

**BIOGAS PURCHASE AND SALE AGREEMENT
 BETWEEN
 BIOENERGY SOLUTIONS, LLC
 AND
 PACIFIC GAS & ELECTRIC COMPANY**

THIS BIOGAS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into by and between BioEnergy Solutions, LLC, a California Limited Liability Company, hereinafter referred to as "Seller," and Pacific Gas and Electric Company, a California corporation, hereinafter referred to as "Buyer," this ___ day of December 2006 (the "Effective Date"). Seller and Buyer shall also be referred to in this Agreement individually as a "Party" and jointly as the "Parties."

RECITALS

WHEREAS, Seller intends to sell and deliver Biogas produced at a site located near Fresno, California, commonly known as the Vintage Dairy, and more particularly described in Exhibit "A" to this Agreement (the "Site"), to Buyer, and Buyer intends to purchase and receive Biogas from Seller for injection into Buyer's pipeline system thereby assisting development and commercialization of the production technology used;

WHEREAS, Seller and Buyer intend to enter into a certain Interconnection Agreement, whereby Seller, referred to therein as "Supplier", will deliver, and Buyer, referred to therein as "PG&E" will receive Biogas produced at the Site by means of interconnection facilities to be built and operated by Buyer ("Buyer's Facilities"), subject to the terms and conditions of this Agreement and the Interconnection Agreement (the "Interconnection Agreement"); and

WHEREAS, after construction of facilities to deliver Biogas at, and in the vicinity of, the Site ("Seller's Facilities"), which Seller will build and operate in reliance on the undertakings of Buyer in this Agreement, and expected construction of Buyer's Facilities to receive Biogas, the Parties desire to interconnect their respective facilities to provide for the delivery and receipt of Biogas at one or more designated locations ("Delivery Points"), all as set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and mutual undertakings set forth in this Agreement, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1. For purposes of this Agreement the following words when used in this Agreement shall have the meaning set forth below:

1.1.1. **“Additional Gas Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets, reporting rights and allowances, howsoever entitled, and whether or not tradable, that are attributable to the generation of electricity using Biogas, but those which are in addition to those qualifying as a Gas Environmental Attribute as defined in section 1.1.13, below. For the avoidance of doubt, any of the foregoing that relate back in any way in calculation of their value to a date prior to the Effective Date may not be counted as Additional Gas Environmental Attributes. **Additional Gas Environmental Attributes shall not include emissions reduction credits encumbered or used by Seller in order to remain compliant with local, state or federal laws governing the production of Biogas at the Site(s).**

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

1.1.3. **“Bankrupt”** means with respect to any entity, such entity: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, which appointment is not dismissed within sixty (60) days, or (v) is generally unable to pay its debts as they fall due.

1.1.4. **“Biogas”** means methane, carbon dioxide and associated non-combustible gases in a gaseous state produced by anaerobic digestion, fermentation, or gasification of organic matter.

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

1.1.6. **“Buyer’s Facilities”** means the pipelines, appurtenant facilities, meters, regulators, quality measurement devices, other equipment and related system upgrades at and from the Interconnection Point, for receipt of Biogas into Buyer’s pipeline system pursuant to this Agreement.

1.1.7. **“CEC”** means the California Energy Commission or any successor government agency.

1.1.8. **“CEC Certification”** means certification or pre-certification by the CEC that the use of Seller’s Biogas to generate electricity in California results in generation by an eligible renewable energy resource as defined by Public Utilities Code section 399.12.

1.1.9. **“CPUC”** means the California Public Utility Commission or any successor government agency.

1.1.10. **"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, IF SELECTED:

X (1) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement.

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

(3) finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law.

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

1.1.11. **"Credit Rating"** means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its issuer rating by S&P or Moody's.

1.1.12. **"Delivery Point(s)"** means points of interconnection between Seller's Facilities and Buyer's Facilities located on Buyer's pipeline system that are designated by Seller from time to time during the term of this Agreement.

1.1.13. **"Gas Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the production of Biogas, and its displacement of conventional fuel sources used to generate electricity. Gas Environmental Attributes include but are not limited to: (1) any avoided discharge of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, and (2) any avoided discharge of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants.

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

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

1.1.16. “**Payment Dispute**” means a claim for an adjustment in a payment due solely to arithmetic or computation error, and not to any dispute requiring interpretation of this Agreement.

1.1.17. “**Performance Assurance**” means collateral in the form of cash, a Letter of Credit, or any other form of security acceptable to Buyer.

1.1.18. “**Product**” means: (a) Biogas produced and delivered in accordance with this Agreement, and (b) Gas Environmental Attributes which are now, or may be in the future, associated with the use of Biogas from Seller’s Sites to produce electricity and which allow Buyer to count the electricity generated using Biogas toward Buyer’s Renewable Portfolio Standard as set forth in Public Utilities Code section 399.15.

1.1.19. “**Right of First Refusal**” means Buyer’s conditional right to buy Additional Gas Environmental Attributes which may become associated with production of Biogas at Seller’s Facilities after the Effective Date.

1.1.20. “**Seller’s Facilities**” means the pipelines, appurtenant facilities, meters, regulators, quality measurement devices and other equipment at and up to the Delivery Point(s) for delivery into Buyer’s pipeline system pursuant to this Agreement.

1.1.21. “**Site(s)**” means the facilities described in Exhibit “A”, attached to this Agreement and incorporated by this reference, and in any additional exhibits that may be added to this Agreement by reason of designation as Delivery Point(s) by Seller from time to time during the term of this Agreement. .

1.2. Capitalized terms used, but not defined, in this Agreement shall have the meanings ascribed thereto in the Interconnection Agreement.

ARTICLE 2

TERM OF AGREEMENT

2.1. **Effective Date and Term.** This Agreement shall become effective on the Effective Date and, unless terminated earlier pursuant to the terms and conditions of this Agreement, shall continue until the 10th anniversary of the Initial Delivery Date with respect to each Delivery Point and each Site (the “Term”).

2.2. **Initial Delivery Date.** The initial delivery date shall be the date on which the first delivery of Biogas from the Site to a Delivery Point is first made for Buyer’s account (the “Initial Delivery

Date”). The Initial Delivery Date shall not occur until Buyer has either received or waived CPUC Approval.

2.3. **Delivery Term.** The Parties shall specify the period of Product delivery for the “Delivery Term,” as defined herein, by checking one of the following boxes:

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

If the “Non-standard Delivery” contract term is selected, Parties need to apply to the CPUC justifying the need for non-standard delivery.

“Delivery Term” means the period of time beginning on the Initial Delivery Date and ending on the 10th anniversary thereof with respect to each Site. For the avoidance of doubt, the Delivery Term shall end on the 10th anniversary of the Initial Delivery Date of Biogas at the last Delivery Point and the last Site designated by Seller as subject to the terms and conditions of this Agreement

2.4. **Early Termination.** Should Seller be unable to deliver at least (twenty-five percent (25%) of the Maximum Quantity from a Site for a period of one-hundred twenty (120) consecutive days, by reason of events other than Force Majeure, then Buyer may at any time thereafter terminate this Agreement as it applies only to the affected Site, by giving Seller thirty (30) days written notice. This Agreement may be terminated entirely or partially by either Party: (a) in accordance with the provisions of Section 3.3, below, due to failure of a condition precedent to occur, or (b) in accordance with Section 9.3, below, due to an uncured Event of Default.

2.5. **Survival of Obligations.** Except as set forth herein, upon expiration or termination of this Agreement, neither Party shall have future or further rights or obligations under this Agreement. The following rights, obligations, and provisions shall survive termination or expiration of this Agreement:

2.5.1. obligations by one Party to the other for payment of any money, or for performance of any obligations, that have accrued or have arisen prior to, or have directly resulted from, the expiration or termination of this Agreement;

2.5.2. limitation of liability provisions contained in Article 11, below;

2.5.3. indemnity provisions contained in Article 12, below, which survive to the full extent of the statute of limitations period applicable to any third party claim; or

2.5.4. confidentiality provisions contained in Article 17, below.

ARTICLE 3
CONDITION PRECEDENT

3.1. **Condition Precedent.** On or before June 30, 2007: (1) Buyer shall have received, CPUC Approval, and the Parties shall have mutually agreed that the terms and conditions of the CPUC Approval are acceptable; and (2) the Parties shall have entered into the Interconnection Agreement.

3.2. **Waiver by Buyer.** Buyer shall retain the right to waive CPUC Approval in writing at any time.

3.3. **Failure of Condition.** In the event that either of the conditions in Section 3.1, above, have not been satisfied or waived by the Parties by the date specified herein, the Parties shall meet within fifteen (15) days following such date to discuss in good faith whether or not this Agreement can be restructured on a mutually satisfactory basis under the circumstances. In the event the Parties are unable to agree on such a restructuring within forty-five (45) days after the first meeting, this Agreement may either: (i) be extended up to an additional ninety (90) days thereafter by mutual consent obtained on or before such forty-fifth (45th) day, or (ii) be terminated if either Party, within fifteen (15) days thereafter, gives ten (10) days prior written notice; provided, however, that any such termination shall not become effective if such condition has been satisfied or waived prior to the effective date of such termination.

3.4. **Cooperation.** Each Party shall cooperate with the other Party as may be reasonable under the circumstances, and at its own cost and expense, and keep the other Party advised of all significant developments related to applying for or obtaining satisfaction of the condition precedent specified in Section 3.1, above.

ARTICLE 4
OBLIGATIONS OF THE PARTIES

4.1. **Seller's Obligations.**

4.1.1. Seller shall deliver Product as set forth in this Agreement.

4.1.2. **Seller's Site(s).** Prior to the Initial Delivery of deliveries of Biogas as a portion of the Product under this Agreement, Seller shall, at its own cost: (i) secure all necessary permits, priorities, rights of way, and materials needed for the production of the Biogas at the Site(s) and the delivery of Biogas to Buyer at the Delivery Point(s); (ii) install, operate and maintain all facilities necessary for the production of Biogas at the Site(s); and (iii) install and maintain pipelines and other equipment at the Site(s) as required to deliver Biogas to Buyer at the Delivery Point(s).

4.1.3. **Gas Quality.** Seller shall cause all Biogas delivered to Buyer to meet applicable gas quality specifications set forth in Buyer's tariffs on file with the CPUC.

4.2. **Buyer's Obligations**

4.2.1. Buyer shall receive Product as set forth in this Agreement.

4.2.2. Regulatory Approval. Buyer represents and warrants that it will use commercially reasonable efforts to obtain CPUC Approval and CEC Certification, and Seller agrees to cooperate with Buyer in preparing and filing documentation necessary to receive CPUC Approval and CEC Certification, as may be reasonably requested by Buyer.

4.2.3. Scheduling. Buyer shall be responsible for scheduling Biogas pursuant to Seller's notification and for compliance with any requirements of third parties at and after the Delivery Point(s).

4.2.4. Payment for Product. Buyer shall, in accordance with the terms hereof, pay Seller the Contract Price for the Product delivered based upon each MMBtu of Biogas that: (a) has been delivered pursuant to the notice requirements contained herein, and (b) meets the specifications set forth in Buyer's tariffs on file with the CPUC.

4.2.5. Operation and Maintenance. Buyer shall operate and maintain Buyer's pipeline system and Buyer's Facilities at the Delivery Point(s) in accordance with prudent gas utility practices.

ARTICLE 5

QUANTITY OF DELIVERIES

5.1. Maximum Contract Quantity of Biogas. During the Delivery Period, Seller shall sell and deliver and Buyer shall buy and accept delivery of all Biogas produced by Seller at the Site(s) up to a maximum volume which shall be the lesser of: (a) the volume of MMBtus designated by Seller within twenty-four (24) months of the Effective Date, and delivered for sale within thirty-six (36) months of the Effective Date; and (b) eight thousand (8,000) MMBtus/day (the "Maximum Delivery Quantity").

5.2. Additional Daily Biogas. For volumes of Biogas delivered over the Maximum Delivery Quantity on any day ("Additional Daily Biogas"), unless otherwise agreed herein, Buyer shall have no obligation to buy and accept delivery of such Additional Daily Biogas from Seller; provided however, that Buyer may elect to purchase all or part of any Additional Daily Biogas at the Agreement Price. Seller shall provide Buyer written notice of the anticipated availability of Additional Daily Biogas as soon as commercially practicable after Seller becomes aware of its future availability. Within twenty-four (24) hours of Buyer's receipt of Seller's notice that Seller anticipates having Additional Daily Biogas on a given day for sale, Buyer must notify Seller of its election to purchase or decline the Additional Daily Biogas at the Agreement Price. If Buyer: (a) declines to purchase the Additional Daily Biogas or (b) fails to provide Seller notice of Buyer's intent to purchase the Additional Daily Biogas within such twenty-four (24) hour period, then Seller may at any time sell the Additional Daily Biogas to any third party.

5.3. Increased Capacity. If at any time subsequent to the Maximum Delivery Quantity being established pursuant to Section 5.3, above, Seller determines it will permanently increase production of Biogas through the addition of one or more new Delivery Point(s), or increasing the volume at any existing Delivery Point, to a volume exceeding the Maximum Delivery Quantity ("Increased Capacity"), Seller shall notify Buyer in writing of such determination

("Increased Capacity Notice"). The Increased Capacity Notice shall be provided to Buyer as soon as is commercially practicable following Seller's determination and shall specify both the date of the anticipated addition of the Delivery Point expected to produce the Increased Capacity. For a period of forty-five (45) days following receipt by Buyer of the Increased Capacity Notice, the Parties shall, in good faith, attempt to negotiate mutually acceptable terms and conditions upon which Buyer will purchase Product associated with the Increased Capacity. During such period, Seller shall refrain from entering into negotiations with any third parties with respect to sale of the anticipated Increased Capacity. In the event that the Parties are unable to come to a mutually acceptable agreement with respect to the Increased Capacity within the forty-five (45) days period, then Seller shall be free to market such Increased Capacity as it sees fit, without further regard to the terms and conditions, or any limitations contained in this Agreement.

5.4. Quantity Notification. At or before noon local time one (1) month prior to each month Biogas will be delivered at the Delivery Point(s), Seller shall notify Buyer of the quantity of Biogas to be delivered. If Seller fails to notify Buyer as set forth herein, Buyer shall be relieved of any obligation to pay for the Product up to the amount of Biogas delivered without such notice.

ARTICLE 6
AGREEMENT PRICE

6.1. For each Decatherm of metered Biogas, Buyer shall pay to Seller for the Product, if CEC Certification is received, as follows, subject to Section 6.2 below:

Volume	Price
Biogas volume less than or equal to 500 Dct	\$ 10.00
Biogas volume above 500 Dct	\$ 8.80

6.2. Should CEC Certification not be received, then Buyer shall pay to Seller for Product as follows:

Volume	Price
Biogas volume less than or equal to 500 Dct	The above price, less \$1.60
Biogas volume above 500 Dct	The above price, less \$1.60

ARTICLE 7
RIGHT OF FIRST REFUSAL

7.1. **Grant of Right.** Seller hereby grants to Buyer a Right of First Refusal to purchase all or any portion of Additional Gas Environmental Attributes, prior to Seller proposing to transfer such Additional Gas Environmental Attributes to a third party. Seller shall deliver a written notice of its intent to sell Additional Gas Environmental Attributes, and Buyer shall have forty-five (45) days from receipt of such notice to notify Seller that it is exercising its Right of First Refusal.

7.2. The Parties shall determine the price Buyer shall pay to Seller for Additional Gas Environmental Attributes (“EA Price”) as follows:

7.2.1. **Index Price:**

7.2.1.1. The EA Price shall be the market clearing price determined with reference to the Chicago Climate Exchange for Additional Gas Environmental Attributes.

7.2.1.2. Should more than one Exchange publish a price for the Additional Gas Environmental Attributes at the time the Right of First Refusal is exercised, then the arithmetic mean price of the multiple Exchange prices shall be the EA Price.

7.2.2. **Market Quotation Average Price:**

7.2.2.1. Should no Exchange publish a price for the Additional Gas Environmental Attributes at the time the Right of First Refusal is exercised, then the price for the Additional Gas Environmental Attributes shall be calculated as follows:

7.2.2.1.1. Each Party shall calculate the arithmetic mean of at least three (3) Broker Quotes for Additional Gas Environmental Attributes substantially similar to the Additional Gas Environmental Attributes sold by Seller to Buyer under this Agreement for the remaining Delivery Term (“Party Quote”). The Parties shall then calculate the arithmetic mean of the two Party Quotes and the result shall become the Price to be paid for the Additional Gas Environmental Attributes for the following twelve (12) months. The Parties shall again calculate Party Quotes, as described immediately above, for each additional twelve (12) month period of time (or less in the case of the final price determination period) during the Delivery Term for which the Right of First Refusal is operative, and such price shall be the Additional Gas Environmental Attribute price for that twelve (12) month period. For the purposes of this Agreement “Broker Quotes” means quotations solicited or obtained in good faith from: (a) regularly published and widely-distributed daily forward price assessments from a broker that is not an Affiliate of either Party and is actively participating in markets for Additional Gas Environmental Attributes or (b) end-of-day prices for the relevant product published by Exchanges which transact in Additional Gas Environmental Attribute markets.

7.2.3. **Agreed Upon Price:**

7.2.3.1.1. In the event each Party is not able, after commercially reasonable efforts to obtain at least three (3) Broker Quotes as described above in order to determine the Market Quotation Average Price, then the Parties shall in good faith attempt to reach agreement on the EA Price using information derived in a commercially reasonable manner by reference to information supplied to by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant Additional Gas Environmental Attribute market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the Additional Gas Environmental Attribute markets, end-users of Additional Gas Environmental Attributes, information vendors and other sources of Additional Gas Environmental Attribute market information; provided, however, that such third parties shall not be Affiliates of either Party.

7.3. If the EA Price is determined based upon an Index, then the following provisions shall apply:

7.3.1. Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth (12th) Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in accordance with Subsection 7.2.2, above.

7.3.1.1. For purposes of this Agreement, the following definitions shall apply:

7.3.1.1.1. "Determination Period" means each calendar month a part or all of which is within the Delivery Period.

7.3.1.1.2. "Exchange" means, the exchange or principal trading market specified relevant to the Index agreed to by the Parties.

7.3.1.1.3. "Floating Price" means a price per unit in \$U.S. specified in a Transaction that is based upon the Index agreed to by the Parties.

7.3.1.1.4. "Market Disruption Event" means, with respect to the Index agreed to by the Parties, any of the following events: (a) the failure of the Index to announce or publish the specified Floating Price or information necessary for determining the Floating price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Index; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

7.3.1.1.5. "Trading Day" means a day in respect of which the relevant Index published the Floating Price.

7.3.1.2. **Corrections to Published Prices.** For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than ten (10) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

ARTICLE 8 **PAYMENT**

8.1. **Billing Period.** The calendar month shall be the standard period for all payments under this Agreement. As soon as practicable after the end of each month, Buyer will render to Seller an invoice for the payment obligations for any Product delivered during the preceding month.

8.2. **Timeliness of Payment.** All invoices rendered under this Agreement shall be due and payable on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Payments shall be made by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by Buyer.

8.3. **Adjustments of Invoices and Disputes.** Either Party may, in good faith, dispute only the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice pursuant to a Payment Dispute within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, the subject of a Payment Dispute, 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 Payment Dispute shall be in writing and shall state the basis therefore. Payment of the disputed amount shall not be required until the Payment Dispute is resolved. Upon resolution of the Payment Dispute, any required payment shall be made within three (3) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by Buyer from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid by Seller or deducted by Buyer. Any Payment Dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 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 occurred, the right to payment for such performance is waived.

8.4. **Audit.** Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid.

ARTICLE 9

CREDIT REQUIREMENTS

9.1. **Collateral.** Upon or any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the non-defaulting Party, may draw on Performance Assurance issued for its benefit. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the 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.

9.2. **Performance Assurance.**

9.2.1. **Performance Assurance.** To secure its obligations under this Agreement Seller agrees to maintain Performance Assurance in the amount of \$217,000.00, which Seller shall maintain in full force and effect from the Initial Delivery Date until the end of the Term.

9.2.2. **Return of Performance Assurance.** Buyer shall return the unused portion of Performance Assurance, including the payment of any interest due thereon to Seller promptly after the following has occurred: (a) the Term of this Agreement has ended, or this Agreement has been terminated; and (b) all payment obligations of the Seller arising under this Agreement.

9.3. **Letters of Credit.** If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 9, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit: (x) fails to maintain a Credit Rating of at least an A2 by Moody's Investor Services, Inc. or its successor ("Moody's") and at least an A by the Standard & Poor's Rating Group ("S&P") (a division of McGraw-Hill, Inc.) or its successor, (y) indicates its intent not to renew such Letter of Credit, or (z) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall (A) provide a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or (B) post cash in each case in an amount equal to the outstanding Letter of Credit within five (5) Business Days after Buyer receives notice of such refusal ("Cure"), as applicable. If Seller fails to Cure or if

such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness/collateral requirements of this Article. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE 10 **EVENTS OF DEFAULT**

10.1. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

10.1.1. failure to make any payment required pursuant to this Agreement when due if such failure is not remedied within three (3) Business Days after written notice;

10.1.2. any representation or warranty made by such Party herein is, or becomes, false or misleading in any material respect when made or when made or repeated;

10.1.3. failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within three (3) Business Days after written notice;

10.1.4. such Party becomes Bankrupt;

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

10.2. Default Cure Rights. If either Party shall fail to perform or observe in any material respect any covenant or obligation arising under any provision of this Agreement shall default hereunder, which failure or default shall continue un-remedied for a period of ten (10) days the Defaulting Party may cure such Event of Default; provided that such ten (10) day period shall be extended by an additional twenty (20) days so long as: (i) such default is not a default in the payment of money, (ii) such default is reasonably subject to cure within such additional period, or (iii) such Party is diligently and continuously proceeding to cure such default.

ARTICLE 11 **REMEDIES**

11.1. Upon the occurrence, and during the continuation, of an uncured Event of Default, the non-defaulting Party may do any one or more of the following:

11.1.1. Declare that this Agreement is terminated and declare all or any portion of payments due under this Agreement immediately due and payable;

11.1.2. Cease or restrict performance of all or any portion of its duties and obligations under this Agreement;

11.1.3. Terminate all or any portion of this Agreement without affecting all or any portion of its duties or obligations or right to payments due under this Agreement; or

11.1.4. Exercise any and all other rights and remedies available at law or in equity.

11.2. Remedies Cumulative. The remedies of the Parties under this Agreement shall be cumulative. The Parties shall have all other rights and remedies not inconsistent herewith as provided by law, or in equity. No exercise by either Party of one right or remedy shall be deemed an election, and no waiver by either Party of any Event of Default shall be deemed a continuing waiver.

ARTICLE 12 **LIMITATION OF LIABILITY**

EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. Each Party'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. 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.

ARTICLE 13 **INDEMNITY**

Each Party shall be solely responsible for and shall indemnify, defend and hold harmless the other Party, its parent and Affiliates including its officers, Board of Directors, agents, contractors, and employees thereof against losses, costs and expenses (including in-house and outside attorneys' fees), claims, enforcement actions, judgments or other obligations or liabilities, resulting from physical injury to property or person, or a violation of a local, state or federal common law; statute or representation, arising from the indemnifying Party's performance or nonperformance of its obligations under this Agreement; provided, however, that neither Party

shall be obligated to indemnify the other Party against any losses, however caused, which arise in whole or in part from the sole negligence, or willful or criminal misconduct of that Party.

ARTICLE 14 **GOVERNMENTAL CHARGES**

14.1. **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.

14.2. **Governmental Charges.** Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 15 **FORCE MAJEURE**

15.1. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

15.2. For the purposes of this Agreement "Force Majeure" shall mean, cover and include the following events or circumstances which prevents one Party from performing its obligations under this Agreement, which event or circumstance which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided: Acts of God or acts of providence including, without limitation, epidemics, landslides, floods, washouts, lightning, earthquakes, the curtailment, allocation, suspension or cessation of transportation services for Gas, except for curtailment, allocation, suspension or cessation of transportation services that is the result of oversold capacity. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii)

the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price.

ARTICLE 16
REPRESENTATIONS AND WARRANTIES

16.1. Each Party. On the Effective Date, each Party represents and warrants to the other Party that:

16.1.1. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

16.1.2. it has all regulatory authorizations (except CPUC Approval) necessary for it to legally perform its obligations under this Agreement;

16.1.3. 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;

16.1.4. this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses. For the purposes of this Agreement For the purposes of this Agreement "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.

16.1.5. 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;

16.1.6. 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;

16.1.7. 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

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

16.1.9. it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement.

16.2 Seller. On the Effective Date, Seller represents and warrants to Buyer it has, and will maintain, the authority and right during the Delivery Term, free of liens and all other obligations

of any kind, to freely dispose of the Product and any Additional Gas Environmental Attribute in existence, or which may exist in the future; excepting only such liens and other obligations as may be permitted in accordance with the provisions of Article 19 below. Seller further represents to Buyer, on information and belief, that nothing in this Agreement shall be deemed to prevent Seller from complying with the rules and regulations of any Governmental Authority.

ARTICLE 17 **CONFIDENTIALITY**

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' employees, lenders, counsel, accountants, advisors or ratings agencies who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, or in connection with any court or regulatory proceeding or request applicable to such Party or any of its Affiliates, or as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies having jurisdiction over this Agreement, including, without limitation, the CPUC and Buyer's Procurement Review Group; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. In addition, Buyer agrees to take reasonable actions to seek confidential treatment of any information it deems necessary to provide to the CPUC, provided that Buyer requests confidential treatment of the information, regardless of whether the CPUC agrees to treat the information as confidential. 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. 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. Notwithstanding the foregoing, a Party may disclose the terms and conditions of this Agreement to index publishers that aggregate and report such data to the public in the form of indices.

ARTICLE 18 **NOTICES**

18.1. Form of Notice. All notices including invoices provided for herein shall be given in writing, and either hand delivered, or sent by prepaid priority courier, or sent by telephone facsimile with original to follow by regular mail. In the case of courier delivery, delivery shall be deemed to occur three (3) business days after delivery to the courier by the sending Party and in the case of facsimile the following business day after telephonic confirmation that the message was sent and received. Unless changed as set forth below, the addresses and facsimile number of the Parties for purposes of this Article 18 are as follows:

Buyer: Pacific Gas and Electric Company
Mailing Address: Attn: Manager, Gas and Electric Supply
245 Market Street, Room 1314
San Francisco, CA 94105
Facsimile Number: 415. 973. 0400
Seller: BioEnergy Solutions, LLC
Mailing Address: 200 New Stine Road, Suite 200
Bakersfield, CA 93309
Facsimile Number: 661.617.6238

18.2. Telephone Contacts. At any time a telephone call is required to confirm the sending and receipt of any facsimile notices, the following telephone numbers shall be utilized:

Buyer: Pacific Gas and Electric Company
Confirmation Telephone: 415.223.3813
Contact: Pete Koszalka, Manager, Electric Fuels Management
Seller: BioEnergy Solutions, LLC
Confirmation Telephone: 661.617.6240
Contact: David R. Albers

18.3. Changes. The designated contact, address and facsimile and telephone numbers specified herein may be changed from time to time by the Party affected after two (2) days written notice

ARTICLE 19 **ASSIGNMENT**

19.1. Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any

such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.”

ARTICLE 20 **MISCELLANEOUS**

20.1. **Choice of Law.** The formation, interpretation and performance of this Agreement shall be governed by the internal laws of the State of California, without reference to principles of conflicts of laws.

20.2. **Compliance with Law.** This Agreement and the terms and conditions herein are subject to all present and future valid laws, orders, rules, and regulations of duly constituted authorities having jurisdiction. Buyer shall provide notice to Seller prior to filing any request for a change to its tariffs that would affect this Agreement.

20.3. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof, supersedes all prior discussions, agreements and understandings, whether oral or written, which the Parties may have in connection herewith and may not be amended or modified except by written agreement of the Parties, and shall not be modified by course of performance, course of conduct or usage of trade.

20.4. **Further Assurances.** Each Party shall do all necessary acts and make, execute, and deliver such written instruments as shall from time to time be reasonably necessary to carry out the terms of this Agreement.

20.5. **Publicity.** Any public statements, publicity or press releases concerning this Agreement and the transactions contemplated by this Agreement shall be jointly planned and coordinated by and between the Parties. Neither Party shall act unilaterally regarding such publicity or press releases without the prior written approval of the other Party, which approval shall not be unreasonably withheld.

20.6. **No Dedication.** Nothing in this Agreement shall be construed as a dedication by any Party of its respective facilities to the other Party or to or for the benefit of any third party. Both Parties may each construct such facilities on their respective systems, as they may deem necessary or appropriate in their sole discretion.

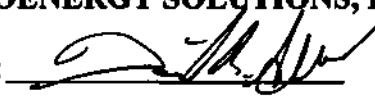
20.7. **Attorneys' Fees.** Should any dispute arise regarding any term or provision of this Agreement or enforcement of any rights hereunder, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs and attorney's fees shall be paid to the prevailing Party.

20.8. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or



unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their authorized representatives as of the day and year first written above.

BIOENERGY SOLUTIONS, LLC

By: 
Title: Manager

PACIFIC GAS AND ELECTRIC COMPANY

 By: 
Title: VP Energy Supply