



PENINSULA CLEAN ENERGY
JPA Board Correspondence
General Counsel

DATE: June 6, 2016
BOARD MEETING DATE: June 9, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable PCE Joint Powers Board

FROM: John C. Beiers, County Counsel/General Counsel
David A. Silberman, Chief Deputy County Counsel/General Counsel

SUBJECT: Report on status of power purchase and related agreements in preparation for approval on June 23, 2016

RECOMMENDATION:

Receive a report on status of power purchase and related agreements in preparation for approval on June 23, 2016

BACKGROUND:

On June 23rd staff will be asking the Board to authorize approval of five separate agreements directly related to power purchases. Because these agreements are both important and complex and because the June 23rd meeting will also include rate-setting and other significant issues, staff believes the Board might benefit from additional time for review and consideration of these agreements in advance. Because the agreements are still being negotiated and because the negotiations are sensitive (including the identity of the short-listed Energy Service Providers), the Board is being presented with template agreements. The final versions presented on June 23rd will be modified to reflect the outcome of negotiations. The documents being presented are as follows:

The "Confirmation". This agreement will eventually include the actual prices and quantities of energy that we will be purchasing. It also provides for scheduling services to be provided by the Energy Service Provider ("ESP"). We have been negotiating the language of the Confirmation with each of the three short-listed ESPs. The goal is that each Confirmation will be as similar to the others as possible so that when the ESPs provide their final prices, the offers are easily comparable. On June 23rd the Board will be asked to authorize the CEO to execute all three of the Confirmations even though ultimately the CEO will only execute one depending on the ESP she chooses after receiving final pricing.

The Master Agreement and "Cover Sheet". The Master Agreement is a standard form agreement and the "Cover Sheet" modifies it. Among other things, this agreement

addresses credit guarantees. Like the Confirmation, this document is being negotiated with each of the short-listed ESPs and the intent is that the three versions of the document be negotiated to be as similar as is possible.

The Intercreditor Agreement, the Security Agreement and the Deposit Account Control Agreement. These three agreements all relate to the creation of a “multi-party lockbox”. Oversimplified, because Peninsula Clean Energy is a brand new entity with limited assets, and absent forms of assurance, ESPs would not be willing to sell PCE energy. One of the assurances that the ESPs are being provided is that PCE is agreeing to place ratepayer revenues into a “lockbox” with instructions that the ESP has a priority interest in the ratepayer funds. The “multiple-party lockbox” will facilitate eventual contracting with multiple ESPs by allowing PCE to authorize distribution of lockbox proceeds to more than one ESP, hence the “multi-party” aspect. The lockbox is managed by a bank. PCE is negotiating with Wilmington Delaware to serve as the collateral agent for the lockbox based on its experience serving in that role for Lancaster Clean Energy. Adding complexity, because the “lockbox” structure directly effects the ESPs, the language of these agreements is also being negotiated independently with each.

In addition, it is of note that PCE is also negotiating with another bank, Barclays, to provide PCE credit that will, among, other things, provide additional assurance to the ESPs. The Board will be approving loan documents with Barclays as well as an agreement with the County to repay it for the money it has advanced to PCE under Section 5.3 of the JPA Agreement as well as the money it is loaning PCE to collateralize the Barclays credit. These agreements are not a subject of this report.

DISCUSSION:

As will be clear from the Board’s review, these agreements are very complex and technical. They are not standard contracts and contain a great deal of specialized industry terms of art. Consistent with the authority delegated to me by the Board, I have retained Steve Hall from the Troutman Sanders law firm on behalf of and to assist PCE in drafting and negotiating these agreements. Steve Hall was selected in consultation with the Board Chair and Vice Chair as well as staff based, in part, on his significant experience in the area, specifically related to CCE programs. He has previously assisted Marin Clean Energy, Sonoma Clean Power and Lancaster Clean Energy in negotiation of their energy contracts.

He will be attending the meeting to present to the Board those aspects of the agreements that might be of most interest to the Board as well as to answer any technical questions the Board may have regarding the terms.

As noted above, the final versions of the agreements will then be brought back to the Board to authorize their execution at the June 23, 2016 meeting.

Master Power Purchase & Sale Agreement

Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: _____ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “*Agreement*.” The Parties to this *Master Agreement* are the following:

(“Party A”)

Peninsula Clean Energy Authority, a California joint powers authority (“Peninsula Clean Energy” or “Party B”)

All Notices:

All Notices:

Street:

Street: 400 County Center, Sixth Floor

City/State:

City/State: Redwood City, California, 94063

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Duns:

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Invoices:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Email:

Email:

Scheduling:

Scheduling:

Attn:

Attn:

Phone:

Phone:

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Facsimile:

Confirmations:

Confirmations:

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Payments:

Payments:

Attn:

Attn:

Phone:

Phone:

Facsimile:

Facsimile:

Email:

Email

Wire Transfer:

Wire Transfer:

BNK:

BNK:

ABA:

ABA:

ACCT:

ACCT:

CREDIT:

CREDIT:

ATTN.:

ATTN.:

Credit and Collections:

Attn:
Phone:
Email:

With additional Notices of an Event of Default to:

Attn:
Phone:
Facsimile:

Credit and Collections:

Attn:
Phone:
Facsimile:

With additional Notices of an Event of Default to:

Attn: David A. Silberman, Chief Deputy County
Counsel
Phone: (650) 363-4749
Facsimile: (650) 363-4034

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff: FERC Electric Tariff Dated: Docket Number

Party B Tariff N/A

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$[**TBD**]
 Cross Default for Party B:
 Party B: _____ Cross Default Amount
\$1,000,000.00
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
- Option C (No Setoff)

Article 8

Credit and Collateral Requirements 8.1 Party A Credit Protection:
(a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____

(1) The annual report containing audited consolidated financial statements for such fiscal year of Peninsula Clean Energy as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at www.peninsulacleanenergy.com, and (2) quarterly unaudited financial statements for Peninsula Clean Energy as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall

be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's.

- Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

The annual report containing audited consolidated financial statements for such fiscal year of Party A's Guarantor as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A's Guarantor and 90 days after the end of each semi-annual period of Party A's Guarantor, and such request will be deemed to have been filled if such financial statements are available at [*website address*]. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

- Not Applicable
 Applicable

(c) Collateral Threshold:

- Not Applicable
 Applicable

If applicable, complete the following:

Party A Collateral Threshold: **\$[TBD]**; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: **\$0**; provided, however, that if Party A's Guarantor's Credit Rating falls below BBB- from S&P and Baa3 from Moody's, the Independent Amount shall be **\$[TBD]**.

Party A Rounding Amount: **\$250,000.00**

(d) Downgrade Event:

- Not Applicable
 Applicable

If applicable, complete the following:

¹ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

Other:
Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

¹ Either this box or the one below to be checked, depending on whether Party A has a guarantor.

(e) Guarantor for Party A:

Guarantee Amount: \$[TBD]²

Article 10

Confidentiality

Confidentiality Applicable

If not checked, inapplicable.

Schedule M

Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable. Collateral description as follows:

Other Changes

1) Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:

“Notwithstanding the foregoing, the Parties hereby agree and acknowledge that the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.12 is amended by deleting the word “issues” and replacing it with “issuer”.

4) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

5) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.50 (Recording) is hereby deleted in its entirety.

9) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

² If applicable.

10) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

11) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

12) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

13) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”

14) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

15) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

16) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

17) Section 2.4 is hereby amended by deleting the words “either orally or”

in the sixth line.

18) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“2.5 Recording. Unless a Party expressly objects to a Recording (defined below) 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 Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.”

19) Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

20) In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.

21) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

22) Section 5.1(h)(v) - “Events of Default”

Add "made in connection with this Agreement" after "any guaranty".

23) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections “(i)” and “(j)”, which read as follows:

“(i) during any consecutive ninety (90) day period, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, under any and all Transactions, regarding which the Seller shall be deemed to be the Defaulting Party, and Buyer shall also be entitled to its remedies under Section 4.1;”

“(j) a representation or warranty with respect to the Defaulting Party’s financial statement that is false or misleading if such false or misleading statement is not be remedied within five (5) Business Days after written notice; or”

“(k) revocation or suspension by the Federal Energy Regulatory Commission of Party A’s authorization to make sales at market-based rates, and Party A is unable to reinstate such authorization within

ninety (90) days.”

“(l) Either Party: (i) commits an Event of Default under or otherwise defaults under one or more of the Security Documents (as defined below) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period; or (ii) disaffirms, disclaims or repudiates any Security Document. “Security Documents” means the Security Agreement, Subordination Agreement, and Blocked Account Agreement entered into by the Parties and certain third parties in connection with a Transaction, and any other agreement documenting the security of Party B to Party A in connection with a Transaction.”

24) Section 5.2 is amended by:

(i) changing in line 3 “right (i) to” to “right to (i)”;

(ii) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(iii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied 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 market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. No Settlement Amount will be due to the Defaulting Party from the Non-Defaulting Party, and the Termination Payment, if payable, shall be due from the Defaulting Party to the Non-Defaulting Party.”

25) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

26) In Section 5.7, delete “(a)” and “or (b) a Potential Event of Default” from the second line.

27) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

28) Section 7.1 shall be amended by:

(i) deleting in the fifteenth line the words “UNLESS EXPRESSLY

HEREIN PROVIDED.”;

(ii) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(iii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iv) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

29) In Sections 8.1(b) and 8.2(b), change “three (3) Business Days” to “five (5) Business Days”.

30) In Sections 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “five (5) Business Days”.

31) Section 8.1(d). Before the comma in line five, add “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing”.

32) Section 8.2(d). Before the comma in line five, add “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing”.

33) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

34) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.”

35) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

36) Section 10.5 shall be amended by:

(i) changing “transfer, sell, pledge, encumber or assign” to “pledge, encumber or collaterally assign”;

(ii) in clause (ii) thereof replace the words “affiliate” and “affiliate’s” with, respectively, “Affiliate” and “Affiliate’s”; and

(iii) in clause (iii) thereof immediately after the words “substantially all of the assets” insert the words “of such Party and”.

37) Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;

and add the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH

JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

38) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

39) Section 10.8 “General.”, shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 and (vii) Section 10.13 shall also survive the termination of the Agreement or any Transaction.” and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

40) In section 10.9 insert the words “copies of” after the word “examine” in line 2. In line 9, change twelve (12) months to twenty-four (24) months.

41) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a

Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”;

(v) an additional paragraph at the end of Section 10.11: “To the extent any information provided by the Parties pursuant to Article 8.1(a) and Article 8.2(a) of this Agreement is not in the public domain, it will be deemed confidential information subject to the non-disclosure obligations in this Section 10.11.”; and,

(vi) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the California Public Records Act (Government Code Section 6250 et seq.).”

42) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the *Mobile Sierra* “public interest” standard of review set forth in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.* No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.”

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing

subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

43) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A a certificate, dated as of the Effective Date and signed by an authorized signatory of Party B, certifying as to the completeness and correctness of attached copies of (i) the deliveries of Party B under Section 3.4(i), and (ii) the incumbency and signatures of the signatories of Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

44) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B a certificate, dated as of the Effective Date and signed by an authorized signatory of Party A, certifying as to the completeness and correctness of attached copies of (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

45) The following shall be added as a new Section 10.15:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

46) The following new Section shall be added as Section 10.16:

“Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary

form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

47) The following new Section shall be added as Section 10.17:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) 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 specified in the Transaction 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 Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source 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 Price Source; (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.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

(ii) 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 three (3) 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 three (3) 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.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

48) The following new Section shall be added as Section 10.18:

Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

49) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members in connection with this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date.

[SELLER]

**PENINSULA CLEAN ENERGY
AUTHORITY, a California joint powers
authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “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.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

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, or (v) is generally unable to pay its debts as they fall due.

1.4 “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.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “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 a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

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

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “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.

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, 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. 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. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "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 a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "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.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "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 a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC 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.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the

Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party’s Confirmation within two (2) Business Days of receipt, Seller’s Confirmation shall be deemed to be accepted and shall be the

controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) 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 Master Agreement, 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. 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. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from

the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction 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 such Transaction (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.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) 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;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a Guarantor becomes Bankrupt;
 - (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its

terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions 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. 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 amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error 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, 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. Upon resolution of the dispute, any required payment shall be made within two (2) 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 the Party receiving such overpayment from subsequent payments, 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 6.3 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 of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into

account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. 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. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, 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. 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, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B'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 prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party

B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet,

Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted

with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all 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, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral 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, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of

the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master 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 government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction 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 Article 6 of 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 TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) 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) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) 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;
- (vi) 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) 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 the Transaction to which it is a Party;

- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such 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.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close

of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. 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. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. 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. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.9 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 Master 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; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors 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, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

“Collateral Agent” has the meaning in the Security Documents.

“Depository Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of the date hereof, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means deposit account no. [TBD] maintained in the name of Party B at Depository Bank, and any replacement account.

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, dated as of the date hereof, between Party B and [TBD Collateral Agent], as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement, dated as of the date hereof, among the Depository Bank, Party B and the Collateral Agent.

“Special Fund” means a Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Party B's Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide the Party A certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (ii) an opinion of counsel for Party B, in form and substance reasonably satisfactory to the Party A, regarding the validity, binding effect and enforceability of this Master Agreement against Party B in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that

nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depositary Bank and such notice shall include information regarding the replacement Secured Account.

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”)
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____
Title: _____
Phone No: _____
Fax: _____

Name: _____
Title: _____
Phone No: _____
Fax: _____

CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between _____ ("Seller")
And
Peninsula Clean Energy Authority, a California joint powers authority ("Buyer")
As of _____ (the "Effective Date")
Transaction Date: _____

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the "CCA");

WHEREAS, Buyer is a California joint powers authority, which has established Peninsula Clean Energy for purposes of delivering CCA service to certain customers located within the County of San Mateo;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer's CCA Implementation Plan and Statement of Intent ("Implementation Plan") to the CPUC;

WHEREAS, Buyer has selected Seller to supply the requested Energy, Renewable Energy and Carbon Free Energy to support Buyer's delivery of CCA service to Buyer's Customers; and

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS.** Defined terms shall have the meanings set forth in this Confirmation or as set forth below:

"Ancillary Services" shall have the meaning ascribed to such term under the Tariff.

"Applicable Law" means any statute, law, treaty, rule, tariff, 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, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

"Buyer Facilities" shall have the meaning set forth in Section 10 hereof.

"CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"CAISO Charges" mean those amounts (other than Imbalance Charges) billed by CAISO and associated with the procurement and delivery at the Delivery Point of any Product through the CAISO market to Buyer as such charges may be adjusted from time to time pursuant to the Tariff. Such charges shall include, but are not limited to, Grid Management Charges, Ancillary Services charges, Unaccounted for Energy charges, CRRs, Bid Cost Recovery and Neutrality charges, in each case as defined by the CAISO.

"California RPS" or "California Renewables Portfolio Standard" means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (8th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission ("CPUC") as set forth in CPUC Decision ("D") 08-08-028, D.08-04-009, D.11-01-025, D.11-12-052, and D.12-06-038, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

"Cap and Trade Regulations" means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

"Capacity" means the net generating capability of a generating resource or generating resources. Capacity is expressed in MW.

"Carbon Free Energy" means Energy deliveries from Carbon Free Sources.

"Carbon Free Source" means any energy source, except for nuclear-powered generation assets, that is located within the State of California or the Pacific Northwest and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

"Category 1 Renewable" means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

"Category 2 Renewable" means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

"Category 3 Renewable" means the Renewable Energy Credits that satisfies the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

"CEC" means the California Energy Commission.

"Commercially Reasonable Efforts" for the purposes of this Confirmation, "commercially reasonable efforts" or acting in a "commercially reasonable manner" shall not require a Party to undertake extraordinary or unreasonable measures.

"Compliance Obligation" has the meaning set forth by the Cap and Trade Regulations.

"CRRs" means Congestion Revenue Rights as defined in the Tariff.

"CPUC" means the California Public Utilities Commission.

"Customers" means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Peninsula Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of San Mateo, and identified to Seller pursuant to this Confirmation.

"Delivery Period" shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

"Delivery Point" has the meaning set forth in Section 4.

"Effective Date" shall have the meaning set forth in the Reference Section at the beginning of this Confirmation.

"Energy" means real (not reactive) electric energy in the form of three-phase alternating current having a nominal frequency of approximately 60 cycles per second and measured in MWh, provided that Energy supplied to Buyer under this Confirmation shall have the characteristics of electrical energy that is available and flowing at the Delivery Point.

"Energy Contract Price" shall mean the price (\$/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

"Energy Contract Quantity" shall mean the quantity of Energy to be delivered by Seller to Buyer hereunder, as set forth on Exhibit A.

"Eligible Renewable Energy Resource" or "ERR" shall mean an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

"Execution Date" means the date that this Confirmation was executed, specified as the Transaction Date in the Reference section at the beginning of this Confirmation.

"Exhibits" shall be those certain Exhibits, which are attached hereto and made a part hereof.

"FERC" means the Federal Energy Regulatory Commission.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States.

"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, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

"Imbalance Charge" means any scheduling penalties, imbalance penalties, overpull or unauthorized overrun penalties, operational flow order penalties, cash out charges, banking charges or similar penalties, fees or charges, assessed by, or oversupply credits or payments due with respect to a failure to comply with balance and/or scheduling requirements of any applicable entity, specifically excluding any distribution charges imposed by PG&E on the delivery of the Energy hereunder.

"Losses" means the difference between (1) the quantity of Energy delivered by PG&E to all Customers prior to application of PG&E's distribution loss factor and (2) the wholesale quantity of Energy delivered by PG&E to all Customers as filed by Buyer with CAISO.

"Mandatory Reporting Rule" means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth at Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

"MW" means megawatt.

"MWh" means megawatt-hour.

"PG&E" means the Pacific Gas and Electric Company, its successors and assigns.

"Pass-Through Charges" shall have the meaning set forth in Section 6 of Appendix I.

"Peninsula Clean Energy Customer Load" means the wholesale electric load requirements of Customers, without deduction for Losses. Peninsula Clean Energy Customer Load shall be deemed to include all Customers that have not opted out of the Peninsula Clean Energy Program on any given day during the Delivery Period.

"Peninsula Clean Energy Program" means the community choice aggregation program operated by Buyer.

“Phase(s)” means specifically defined period(s) of time throughout the Delivery Period during which additional Customers are incorporated into the Peninsula Clean Energy Customer Load in accordance with the Peninsula Clean Energy Program, as further described in the Implementation Plan.

“Product” shall have the meaning set forth in Section 2.1 below.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practice” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of REC creation, which pursuant to the California RPS program, will not be valid if older than 36 months.

“Renewable Energy” means Energy and associated Renewable Energy Credits generated by an Eligible Renewable Energy Resource.

“Renewable Energy Contract Price” shall mean the price (\$/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

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

“SC Services” means those scheduling coordinator services described in Appendix I, attached hereto and incorporated herein.

“Security Documents” has the meaning set forth in the Master Agreement.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Third-Party SC” means a third party designated by Buyer to provide the Scheduling Coordinator functions for the benefit of Buyer.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

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

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. **PRODUCT.**

2.1 Seller Delivery Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of:

- (a) a quantity of Energy determined in accordance with Sections 6.1;
- (b) a quantity of Renewable Energy determined in accordance with Section 5.2 and 6.2; and
- (c) a quantity of Carbon Free Energy determined in accordance with Sections 6.1.

2.2 Change in Law.

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Execution Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These change in law provisions are independent of those set forth in the RPS Standard Terms and Conditions below and in Section 2.8.

2.3 Renewable Energy.

(a) RPS Standard Terms and Conditions.

STC 6: Eligibility

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

STC REC-1: Transfer of Renewable Energy Credits

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

STC REC-2: Tracking of RECs in WREGIS

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

STC 17: 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.

- 2.4 No New Construction Without Environmental Review. To the extent that Seller constructs any new facilities to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.
- 2.5 Resources. The Energy provided under this Confirmation may be procured from unit-specific sources, provided that such unit-specific sources are not nuclear or coal-fired resources, under terms and conditions to be agreed between the Parties. To the extent unit-specific resources have not been agreed to by the Parties, Seller may use Unspecified Sources of Power to provide the required Energy and in addition, the Parties acknowledge that Seller may supply Unspecified Sources of Power from time to time to satisfy any Energy required hereunder.
- 2.6 Delivery of WREGIS Certificates. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Peninsula Clean Energy. Seller shall comply with all Applicable Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer’s sole benefit. Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer

conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates that meet the specifications reflected in this Confirmation. Upon either Party's receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.7 **Retirement of RECs.** To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations ("CCR") Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs purchased from Seller hereunder for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D).

2.8 **RPS Adjustment.** The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the regulatory requirements for application of the RPS Adjustment change after the Trade Date and such change causes an increase in the greenhouse gas emissions intensity associated with the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction to mitigate the increase in the greenhouse gas emissions intensity. In the event that the Parties are unsuccessful in revising or amending this Transaction to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Transaction Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof:

Start Date:	End Date:

4. **LOCATION AND DELIVERY POINT.**

Market Area	Delivery Point	Buyer's Local Utility
CAISO	PG&E DLAP	PG&E

5. **PRICING.**

5.1. **Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity multiplied by the Energy Contract Price specified in Exhibit A.

5.2. **Renewable Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the applicable Renewable Energy Contract Price as specified in Exhibit B, which is in addition to the Energy Contract Price, multiplied by the portion of the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS during such month. Seller acknowledges that from time to time Buyer may require an adjustment in the amount of Renewable Energy provided to Buyer hereunder in order for Buyer to satisfy requirements of the California RPS program applicable to the Peninsula Clean Energy Authority as well as certain voluntary renewable energy procurement requirements identified by Buyer. To the extent that Buyer requires such adjustments to its Renewable Energy requirements, (i) Buyer shall provide written notice to Seller of such adjustments and (ii) Seller shall use commercially reasonable efforts to purchase additional Renewable Energy (in which case Buyer shall reimburse Seller for its actual cost to purchase such additional Renewable Energy) or re-market excess Renewable Energy for the benefit of Buyer (in which case Seller shall credit Buyer's account for the revenues obtained by Seller for remarketing such excess Renewable Energy, provided that Buyer shall remain responsible to pay Seller for the quantities represented in Exhibit B), in each case, in accordance with procedures to be mutually agreed upon by Seller and Buyer. Seller shall not enter into any such transactions to purchase additional Renewable Energy or re-market excess Renewable Energy without Buyer's written approval.

5.3. **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity multiplied by the Carbon Free Energy Price specified in Exhibit C.

6. **CONTRACT QUANTITIES.**

6.1. **Energy.** Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.

- 6.2. **Renewable Energy.** Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include any and all Renewable Energy Credits associated with such Renewable Energy.
- 6.3. **Carbon Free Energy.** Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.
7. **MONTHLY BILLING SETTLEMENT.** Seller's monthly invoice to Buyer shall be settled in accordance with this Section 7.
- 7.1. **Collection of Customer Payments.** In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller's invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.
- 7.2. **Monthly Invoice Timeline.** Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.
8. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on behalf of Peninsula Clean Energy and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.
9. **LOAD SERVED.** The services and the Product described under this Confirmation shall be provided to the Customers selected by Buyer for the first Phase of its Peninsula Clean Energy Program, as further described in Peninsula Clean Energy's Implementation Plan and Statement of Intent. During customer phase-in periods, as discussed in the Implementation Plan, Customers will be switched to the Peninsula Clean Energy Program over an approximately thirty (30) day period in accordance with the applicable meter read cycle for such Customer. At the end of each month, Buyer shall provide to Seller updated aggregate account information for Customers to be served during the upcoming month. Buyer shall provide to Seller a daily report of Customer sales based on the meter data reported by PG&E, and Buyer shall submit, or cause to be submitted, settlement quality meter data to the CAISO. Seller shall prepare invoices to Buyer based on such daily reports.
10. **BUYER FACILITIES.** Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities or purchase energy from other parties ("Buyer Facilities").
11. **CUSTOMIZED PRICING.** From time to time, Buyer may request Seller to prepare customized pricing options for certain large commercial and industrial customers identified by Buyer and to engage in discussions with such customers to help them understand their Peninsula Clean Energy Program service options. Examples of these types of products may include, but need not be limited to fixed price offers of varying term lengths, variable price offers, block, or component pass-through products. These products would be offered on an opt-in basis and, to the greatest extent possible, these products will be priced on the individual customer's usage characteristics. Buyer may also request Seller to develop one or more proposals to provide data management and customer services (including facilitating EDI transactions with PG&E for enrollment, usage history, billing, etc.) for such customers. The focus of these customized pricing options for individual customers will be the large commercial and industrial rate classes. However, in order to maximize customer attraction and/or retention as part of the Peninsula Clean Energy Program, Buyer may also request that Seller develop special energy supply product offerings to other customer segments, including medium commercial or residential/small business customers. Any such offerings by Seller will be presented to Peninsula Clean Energy Customers by Buyer. Buyer reserves the right in its sole discretion to request and cause to be presented to its Customers competitive proposals for any such services from third-party suppliers. The Parties acknowledge and agree that any customized pricing options, proposals, product offerings prepared or developed by Seller pursuant to this Section 11 shall only be binding on the Parties upon the mutual written agreement of the Parties.
12. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.
13. **CONFIDENTIAL INFORMATION.** Seller shall take all reasonable steps necessary to ensure that confidential information about customers of Buyer that Seller receives remains confidential. Seller acknowledges that the confidential information about customers of Buyer that it will have access to under this Confirmation could give it, Seller's affiliates or any third party an unfair competitive advantage in the event that Seller, Seller's affiliates or any third party were to compete with Buyer in

the provision of energy, renewable energy, or other related services to its Customers. SELLER AGREES THAT IT WILL NOT USE OR SHARE ANY INFORMATION IT RECEIVES REGARDING BUYER'S CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS CONFIRMATION. Seller shall not use such customer information to compete with Buyer in any manner and expressly agrees that for a period of three (3) years after the termination of this Confirmation, Seller will not directly or indirectly, on its own behalf or on behalf of any person, corporation, partnership, venture or other business entity, (i) solicit or attempt to solicit any Customers or (ii) circumvent, attempt to circumvent, bypass or otherwise exclude Buyer from the provision of energy, renewable energy or other related services to such Customers; provided, however, that Buyer agrees and acknowledges that as of the date hereof, Seller's affiliate(s) supplies electricity to certain customers located within the jurisdictional boundaries of the Member Agencies and Buyer further agrees and acknowledges that nothing contained herein prevents such Seller affiliate(s) from continuing to serve those customers or from soliciting or attempting to solicit any Customers in accordance with its normal course of business, including soliciting a Customer as part of a solicitation that includes such Customer's accounts that are located both within and outside of the jurisdictional boundaries of the Member Agencies. Upon the written request of Buyer, Seller shall return all such customer information to Buyer and destroy any copies of such information remaining in its possession.

14. **SECURITY PROVISIONS.**

14.1. **Compliance with Security Documents and Adopted Policies.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents and the Adopted Policies. Buyer shall give Seller copies of any revisions to the Adopted Policies not less than thirty (30) days prior to the effectiveness of such revisions. Upon the occurrence of an event of default (after giving effect to any applicable cure periods) by Buyer under any Security Agreement or a termination of any Security Agreement by Seller due to Buyer's failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform.

14.2. **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer's financial performance, Buyer's performance of its obligations under this Confirmation or any Security Agreement or the ongoing viability of the CCA.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (viii) below, and each report shall be with regard to such previous calendar month or other period as applicable:

- (i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity;
- (ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);
- (iii) Cash reconciliations and bank statements for each of Buyer's Peninsula Clean Energy's banking accounts;
- (iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers;
- (v) Summary of all Customers added or deleted from the list of Customers served by Buyer, such information shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity; and
- (vi) Certificate of compliance with Adopted Policies; and
- (vii) Summary of all net meter data, grossed-up meter data and the difference between the two amounts on a daily and hourly interval basis.

(b) **Annual Reports.** The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer's fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer's financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared

in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated [REDACTED], 2016 (the "Master Agreement") between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the "Agreement."

<p>This Confirmation is subject to the Exhibits identified below and that are attached hereto:</p> <p>Appendix I - Schedule of Schedule Coordinator Services</p> <p>Exhibit A – Energy Contract Quantity and Price Schedule</p> <p>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</p> <p>Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule</p> <p>Exhibit D – Scheduling Fee</p>

PENINSULA CLEAN ENERGY AUTHORITY, a California joint powers authority

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

Appendix I
Scheduling Coordinator Services

Reference:
Master Power Purchase and Sale Agreement
Between _____ ("Seller")
And
Peninsula Clean Energy, a California joint powers authority ("Buyer")
As of _____ (the "Effective Date")
Transaction Date: _____

Pursuant to the Confirmation entered into between Buyer and Seller dated _____, Seller shall provide the scheduling coordinator services set forth on this Appendix I (collectively, the "SC Services"). Any capitalized terms used in this Appendix I but not otherwise defined in this Appendix I or the Confirmation shall have the meanings ascribed to such terms in the Tariff or the Master Agreement, as applicable.

1. **Forecasting.**

- (a) **Short Term Forecasting.** Seller shall be responsible for preparing and submitting short-term load forecasts of Energy and Capacity for terms of less than one year as Buyer's 'Scheduling Coordinator' necessary to meet its energy supply obligations to Buyer (the "Short-Term Forecast"). The Parties shall mutually agree from time to time on the assumptions and models to be included in the Short-Term Forecast and the Long-Term Forecasts (defined below) prepared hereunder. Such forecasts shall be inclusive of estimated Losses from the Delivery Point to Customers' meters. Buyer shall provide settlement quality meter data, resource data and load data as reasonably requested by Seller necessary for the preparation of the forecasts. Seller shall not be liable for any costs or losses incurred by or charged to Buyer as a result of Seller's forecasting obligations so long as Seller has performed its obligations in accordance with Prudent Industry Practices and the Agreement. In the event a Governmental Authority requests clarification of forecasts provided by Seller hereunder or otherwise requires Buyer to substantiate such forecasts, Seller shall in good faith assist Buyer in responding to such request and assist Buyer in defending the reasonableness of such forecasts (such assistance shall exclude payment of any costs or expenses incurred by Buyer in responding to such inquiries).
- (b) **Long Term Forecasting.** Buyer shall prepare appropriate long-term load forecasts for Energy and Capacity for terms of one year and greater and Seller will assist and coordinate with Buyer in its preparation of such long-term load forecasts and Buyer shall submit such long-term load forecasts as required by the CPUC, CEC the CAISO or any other applicable regulatory body, including those required of a CCA (including all updates and revisions, (the "Long-Term Forecast") and promptly provide Seller with a copy thereof, provided that every ninety (90) days Buyer shall provide Seller with either a new Long-Term Forecast or a statement that no changes to the most recent Long-Term Forecast have occurred. Seller shall have the right to request clarification regarding any change made to the Long-Term Forecast.
2. **Load Balancing.** Buyer shall be responsible for and shall pay, and shall reimburse or credit Seller if Seller pays, all Imbalance Charges resulting from the supply of Product.
3. **Scheduling.** Seller shall be responsible for submitting schedules and bidding Product in accordance with the obligations of a Scheduling Coordinator as defined by the CAISO, including the scheduling and bidding for loads of all Customers served by Buyer. Seller shall perform the scheduling and bidding services in accordance with the Tariff, protocols and business practices. Seller shall establish a separate 'Scheduling Coordinator' identification to isolate CAISO charges related to providing energy supply services to Buyer, and Seller shall be responsible for any collateral postings required by the CAISO in conjunction with scheduling the Peninsula Clean Energy Customer Load.
- (a) **Day Ahead Forecasting.** Seller shall submit day-ahead forecasts of Peninsula Clean Energy Customer Load on a daily basis ("Day-Ahead Forecasts"), based on a methodology to be agreed upon between Buyer and Seller. Day-Ahead Forecasts shall be based upon Customer information provided to Seller, historical load patterns, and Seller weather forecasts. Seller shall provide Buyer with daily Day-Ahead Forecasts upon the prior written request of Buyer, and to implement reasonable modifications to daily forecasting methodology. Variances between Day-Ahead Forecast and the actual Peninsula Clean Energy Customer Load will be settled at CAISO real-time prices as reflected in the CAISO settlements statement.
- (b) **Monthly Summary Report / Filing.** On or before the fifteenth (15th) day of each month (or the next Business Day thereafter if the fifteenth (15th) day of the month is not a Business Day) following the end of each month during the term, Seller will e-mail to Buyer electronic reports summarizing the activities during the prior month, which reports shall be in form and substance reasonably satisfactory to Buyer and Seller (the "Monthly Report"). The monthly reports will be supported by appropriate documentation. Seller shall file with CAISO all schedules and meter data reports required to be filed by the Scheduling Coordinator for Buyer.
- (c) **Seller Excused.** In addition to any excuses for performance otherwise expressly provided for in the Agreement, Seller shall be excused from performing its obligations under this Appendix I to the extent that (i) any failure by Buyer to perform any of its obligations hereunder, delays or interferes with Seller performing its obligations under this Appendix I

and (ii) the occurrence of disruptions of the CAISO system that prohibit Seller from meeting its scheduling obligations hereunder, including a disruption that prohibits Seller from making hourly changes during scheduling periods.

(d) **Buyer Facilities.** At Buyer's request and upon ninety (90) days written notice provided by Buyer, Seller shall schedule or accept inter-scheduling coordinator trades from Buyer Facilities, as a Scheduling Coordinator, and directly pass through the benefits of such schedules to Buyer. Seller shall not be obligated to act as Scheduling Coordinator for generating facilities that are Buyer's Facilities except under a separate agreement, which shall be subject to agreement of the Parties. Unless the Parties agree otherwise, Buyer Facilities shall not displace energy related products or wholesale hedge positions entered into by Seller on behalf of Peninsula Clean Energy Customer Load requirements. Any incremental costs and expenses incurred by Seller in performing its obligations under this Section 10 shall be billed to Buyer as Pass-Through Charges. Seller shall use commercially reasonable efforts to minimize any such incremental costs and expenses.

4. **Congestion Revenue Rights.** Seller shall assist Buyer with obtaining CRRs through the CAISO allocation process and load migration processes relating to mitigating Buyer's congestion costs and shall provide pertinent contact information for individuals within Seller's organization who will be assisting Buyer with candidate CRR holder registration and ongoing CRR administration throughout the Term of Agreement. At Buyer's direction, Seller shall assist Buyer (at Buyer's cost) with obtaining and/or selling CRRs through the CAISO CRR auction process.

5. **Buyer's Obligations.**

(a) **Information for Scheduling.** Buyer acknowledges that Seller will be communicating information that Seller receives from Buyer to the CAISO. Buyer acknowledges that Seller will be requesting that Buyer confirm the accuracy and completeness of the information and consistency with Buyer's operational plans and that Seller may refuse to provide the SC Services at any time Seller does not receive that confirmation, and Seller shall have no liability hereunder for such refusal to provide the SC Services.

(b) **Meter Data.** Buyer shall establish its ability to perform, or have performed by a third party on Buyer's behalf, all metering requirements necessary for Seller to comply with the requirements of the Tariff in connection with providing services. Buyer shall actively intervene with third parties, as necessary and appropriate, on Seller's behalf to ensure that Seller has all reasonable access to relevant meters, associated Assets and facilities and meter data as is necessary for Seller to comply with the requirements of the Tariff. Buyer shall submit to the CAISO, or cause to be submitted to the CAISO, any meter data required by the CAISO related to Buyer's schedules consistent with the CAISO's Settlement and Billing Protocol and Metering Protocol. Buyer shall comply with the CAISO's annual meter data quality audit.

(c) **Contact List.** Buyer shall provide Seller with a 24-hour emergency contact list.

(d) **Information.** Buyer shall timely provide any information as reasonably required by Seller to perform the SC Services.

6. **Pass-Through Charges.** Seller shall be responsible for bidding and scheduling the loads of Buyer in accordance with Prudent Utility Practice and Applicable Law, including the Tariff. Seller shall pass through to Buyer all other costs or credits included in the CAISO invoice and charged or credited to Seller in serving as Buyer's Scheduling Coordinator that are not otherwise specified in the terms and conditions as provided herein ("Pass-Through Charges"), including but not limited to: all CAISO Charges, Imbalance Charges, day-ahead energy prices, and real-time energy prices associated with Energy volumes above or below the Energy Contract Quantity identified in Exhibit A and the Carbon Free Energy Quantity identified in Exhibit C, including volumes associated with inter-scheduling coordinator trades from Buyer Facilities. The Parties agree and acknowledge that Buyer's Customers will remain responsible for payment of delivery charges for transmission, distribution, public goods and other non-bypassable surcharges charged directly to Customers by PG&E. Upon reasonable advance notice, Buyer may request a review of the relevant records of Seller to confirm the accuracy of any costs or credits passed-through to Buyer hereunder. Seller shall maintain at all times and use commercially reasonable efforts to provide such records for Buyer's review during normal business hours and copies of such records at Buyer's cost and subject to any applicable confidentiality restrictions.

7. **Indemnification.**

(a) **BUYER AGREES THAT IT WILL INDEMNIFY AND HOLD HARMLESS SELLER AND SELLER'S AFFILIATES WITH RESPECT TO ANY FINES OR PENALTIES THAT MAY BE ASSESSED AGAINST SELLER BY THE CAISO FOR INACCURATE INFORMATION THAT BUYER REPORTED TO SELLER IN WRITING (INCLUDING ELECTRONIC COMMUNICATIONS).**

(b) **SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS BUYER FROM ANY PENALTIES, FINES OR COSTS ASSESSED AGAINST BUYER BY THE CPUC OR THE CAISO TO THE EXTENT DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER.**

8. **Monthly Settlement.**

- (a) **Third Party Costs.** On or before the fifteenth (15th) day of each month (or the next Business Day thereafter if the fifteenth (15th) day of the month is not a Business Day), Seller shall assemble all third party charges incurred for services performed by Seller during the previous month for inclusion in the Monthly Report.
- (b) **CAISO Settlements.** On or before the fifteenth (15th) day of each month (or the next Business Day thereafter if the fifteenth (15th) day of the month is not a Business Day), Seller shall provide Buyer with an estimate of the amount of CAISO settlement costs attributable to Buyer through the forthcoming settlement period. Seller shall pay any settlement costs incurred by Seller on behalf of Buyer and incorporated within invoices from the CAISO on or before the due date in accordance with the Tariff for inclusion in the Monthly Report.
- (c) **Payment Information.** On or before the fifteenth (15th) day of each month (or the next Business Day thereafter if the fifteenth (15th) day of the month is not a Business Day), Seller shall deliver to Buyer a statement, which may be based on reasonable estimated amounts if actual amounts are not available, in electronic form and in writing setting forth amounts due Buyer or Seller, as the case may be, under this Appendix I. Seller and Buyer shall net all amounts due between Buyer and Seller arising under this Appendix I and amounts owed between the Parties pursuant to Section 6.4 of the Master Agreement. Payments required pursuant to this Annex I shall be made in accordance with the payment provisions of the Master Agreement applicable to the Confirmation.
- (d) **Disputes.** Seller shall use commercially reasonable efforts to engage the CAISO dispute process on Buyer's behalf for any erroneous charges identified by Seller or Buyer in the CAISO settlements.
9. **Obligations Several / Relationship.** The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Appendix I shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Appendix I.
10. **Authorized Representatives.** Each Party shall designate in writing one or more persons as its authorized representative(s) to act on its behalf in carrying out the provisions of this Appendix I. The Parties shall be bound by the oral and written communications, directions, requests, decisions and other actions taken by their respective authorized representative.
11. **Buyer's Representation Regarding Operational Plans.** Buyer acknowledges that Seller will be communicating information that Seller receives from Buyer to the CAISO. Buyer covenants and agrees with Seller that all information provided to Seller by Buyer, its officers and employees will be true, complete and consistent with Buyer's operational plans to the best knowledge of the person providing the information. Buyer acknowledges that Seller will be requesting that Buyer confirm (i) the accuracy and completeness of the information; (ii) consistency with Buyer's operational plans and (iii) compliance with the CAISO and FERC rules or regulations.
12. **No Dedication of Facilities.** Neither the services performed by Seller under this Appendix I nor either Party's actions or inactions under this Appendix I shall constitute or be construed as a dedication of the systems or assets, or any portion thereof, of either Party to the public or to the other Party.
13. **Control.** Buyer agrees, upon request of Seller, to submit a letter of concurrence in support of any affirmative statement by Seller that this contractual arrangement does not transfer "ownership or control of generation capacity" from Buyer to Seller, as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42.
14. **Terminating Seller's Designation as Scheduling Coordinator.** Buyer may revoke Seller's authorization to act as Scheduling Coordinator and designate a Third-Party SC if Seller fails to perform any material covenant or obligation set forth in this Appendix and such failure is not remedied within thirty (30) days of receipt of written notice. If Buyer designates a Third Party SC in accordance with this provision, the Parties agree to take any other action necessary to terminate the designation of Seller as Scheduling Coordinator, including Seller submitting a letter to the CAISO resigning as Scheduling Coordinator under this Agreement and amending this Agreement to reflect such termination. Buyer shall give Seller written notice of the designation of the Third-Party SC 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 written notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.
15. **SC Service Fees.** Buyer shall be obligated to pay to Seller the following fee under this Agreement, which shall be in addition to the Pass-Through Charges specified in Section 6:
- (a) **Scheduling Fees.** Amounts, if any, as described in Exhibit D.

Exhibit A
Energy Contract Quantity and Price Schedule

[TBD]

Exhibit B
Renewable Energy Contract Quantity and Price Schedule

[TBD]

Exhibit C
Carbon Free Energy Contract Quantity and Price Schedule

[TBD]

**Exhibit D
Scheduling Fees**

[TBD]

DATED as of June _____, 2016

- (1) **WILMINGTON TRUST, NATIONAL ASSOCIATION**,
as Account Bank,
 - (2) **PENINSULA CLEAN ENERGY AUTHORITY**,
as PCEA,
- and
- (3) **WILMINGTON TRUST, NATIONAL ASSOCIATION**, not in
its individual capacity, but solely as collateral agent,
as Secured Party.

ACCOUNT CONTROL AGREEMENT

ACCOUNT CONTROL AGREEMENT dated as of June __, 2016 (this “Agreement”)

BETWEEN:

- (1) **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association (the “Account Bank”);
- (2) **PENINSULA CLEAN ENERGY AUTHORITY (“PCEA”)**;
and
- (3) **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, not in its individual capacity, but solely as collateral agent (the “Secured Party”).

WHEREAS:

- (A) PCEA has pledged to the Secured Party (for the benefit of the PPA Providers, as secured creditors) all accounts receivable owing from time to time to PCEA by PCEA’s utility customers for Product sold to PCEA under one or more Power Purchase Agreements, pursuant to that certain Security Agreement between PCEA and Secured Party dated June __, 2016 (the “Security Agreement”);
- (B) PCEA has directed Pacific Gas and Electric Company (“PG&E”) to remit all present and future collections on accounts receivable now or hereafter billed by PG&E and owed by PCEA’s customers to Secured Party, for remittance to a Lockbox Account (as defined in the Security Agreement) maintained by Secured Party;
- (C) Secured Party shall have, for the benefit of the PPA Providers, a first priority continuing security interest in and lien on such receivables, deposit accounts and related Collateral (as defined in the Security Agreement) pledged to Secured Party for the benefit of the PPA Providers, as provided in the Security Agreement;

PCEA intends that Secured Party shall distribute the Collateral deposited into the Lockbox Account in accordance with the provisions of the Security Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

Unless otherwise defined herein, all capitalized terms used herein and defined in the Security Agreement shall be used herein as therein defined. Reference to singular terms shall include the plural and vice versa.

1. THE ACCOUNTS.

PCEA hereby requests that Account Bank open, and Account Bank hereby confirms that it has opened, account number [*insert account number*] (a non-interest-bearing deposit account held in the name of PCEA) which will be subject to, and administered in accordance with, the terms of this Agreement (together, the “PCEA Account”).

The parties hereto agree that the PCEA Account shall be funded solely by wire transfers of immediately available funds and that Account Bank shall not be required to accept any other items for deposit into the PCEA Account. All amounts payable for deposit into the PCEA Account shall be paid to Account Bank at the following accounts:

Wilmington Trust Company
ABA#: 031100092
Credit: Peninsula Clean Energy Authority
A/C #: TBD
Attn.: Adam Vogelsong

2. CONTROL OF THE ACCOUNTS / PAYMENT MECHANICS.

- (a) The PCEA Account shall be maintained by Account Bank in the name of “Peninsula Clean Energy Authority” and shall be under the sole dominion and control of Secured Party. Account Bank agrees that it will comply with written instructions originated by Secured Party directing disposition of the funds in the PCEA Account without further consent by PCEA or otherwise.
- (b) Account Bank shall disburse and/or invest funds held in the PCEA Account as instructed by the Secured Party.

3. STATEMENTS AND OTHER INFORMATION.

- (a) Account Bank shall provide Secured Party with copies of the regular monthly bank statements of the Collections Account at such times such statements are provided to PCEA and such other information relating to the PCEA Account as shall reasonably be requested by Secured Party or PCEA. Account Bank shall also deliver a copy of all notices and statements required to be sent by it to PCEA pursuant to any agreement governing or related to the PCEA Account to Secured Party at such times such notices and statements are provided to PCEA. Except as otherwise required by law, Account Bank will use reasonable efforts promptly to notify Secured Party and PCEA if Account Bank receives a notice that any other person claims that it has a property interest in the PCEA Account. As at the date of this Agreement, Account Bank confirms that it has not received notice that any other person has any interest in the PCEA Account.
- (b) Account Bank hereby confirms that (i) the PCEA Account has been established and are maintained with Account Bank on its books and records, (ii) Account Bank is a bank within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code of New York, (iii) the PCEA Account is a deposit accounts within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code of New York, and (iv) the jurisdiction of Account Bank for the purposes of Article 9 of the Uniform Commercial Code of New York is New York.

4. **FEES.**

PCEA agrees to pay on demand all usual and customary service charges, transfer fees and account maintenance fees of Account Bank in connection with the PCEA Account in accordance with the terms of the separate fee agreement entered into by PCEA and Account Bank.

5. **SET-OFF.**

Account Bank hereby agrees that Account Bank will not exercise or claim any right of set-off or banker's lien against the PCEA Accounts. As of the date of this Agreement, Account Bank does not know of any claim to or interest in the PCEA Account, except for claims and interests of the parties hereto. All of Account Bank's present and future rights against the PCEA Account are subordinate to Secured Party's security interest therein.

6. **ACCOUNT BANK.**

The acceptance by Account Bank of its duties under this Agreement is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to all of Account Bank's rights, duties, liabilities and immunities:

- (a) Account Bank shall be protected in acting upon any written notice, certificate, resolution, instruction, request, authorization or other paper or document as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information therein contained, which it in good faith believes to be genuine and to have been signed or presented by the proper party or parties in accordance with the terms of this Agreement.
- (b) Account Bank may act relative hereto upon advice of counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. If at any time Account Bank determines that it requires or desires guidance regarding the application of any provision of this Agreement or any other document, regarding compliance with any direction it receives hereunder, Account Bank may deliver a notice to Secured Party (or PCEA after Secured Party has informed Account Bank that PCEA has satisfied all of its obligations under the Power Purchase Agreements) requesting written instructions as to such application or compliance, and such instructions by or on behalf of Secured Party (or PCEA after Secured Party has informed Account Bank that PCEA has satisfied all of its obligations under the Power Purchase Agreements), as applicable, shall constitute full and complete authorization and protection for actions taken and other performance by Account Bank in reliance thereon. Until Account Bank has received such instructions after delivering such notice, it may, but shall be under no duty to, take or refrain from taking any action with respect to the matters described in such notice.
- (c) This Agreement sets forth exclusively the duties of Account Bank with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Agreement against Account Bank.

- (d) Any funds held by Account Bank, as such, need not be segregated from other funds except to the extent required by mandatory provisions of law.

7. REPRESENTATIONS OF ACCOUNT BANK.

Account Bank represents and warrants as to itself (as set forth below) to Secured Party as follows, such representations are being made on the date of the execution and delivery of this Agreement, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties are correct on and as of such earlier date):

- (a) Organization, Corporate Authority, Etc. Account Bank represents and warrants that it is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority to enter into and perform its obligations under this Agreement, and has full right, power and authority to enter into and perform its obligations under this Agreement.
- (b) Authorization, Etc. Account Bank represents and warrants that this Agreement has been duly executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its own behalf.
- (c) Legal, Valid and Binding. Account Bank represents and warrants that this Agreement has been duly executed and delivered by it and, assuming that this Agreement is the legal, valid and binding obligation of each other party thereto, is the legal, valid and binding obligation of Account Bank, enforceable against Account Bank in accordance with its terms.
- (d) No Violation. Account Bank represents and warrants that this Agreement has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will violate any federal law or regulation relating to its banking or trust powers or contravene or result in any breach of, or constitute any default under its charter or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected.

8. EXCULPATION OF ACCOUNT BANK; INDEMNIFICATION BY BORROWER.

Each of PCEA and Secured Party agrees that Account Bank shall have no liability to any of them for any loss or damage that any or all may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof, unless occasioned by the gross negligence, breach of an express term of this Agreement or willful misconduct of Account Bank. In no event shall Account Bank be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Account Bank's reasonable control or for the indirect, special or consequential damages. PCEA agrees to indemnify Account Bank and hold it harmless from and against all claims, other than those ultimately determined to be founded on

the gross negligence or willful misconduct of Account Bank, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Account Bank through the use of any PCEA Account at Account Bank or pursuant to this Agreement.

9. TERMINATION.

This Agreement may be terminated upon delivery to Account Bank of a written notification thereof jointly executed by Secured Party and (provided Secured Party has not notified Account Bank that an Event of Default is then continuing) PCEA. Notwithstanding the foregoing, this Agreement may be terminated by Secured Party at any time, with or without cause, upon its delivery of written notice thereof to each of PCEA and Account Bank. This Agreement may be terminated by Account Bank at any time on not less than thirty (30) days' prior written notice delivered to each of PCEA and Secured Party provided that such termination shall not take effect until Secured Party confirms that a replacement account and replacement security thereover have been obtained in form and substance satisfactory to Secured Party. Upon any such termination of this Agreement, Account Bank will immediately transmit to such account as Secured Party may direct all funds, if any, then on deposit in, or otherwise standing to the credit of the PCEA Account. The provisions of paragraphs 2 and 5 shall survive termination of this Agreement unless and until specifically released by Secured Party in writing. All rights of Account Bank under paragraphs 4, 5, 6 and 8 shall survive any termination of this Agreement.

10. IRREVOCABLE AGREEMENTS.

PCEA acknowledges that the agreements made by it and the authorizations granted by it in paragraph 2 hereof are irrevocable and that the authorizations granted in paragraph 2 hereof are powers coupled with an interest.

11. NOTICES.

All notices, requests or other communications given to Account Bank, PCEA or Secured Party shall be given in writing (including by facsimile) at the address specified below:

Account Bank: Wilmington Trust, National Association
1100 N. Market Street
Wilmington, DE 19890-1605
Attention: Adam Vogelsong
Reference: Peninsula Clean Energy Authority
Fax: +1 302-636-4140/4141
Email: avogelsong@wilmingtontrust.com

PCEA: Peninsula Clean Energy Authority
[Address]
[Address]
Attention: [TBD]
Fax: [TBD]

Email: [TBD]

Secured Party: Wilmington Trust, National Association, as
Collateral Agent
1100 N. Market Street
Wilmington, DE 19890-1605
Attention: Adam Vogelsong
Reference: Peninsula Clean Energy Authority
Fax: +1 302-636-4140/4141
Email: avogelsong@wilmingtontrust.com

Any party may change its address for notices hereunder by notice to each other party hereunder given in accordance with this paragraph 11. Each notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this paragraph 11 and confirmation of receipt is made by the appropriate party, (b) if given by overnight courier, five (5) days after such communication is deposited with the overnight courier for delivery, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified in this paragraph 11.

12. MISCELLANEOUS.

- (a) This Agreement may be amended only by a written instrument executed by each of the parties hereto acting by their respective duly authorized representatives.
- (b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but neither PCEA nor Account Bank shall be entitled to assign or delegate any of its rights or duties hereunder without first obtaining the express prior written consent of Secured Party.
- (c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- (d) This Agreement and any document contemplated hereby may be delivered by a party hereto by way of facsimile or e-mail transmission and such delivery shall be deemed completed for all purposes upon the completion of such facsimile or e-mail transmission. A party that so delivers this Agreement or any such document by way of facsimile or e-mail transmission agrees to promptly thereafter deliver to the other party hereto an original signed counterpart. The signature of any party transmitted by facsimile or e-mail shall be considered for these purposes as an original document, and any such document shall be considered to have the same binding legal effect as an originally executed document. In consideration of the mutual covenants herein contained, the parties agree that neither of them shall raise the use of a facsimile machine or e-mail as a defense in any suit or controversy related to this Agreement or any of the other documents and forever waive any such defense.

- (e) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF NEW YORK. The parties agree that the State of New York (i) is and shall remain the “bank’s jurisdiction” of the Account Bank for the purposes of the Uniform Commercial Code; and (ii) shall be deemed to be the location of the PCEA Accounts and of the PCEA’s rights and interests in and to the PCEA Accounts. This Agreement may be executed by the parties hereto in separate counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.
- (f) EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH THEY ARE PARTIES INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT, THE OTHER LOAN OPERATIVE DOCUMENTS OR THE RELATIONSHIP ESTABLISHED HEREUNDER OR THEREUNDER.
- (g) PCEA hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York state court sitting in New York City for the purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby and thereby. PCEA irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.
- (h) PCEA hereby irrevocably appoints [*PCEA to identify party to receive service*] from time to time to receive on its behalf service of process issued out of the federal courts of New York in any legal action or proceeding arising out of or in connection with this Agreement or any other document to which it is a party. PCEA undertakes not to revoke the authority of the agent specified above and if, for any reason, any such agent no longer serves or is capable of serving as agent of the relevant party hereto to receive service of process in New York, such party shall promptly appoint another such agent and advise Secured Party thereof and, failing such appointment within fourteen (14) days, Secured Party shall be entitled (and is hereby authorized) to appoint an agent on behalf of PCEA. Nothing herein contained shall restrict the right to serve process in any other manner allowed by law.

[signature page follows]

IN WITNESS WHEREOF, each of the parties has executed and delivered this Account Control Agreement as of the day and year first above set forth.

Account Bank

WILMINGTON TRUST, NATIONAL ASSOCIATION

By: _____

Name:

Title:

PCEA

PENINSULA CLEAN ENERGY AUTHORITY

By: _____

Name:

Title:

Secured Party

WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Collateral Agent

By: _____

Name:

Title:

SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this “**Agreement**”) dated as of [_____], 2016 is entered into between Peninsula Clean Energy Authority, a California joint powers authority, as pledgor (“**PCEA**”), and Wilmington Trust, National Association, a national banking association, not in its individual capacity, but solely as collateral agent (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”), for the benefit of the PPA Providers, as Secured Creditors.

RECITALS:

A. PCEA has on various dates entered into, and may in the future enter into, a Power Purchase Agreement with a PPA Provider pursuant to which PCEA has agreed, or will agree, to purchase the Product from such PPA Provider.

B. PCEA shall sell the Product it purchases from PPA Providers to PCEA’s customers at rates established by PCEA from time to time.

C. PCEA generates accounts receivable owing to PCEA by PCEA’s customers for such Product.

D. PCEA’s customers are billed by PG&E and instructed to remit to PG&E sums they owe for the Product provided by PCEA.

E. As of the date hereof, PCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of PCEA to Collateral Agent, for remittance to a Lockbox Account maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent and PCEA direct PG&E otherwise.

F. PCEA desires herein to pledge to Collateral Agent, for the benefit of the PPA Providers as Secured Creditors, a security interest in and to (i) the above-described accounts receivable of PCEA owed by PCEA’s Customers and (ii) the Lockbox Account, which is maintained at the Depository Bank.

G. The PPA Providers and PCEA have entered into an Intercreditor and Collateral Agency Agreement wherein the PPA Providers appointed Wilmington Trust, National Association, as Collateral Agent, to act on their behalf regarding the administration, collection and allocation of the proceeds of the Collateral.

H. PCEA and Collateral Agent desire to enter into this Agreement to evidence the pledge of the Collateral and to set forth their agreements regarding the Collateral and the application of the Collateral to the Obligations.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

Section 1. Definitions, Etc.

1.01 Defined Terms. The following terms shall have the meanings assigned to them in this Section 1.01 or in the provisions of this Agreement referred to below:

“**Bankruptcy Code**” means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which commercial banks in the State of New York are required or authorized to close.

“**Collateral**” means the following, whether now existing or hereafter arising: (a) the Receivables; (b) the Deposit Accounts; (c) all cash, cash equivalents, Securities, Investment Property, Security Entitlements, checks, money orders and other items of value now or hereafter paid, deposited, credited or held (whether for collection, provisionally or otherwise) in or with respect to any Deposit Account or otherwise in the possession or under the control of, or in transit to, the Collateral Agent or the Depository Bank for credit or with respect to any Deposit Account; and (d) all Proceeds of any or all of the foregoing. The term “Collateral” shall not include the On-Bill Repayment Account and any amounts distributed to PCEA pursuant to Section 6.02(vi).

“**Collateral Agent**” has the meaning given to such term in the Preamble hereof.

“**Control**” has the meaning given to such term in Section 9-104 of the UCC.

“**Control Agreement**” means the Account Control Agreement, dated as of the date hereof, among the Depository Bank, PCEA and Collateral Agent and any other agreements entered into among PCEA and Depository Bank which shall designate the Deposit Accounts as blocked accounts under the “control” of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

“**Customer**” means any customer of PCEA who purchases the Product from PCEA but is invoiced by PG&E, and any other obligor(s) responsible for payment of a Receivable.

“**Deposit Accounts**” means the Lockbox Account, together with any other “deposit account” or “securities account” (as such terms are defined in the UCC) from time to time pledged by PCEA to Collateral Agent to secure the Obligations.

“**Depository Bank**” means Wilmington Trust, National Association, a national banking association, in its capacity as depository bank, and its successors and assigns.

“**Direction Letter**” means that certain letter, a copy of which has been or will be delivered to the Collateral Agent, from PCEA to PG&E dated on or about the date of this Agreement pursuant to which PCEA has directed PG&E to remit all of the Proceeds on the Receivables collected by PG&E from Customers to the Collateral Agent for

application to the Obligations, unless and until both PCEA and Collateral Agent jointly instruct PG&E to terminate or change such direction.

“Distribution Date” means the [twenty-third (23rd)] day of each month. **[Note: PCEA to confirm.]**

“Distribution Date Certificate” means a certificate prepared and submitted by PCEA in accordance with Section 6.03.

“Event of Default” has the meaning set forth in the applicable Power Purchase Agreement.

“Intercreditor Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of even date herewith, among Collateral Agent, the Secured Creditors from time to time party thereto and PCEA, as amended, supplemented, restated or replaced from time to time.

“Lockbox Account” means the deposit account no. [_____] maintained at Depository Bank, and any replacement account.

“Notice of Default” means a letter from PCEA to Collateral Agent in the form attached hereto as Exhibit B providing notice that an Event of Default has occurred under a Power Purchase Agreement with respect to a PPA Provider and such Event of Default was not remedied by such PPA Provider within the applicable cure period, if any.

“Obligations” means the obligations of PCEA under a Power Purchase Agreement with such PPA Provider, in each case whether now existing or hereafter arising, absolute or contingent, due or to become due, matured or unmatured, liquidated or unliquidated.

“On-Bill Repayments” means all payments made by Customers into the Lockbox Account that are related to on-bill repayment of financing for energy efficiency or on-site solar photovoltaic projects.

“On-Bill Repayment Account” means a deposit account in the name of PCEA for the purpose of receiving all On-Bill Repayments made by Customers.

“Permitted Investments” means any of the following investments:

(i) Marketable securities issued by the U.S. Government and supported by the full faith and credit of the U.S. Treasury, either by statute or an opinion of the Attorney General of the United States;

(ii) Marketable debt securities, rated Aaa by Moody’s and/ or AAA by S&P, issued by U. S. Government-sponsored enterprises, U. S. Federal agencies, U. S. Federal financing banks, and international institutions whose capital stock has been subscribed for by the United States;

(iii) Certificates of Deposit, Time Deposits, and Bankers Acceptances of any bank or trust company incorporated under the laws of the United States or any state, provided that, at the date of acquisition, such investment, and/or the commercial paper or other short term debt obligation of such bank or trust company has a short-term credit rating or ratings from Moody's and/or S&P, each at least P-1 or A-1;

(iv) Commercial paper of any corporation incorporated under the laws of the United States or any state thereof which on the date of acquisition is rated by Moody's and/or S&P, provided each such credit rating is least P-1 and/or A-1;

(v) Money market mutual funds that are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, and operated in accordance with Rule 2a-7 and that at the time of such investment are rated Aaa by Moody's and/or AAAm by S&P, including such funds for which the Trustee or an affiliate provides investment advice or other services;

(vi) Tax-exempt variable rate commercial paper, tax-exempt adjustable rate option tender bonds, and other tax-exempt bonds or notes issued by municipalities in the United States, having a short-term rating of "MIG-1" or "VMIG-1" or a long term rating of "AA" (Moody's), or a short-term rating of "A-1" or a long term rating of "AA" (S&P);

(vii) Repurchase obligations with a term of not more than thirty days, 102 percent collateralized, for underlying securities of the types described in clauses (i) and (ii) above, entered into with any bank or trust company meeting the requirements specified in clause (iii) above; and

(viii) Investment agreements, including guaranteed investment contracts, with an entity whose claims-paying ability or senior long-term unsecured debt obligations are rated "AA-" or higher by S&P or are guaranteed by an entity whose claims-paying ability or senior long-term unsecured debt obligations are rated "AA-" or higher by S&P.

(ix) Maturities on the above securities shall not exceed 365 days and all rating requirements and/or percentage restrictions are based on the time of purchase.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“PG&E” means the Pacific Gas and Electric Company, its successor and assigns.

“Power Purchase Agreement” means each power purchase agreement pursuant to which a PPA Provider sells the Product to PCEA, as amended, supplemented, restated or replaced from time to time.

“PPA Provider” means each seller of Product under a Power Purchase Agreement that is a party to the Intercreditor Agreement, and its respective successors and assigns.

“**Product**” means one or more of the following: energy, renewable energy attributes, capacity attributes or resource adequacy benefits.

“**Receivable**” means an Account evidencing PCEA’s rights to payment for Product, billed in an invoice sent to a Customer by PG&E, together with all late fees and other fees which PG&E and PCEA agree are to be charged in such invoice to the Customer by PG&E on behalf of PCEA.

“**Regular Charges**” has the meaning given to such term in Section 6.02(iii).

“**Secured Creditors**” means each PPA Provider party to the Intercreditor Agreement, and its respective successors and assigns.

“**Sharing Percentage**” means, as of any date of determination, with respect to each PPA Provider, the percentage equivalent of a fraction, (y) the numerator of which is the outstanding amount of the Obligations of such PPA Provider at such time, and (z) the denominator of which is the sum of the outstanding amount of the Obligations of all PPA Providers at such time.

“**Supplemental Payment**” means, as of any date of determination, with respect to each Power Purchase Agreement, all Obligations owing by PCEA to the PPA Provider party thereto, excluding, however, Obligations owed to such PPA Provider for the sale of the Product (y) calculated at a non-default rate and/or (z) calculated without giving effect to the occurrence of a Termination Event thereunder. Supplement Payments include all out-of-pocket losses such as indemnity claims arising under such Power Purchase Agreement to the extent such losses were incurred by such PPA Provider, all late payment charges due under such Power Purchase Agreement, and all Obligations arising upon a default or Termination Event under such Power Purchase Agreement such as early termination fees.

“**Termination Event**” means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

“**UCC**” means the Uniform Commercial Code in effect in the State of California from time to time.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms “**Account**”, “**Investment Property**”, and “**Proceeds**” have the respective meanings set forth in Article 9 of the UCC. The terms “**Security**” and “**Security Entitlements**” have the respective meanings set forth in Article 8 of the UCC.

1.03 Other Interpretive Provisions. References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All

references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

Section 2. Grant of Security Interest.

As collateral security for the payment and performance in full of the Obligations when due, whether at stated maturity, by acceleration or otherwise, PCEA hereby assigns, pledges and grants to Collateral Agent, for the benefit of the Secured Creditors, a security interest in and continuing lien on all of PCEA's right, title and interest in and to the Collateral. The collateral assignment evidenced by this Agreement is a continuing one and is irrevocable by PCEA so long as any of the Obligations are outstanding.

Section 3. Representations and Warranties.

PCEA represents and warrants to Collateral Agent that:

3.01 Title. It is the sole beneficial owner of the Collateral and such Collateral is free and clear of all liens, except liens in favor of Collateral Agent.

3.02 Names, Etc. As of the date hereof, the full and correct legal name, type of organization, jurisdiction of organization, mailing address, and principal place of business of PCEA is as follows: Peninsula Clean Energy Authority, a California joint powers authority, [400 County Center, Sixth Floor, Redwood City, CA 94063].

3.03 Changes in Circumstances. PCEA has not: (a) within the period of four (4) months prior to the date hereof, changed its location (as defined in Article 9 of the UCC); (b) within the period of five (5) years prior to the date hereof, changed its name; or (c) within the period of four (4) months prior to the date hereof, become a "new debtor" (as defined in Article 9 of the UCC) with respect to a currently effective security agreement previously entered into with any other Person.

3.04 Security Interests. The liens granted by this Agreement have attached and constitute a perfected first priority security interest in the Collateral. PCEA has the unencumbered right to grant liens in the Collateral to Collateral Agent, and all consents, if any, required to be obtained by PCEA have been obtained.

Section 4. Covenants.

PCEA hereby stipulates and agrees with the Collateral Agent as follows:

4.01 Perfection by Control. PCEA shall not be permitted to withdraw funds from the Deposit Accounts until the Obligations have been satisfied and this Agreement has been terminated. Collateral Agent shall have the exclusive authority to withdraw, or (other than as set forth herein) direct the withdrawal of, funds from the Deposit Accounts. The Control Agreement for each Deposit Account shall give the Collateral Agent the sole power to direct Depository Bank regarding the Deposit Account, and thus Collateral Agent shall Control the Deposit Accounts within the meaning of the UCC. Collateral Agent shall make distributions from the Deposit Accounts only in accordance with Section 6 of this Agreement.

4.02 Further Assurances. Upon the request of Collateral Agent, PCEA shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, documents, agreements or other papers as may be necessary in the judgment of Collateral Agent to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable Collateral Agent to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

- (a) take such other action as Collateral Agent may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created hereunder in the Collateral;
- (b) promptly from time to time enter into such Control Agreements, each in form and substance reasonably acceptable to Collateral Agent, as may be required to perfect the security interest created hereby;
- (c) keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement; and
- (d) permit representatives of Collateral Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and to be present at PCEA's places of business to receive copies of communications and remittances relating to the Collateral, and forward copies of any notices or communications received by PCEA with respect to the Collateral, all in such manner as Collateral Agent may reasonably require.

4.03 No Other Liens. PCEA shall not (a) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which the Collateral Agent is not named as the sole secured party, or (b) cause or permit any Person other than the Collateral Agent to have "control" (as defined in Article 9 of the UCC) of any Deposit Account constituting part of the Collateral.

4.04 Locations; Names, Etc. Without at least thirty (30) days' prior written notice to the Collateral Agent, PCEA shall not: (a) change its location (as defined in Article 9 of the UCC), (b) change its name from the name shown as its current legal name in Section 3 of this Agreement, or (c) agree to or authorize any modification of the terms of any item of the Collateral if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of control (within the meaning of Article 9 of the UCC) by Collateral Agent over such item of Collateral.

4.05 Perfection and Recordation. PCEA authorizes Collateral Agent to file Uniform Commercial Code financing statements describing the Collateral (provided that no such description shall be deemed to modify the description of Collateral set forth in Section 2). The Collateral Agent, in accordance with Section 4.02 hereof, hereby requests and instructs PCEA to prepare and file such Uniform Commercial Code financing and continuation statements describing the Collateral as may be necessary to perfect and continue the security interest granted herein.

Section 5. Remittance of Collections to Collateral Agent.

5.01 Irrevocable Direction. PCEA has, pursuant to the Direction Letter, irrevocably instructed PG&E to remit to Collateral Agent all payments due or to become due in respect of the Receivables unless and until both Collateral Agent and PCEA direct otherwise in writing. The parties agree that if any such payments, or any other Proceeds of Collateral, are received by PCEA, they shall be held in trust by PCEA for the benefit of the Collateral Agent, and PCEA shall as promptly as possible remit or deliver same to Collateral Agent for application as provided herein. Collateral Agent thus has the right to all collections on the Collateral remitted to it by PG&E until the Obligations are paid in full.

5.02 Application of Proceeds. The Proceeds of any collection or realization of all or any part of the Collateral shall be applied by Collateral Agent as provided for in Section 6 below. Collateral Agent waives all rights under the UCC to enforce rights in the Collateral by means of a sale or other foreclosure action; the Collateral shall be collected by Collateral Agent from PG&E pursuant to the Direction Letter.

5.03 Deficiency. If the Proceeds of the collection of the Collateral are insufficient to pay in full the Obligations, PCEA remains liable to Collateral Agent and Secured Creditors for any deficiency.

5.04 Attorney-in-Fact. Collateral Agent is hereby appointed the attorney-in-fact of PCEA to receive, endorse and collect all checks made payable to the order of PCEA representing any payment or other distribution in respect of the Collateral.

Section 6. Establishment of and Distributions From Deposit Accounts.

6.01 Establishment of Deposit Accounts. PCEA shall establish the Lockbox Account in PCEA's name at Depositary Bank. Such account, and any other Deposit Account hereunder, shall be a blocked account under the sole control of Collateral Agent, pursuant to a

Control Agreement. Collateral Agent shall accept all funds remitted to the Deposit Accounts under this Agreement, and credit such funds as provided for in Section 6.02 below.

6.02 Priority of Distributions of Collateral. Proceeds of Collateral shall be allocated in accordance with this Section 6.02. On each Distribution Date, Collateral Agent shall distribute all funds in the Lockbox Account or otherwise received on the Collateral in accordance with the following priority:

(i) *first*, to PCEA upon the Collateral Agent's receipt of a Notice of Default from PCEA for a PPA Provider, the amount of any Regular Charges (as defined below) that would otherwise be payable to such PPA Provider;

(ii) *second*, to the On-Bill Repayment Account for any On-Bill Repayments deposited into the Lockbox Account;

(iii) *third*, provided the Collateral Agent has not received a Notice of Default from PCEA with respect to such PPA Provider, to each PPA Provider in payment of current payments for the Product delivered and owing to such PPA Provider, and without giving effect to any Supplemental Payment owing to such PPA Provider, according to its Sharing Percentage; provided, however, that if a Power Purchase Agreement has been terminated by a PPA Provider and Obligations remain outstanding under such Power Purchase Agreement, the Obligations of such PPA Provider for purposes of this subsection (iii) shall equal the monthly average of the charges billed under such Power Purchase Agreement for the sale of the Product during the historical rolling twelve (12) month period immediately prior to the date of termination of such Power Purchase Agreement (the Obligations payable under this subsection (iii) are the "**Regular Charges**");

(iv) *fourth*, to each PPA Provider in payment of any Supplemental Payment owing to it according to its Sharing Percentage (excluding any Regular Charges received by such PPA Provider under the preceding subsection (iii));

(v) *fifth*, to the Collateral Agent (as such and in its individual capacity) in respect of its reasonable out-of-pocket fees and expenses incurred under this Agreement or the Intercreditor Agreement that have been invoiced to PCEA, including, without limitation, payment of expenses incurred by the Collateral Agent which indemnity shall include the reasonable out of pocket attorneys' fees of outside counsel to the Collateral Agent; and

(vi) *sixth*, the balance, if any, shall be returned to PCEA free and clear of the lien of this Agreement.

Collateral Agent shall rely, and shall be fully protected in relying, on a Distribution Date Certificate submitted to it by PCEA in making the above calculations, without any requirement that Collateral Agent verify the accuracy of such Distribution Date Certificate, subject to revision in the event of disputes resolved under Section 6.05.

6.03 Distribution Date Certificate. On or before three (3) Business Days before each Distribution Date, PCEA shall remit to Collateral Agent and each PPA Provider a certificate in substantially the form of Exhibit A hereto (the “**Distribution Date Certificate**”) prepared by PCEA itemizing each of the payments to be remitted under Section 6.02 above. The PPA Providers may share such Distribution Date Certificates with their respective accountants, legal counsel and other advisors.

6.04 Disputes. If a PPA Provider advises PCEA and Collateral Agent in writing that the calculations by PCEA in any Distribution Date Certificate is in its opinion materially incorrect, then PCEA and such PPA Provider shall attempt to resolve the discrepancy in good faith. If the parties are able to reach an agreement with respect to such discrepancy in advance of the relevant Distribution Date, PCEA shall remit to Collateral Agent and each PPA Provider a revised Distribution Date Certificate reflecting the agreed upon amounts, and the Collateral Agent shall (to the extent it receives the revised Distribution Date Certificate sufficiently in advance of the scheduled distribution) disburse funds in accordance with such revised Distribution Date Certificate on the applicable Distribution Date. If the parties are unable to agree, they shall resolve such dispute in accordance with the dispute resolution provision of the Power Purchase Agreement between such PPA Provider and PCEA. In the interim, the Distribution Date Certificate originally submitted by PCEA shall be relied upon by Collateral Agent for purposes of making distributions from the Lockbox Account or any other Deposit Account of all undisputed amounts in accordance with Section 6.02, and the Collateral Agent shall make no distribution in respect of any disputed amount until such time as it has received a revised Distribution Date Certificate.

6.05 Earnings on Deposit Accounts. PCEA shall establish the Deposit Accounts as a non-interest bearing account, provided that PCEA may invest the Collateral in Permitted Investments. In furtherance of the foregoing and upon receipt of written instruction from PCEA, the Collateral Agent may invest and reinvest such funds in one or more Permitted Investments designated by PCEA in such written instructions. PCEA acknowledges that interests in Permitted Investments are not obligations of Wilmington Trust, National Association, are not deposits and are not insured by the FDIC. Collateral Agent (as such and in its individual capacity) shall not be responsible for any loss of any funds invested in accordance with this Section. It is expressly understood that in the absence of written instruction from PCEA regarding the investment of funds in Permitted Investments, such funds will remain uninvested.

Section 7. Miscellaneous.

7.01 Notices. Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed to the relevant party as provided below their signatures to this Agreement or at such other address for notice as PCEA or Collateral Agent shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) that is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) that

is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

7.02 No Waiver. No failure on the part of the Collateral Agent to exercise, and no course of dealing with respect to, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof.

7.03 Amendments. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by PCEA and Collateral Agent.

7.04 Expenses. PCEA agrees to reimburse Collateral Agent (as such and in its individual capacity) for all reasonable costs and expenses incurred by it (including the reasonable fees and expenses of legal counsel) in connection with (i) the performance by Collateral Agent of its duties under this Agreement, the Intercreditor Agreement or the Control Agreements, (x) protecting, defending or asserting rights and claims of the Collateral Agent in respect of the Collateral, (y) litigation relating to the Collateral, and (z) workout, restructuring or other negotiations or proceedings, and (ii) the enforcement of this Section 7.04, and all such reasonable costs and expenses shall be Obligations entitled to the benefits of the collateral security provided pursuant to Section 2.

7.05 Duty of Care; Earnings. Collateral Agent shall have no duty or obligation with respect to the Collateral except for its contractual obligations under this Agreement, the Intercreditor Agreement or a Control Agreement. The Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against any Person, beyond the safe custody of any Collateral in the Collateral Agent's possession or control. Without limiting the generality of the foregoing, Collateral Agent shall have no duty (a) to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of PCEA and the Collateral Agent (provided that PCEA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of Collateral Agent). This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Obligations, be binding upon PCEA, its successors and assigns, and inure, together with the rights of Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns.

7.07 Counterparts. This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto shall be as effective as an original signature.

7.08 GOVERNING LAW; JURISDICTION. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT THE ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA OR THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

7.09 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

7.10 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

7.11 Termination. Unless earlier terminated by the parties hereto, when all Obligations shall have been paid in full and the Power Purchase Agreements shall have all expired or been terminated, this Agreement shall terminate, and the Collateral Agent shall forthwith cause to be assigned, transferred and delivered to PCEA, without any recourse, warranty or representation (other than that no liens exist in the Collateral arising by or through Collateral Agent), any remaining Collateral to PCEA. At PCEA's request, Collateral Agent shall, at PCEA's reasonable expense, instruct Depository Bank to release all assets credited to the Deposit Accounts to PCEA, and Collateral Agent shall also execute such other documentation as shall be reasonably requested by PCEA to effect the termination and release of the liens on the Collateral, including notice to PG&E that the Direction Letter is terminated.

7.12 Severability. The provisions of this Agreement are intended to be severable. If for any reason any of the provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

PENINSULA CLEAN ENERGY AUTHORITY,
as Pledgor

By: _____
Name:
Title:

Notice Address:

Peninsula Clean Energy Authority
400 County Center, Sixth Floor
Redwood City, CA 94063
Attention: [_____]
Fax: [_____]

WILMINGTON TRUST, NATIONAL ASSOCIATION,
not in its individual capacity, but solely as Collateral Agent

By: _____
Name:
Title:

Notice Address:

Wilmington Trust, National Association
650 Town Center Drive, Suite 600
Costa Mesa, CA 92626
Reference: [Peninsula Clean Energy Authority]
Fax: [+1 714-384-4151]

With a copy to:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, Delaware 19890
Attention: [Adam Vogelsong]
Reference: [Peninsula Clean Energy Authority]
Fax: [+1 302-636-4140/4141]

Exhibit A

Form of Distribution Date Certificate

The undersigned, [INSERT NAME], the [INSERT NAME OF OFFICE HELD] of Peninsula Clean Energy Authority, a California joint powers authority (“**PCEA**”), hereby certifies, on behalf of PCEA in such capacity and not in its individual capacity, with reference to that certain Security Agreement dated as of [_____], 2016 (capitalized terms used herein shall have the same meaning as set forth in the Security Agreement) between PCEA and Wilmington Trust, National Association, as collateral agent (“**Collateral Agent**”), to Collateral Agent as follows:

This certificate is being delivered to Collateral Agent on or before the date that is three (3) Business Days before the Distribution Date of [_____], 20__.

The funds that are on deposit in the Lockbox Account shall be disbursed on the Distribution Date as follows:

1. [To PCEA, the amount of any Regular Charges that would otherwise be payable to a PPA Provider for which the Collateral Agent has received a Notice of Default from PCEA in an aggregate amount equal to [_____ Dollars (\$_____)]; *[include if applicable]*
2. To the On-Bill Repayment Account, the amount of any On-Bill Repayments deposited into the Lockbox Account in an aggregate amount equal to [_____ Dollars (\$_____)];
3. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of its Regular Charges, an aggregate amount equal to [_____ Dollars (\$_____)]; *[Include this paragraph for each PPA Provider; however, do not include for a PPA Provider if the Collateral Agent has received a Notice of Default from PCEA with respect to such PPA Provider.]*
4. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of any Supplemental Payment owing to it according to its Sharing Percentage (excluding any Regular Charges received by it under the preceding paragraph)) in an aggregate amount equal to [_____ Dollars (\$_____)]; *[Include this paragraph for each PPA Provider]*
5. To Collateral Agent, in respect of Collateral Agent’s reasonable out-of-pocket fees and expenses incurred under the Security Agreement or the Intercreditor Agreement that have been invoiced to PCEA, an aggregate amount equal to [_____ Dollars (\$_____)]; and
6. The remaining funds, if any, that are on deposit are to be disbursed to PCEA into the account designated by PCEA.

[Signatures on following page]

I hereby certify, on behalf of PCEA and not in my individual capacity, that this Distribution Date Certificate is true and complete in all material respects.

PENINSULA CLEAN ENERGY AUTHORITY

By: _____

Name:

Title:

Date:

Exhibit B

Form of Notice of Default

Wilmington Trust, National Association, in its capacity as Collateral Agent
650 Town Center Drive, Suite 600
Costa Mesa, CA 92626
Reference: [Peninsula Clean Energy Authority]

With a copy to:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, Delaware 19890
Attention: [Adam Vogelsong]
Reference: [Peninsula Clean Energy Authority]

[_____], 20[__]

Reference is hereby made to the Security Agreement, dated as of [_____], 2016 (as amended or restated from time to time, the “**Security Agreement**”) between Peninsula Clean Energy Authority, a California joint powers authority, as pledgor (“**PCEA**”), and Wilmington Trust, National Association, a national banking association, not in its individual capacity, but solely as collateral agent (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”), for the benefit of [INSERT NAME OF DEFAULTING PPA PROVIDER] (the “**Defaulting PPA Provider**”) and the other PPA Providers, as Secured Creditors.

PCEA hereby gives the Collateral Agent notice that an Event of Default has occurred under the Power Purchase Agreement with the Defaulting PPA Provider and such Event of Default has not been remedied by the Defaulting PPA Provider within the applicable cure period.

This letter constitutes a “Notice of Default” referred to in the Security Agreement, including for purposes of Section 6.02 of the Security Agreement.

PENINSULA CLEAN ENERGY AUTHORITY

By: _____
Name:
Title:
Date:

INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT,

dated as of [_____], 2016,

by and among

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Collateral Agent,**

**THE PPA PROVIDERS
FROM TIME TO TIME
PARTY HERETO,**

and

PENINSULA CLEAN ENERGY AUTHORITY

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Exhibit A – Form of Joinder

INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

This **INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT**, dated as of [_____], 2016 (this “**Agreement**”), is entered into by and among (i) **Wilmington Trust, National Association**, not in its individual capacity, but solely in its capacity as Collateral Agent (“**Collateral Agent**”), (ii) each of the creditors from time to time signatory hereto that are party to a Power Purchase Agreement (each such creditor defined below as a “**PPA Provider**”) and (iii) Peninsula Clean Energy Authority, a California joint powers authority (“**PCEA**”).

RECITALS:

A. PCEA has on various dates entered into, and may in the future enter into, a Power Purchase Agreement with a PPA Provider pursuant to which PCEA has agreed, or will agree, to purchase the Product from such PPA Provider.

B. PCEA shall sell the Product it purchases from PPA Providers to PCEA’s customers at rates established by PCEA from time to time.

C. PCEA proposes to pledge to Collateral Agent, for the benefit of the PPA Providers, as Secured Creditors, all accounts receivable owing from time to time to PCEA by PCEA’s customers for such Product, to secure PCEA’s obligations to Secured Creditors under the Power Purchase Agreements.

D. PCEA’s customers are billed and instructed to remit to PG&E sums they owe for the Product provided by PCEA.

E. As of the date hereof, PCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of PCEA to Collateral Agent for remittance to a Lockbox Account established pursuant to the Control Agreement, which direction is irrevocable unless both Collateral Agent and PCEA direct PG&E otherwise.

F. Collateral Agent shall have, for the benefit of the Secured Creditors, a first priority security interest in and lien on such receivables, deposit accounts and related Collateral pledged to Collateral Agent for the benefit of the Secured Creditors, as provided in the Security Agreement.

G. Distributions from such Collateral shall be made by Collateral Agent as provided in this Agreement, with PPA Providers having a senior right to distributions from the Collateral.

H. Secured Creditors desire in this Agreement to appoint Wilmington Trust, National Association as Collateral Agent to act on their behalf regarding the administration, collection and enforcement of the Collateral, all as more fully provided herein.

I. Secured Creditors also desire to enter into this Agreement to define the rights, duties, authority and responsibilities of Collateral Agent.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. DEFINITIONS

Section 1.1. Definitions

Each capitalized term used herein and not defined herein shall have the meaning given to such term in the Security Agreement. The following terms shall have the meanings assigned to them in this Section 1.1 or in the provisions of this Agreement referred to below:

“Affiliate” means, at any time, and as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

“Agreement” shall have the meaning assigned thereto in the Preamble hereof.

“Applicable Law” means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; or (d) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

“Bankruptcy Proceeding” means, with respect to any Person, the institution by or against such Person of any proceeding seeking relief as a debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking the reorganization, arrangement, adjustment or composition of such Person or its debts, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property, or a general assignment by such Person for the benefit of its creditors.

“Business Day” means any day other than a Saturday, a Sunday or a day on which commercial banks in the State of New York are required or authorized to be closed.

“Collateral” has the meaning given to such term in the Security Agreement.

“**Collateral Agent**” means the party identified as such in the Preamble hereof, and its successors and permitted assigns in such capacity.

“**Control Agreement**” means the Account Control Agreement, dated as of the date hereof, among Wilmington Trust, National Association, as account bank, PCEA and Collateral Agent.

“**Customer**” means any customer of PCEA who purchases Product from PCEA but is invoiced by PG&E, or any other obligor(s) responsible for payment of a Receivable.

“**Customer Payment**” means, with respect to each Receivable, all payments for Product and related charges such as late charges, invoiced to the Customer by PG&E on PCEA’s behalf.

“**Deposit Accounts**” has the meaning given to such term in the Security Agreement.

“**Depository Bank**” has the meaning given to such term in the Security Agreement.

“**Distribution Date**” has the meaning given to such term in the Security Agreement.

“**Distribution Date Certificate**” has the meaning given to such term in the Security Agreement.

“**Joinder**” has the meaning given to such term in Section 6.5.

“**Lien**” means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

“**Lockbox Account**” has the meaning given to such term in the Security Agreement.

“**Obligations**” has the meaning given to such term in the Security Agreement.

“**PCEA**” means the party identified as such in the Recitals hereof, and its successors and permitted assigns, and includes PCEA in its capacity as a debtor in possession under the Bankruptcy Code.

“**Person**” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“**PG&E**” means the Pacific Gas and Electric Company, its successors and assigns.

“**Product**” means one or more of the following: energy, renewable energy attributes, capacity attributes or resource adequacy benefits.

“Power Purchase Agreement” means each power purchase agreement pursuant to which a PPA Provider sells Power to PCEA, which Power PCEA then sells to Customers, as amended, supplemented, restated or replaced from time to time.

“PPA Provider” means each seller of Product under a Power Purchase Agreement that is a party to this Agreement, and its respective successors and assigns.

“Receivable” means an Account evidencing PCEA’s right to payment for Product, billed in an invoice sent to a Customer by PG&E, together with all late fees and other fees which PG&E and PCEA agree are to be charged in such invoice to the Customer by PG&E on behalf of PCEA.

“Regular Charges” has the meaning given to such term in the Security Agreement.

“Secured Creditors” means each PPA Provider that is a party to this Agreement, and its respective successors and assigns.

“Security Agreement” means the Security Agreement, dated as of even date herewith, between PCEA and Collateral Agent for the benefit of Secured Creditors, granting a security interest in the Collateral to secure the Obligations, as amended, supplemented, restated or replaced from time to time.

“Sharing Percentage” means, as of any date of determination, with respect to each PPA Provider, the percentage equivalent of a fraction, (x) the numerator of which is the outstanding amount of the Obligations of such PPA Provider at such time, and (y) the denominator of which is the sum of the outstanding amount of the Obligations of all PPA Providers at such time.

“Supplemental Payment” has the meaning given to such term in the Security Agreement.

“Termination Event” means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

Section 1.2. Other Interpretive Provisions

References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement or the Security Agreement, as applicable. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and

regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

SECTION 2. RELATIONSHIPS AMONG SECURED CREDITORS

Section 2.1. Liens in the Collateral

At all times, whether before, after or during the pendency of any Bankruptcy Proceeding and notwithstanding the priorities which would ordinarily result from the order of granting of any Liens, the order of attachment or perfection thereof, or the order of filing or recording of any financing statements or other instrument, or the priorities that would otherwise apply under Applicable Law, Collateral Agent, for the benefit of the PPA Providers, shall have a first priority lien in the Collateral to secure the Obligations. No Secured Creditor will acquire in its own name a Lien in the assets of PCEA to secure any Obligations arising under a Power Purchase Agreement other than Liens arising by operation of law such as setoff rights. Secured Creditors shall share in the Proceeds of the Collateral as provided for in Section 4.6.

Section 2.2. No Debt Subordination

Nothing in this Agreement shall be construed to be or operate as a subordination of any of the Obligations owed to a Secured Creditor in right of payment to the Obligations owed to any other Secured Creditor.

Section 2.3. Restrictions on Enforcement Action

So long as any Obligation is outstanding, the provisions of this Agreement shall provide the exclusive method by which Collateral Agent or any Secured Creditor may exercise rights in or assert claims against the Collateral or PCEA pertaining to the Obligations.

Section 2.4. No Restriction on Terms of Power Purchase Agreements

This Agreement does not impose any restriction on the terms of a Power Purchase Agreement. The City and any PPA Provider are free to agree on any and all of the terms for charges that may be provided for under its Power Purchase Agreement, such as the price for the Product, late fees, and early termination fees. Without limiting the foregoing, no PPA Provider shall be restricted as to the amount or output of the Product it sells to PCEA or the length of such Power Purchase Agreement, or any amendment thereof. Upon request by the Collateral Agent, each PPA Provider will disclose to Collateral Agent the Obligations then due and owing to such PPA Provider in an itemized manner and provide a copy of its Power Purchase Agreement with PCEA, and PCEA consents to such disclosure to such Person or any party hereto.

Section 2.5. Representations and Warranties

Each Secured Creditor represents and warrants to the other parties hereto that:

- (a) the execution, delivery and performance by such Secured Creditor of this Agreement has been duly authorized by all necessary corporate or similar proceedings

and does not and will not contravene any provision of law, its charter or by-laws or any amendment thereof, or of any indenture, agreement, instrument or undertaking binding upon such Secured Creditor; and

(b) the execution, delivery and performance by such Secured Creditor of this Agreement will result in a valid and legally binding obligation of such Secured Creditor enforceable against such Secured Creditor in accordance with its terms.

Section 2.6. Cooperation; Accountings

Each Secured Creditor will, upon the reasonable request of the Collateral Agent, from time to time execute and deliver or cause to be executed and delivered such further instruments, and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions of this Agreement. Each Secured Creditor agrees to provide to the Collateral Agent upon reasonable request a statement of all payments received by it in respect of the Obligations pertaining to its Power Purchase Agreement.

SECTION 3. AGENCY PROVISIONS

Section 3.1. Appointment and Authorization of Collateral Agent

(a) Each Secured Creditor hereby designates and appoints Wilmington Trust, National Association, as Collateral Agent of such Secured Creditor under this Agreement and Wilmington Trust, National Association, hereby accepts such designation and appointment.

(b) Notwithstanding any provision to the contrary elsewhere in this Agreement, Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Collateral Agent. The right or power of Collateral Agent to perform any discretionary act hereunder shall not be construed as a duty. Collateral Agent is hereby authorized, empowered and instructed to execute, deliver and perform its obligations under this Agreement, the Security Agreement, the Control Agreement and each other document as may be necessary or convenient in connection with the foregoing; provided, however, that the Collateral Agent shall not amend, modify or terminate the Control Agreement without the prior written consent of the Secured Creditors.

Section 3.2. Collateral Held in Trust

(a) Deposit Accounts Subject to Collateral Agent's Control.

Collateral Agent agrees that its security interest and right of setoff in and to the Deposit Accounts is held for the benefit of all the Secured Creditors and itself as Collateral Agent, and that Collateral Agent will comply with this Agreement and the Security Agreement in distributing monies received from such Deposit Accounts.

(b) Collateral Held in Trust by Secured Creditors.

Each Secured Creditor hereby acknowledges that if any Secured Creditor (individually or through its own custodian) shall hold or control, at any time, any assets comprising Collateral, such possession or control is also held for the benefit of Collateral Agent for the benefit of the Secured Creditors. The foregoing sentence shall not be construed to impose any duty on a Secured Creditor (or any third party acting on its behalf) with respect to such Collateral if it is not perfected by possession or control.

Section 3.3. Delegation of Duties

Collateral Agent may exercise its powers and execute any of its duties under this Agreement by or through employees, agents, and attorneys-in-fact, and shall be entitled to take and to rely on advice of counsel concerning all matters pertaining to such powers and duties. Collateral Agent shall be responsible for the negligence or willful misconduct of any such employees, agents, or attorneys-in-fact. Collateral Agent may utilize the services of such Persons as Collateral Agent in its sole discretion may determine, and shall be entitled to indemnity hereunder for all reasonable fees and expenses of such Persons.

Section 3.4. Exculpatory Provisions

Neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement (except for its or such Person's own bad faith, respectively) or (b) responsible in any manner to PCEA or any of the Secured Creditors for any recitals, statements, representations, warranties or covenants made by PCEA or any Secured Creditor or any officer thereof contained in any certificate, report, statement or other document referred to or provided for in, or received by, Collateral Agent under or in connection with this Agreement or any other document in any way connected therewith, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Lien or the perfection or priority of any such Lien (including any Lien in the Collateral), or for any failure of PCEA to perform its obligations thereunder.

Section 3.5. Reliance by Collateral Agent

Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing (in electronic or physical form), resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to PCEA), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take action not provided for under this Agreement unless it shall first be indemnified to its reasonable satisfaction by PCEA or the Secured Creditors against any and all liability and expense which may be incurred by it by reason of taking, continuing to take or refraining from taking any such action. Collateral Agent shall in all cases be fully protected in acting, or in

refraining from acting, under this Agreement in accordance with the provisions of Section 4 hereof, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

Section 3.6. Knowledge

Collateral Agent shall not be deemed to have knowledge or notice of any facts regarding the Collateral or the Obligations unless Collateral Agent has received written notice from the Secured Creditor or PCEA referring to this Agreement, describing such facts in reasonable detail.

Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors

Each Secured Creditor expressly acknowledges that except as expressly set forth in this Agreement, neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates has made any representations or warranties to it and that no act by Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by Collateral Agent (as such or in its individual capacity) to any Secured Creditor. Each Secured Creditor represents that it has, independently and without reliance upon Collateral Agent or any other Secured Creditor, and based on such documents and information as it has deemed appropriate, made its own appraisal of any investigation into the business, operations, property, financial and other condition and creditworthiness of PCEA. Each Secured Creditor also represents that it will, independently and without reliance upon Collateral Agent or any other Secured Creditor, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and to make such investigation as it deems necessary to inform itself as to the business, operations, property, financial and other condition and creditworthiness of PCEA and any perfection or lack of perfection of the Lien of Collateral Agent in the Collateral.

Section 3.8. Reporting

Collateral Agent shall have no duty or responsibility to provide the Secured Creditors with, or otherwise monitor or review in any respect, any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of PCEA which may come into the possession of Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact, or Affiliates. Collateral Agent shall provide to Secured Creditors copies of all notices received by it regarding the Collateral, the Security Agreement or this Agreement; provided that the failure to provide such copies shall not cause Collateral Agent (as such or in its individual capacity) to incur liability to any Person. Collateral Agent shall promptly (but in no event more than 3 Business Days) after Collateral Agent's receipt of a written request from a Secured Creditor provide a report to all Secured Creditors regarding any payments or distributions of Collateral received by Collateral Agent.

Section 3.9. Indemnification

Each Secured Creditor, severally and not jointly, shall indemnify Collateral Agent (as such and in its individual capacity) from and against any and all liabilities, obligations,

losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against Collateral Agent (as such or in its individual capacity) arising out of actions or omissions of Collateral Agent specifically required or permitted by this Agreement; provided that neither PCEA nor the Secured Creditors shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from Collateral Agent's fraud, willful misconduct, gross negligence or bad faith. The agreements in this Section 3.9 shall survive the repayment of the Obligations and the termination of this Agreement for a period of 1 year.

Section 3.10. Collateral Agent May Act in its Individual Capacity

Wilmington Trust, National Association, and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with PCEA and its Affiliates as though it was not Collateral Agent hereunder.

Section 3.11. Successor Collateral Agent

(a) Collateral Agent may resign at any time upon 60 days' prior written notice to the Secured Creditors and PCEA, or may be removed by the majority demand of the other Secured Creditors for cause at any time if Collateral Agent has failed to take any action that Collateral Agent is required to take hereunder after request by a Secured Creditor, or Collateral Agent has taken any action hereunder that Collateral Agent is not authorized to take hereunder or that violates the terms hereof and, in either case, has not remedied such failure or violation with reasonable promptness after a written request for corrective action is delivered to Collateral Agent. After any resignation or removal hereunder of Collateral Agent, the provisions of this Section 3 shall continue to be binding upon and inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as Collateral Agent hereunder while it was Collateral Agent under this Agreement.

(b) Upon receiving written notice of any such resignation or removal, a successor Collateral Agent shall be appointed by the Secured Creditors and PCEA (which approval shall not be unreasonably withheld or delayed). If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent's notice of resignation or upon removal of Collateral Agent, then any Secured Creditor or Collateral Agent (unless Collateral Agent is being removed) may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent. If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent's notice of resignation or upon removal of Collateral Agent, then the resignation or removal shall nonetheless become effective and the Secured Creditors, acting pursuant to their directive in which each Secured Creditor has one vote, shall thereafter have the rights and obligations of Collateral Agent hereunder and under the Security Agreement until a successor Collateral Agent has been appointed and accepted such appointment. The appointment of a successor Collateral Agent pursuant to this Section 3.11(b) shall become effective upon the acceptance of the appointment as Collateral Agent hereunder by a successor

Collateral Agent. Upon such effective appointment, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(c) The resignation or removal of a Collateral Agent shall take effect on the day specified in the notice described in Section 3.11(a), unless previously a successor Collateral Agent shall have been appointed and shall have accepted such appointment, in which event such resignation or removal shall take effect immediately upon the acceptance of such appointment by such successor Collateral Agent, and provided, further, that no resignation or removal shall be effective hereunder unless and until a successor Collateral Agent shall have been appointed and shall have accepted such appointment, except as provided in Section 3.11(b).

(d) Upon the effective appointment of and acceptance by a successor Collateral Agent, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the predecessor Collateral Agent hereby appoints the successor Collateral Agent the attorney-in-fact of such predecessor Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Collateral Agent hereunder and all power, trusts, duties, documents, rights and authority of the previous Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Collateral Agent shall, nevertheless, on the written request of the Secured Creditors or successor Collateral Agent, execute and deliver any other such instrument transferring to such successor Collateral Agent all the Collateral, properties, rights, power, trust, duties, authority and title of such predecessor. In connection with the resignation or removal of Collateral Agent, PCEA, to the extent requested by the Secured Creditors or Collateral Agent, shall procure and execute any and all documents, conveyances or instruments requested, including any documentation appropriate to reflect the transfer of the Lien or other rights granted herein to such successor Collateral Agent.

SECTION 4. ACTIONS BY COLLATERAL AGENT

Section 4.1. Duties and Obligations

The duties and obligations of Collateral Agent are only those set forth in this Agreement. The Collateral Agent shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Collateral, or to otherwise take or refrain from taking any action hereunder, except as expressly provided by the terms hereof or in written instructions received pursuant hereto, and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. Upon the written instruction at any time and from time to time of a majority of the Secured Creditors, the Collateral Agent shall take such action or refrain from taking such action, not inconsistent with the provisions of this Agreement, as may be specified in such instruction. Notwithstanding the foregoing, Collateral Agent shall not be required to take, or refrain from taking, any action that, in its opinion or in the opinion of its counsel, may expose Collateral Agent (as such or in its individual capacity) to liability. Collateral Agent (as such or in its individual capacity) shall not be liable for any action it takes or omits to take in good faith

which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by Collateral Agent does not constitute willful misconduct, gross negligence or bad faith. The Collateral Agent shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of any of its obligations under or in connection with this Agreement, the Security Agreement, the Control Agreement or any related document.

Section 4.2. Voting; Amendments to Security Agreement

Collateral Agent shall act at the written instruction of the majority of the Secured Creditors in connection with all matters requiring a vote or instruction under this Agreement or the Security Agreement, with each Secured Creditor having one vote. Notwithstanding the foregoing, without the prior written consent of all of the Secured Creditors, Collateral Agent shall not enter into any amendment or restatement of the Security Agreement, or replacement thereof, that amends (i) the definition of the term “Obligations” set forth in the Security Agreement or (ii) Section 6.02 of the Security Agreement (titled Priority of Distributions of Collateral).

Section 4.3. Actions Pertaining to the Collateral

Collateral Agent has the sole and exclusive standing and right to assert claims relating to the Collateral, and no Secured Creditor may enforce or assert against PCEA, the Deposit Accounts, the Depository Bank, or any other Person, any claims relating to the Collateral. Collateral Agent shall act at the instruction of the majority of the Secured Creditors in asserting claims under this Agreement, the Security Agreement or the Control Agreement. Notwithstanding the foregoing, if Collateral Agent deems it prudent to act without the instruction of the Secured Creditors to protect the Collateral, it may (but shall be under no obligation to) do so, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

Section 4.4. Duty of Care

Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of rights pertaining to the Collateral beyond the safe custody of any Collateral in Collateral Agent’s actual possession. Without limiting the generality of the foregoing, Collateral Agent shall have no duty or obligation (a) to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer’s certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer’s certificate or an opinion of counsel.

Section 4.5. Further Assurances

Each Secured Creditor shall take such actions and cooperate with Collateral Agent as may be reasonably requested, and execute such documents as may be necessary, to carry out or effect the intent of the parties hereto.

Section 4.6. Distribution of Proceeds of Collateral

Collateral Agent shall distribute the Proceeds of the Collateral as provided in Section 6.02 of the Security Agreement. Collateral Agent shall rely on the provisions in Section 6 of the Security Agreement for calculating the Obligations payable from such Proceeds. Collateral Agent has no duty or obligation to make an independent inquiry regarding the foregoing calculations or the facts on which such calculations are based.

Section 4.7. Deposit Accounts

Subject to distributions permitted under the Security Agreement or this Agreement, the Proceeds of Collateral shall be maintained in the Deposit Accounts, and no such account shall be required to be interest bearing. Notwithstanding the forgoing, Collateral may be invested in Permitted Investments as provided for in the Security Agreement. Collateral Agent shall not be responsible for any loss of funds invested in accordance with this Section.

Section 4.8. Restoration of Obligations

In the event any payment of, or any application of any amount, asset or property to, any of the Obligations owed to any Secured Creditor or any obligations owed to Collateral Agent under the Security Agreement or this Agreement, or any part thereof, made at any time (including, without limitation, made prior to any applicable Bankruptcy Proceeding) is rescinded or are otherwise be restored or returned by such Secured Creditor or Collateral Agent at any time after such payment or application, whether by order of any court, by settlement, or otherwise, then the respective obligations and the security interests of such Person shall be reinstated, all as though such payment or application had never been made.

Section 4.9. Privileged Materials

With respect to all materials and communications relating to the Collateral with or in the possession of Collateral Agent or its counsel that are subject to any claim of privilege in favor of Collateral Agent, each Secured Creditor agrees that Collateral Agent shall not be required to take any action under this Agreement that compromises the privileged nature of such conversations or materials, and all such privileges shall be preserved.

Section 4.10 Action Upon Instruction

Whenever the Collateral Agent is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any document, or is unsure as to the application, intent, interpretation or meaning of any provision of this Agreement or any other document, or any such provision may be ambiguous as to its application or in conflict with any other applicable provision, permits any determination by the Collateral Agent, or is silent or

incomplete as to the course of action that the Collateral Agent is required to take with respect to a particular set of facts, then the Collateral Agent may give notice (in such form as shall be appropriate under the circumstances) to the Secured Creditors requesting instruction as to the course of action to be adopted, and, to the extent the Collateral Agent acts or refrains from acting in good faith in accordance with any such written instruction of a majority of the Secured Creditors received, the Collateral Agent shall not be personally liable on account of such action or inaction to any Person. If the Collateral Agent shall not have received appropriate instruction from the Secured Creditors within ten (10) days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action which is consistent, in its view, with this Agreement, the Security Agreement, and Control Agreement or other documents, and as it shall deem to be in the best interests of the Secured Creditors, and the Collateral Agent shall have no personal liability to any Person for any such action or inaction.

SECTION 5. BANKRUPTCY PROCEEDINGS

The following provisions shall apply during any Bankruptcy Proceeding of PCEA:

(a) Collateral Agent shall represent all Secured Creditors in connection with all matters directly relating solely to the Collateral, use of cash collateral, relief from the automatic stay and adequate protection. In such Bankruptcy Proceeding, Collateral Agent shall act on the instruction of the majority of the Secured Creditors.

(b) Each Secured Creditor shall be free to act independently on any issue not directly relating solely to the Collateral.

(c) Each Secured Creditor shall file its own proof of claim in respect of the Obligations owing to it. Collateral Agent shall have the right to file (but has no obligation to file) a proof of claim in its capacity as Collateral Agent in respect of any or all of the Obligations.

(d) Each Secured Creditor shall have the sole right to vote the claims pertaining to the Obligations owing to it by PCEA.

(e) Any Collateral or proceeds thereof received by any Secured Creditor as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to Collateral Agent for distribution in accordance with Section 4.6.

SECTION 6. MISCELLANEOUS

Section 6.1. Amendments to this Agreement and Assignments

This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Collateral Agent, PCEA and all Secured Creditors. This Agreement is assignable by any party hereto, provided that (a) the parties, and the parties agree to, execute and deliver a restated agreement in the event there is a change in the identity of the Collateral Agent and (b) any assignee of a PPA Provider under a Power Purchase Agreement shall comply with Section 6.5.

Section 6.2. Marshalling

Collateral Agent shall not be required to marshal any present or future security for (including, without limitation, the Collateral), or guaranties of the Obligations or to resort to such security or guaranties in any particular order; and all of each of such Person's rights in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising.

Section 6.3. Governing Law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT THE ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE STATE OF CALIFORNIA OR THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

Section 6.4. Waiver of Jury Trial

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

Section 6.5. Joinder

Each time PCEA enters into a new Power Purchase Agreement as to which the counterparty thereto is to share in the Collateral, such counterparty shall execute and deliver to Collateral Agent a Joinder to Intercreditor and Collateral Agency Agreement in the form of Exhibit A hereto (a "**Joinder**"). Further, no PPA Provider may assign or transfer its rights hereunder or under a Power Purchase Agreement without such assignees or transferees delivering an executed Joinder to Collateral Agent. By executing a Joinder, such counterparty agrees to be bound by the terms of this Agreement as though named herein and shall share according to the Sharing Percentage attributable to the Obligations owed to or acquired by it. Each such counterparty that is an assignee shall upon execution and delivery of a Joinder be the PPA Provider and Secured Creditor under this Agreement representing the holder of the assigned

Obligations and shall be obligated for all obligations, including indemnity obligations, to Collateral Agent of its transferor, and such transferor shall cease forthwith to be a Secured Creditor hereunder.

Section 6.6. Counterparts

This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto or to any Joinder shall be as effective as an original signature.

Section 6.7. Termination

Unless earlier terminated by the parties hereto, upon payment in full of the last of the Obligations in accordance with their respective terms and all obligations owed to Collateral Agent, this Agreement shall terminate except for those provisions hereof that by their express terms shall survive the termination of this Agreement. Except as otherwise provided herein, this Agreement shall terminate with respect to a particular PPA Provider on the date on which all of the Obligations under such PPA Provider's Power Purchase Agreement shall have been paid and satisfied in full. Notwithstanding the foregoing, if all or any part of the Obligations are reinstated pursuant to Section 4.8, then this Agreement shall be renewed as of such date and shall thereafter continue in full force and effect to the extent of the Obligations so invalidated, set aside or repaid, or that remain outstanding.

Section 6.8. Controlling Terms

In the event of any inconsistency between this Agreement and the Security Agreement, the Security Agreement shall control.

Section 6.9. Notices

Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed as provided below their signatures to this Agreement or at such other address for notice as Collateral Agent or such Secured Creditor shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) that is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) that is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

Section 6.10. No Recourse Against Constituent Members of PCEA

The parties hereto acknowledge and agree that (i) PCEA is organized as a joint powers authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members, (ii) PCEA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, the Security Agreement and any other agreement entered into in connection therewith and (iii) such parties will have no rights and will not make any claims, take any actions or assert any remedies against any of PCEA's constituent members in connection with this Agreement, the Security Agreement and any other agreement entered into in connection therewith.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have caused these this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

WILMINGTON TRUST, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Collateral Agent

By: _____
Name:
Title:

Notice Address:

Wilmington Trust, National Association
650 Town Center Drive, Suite 600
Costa Mesa, CA 92626
Reference: [Peninsula Clean Energy Authority]
Fax: [+1 714-384-4151]

With a copy to:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, Delaware 19890
Attention: [Adam Vogelsong]
Reference: [Peninsula Clean Energy Authority]
Fax: [+1 302-636-4140/4141]

[_____] ,
as Secured Creditor

By: _____
Name:
Title:

Notice Address:

[Insert Address]

EXHIBIT A

JOINDER TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

Wilmington Trust, National Association, in its capacity as Collateral Agent
650 Town Center Drive, Suite 600
Costa Mesa, CA 92626

With a copy to:

Wilmington Trust, National Association
1100 North Market Street
Wilmington, Delaware 19890
Attention: [Adam Vogelsong]
Reference: [Peninsula Clean Energy Authority]

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of [_____], 2016 (as amended or restated from time to time, the “**Intercreditor Agreement**”; capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Intercreditor Agreement), among Wilmington Trust, National Association, as Collateral Agent, and the PPA Providers party thereto, relating to Peninsula Clean Energy Authority, a California joint powers authority (“**PCEA**”).

By executing and delivering this Joinder to Intercreditor and Collateral Agency Agreement (this “**Joinder**”), the undersigned holder of the Obligations arising under that certain Power Purchase Agreement between PCEA and the undersigned, a copy of which is enclosed with this Joinder, (1) agrees to the appointment of Wilmington Trust, National Association as its Collateral Agent in accordance with Section 3.1 of the Intercreditor Agreement, and (2) agrees to be bound by all of the terms and provisions of the Intercreditor Agreement, including to the indemnification obligation set forth in Section 3.9. The address set forth under the signature of the undersigned constitutes its address for the purposes of Section 6.10 of the Intercreditor Agreement.

Dated as of: _____, 20__.

By: _____

Name:

Title:

[Insert address for notices]