Mon 1/14/2013.</i>	68,723	3,644	\$17.75	\$64,681.00
Sun 01/13/2013	Mon 01/14/2013		45,876	2,432	\$17.75	\$43,168.00
Mon 01/14/2013	Mon 01/14/2013		47,273	2,506	\$17.50	\$43,855.00
Tue 01/15/2013	Tue 01/15/2013		38,049	2,017	\$17.25	\$34,793.25
Wed 01/16/2013	Wed 01/16/2013		33,898	1,797	\$17.00	\$30,549.00
Thu 01/17/2013	Thu 01/17/2013		58,362	3,094	\$16.75	\$51,824.50
Fri 01/18/2013	Fri 01/18/2013		53,278	2,825	\$17.00	\$48,025.00
Sat 01/19/2013	Tue 01/22/2013	<i>Sat 1/19/2013, Sun 1/20/2013, and Mon 1/21/2013 are not Business Days. Next Business Day is Tues 1/22/2013.</i>	61,737	3,273	\$17.00	\$55,641.00
Sun 01/20/2013	Tue 01/22/2013		53,356	2,829	\$17.00	\$48,093.00
Mon 01/21/2013	Tue 01/22/2013		46,478	2,464	\$17.00	\$41,888.00
Tue 01/22/2013	Tue 01/22/2013		44,223	2,345	\$17.00	\$39,865.00
Wed 01/23/2013	Wed 01/23/2013		46,963	2,490	\$17.25	\$42,952.50
Thu 01/24/2013	Thu 01/24/2013		52,020	2,758	\$17.50	\$48,265.00
Fri 01/25/2013	Fri 01/25/2013		47,147	2,500	\$18.00	\$45,000.00
Sat 01/26/2013	Mon 01/28/2013	<i>Sat 1/26/2013 and Sun 1/27/2013 are not Business Days. Next Business Day is Mon 1/28/2013.</i>	46,360	2,458	\$18.00	\$44,244.00
Sun 01/27/2013	Mon 01/28/2013		45,838	2,430	\$18.00	\$43,740.00
Mon 01/28/2013	Mon 01/28/2013		41,241	2,187	\$18.00	\$39,366.00
Tue 01/29/2013	Tue 01/29/2013		35,622	1,889	\$17.00	\$32,113.00
Wed 01/30/2013	Wed 01/30/2013		58,520	3,103	\$17.50	\$54,302.50
Thu 01/31/2013	Thu 01/31/2013		46,857	2,484	\$17.50	\$43,470.00
Total (Due Monthly in Accordance with Section 6.1)						\$1,349,643.75

APPENDIX XXV
FORM OF LETTER OF CONCURRENCE

[Date]

[Name]
[Position]
[Company Name]
[Address]

Re: Letter of Concurrence Regarding Control of [Name] Unit

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company (“PG&E”) and [Company Name] with respect to [Unit Name] (the “Facility”) for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission’s (“Commission”) Order No. 697.¹ Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.² The Commission further requires that “a seller making such an affirmative statement seek a ‘letter of concurrence’ from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing.”³

PG&E and [Company Name] have executed a tolling agreement (the “Agreement”) with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] does not intend to transfer “ownership or control of generation capacity” from [Company Name] to PG&E as the term “ownership or control of generation capacity” is used in 18 CFR § 35.42.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

[Author]

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

² Order No. 697 at P 186.

³ Order No. 697 at P 187.

[Position]

Pacific Gas and Electric Company

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____

[Name]

[Company Position]

[Company Name]

REFERENCE EXAMPLE ONLY

APPENDIX XXVI -- FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2___], between PACIFIC GAS AND ELECTRIC COMPANY (“PG&E”), and [_____] , as collateral agent¹ (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to a “Party” and collectively as the “Parties”.

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____, 2___ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between PG&E and Seller, PG&E has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, PG&E has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. **Definitions.** Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. **Consent.** Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the [Security Agreement] of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).
3. **Limitations on Assignment.** Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to

¹ This form assumes that a collateral agent will hold the security on behalf of a syndicate of lenders and therefore, the consent would be signed by the collateral agent in such capacity for the benefit of the secured parties. If that is not the case, please modify.

PG&E a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as PG&E may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a "Financing Default"), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

"Permitted Transferee" means any person or entity who is reasonably acceptable to PG&E. Financing Provider may from time to time, following the occurrence of a Financing Default, Notify PG&E in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's rights under the Financing Documents, and PG&E shall, within thirty (30) business days of its receipt of such written Notice, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if PG&E shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a "Permitted Transferee".

4. Cure Rights.

(a) Notice to Financing Provider by PG&E. PG&E shall, concurrently with the delivery of any Notice of an event of default under the Assigned Agreement (each, an "Event of Default") to Seller (a "Default Notice"), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, PG&E shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with Notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement "Additional Cure Period" means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by PG&E to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider's applicable cure period shall begin on the date on which Notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E's ability to terminate the Assigned

Agreement (in each case only if both PG&E and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E's right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such Notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving Notice of an Event of Default from PG&E or Seller, whichever is received first, Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written Notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a Notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that PG&E makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases PG&E from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that PG&E may agree with Seller to modify or amend the Assigned Agreement, and that PG&E is not obligated to Notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases PG&E from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

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

9. Miscellaneous.

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

If to Financing Provider:

Name: _____
Address: _____

Attn: _____
Telephone: _____

Email: _____

If to PG&E:

Name: _____
Address: _____

Attn: _____
Telephone: _____

Email: _____

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

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

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

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

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

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

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

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

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

PACIFIC GAS AND ELECTRIC COMPANY
(PG&E)

By: _____
Name: _____
Title: _____

(Financing Provider), as collateral agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

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

_____[name of Seller]

By: _____
Name: _____
Title: _____

APPENDIX XXVII

CRITICAL MILESTONES (applicable to New Facilities, only)

Critical Milestone	Due Date
Written evidence of control of the Site	
Submit Application for Gas Service (if applicable)	
Execution of electric interconnection agreement	
Completion of data submission to the California Energy Commission ("CEC")	
Receipt of CEC approval and all Permits necessary to commence construction by _____ (which must be no later than 18 months after CPUC Approval for projects over 50 MW)	
Site readiness for construction, including receipt of any and all necessary zoning approvals, easements, rights of way, and rights to water and sewer access (subject to construction of facilities), as necessary	
Placement of order for major equipment including combustion turbines, steam turbines, HRSGs, and transformers	
Receipt of commitment for construction and permanent financing	
Close of construction financing	
Execution of the Engineering Procurement and Construction ("EPC") contract	
Issuance of EPC notice to proceed	
Construction Start Date	
Close of permanent financing	
Receipt of major equipment on-site	
Completion of electric interconnection	
Completion of Gas interconnection	

APPENDIX XXVIII

FORM OF MONTHLY CONSTRUCTION PROGRESS REPORT

Monthly Progress Report

of

("Seller")

provided to

Pacific Gas and Electric Company
("Buyer")

[Date]

REFERENCE EXAMPLE ONLY

Instructions.

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement by and between _____, (“Seller”) and Pacific Gas and Electric Company dated _____, (the “Agreement”).

Seller shall review the status of each Critical Milestone of the construction schedule for the Units and related Project and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Critical Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related Project, attaining any Critical Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Critical Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Critical Milestone.
- (ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Units or related Project, attainment of any Critical Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Critical Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Critical Milestone;
- (iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Critical Milestone;
- (iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;
- (v) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For guidance, each “overview” subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous month. Each “expected activities” subsection shall include a brief list of major activities planned for the current month.

Seller shall complete, certify, and deliver this form of Monthly Construction Progress Report to [REDACTED], together with all attachments and exhibits, with copies of this report delivered to GCMTGroup@pge.com and [REDACTED].

1. Executive Summary

Please provide an overview of the project, including technology, size, location, and ownership.

Please provide a brief chronological cumulative summary of the **major** activities completed for each of the following aspects of the Project. Include the date each item was added to the summary (e.g., in *Critical Milestone* section “January 2012 – notice of Construction Start Date milestone achieved was reported to PG&E on January 15, 2012” and in *Construction* section “January 2012 - Full Notice to Proceed was issued to EPC contractor on January 10, 2012”):

- 1.1 Critical Milestones**
- 1.2 Governmental Approvals**
- 1.3 Financing**
- 1.4 Property Acquisition**
- 1.5 Design and Engineering**
- 1.6 Major Equipment procurement**
- 1.7 Construction**
- 1.8 Interconnection**
- 1.9 Startup**

2. Critical Milestones

In this section, please include information on each Critical Milestone listed in Appendix XXVII, plus any additional significant milestones related to the project.

2.1 Critical Milestone schedule

Please state the status and progress of each Critical Milestone. Provide the date of completion of completed Critical Milestone(s) and the expected date of completion of uncompleted Critical Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

2.2 Remedial Action Plan (applicable if Seller fails to achieve Critical Milestone by the Critical Milestone Date)

Please describe in detail any delays (actual or anticipated) beyond the scheduled Critical Milestone dates. Describe the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Describe Seller’s Remedial Action Plan which shall include detailed plans to achieve the missed Critical Milestone and subsequent Critical Milestones.

3. Governmental Approvals

In this section, please include information on each of the Material Governmental Approvals required for the construction of the Units and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination, and/or issuance of permit. If the government agency maintains a website with information on the approval process for the project, please provide a link.

3.1 Environmental Impact Report/Statement (EIR/EIS)

Please describe the environmental review process and each of the primary Governmental Approval(s) to be obtained for the project. Provide the status and completion date (expected or actual) of each significant activity in the process.

3.2 Other Governmental Approvals

Please describe each of the other major Governmental Approvals to be obtained for the project. Provide the status and completion date (expected or actual) of each significant activity.

3.3 Recent Governmental Approval activities

Please describe in detail the Governmental Approval activities that occurred during the previous calendar month.

3.4 Expected Governmental Approval activities

Please list all Governmental Approval activities that are expected to be performed during the current calendar month.

3.5 Governmental Approval Notices received

Please attach to this Monthly Progress Report copies of any Notices related to Governmental Approval activities received during the previous calendar month.

4. Financing Activities

In this section, please include information on each separate phase of financing for the project. Include information on debt, equity, and/or federal or state loans or grants.

4.1 Overview of financing activities

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

4.2 Recent financing activities

Please describe in detail the financing activities that occurred during the previous calendar month.

4.3 Expected financing activities

Please list the financing activities that are expected to be performed during the current calendar month.

5. Property Acquisition Activities

In this section, please include information on property acquisition or site control activities for the project.

5.1 Overview of property acquisition activities

Please provide a summary of the status and progress of each major property acquisition activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

5.2 Recent property acquisition activities

Please describe in detail the property acquisition activities that occurred during the previous calendar month.

5.3 Expected property acquisition activities

Please list the property acquisition activities that are expected to be performed during the current calendar month.

6. Design and Engineering Activities

In this section, please include information on the status of design and engineering for the project.

6.1 Overview of design activities

Please provide a summary of the status and progress of each major design or engineering activity, including dates of completion of significant activities and expected timing of future activities.

6.2 Recent design activities

Please describe in detail the design activities that occurred during the previous calendar month.

6.3 Expected design activities

Please list the design activities that are expected to be performed during the current calendar month.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the project to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

7.1 Overview of major equipment procurement activities

For each type of equipment, list the number of each major item to be procured, the manufacturer, model number (if applicable), and rating. List the delivery schedule (expected or actual as applicable), breaking out the number of each item (to be) procured or delivered in each month.

7.2 Recent major equipment procurement activities

Please describe in detail the major equipment procurement activities that occurred during the previous calendar month.

7.3 Expected major equipment procurement activities

Please list the major equipment procurement activities that are expected to be performed during the current calendar month.

8. Construction Activities

In this section, please include information on the status of any construction-related factors that may affect the ability of the project to deliver Energy to the Buyer. Include information on the project infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the project.

8.1 Overview of major construction activities

Please provide a summary of the status and progress of each major construction activity for all portions of the project, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC contract, and the date of issuance of a full notice to proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each month.

8.2 Recent construction activities

Please describe in detail the construction activities that occurred during the previous calendar month.

8.3 Expected construction activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

8.4 EPC Contractor Monthly Construction Progress Report

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

8.5 Look-ahead construction schedule

Please provide a look-ahead construction schedule covering at least three months.

8.6 OSHA Recordables

Please list all OSHA recordables from the previous calendar month.

8.7 Work stoppages

Please describe any work stoppage from the previous calendar month and its effect on the construction schedule.

9. Interconnection Activities

In this section, please include information on interconnection-related factors that may affect the ability of the project to deliver energy to the Buyer. Include information on the status of interconnection studies, Interconnection Agreements, design and construction of interconnection facilities (e.g., substations, switchyards, gen-ties, network upgrades, system protection schemes, telecommunications equipment to the extent not already covered in the project construction information in Section 9), and grid outage and/or interconnection schedules.

9.1 Overview of interconnection activities

Please provide a summary of the status and progress of each major interconnection activity including dates of completion of significant activities and expected timing of future activities.

9.2 Recent interconnection activities

Please describe in detail the interconnection activities that occurred during the previous calendar month.

9.3 Expected interconnection activities

Please list the interconnection activities that are expected to be performed during the current calendar month.

10. Startup

In this section, please include information on the status of activities related to preparation for Energy delivery and commercial operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the project may deliver energy to the grid and/or declare Commercial Operation.

10.1 Overview of startup activities

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

10.2 Recent startup activities

Please describe in detail the startup activities that occurred during the previous calendar month.

10.3 Expected startup activities

Please list the startup activities that are expected to be performed during the current calendar month.

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

By: _____

Name: _____

Title: _____

Date: _____

REFERENCE EXAMPLE ONLY

**APPENDIX XXIX
NOTICES**

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

All Notices:

Delivery Address:

Street:

City: State: Zip:

Mail Address: (if different from above)

Attn:

Phone:

Facsimile:

Invoices and Payments:

Attn:

Phone:

Facsimile:

Scheduling:

Attn:

Phone:

Facsimile:

Wire Transfer:

BNK:

ACCT Title:

ABA:

ACCT:

DUNS:

Federal Tax ID Number:

Credit and Collections:

Attn:

Phone:

Facsimile:

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

Attn:

Phone:

Facsimile:

Name: Pacific Gas and Electric Company, a California corporation

("Buyer" or "PG&E")

All Notices:

Delivery Address:

77 Beale Street, Mail Code N12E

San Francisco, CA 94105-1702

Mail Address:

P.O. Box 770000, Mail Code N12E

San Francisco, CA 94177

Attn: Candice Chan (CWW9@pge.com)

Director, Contract Mgmt & Settlements

Phone: (415) 973-7780

Facsimile: (415) 972-5507

Invoices and Payments:

Attn: Azmat Mukhtar (ASM3@pge.com)

Manager, Bilateral Settlements

Phone: (415) 973-4277

Facsimile: (415) 973-2151

Scheduling:

Attn: DA Operations (DAENERGY@pge.com)

Phone: (415) 973-1971

Back-up Phone: (415) 973-4500

Wire Transfer:

BNK: Mellon Bank of New England, N.A.

ACC Title: PG&E

ABA: 059994

ACCT: 011001234

DUNS: 556650034

Federal Tax ID Number: 94-0742640

Credit and Collections:

Attn:

Credit Risk Management

Phone: (415) 973-4414

Facsimile: (415) 973-7301

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

Attn: Mark Zimmerman (MWZ1@pge.com)

Manager, Contract Management

Phone: (415) 973-6515

Facsimile: (415) 972-5507

REFERENCE EXAMPLE ONLY

END OF TOLLING POWER PURCHASE AGREEMENT

REFERENCE EXAMPLE ONLY