

PCE Recent and Upcoming Outreach Events

7-Oct	Table at SSF Farmers Markets
10-Oct	Presentation at San Mateo Multifamily Energy Efficiency Workshop
14-Oct	Presentation at South San Francisco Library
17-Oct	Table at Genentech Employee Cafeteria
17-Oct	Presentation at Sunshares Workshop at San Mateo Library
21-Oct	Table at Kavanaugh Community Day in East Palo Alto
28-Oct	Table at Health + Safety Fair at Tanforan Mall in San Bruno
28-Oct	Table at Halloween/ Dia de los Muertos Festival at Facebook
28-Oct	Table at Burlingame Fall Fest (Burligame CEC)
29-Oct	Table at Burlingame Fall Fest (Burligame CEC)
6-Nov	Table at Dia de los Muertos Festival in Redwood City
10-Nov	Table at San Mateo Harvest Festival
11-Nov	Table at San Mateo Harvest Festival
12-Nov	Table at San Mateo Harvest Festival
14-Nov	Presentation in Spanish in North Fair Oaks
16-Nov	Presentation in Spanish in Half Moon Bay
18-Nov	Table at Pacifica City Open House
30-Nov	Table at Acterra EV event in South San Francsico
1-Dec	Table at Night of Lights in Half Moon Bay
2-Dec	Presentation in Spanish at South San Francisco Library
10-Dec	Presentation in English and Chinese in South San Francisco Library

**Import Resource Adequacy Capacity Product
Confirmation Agreement Between
Calpine Energy Services, L.P. and Peninsula Clean Energy Authority,
a California joint powers authority
Resource Contract Capacity Number: TBD**

This confirmation agreement ("Confirmation") dated October 23, 2017 (the "Confirmation Effective Date"), shall document the negotiated transaction between Calpine Energy Services, L.P. ("Seller") and Peninsula Clean Energy Authority, a California joint powers authority ("Buyer"), together the "Parties", in which Seller agrees to provide to Buyer the right to Import RA Capacity Product (as defined herein) as specified herein. This Confirmation is governed by the Western Systems Power Pool Agreement (Effective Version: June 26, 2017), excluding the Schedules thereto, as amended and supplemented by this Confirmation (collectively, the "Master Agreement") under the following terms and conditions. The definitions and provisions contained in the Master Agreement; in the decisions of the California Public Utilities Commission ("CPUC") as contained in Decision ("D.") 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063 and 16-06-045, and subsequent decisions related to resource adequacy ("RA") issued from time to time by the CPUC, and the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program (collectively, "RA Rules"); and in the tariffs and protocols of the California Independent System Operator ("CAISO"), as amended from time to time ("Tariff") shall apply to this Confirmation and are incorporated by reference; provided, that to the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

1. Definitions:

"Import RA Capacity Product" means the qualified and deliverable capacity from the System Resource that can be counted toward Buyer's RAR, and all other resource adequacy requirements established by any other regional entity responsible for RAR including but not limited to the CAISO. Import RA Capacity Product does not confer to Buyer any right to the Contract Quantity of Seller's System Resource other than the right to count such Contract Quantity toward Buyer's RAR during the Delivery Term. Specifically, no energy associated with Seller's System Resource is required to be made available to Buyer as part of this Confirmation, and Buyer shall in no way be responsible to compensate Seller for any commitments made or owed by Seller to CAISO in connection with the Import RA Capacity Product sold under this Confirmation.

"Contract Quantity" means the amount of Import RA Capacity Product stated in megawatts ("MW"), made available twenty-four hours per day, seven days per week, to the RA Capacity Delivery Point through transmission service that is not recallable for economic reasons, and which is backed by operating reserves in the originating control area, delivered to the RA Capacity Delivery Point as set forth in this Confirmation.

"RA Capacity Delivery Point" means the CAISO Scheduling Point on the California Oregon Border (COB) which maps to the CAISO Branch Group Malin 500 where Buyer holds intertie import capability.

“RAR” means the system resource adequacy requirements established for load serving entities by the CPUC pursuant to the RA Rules.

“System Resource” means a group of resources located outside of the CAISO Control Area capable of providing Energy and/or Ancillary Services to the RA Capacity Delivery Point.

2. **Representations and Warranties:**

2.1 Seller and Buyer represent and warrant that throughout the Delivery Term they shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, consistent with the Tariff and RA Rules. Such commercially reasonable actions shall include but are not limited to the following:

- a) Meeting requirements established by the Tariff and RA Rules, including (1) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Term as required for full RAR eligibility, (2) demonstrating that the Contract Quantity can be delivered to the CAISO controlled grid pursuant to “deliverability” standards established by the CPUC or other regional entity or entities responsible for RA administration, and (3) ensuring the timely submission by Seller's Scheduling Coordinator (or the Scheduling Coordinator for the Import RA Capacity Product) of Supply Plans and sufficient information to allow for the submission of a complete Resource Plan by Buyer's Scheduling Coordinator (as such terms are defined in the Tariff), in accordance with the Tariff and applicable RA Rules so that the Contract Quantity can be counted for Buyer's RAR; and
- b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Confirmation to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO or other regional entity or entities responsible for RA administration, so as to maintain the benefits of the bargain struck by the Parties; and
- c) At all times using “Good Utility Practice” as defined in the Tariff.

2.2 Seller represents and warrants that throughout the Delivery Term:

- a) Buyer has the exclusive right to count the Contract Quantity of Import RA Capacity Product from Seller's System Resource toward Buyer's RAR;
- b) No portion of the Contract Quantity of Import RA Capacity Product has been committed by Seller to any third party in order to satisfy RAR or analogous capacity obligations in other markets; and
- c) Seller shall abide by all applicable Tariff provisions and procedures approved by the Federal Energy Regulatory Commission (“FERC”), and/or set forth in the RA Rules as they apply to the Import RA Capacity Product.

3. **CAISO Dispatch Requirements:**

During the Delivery Term, unless the System Resource is affected by an event of force majeure that results in a partial or full transmission outage reducing the amount of Contract Quantity, Seller shall commit the Contract Quantity to the CAISO in compliance with the applicable section of the Tariff implementing the RA Rules.

In compliance with section 40.6 of the Tariff, Seller shall submit a bid or self-schedule or have a bid submitted on the Seller's behalf by the CAISO into the CAISO Day Ahead Integrated Forward Market ("IFM") at the RA Capacity Delivery Point of the Import RA Capacity Product in all hours of the Delivery Term for the amount of the Contract Quantity, adjusted for any outages or reductions in Contract Quantity reported to the CAISO in accordance with the Tariff, except for any hours in which the Seller was prohibited by Section 30.8 of the Tariff from bidding across an out-of-service transmission path at the RA Capacity Delivery Point.

In compliance with Section 40.6 of the Tariff, Seller shall submit a bid into the CAISO Day Ahead Residual Unit Commitment ("RUC") Procedure at the RA Capacity Delivery Point of the Import RA Capacity Product for the amount of the Contract Quantity.

Seller shall have no further offer requirements in the CAISO Real Time Market or under the Hour Ahead Scheduling Procedure for the portion of the Contract Quantity that is not committed or self-scheduled in the IFM and not committed in RUC.

4. **Contract Quantity and Delivery Term (full capacity of the System Resource) are as follows:**

The "Delivery Term" is:

January 1, 2018 through December 31, 2018

[REDACTED]

[REDACTED]

5. **Contract Price:** Buyer shall pay the following Contract Price to Seller in accordance with the Master Agreement:

[REDACTED]

6. **CAISO Revenues:** Seller shall retain any and all revenues received from the CAISO in relation to Import RA Capacity Product sold pursuant to this Confirmation.

7. **Indemnity Against Penalties and Replacement:** Seller agrees to indemnify Buyer for:

- a) any monetary penalties assessed by the CPUC and/or the CAISO against Buyer for Buyer's failure to meet the requirements of the RA Rules or Tariff as a result of Seller not fulfilling any of its obligations under this Confirmation; and
- b) costs incurred, using reasonable efforts, by Buyer to replace, if required, any Import RA Capacity Product to bring the total volume back to Contract Quantity and Delivery Term specified herein.

If approved by the CPUC and the CAISO, Seller may, at no cost to Buyer, replace any Import RA Capacity Product with replacement product that Buyer can use to meet its RAR requirements and all associated requirements of the RA Rules and the Tariff; provided, that Seller shall: notify Buyer of its intent to provide replacement product; provide written confirmation of approval from the CPUC and CAISO; and identify the replacement resource meeting the requirements of this Confirmation and the Tariff, all no later than fifteen (15) Business Days before that Showing Month's relevant deadlines for Buyer's RAR showings. If Seller notifies Buyer in writing as specified above, and if the identified replacement resource meets the requirements of this Confirmation and the Tariff, then such replacement resource shall be deemed Import RA Capacity Product for that Showing Month. If Seller notifies Buyer in writing of its intent to provide replacement product to this section, and Buyer is unable to utilize the replacement resource under the Tariff or RA Rules governing the substitution or replacement of capacity products, then Seller shall reimburse Buyer for any and all costs and charges incurred by Buyer as a result of Buyer's inability to utilize the replacement resource, and shall indemnify Buyer pursuant to this Section 7. For purposes of this Section 7, the term "Buyer" shall include any third party entity to which Buyer resells any of the Contract Quantity.

8. **Confidentiality:** Notwithstanding the Master Agreement, the Parties agree that Buyer may disclose the Import RA Capacity Product under this Confirmation to the CPUC, the CAISO or any other governmental body having jurisdiction in order to support its RAR showings, if applicable, and Seller may disclose the transfer of the Import RA Capacity Product under this Confirmation to the Scheduling Coordinator in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Buyer and Seller acknowledge and agree that the Master Agreement and this Confirmation are subject to the California Public Records Act (Government Code Section 6250 et seq.), and that Buyer is required to make public this Confirmation (which may be partially redacted by Buyer) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation.

Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Buyer acknowledges that Seller may submit information to Buyer that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure

pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. For purposes of this Section, the "Disclosing Party" is the Party to this Confirmation that discloses information to the other Party, and the "Receiving Party" is the Party receiving such information.

9. **Buyer's Resale of Import RA Capacity Product:** Buyer may resell all or a portion of the Import RA Capacity Product purchased hereunder and any associated rights, in each case, acquired under this Confirmation. In the event Buyer resells all or a portion of the Import RA Capacity Product and any associated rights acquired under this Confirmation ("Resold Product"), Seller agrees, and agrees to cause its Scheduling Coordinator, to follow Buyer's instructions and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product.

A series of horizontal black bars of varying lengths and positions, creating a stylized, abstract representation of text or a graphic element. The bars are arranged in a way that suggests a sequence or a list, with some bars starting further to the left than others, creating a stepped effect. The bars are solid black and have sharp edges.

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11. **No Recourse to Members:** Buyer 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. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent

members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

12. **Counterparts:** This Confirmation 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 Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.
13. **Entire Agreement, No Oral Agreements or Modifications:** This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and, along with the Master Agreement, shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Imported RA Capacity specified herein. Notwithstanding any other provision of the Master Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

Seller: Calpine Energy Services, L.P.

Buyer: Peninsula Clean Energy
Authority, a California joint powers
authority

By:  _____

By: _____

Name: Andrew Novotny

Name: _____

Title: Vice President

Title: _____

Date: October 23, 2017

Date: _____

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
ANAHOU ENERGY, LLC
AND
PENINSULA CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between, **Anahou Energy, LLC** a Delaware limited liability company ("Seller") and **Peninsula Clean Energy Authority**, a California joint powers authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of October 25, 2017 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western Systems Power Pool Agreement (Effective Version: June 26, 2017), excluding the Schedules thereto, as amended by this Confirmation, (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

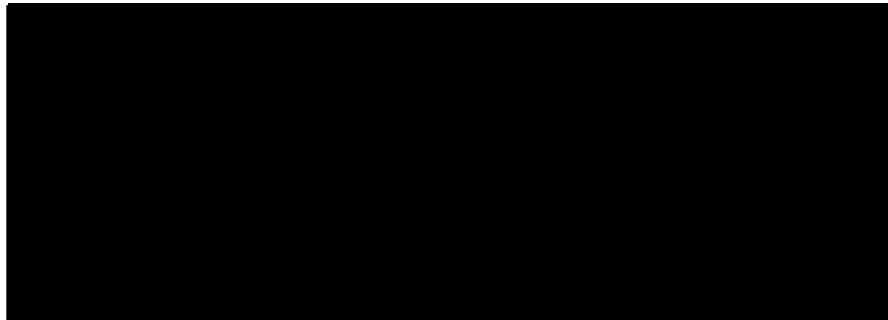
- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5 (an subject to the restrictions specified therein).
- 1.2 "Applicable Laws" means (i) any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, and (ii) the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning specified in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to each day of each Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, and 16-06-045 and subsequent decisions related to resource adequacy as issued from time to time by the CPUC.

- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.30 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

- 1.31 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Service Schedule B Commitment Service" in the WSPP Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.32 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.35 "Product" has the meaning specified in Article 3 hereof.
- 1.36 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.38 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.41 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.42 "Resold Product" has the meaning specified in Section 9 hereof.
- 1.43 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.44 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.45 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.46 "Shortfall Capacity" has the meaning specified in Section 4.11 hereof.
- 1.47 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.48 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.49 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

- 1.50** "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 1.51** "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.52** "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.53** "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.54** "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATIONARTICLE



3. RESOURCE ADEQUACY CAPACITY PRODUCT

For each day of each Showing Month that is part of the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes or LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant

to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product. "Contingent Firm" shall have the same meaning as "Service Schedule B Unit Commitment" in the WSPP Agreement.

3.3 ☐ **Flexible RA Product**

Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amounts set forth in Section 4.3.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

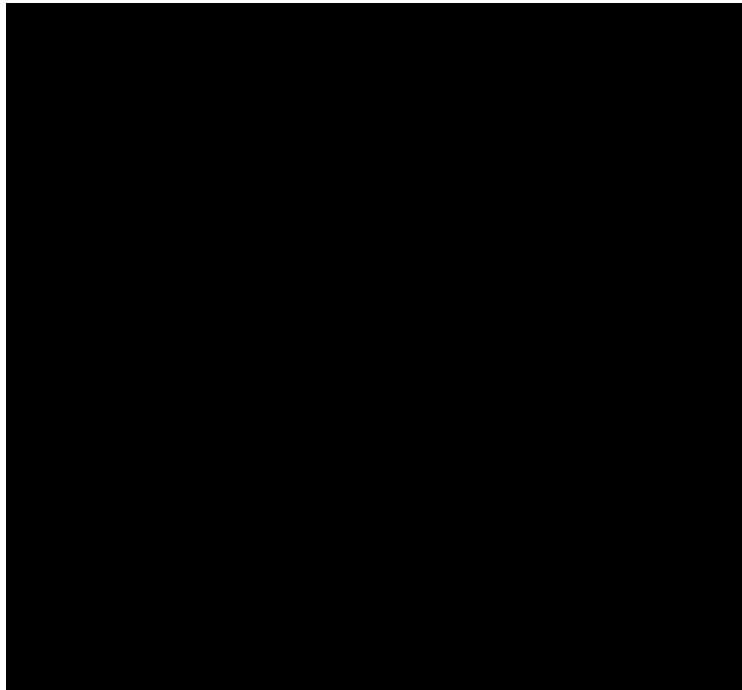
The Delivery Period shall be: [] through [], inclusive.

4.2 Delivery Point.

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)



4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** Seller's obligation to deliver the Contract Quantity for each day of each Showing Month may be reduced by the amount of any Planned Outage which exists during the applicable Showing Month for the applicable days of such Planned Outage; provided, Seller notifies Buyer, no later than fifteen (15) Business Days before the relevant deadlines for the corresponding RAR Showings, LAR Showings and/or Flexible RAR Showings applicable to that Showing Month, of the

amount of Product from the Unit Buyer is permitted to include in Buyer's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage.

If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the affected days of such Showing Month.

- (a) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (b) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be fifteen (15) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in no event shall Seller provide Alternate Capacity that is supplied by or from generating units that utilize coal or coal materials as a source of fuel and provided further that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month. If Seller notifies Buyer in writing of its intent to provide Alternate Capacity pursuant to this Section 4.5 and Buyer is unable to utilize the Alternate Capacity under Tariff rules governing the substitution or replacement of capacity products, then Seller shall reimburse Buyer for any and all costs or charges incurred by Buyer from the CAISO for Buyer's inability to utilize the Alternate Capacity.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, or if Buyer is unable to utilize the Alternate Capacity for reasons identified in the last sentence of subpart (a) above, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event and Seller notified Buyer no later than the Notification Deadline of Seller's intent not to provide Alternate Capacity in an amount equal to the Contract Quantity of that Showing Month, unless Buyer is unable to utilize the Alternate Capacity for reasons identified in the last sentence of subpart (a) above.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each day of each Showing Month.

- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity plus costs and expenses incurred by Buyer in purchasing such Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.
- (c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), 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 not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity for any portion of the Delivery Period due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity for any portion of the Delivery Period as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder for each day of the Delivery Period.

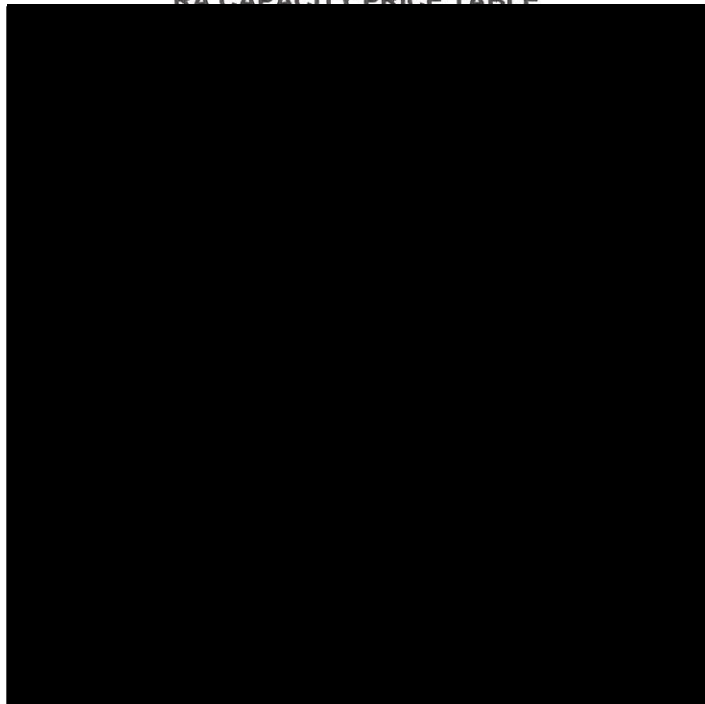
With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or

controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Section 9 of the WSPP Agreement with respect to each Showing Month, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice and (ii) the twentieth (20th) of the month following the Monthly Delivery Period, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE



4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation

Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above. In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense during normal working hours after reasonable prior notice, to retain an independent third party reasonably acceptable to Seller to audit any documents, records, or data of Seller associated with the Contract Quantity. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

4.11 Post-Showing Replacement Capacity

In the event CAISO determines, in accordance with the Tariff, that any portion of the Contract Quantity for any portion of a Showing Month which was shown by Buyer in its RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC, requires outage replacement by Buyer in accordance with Section 40.7 of the Tariff ("Shortfall Capacity"), and if Buyer is required to obtain such outage replacement, Seller's Monthly RA Capacity Payment will be reduced by the Product no longer available to Buyer for meeting its RA Compliance Obligations at the fixed price per unit determined in accordance with Section 4.9 above and, neither Seller, nor the Unit's SC, shall have the right to provide Buyer with Replacement Capacity with respect to such Shortfall Capacity. If the CAISO requires Seller or its SC to obtain the outage replacement such that Buyer is permitted to count the Shortfall Capacity in its RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC, there shall be no adjustment to Seller's Monthly RA Capacity Payment for such Shortfall Capacity.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation

to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and

- (b) negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings;

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated

- RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
 - (l) No portion of the Designated RA Capacity or any Alternate Capacity provided under this Confirmation is or will be from Units that utilize coal or coal materials as a source of fuel. Seller understands and acknowledges that it is Buyer's policy to not purchase or accept products from generators that utilize coal or coal materials as a source of fuel. Any future replacement of the Units or the Designated RA Capacity, if necessary, shall not be from generators that utilize coal or coal materials as a source of fuel.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

Seller acknowledges that PCEA is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. and that Buyer is required to make public this Confirmation (which may be partially redacted by Buyer) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. PCEA acknowledges that Seller may submit information to PCEA that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that PCEA may submit to Seller information that PCEA considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action within thirty (30) days, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

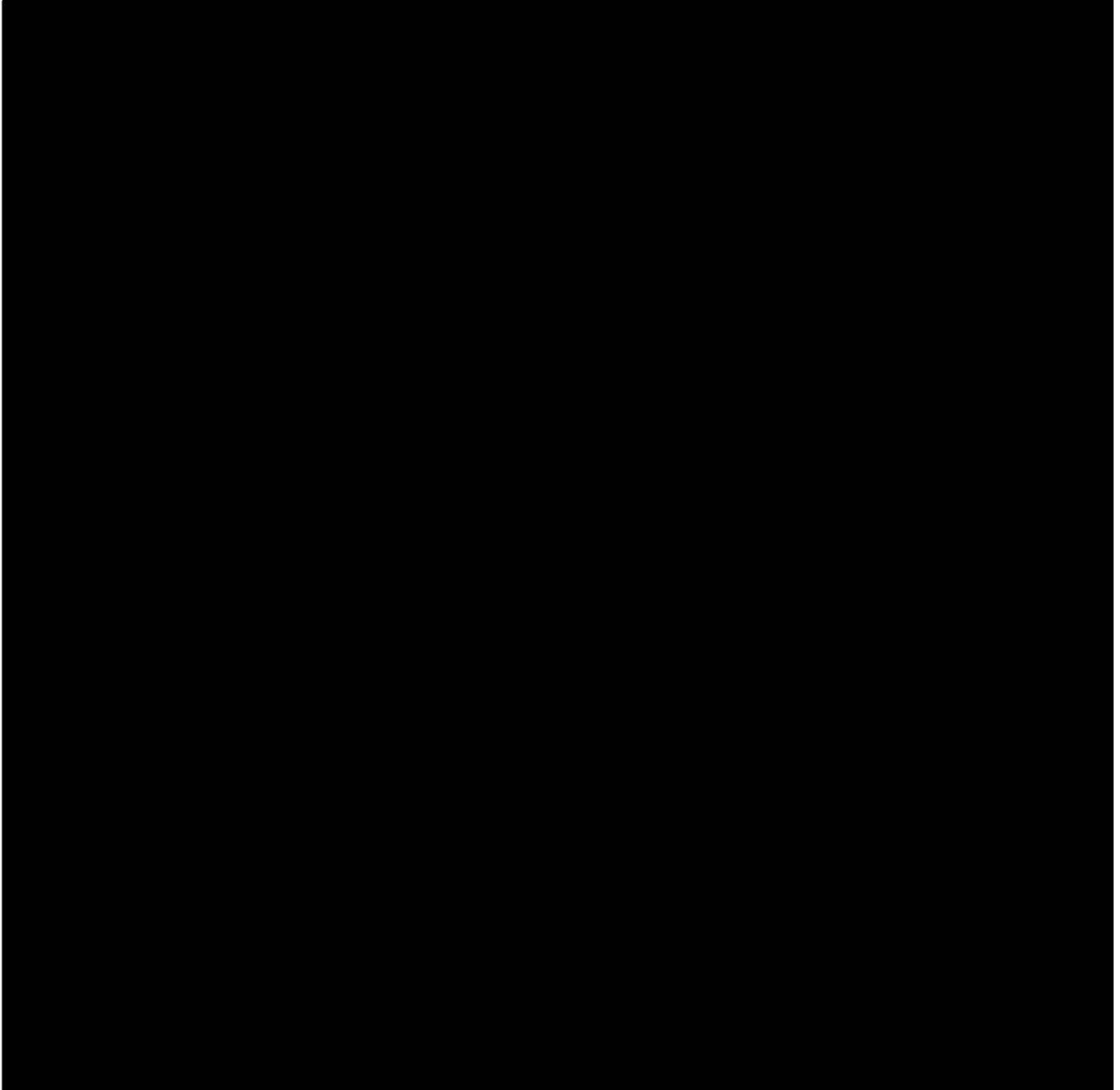
ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

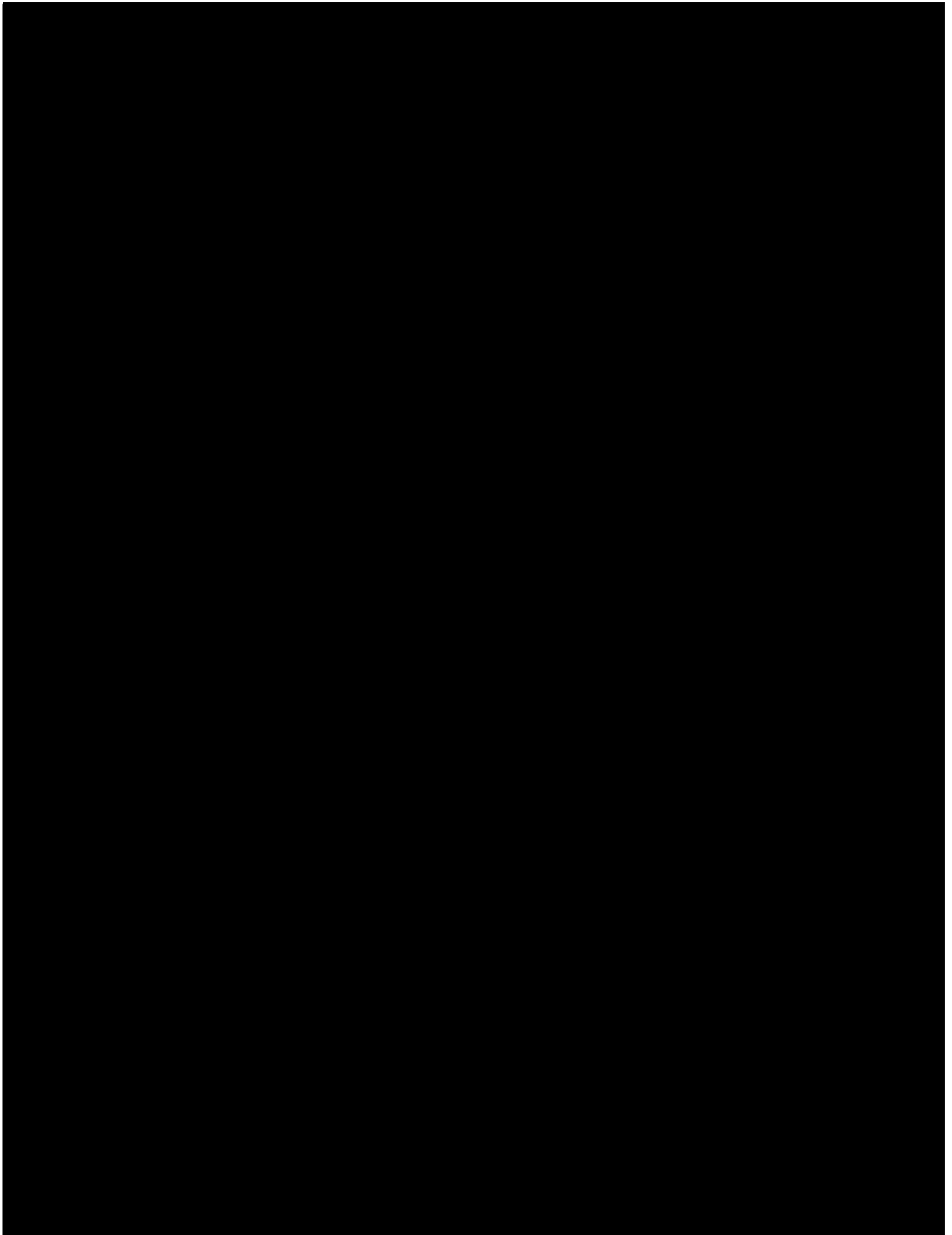
Buyer may re-sell all or a portion of the Product hereunder and any associated rights, in each case, acquired under this Agreement. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement ("Resold Product"), Seller agrees, and agrees to cause each Unit's SC, to follow Buyer's instructions and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees, and agrees to cause each Unit's SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or a Unit's SC to comply with the terms of this Agreement, and Seller would have had liability to Buyer under this Agreement for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Agreement, including without limitation, pursuant to Section 4.8, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. WSPP AGREEMENT AMENDMENTS





(w)



ARTICLE 13. NO RECOURSE TO MEMBERS OF BUYER

Buyer 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. Buyer is and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no recourse to, and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

ARTICLE 14. COUNTERPARTS

This Confirmation 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 Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

ARTICLE 15. ENTIRE AGREEMENT, NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and (together with the Master Agreement, as revised by this Confirmation) shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a documentary writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a documentary writing executed by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

PENINSULA CLEAN ENERGY AUTHORITY

ANAHOU ENERGY, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____



Susan E. Tell

Chief Executive Officer



Supply. Flexibility. Commitment.

AGREEMENT BETWEEN
Powerex Corp. * and Peninsula Clean Energy Authority
Powerex Deal No. FHE693

This document (“**Confirmation**” or “**Agreement**”) confirms the agreement reached on the Effective Date between Powerex Corp.* (“**Powerex**” or “**Seller**”) and Peninsula Clean Energy Authority, a California joint powers authority (“**PCEA**” or “**Buyer**”) regarding the sale and purchase of the Product in accordance with the EEI Master Power Purchase and Sale Agreement dated as of May 18, 2017, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the “**Master Agreement**”) and as amended and supplemented by this Confirmation under the following terms and conditions. Consistent with Section 2.2 of the Master Agreement, this Confirmation, together with all other transactions, confirmations and the Master Agreement, form a single integrated agreement between the Parties and are not separate contracts.

Seller: Powerex

Buyer: PCEA

Trade Date: October 25, 2017

Transaction: This Transaction is for Buyer to procure Bundled Renewable Energy, all in accordance with the terms and conditions of this Confirmation.

Generation Term: For the purposes of this Confirmation and the Bundled Renewable Energy to be delivered pursuant hereto, the generation term for Bundled Renewable Energy is January 1, 2018, through December 31, 2018, inclusive.

Product: “**Bundled Renewable Energy**”, which is comprised of energy generated by the Project(s) and the associated Green Attributes, including RECs.

Delivery and Passage of Title:

Delivery – Out-of-State Designated Facilities

The Parties recognize that a schedule of energy by Seller into the California Independent System Operator (“**CAISO**”) balancing authority (“**CAISO Balancing Authority**”) by means of either Delivery Method 1 (Category 1 Product) and/or Delivery Method 2 (Category 2 Product), as defined and described below, are deliveries to the CAISO and not directly to the Buyer. Scheduling energy in accordance with Delivery Method 1 and/or Delivery Method 2 into the CAISO Balancing Authority shall constitute delivery of Bundled Renewable Energy to Buyer, provided the WREGIS Certificates evidencing the Green Attributes comprised in the Bundled Renewable Energy are delivered to Buyer as provided in this

Confirmation.

Delivery – In-State Designated Facilities

The Parties recognize that a schedule of energy by or on behalf of Seller onto the CAISO Controlled Grid by means of Delivery Method 1 (Category 1 Product) is a delivery to the CAISO and not directly to the Buyer. Scheduling energy in accordance with Delivery Method 1 onto the CAISO Controlled Grid shall constitute delivery of Bundled Renewable Energy to Buyer, provided the WREGIS Certificates evidencing the Green Attributes comprised in the Bundled Renewable Energy are delivered to Buyer as provided in this Confirmation.

Passage of Title

Energy: Title to the Energy shall pass at the Delivery Point.

Green Attributes: Green Attributes (including any RECs) to be delivered to Buyer hereunder shall be represented by WREGIS Certificates. Seller shall use WREGIS to transfer title to the Green Attributes to Buyer. The transfer of WREGIS Certificates through WREGIS shall be deemed to transfer title to all of the Green Attributes associated with the Product.

As between Buyer and Seller, Seller shall be responsible for all costs associated with the creation of the WREGIS Certificates and the transfer of such certificates to Buyer (including any costs and expenses for Qualified Reporting Entity (as defined in the WREGIS Operating Rules) services associated with the WREGIS Certificates created and transferred hereunder). Buyer shall be responsible for the costs of establishing and maintaining its' own WREGIS account.

Delivery Method Election:

Seller and Buyer acknowledge and agree that Buyer has purchased Bundled Renewable Energy, and that the energy generated by a Project and allocated to this Transaction will not be sold back to that Designated Facility, is available to Buyer and is not otherwise committed to another party. The Green Attributes associated with the Bundled Renewable Energy have not been unbundled and transferred to another owner.

The Parties intend that the Product as procured by Buyer and as delivered by Seller in accordance with Delivery Method 1 (the "**Category 1 Product**") will meet the Category 1 Eligibility Requirements in accordance with this Confirmation.

The Parties intend that the Product as procured by Buyer and as delivered by Seller in accordance with Delivery Method 2 (the "**Category 2 Product**") will meet the Category 2 Eligibility Requirements in accordance with this Confirmation.

Bundled Renewable Energy

Buyer elects to take receipt of the Energy associated with Buyer's procurement of the Product as follows:

☒ **"Delivery Method 1"** – (Category 1 Product) – Energy directly delivered from the Project on an hourly, sub-hourly or real-time basis to the Delivery Point without substituting electricity from another source ("**Project Energy**"), and/or

☐ **"Delivery Method 2"** – (Category 2 Product) – Energy generated by a source other than the Project, delivered to the Delivery Point in substitution for, and in an amount matching the amount of, Project Energy ("**Substitute Energy**").

If both boxes are checked, Buyer is deemed to have selected a combination of Delivery Method 1 and Delivery Method 2 as detailed below.

Substitute Energy shall be generated by a resource located outside of the metered boundaries of a California balancing authority and such Substitute Energy was not in the Buyer's portfolio prior to the date of this Transaction.

Substitute Energy will be scheduled into a California balancing authority within the same calendar year as the year in which the Project Energy was generated.

Powerex will not deliver Substitute Energy from a Specified Source if such unit or facility is a nuclear-powered or coal-fired generating resource. Except as provided in the immediately preceding sentence, Powerex may procure and deliver Substitute Energy from any other source, including a Specified Source, an "unspecified source" (as such term is defined in the Mandatory Reporting Rule) or electricity procured in the open market.

Delivery Method Quantity:Delivery Term

The delivery term is January 1, 2018, through the date that all Green Attributes transacted under this Confirmation have been delivered from Seller to Buyer in accordance with this Confirmation, and in any case no later than April 30, 2019 (the "**Delivery Term**").

Quantity

During the Delivery Term, Buyer shall procure [REDACTED] of Bundled Renewable Energy from Seller to be delivered by Seller in accordance with the Delivery Method selected under the "Delivery Method Election" section above, being comprised of [REDACTED] of Category 1 Product ("**Category 1 Product Contract Quantity**") and [REDACTED] MWh of Category 2 ("**Category 2 Product Contract Quantity**").

Category 1 Product

<u>Generation Term</u>	<u>Category 1 Product Contract Quantity (MWh)</u>
January 1, 2018 through December 31, 2018	██████████

Category 2 Product

<u>Generation Term</u>	<u>Category 2 Product Contract Quantity (MWh)</u>
-	██████████

Total Energy Deliveries (Category 1 Product and Category 2 Product) to Delivery Point

<u>Generation Term</u>	<u>Total Contract Quantity (MWh)</u>
January 1, 2018 through December 31, 2018	██████████

Deliveries of Category 1 Product and Category 2 Product are further described in the “Scheduling and Tagging” section of this Confirmation.

The Green Attributes will be delivered to Buyer on or before the 20th NERC Business Day of the month following applicable WREGIS timelines.

Green Attributes will be transferred to the WREGIS account named “Peninsula Clean Energy”.

The determination of the hourly quantity of Category 1 Product generated by an out-of-state Project and delivered to the Delivery Point shall be made after-the-fact and will be: the lesser of (i) the Projects’ hourly metered output, and (ii) the actual hourly quantity allocated by Seller to this Confirmation and delivered to the Buyer at the Delivery Point as determined by the NERC e-tags.

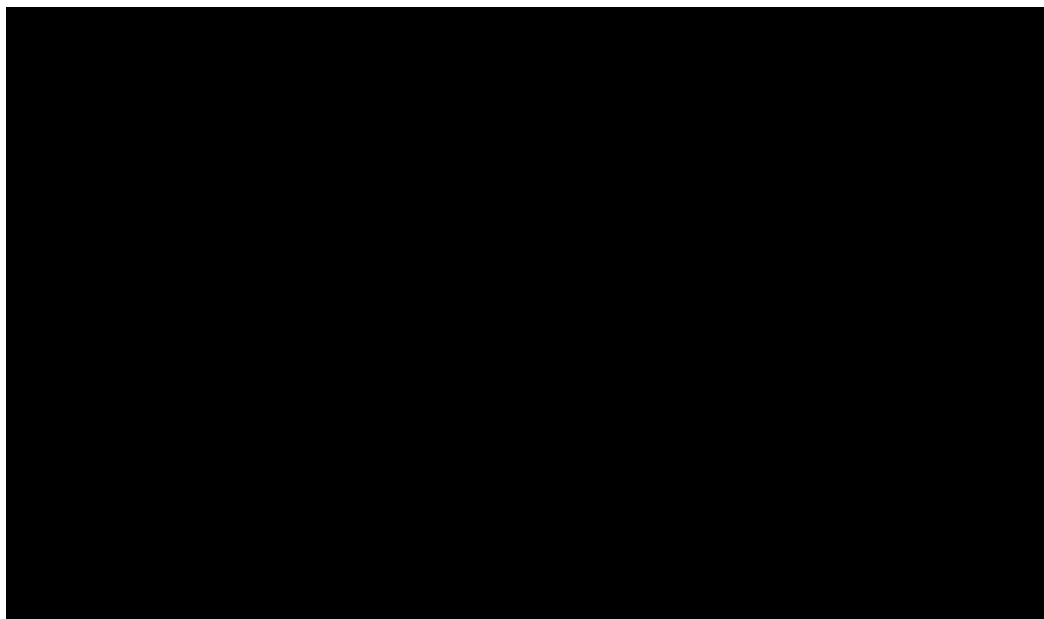
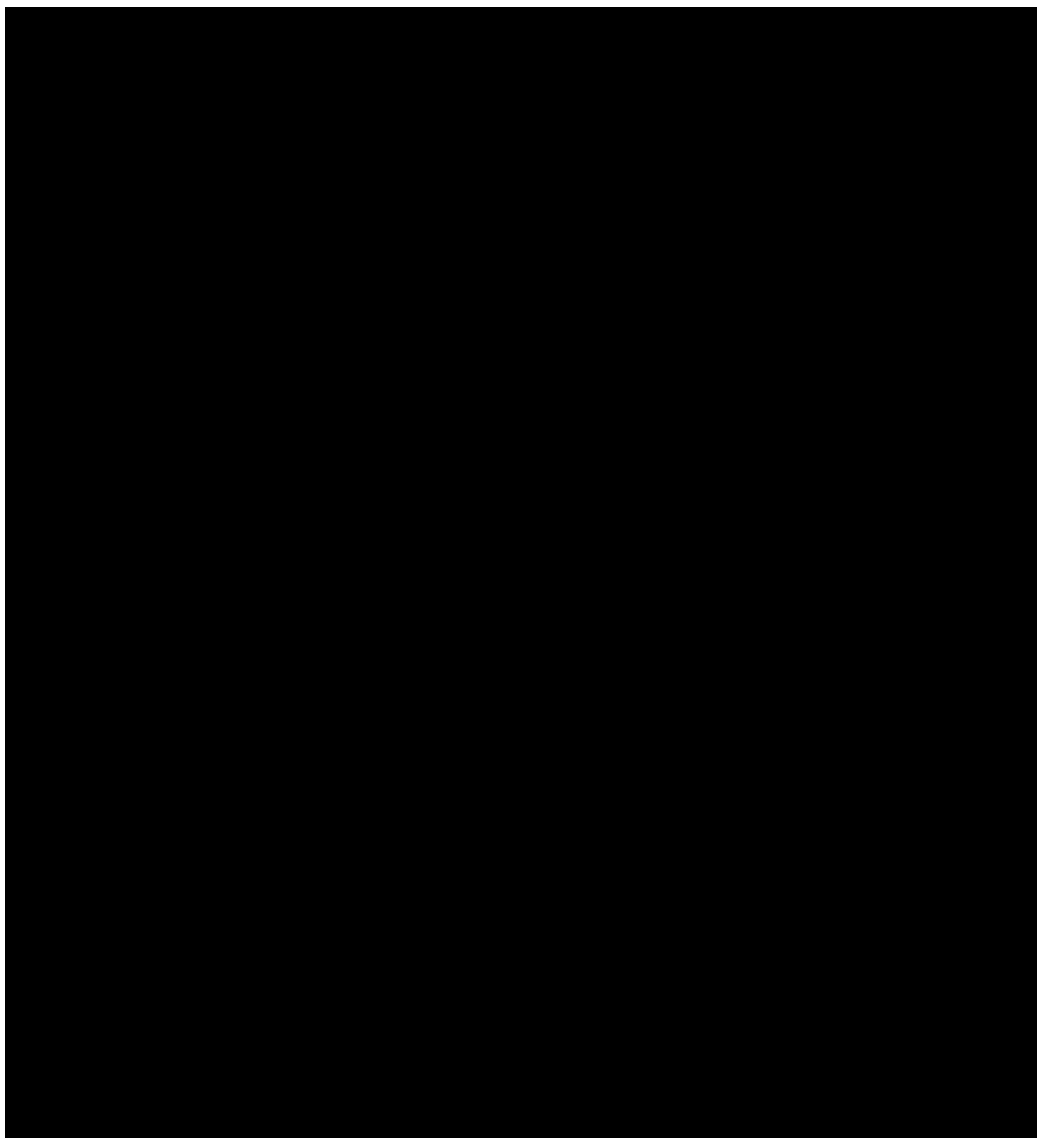
In the event that the quantity of Category 1 Product delivered in any hour is less than the quantity of energy delivered to the Buyer at the Delivery Point pursuant to this Confirmation that Seller intended to be a delivery of Category 1 Product, the Buyer shall pay the Energy Price (less the CAISO Credit) for any such quantities, and any such quantities shall not count

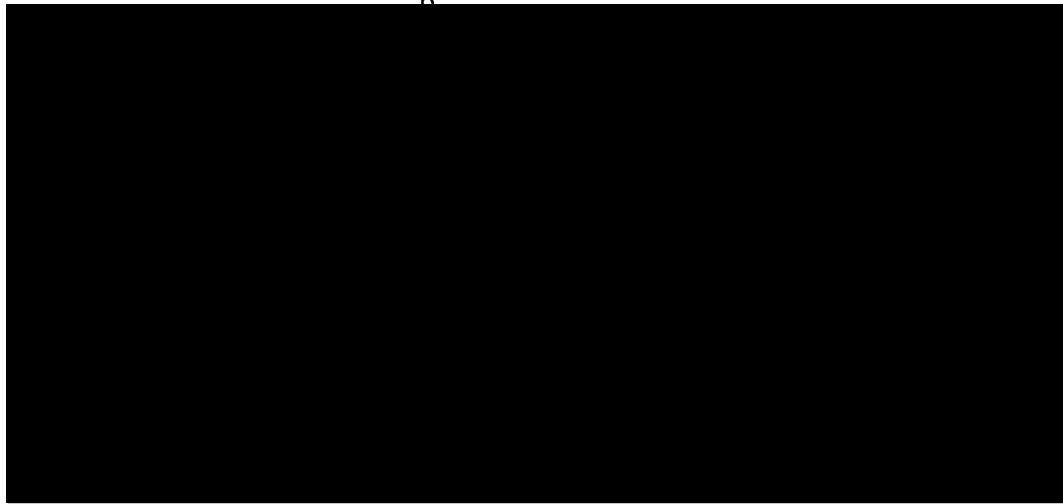
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towards the Category 1 Product Contract Quantity to be delivered under this Confirmation.

Contract Price:

In this Confirmation,





Designated Facility: Bundled Renewable Energy procured under this Confirmation will be generated by and/or attributable to one or more of the facilities (each a “**Designated Facility**”) listed in Schedule “A”. Each Designated Facility must be certified as an eligible renewable energy resource for the California RPS Program (or will be certified as an eligible renewable energy resource prior to delivery of Category 1 Product or Category 2 Product generated by or attributed to such facility). Seller must be contractually entitled to all or a portion of the bundled energy and associated Green Attributes generated by a Designated Facility during the Generation Term (or the portion thereof in respect of which bundled energy is generated by or attributed to such facility). Schedule “A” may be amended and updated by Seller in accordance with “Additional Designated Facilities” below.

For the purposes of this Agreement, a facility will be deemed to be certified as an eligible renewable energy resource prior to delivery of a Category Product if (i) the facility is certified as an eligible renewable energy resource by the CEC and (ii) delivery of the Category Product occurs on or after the eligibility date issued by the CEC.

Additional Designated Facilities – Applicable to Category 1 Product only:

From time to time during the Generation Term, Seller may designate one or more additional renewable generation facilities [REDACTED] as a Designated Facility for the purposes of delivering Category 1 Product under this Confirmation, provided that Seller shall designate such facility in advance of delivering any Green Attributes with associated delivery of energy from such facility and any such additional renewable generation facility will meet the eligibility requirements for a Designated Facility as provided above. Seller may designate any such additional facility(s) by providing Buyer with an updated Schedule “A” that includes such additional facility(ies) listed as “Part B – Additional Designated Facilities for Category 1 Product” of Schedule “A”, which shall thereupon replace the existing Schedule “A” to this Confirmation. Any additional Designated Facility shall be considered to be a Designated Facility with

respect to Category 1 Product deliveries for all purposes of this Confirmation.

Eligibility Requirements:

If, at any time, a Category Product does not meet the applicable Eligibility Requirements (a "**Failing Category Product**"), the provisions of Article 4 of the Master Agreement shall apply (as modified by and subject to the limitations set forth in this Confirmation) and it shall not be an Event of Default for the purposes of the Master Agreement. Provided that the Parties have complied with any obligations under Section 2 of this Confirmation, the Parties will have no obligation to schedule, deliver or purchase a Failing Category Product and no liability to each other for any failure to schedule, deliver or purchase a Failing Category Product except in the event and to the extent that there is a Seller Eligibility Failure, Buyer Eligibility Failure, Regulatory Determination or change in law as and to the extent provided in this Confirmation.

Unless expressly provided in this Confirmation, nothing herein shall excuse either Party from its obligations hereunder as a result of, and neither Party shall be entitled to rely on, any Seller Eligibility Failure or Buyer Eligibility Failure. Subject to the limitations set forth in this Confirmation, each Party will make commercially reasonable efforts to do, or cause or permit to be done, everything in its direct control which would or would reasonably be expected to cause each of the Eligibility Requirements, or elements or components thereof, applicable to the Category Products to be met or satisfied, and neither Party will do or omit to do, or cause or permit to be done, anything in its direct control which would or would reasonably be expected to cause any one or more of the Eligibility Requirements, or elements or components thereof, applicable to a Category Product not to be met or satisfied.

Regulatory Determination/Change in Law:

If one or both of the Category Products to be delivered under and in accordance with the terms of this Confirmation does not or will not meet or satisfy the applicable Eligibility Requirements as a result of (a) a change in law (as defined herein) or (b) a determination of a governmental or regulatory authority having authority or jurisdiction (and such determination is not a result of a Seller Eligibility Failure, Buyer Eligibility Failure, change in law or Force Majeure) (a "**Regulatory Determination**"), then, in each case, provided that the Parties have complied with any obligations under Section 2 (and, with respect to Seller in the event of a change in law to the extent applicable, Section 6) of this Confirmation and such efforts have been unsuccessful in causing the affected Category Product(s) to meet or satisfy the applicable Eligibility Requirements:

- (a) if the change in law or Regulatory Determination occurs prior to delivery of any of the applicable Category Product(s) hereunder,

the Parties will have no liability to each other for any failure to schedule, deliver or purchase the affected Category Product;

- (b) if the change in law or Regulatory Determination occurs after delivery of any of the applicable Category Product(s) hereunder, the Parties will have no liability to each other for any failure to schedule, deliver or purchase the affected Category Product that is not then delivered; and
- (c) either Party may, by written notice to the other, immediately terminate the Transaction, without penalty, termination payment or liability of either Party to the other except as provided in paragraph (b) above.

Delivery Point: Out-of-State Designated Facilities: Seller may deliver Energy to any Scheduling Point or combination of Scheduling Points.

In-State Designated Facilities: Seller shall deliver Project Energy from an in-state Designated Facility to the Delivery Point specified in Schedule "A".

Scheduling and Tagging:

Scheduling

Seller shall schedule or cause to be scheduled, at its sole discretion, Energy into the CAISO Balancing Authority or onto the CAISO Controlled Grid on a day-ahead, hour-ahead, sub-hourly and/or real-time basis. Without limiting the generality of the foregoing, Seller may schedule or cause to be scheduled the Energy during any and/or all Peak and Off-Peak hours.

All Energy shall be scheduled in accordance with Generally Accepted Utility Practice.

e-tagging – Out-of-State Designated Facilities

Seller shall generate all e-tags required to schedule the Energy to and from the Delivery Point. Seller shall match RECs with e-Tags before transferring the RECs to Buyer. For greater certainty, no e-Tags will be generated for deliveries from in-state Projects and RECs generated by an in-state Project will therefore not be matched with e-Tags before transferring to Buyer.

Each e-Tag shall show the CAISO Balancing Authority as the last CA (Control Area) under 'Physical Path' and Buyer shall be designated by inserting "Peninsula Clean Energy" in the Comment section on each NERC e-Tag.

Category 1 Product

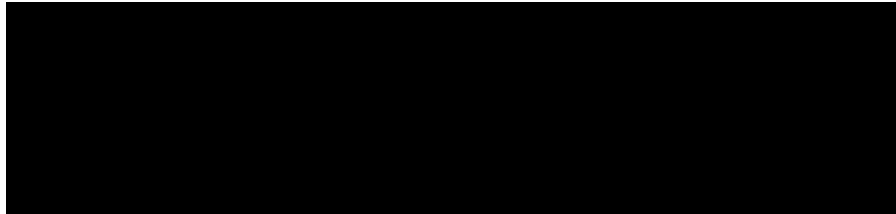
For Category 1 Product, each e-Tag shall (i) contain a single Designated Facility, from the Designated Facilities listed in Schedule "A", identified as the source under 'POR/ POD' under the 'Physical Path' section of an e-tag, and (ii) include the RPS ID for the Designated Facility in the Misc(Token/Value) field of the e-Tag where "RPS_ID" is the Token and the RPS ID is the Value.

For Category 1 Product only, the use of another source to provide real-time ancillary services required to maintain an hourly import schedule into the CAISO Balancing Authority shall be permitted, but only the fraction of the schedule actually generated by or attributable to the Designated Facility shall qualify as Category 1 Product under this Confirmation.

Category 2 Product

For Category 2 Product, each e-Tag shall include one or more, up to a maximum of ten, of the RPS ID numbers for the Designated Facilities listed in Schedule "A" in the Misc(Token/Value) field of the e-Tag where "RPS_ID" is the Token and the RPS ID is the Value.

Seller scheduling contacts:

**Importer for Cap and Trade Purposes:**

For any Energy imported into California, Seller will be the electricity importer into California for purposes of the Cap and Trade Regulations. The Parties acknowledge that Seller will be responsible for satisfying the Compliance Obligation under the Cap and Trade Regulations associated with the energy which Seller shall schedule into the CAISO Balancing Authority as part of the Product to be delivered under this Confirmation and that they will work together such that Seller may claim that any Project Energy which Seller has scheduled into the CAISO Balancing Authority is from a Specified Source and claim the RPS Adjustment with respect to Substitute Energy, in both cases to mitigate such Compliance Obligation.

Definitions Applicable

to this Transaction: For the purposes of this Confirmation, the following terms shall have the following meanings:

- (a) "Alternate Eligible Facility" means an alternate Eligible Facility.

- (b) “Alternate Source” means an alternate source of supply of energy and associated Green Attributes generated by the same facility as a Designated Facility during the Generation Term and which Seller is entitled to pursuant to its purchase agreements for output from the facility.
- (c) “Buyer Eligibility Failure” means a failure of a Category Product to meet or satisfy the applicable Eligibility Requirements or any element or component thereof as a result of or if caused by any fact or circumstance within the control of Buyer, including a failure by Buyer to accept an applicable transfer on WREGIS, to provide information and data available to Buyer (including as provided by Seller) as may be required to verify the Green Attributes comprised in the Products or, for Category 2 Product, to retire or designate for retirement the RECs for the purposes of compliance with the California RPS Program. For greater certainty, Buyer Eligibility Failure shall only apply to the extent such failure is not caused by or attributable to a change in law, Regulatory Determination, Force Majeure or Seller Eligibility Failure and Buyer has complied with its obligations, if any, with respect thereto under this Confirmation.
- (d) “Buyer Shortfall” means that the quantity of Category 1 Product or Category 2 Product received or purchased by Buyer pursuant to this Confirmation is less than the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, if such shortfall is caused by or attributable to:
 - (i) the failure of the Buyer to receive or purchase the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity generated by and/or attributable to the Project(s) and delivered to Buyer pursuant to this Confirmation for any reason other than a Force Majeure; or
 - (ii) a Buyer Eligibility Failure;and the amount of such shortfall is the difference between:
 - (iii) the greater of:
 - A. the actual quantity of Category 1 Product or Category 2 Product generated by and/or attributable to the Project(s) up to the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, and delivered to Buyer pursuant to this Confirmation, or
 - B. the actual quantity of Category 1 Product or Category 2 Product generated by and/or attributable to the Project(s) up to the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, that would have been delivered to Buyer pursuant to this Confirmation if

the Buyer had met or satisfied the applicable Eligibility Requirements

in each case, for greater certainty, taking into account any Seller Shortfall; and

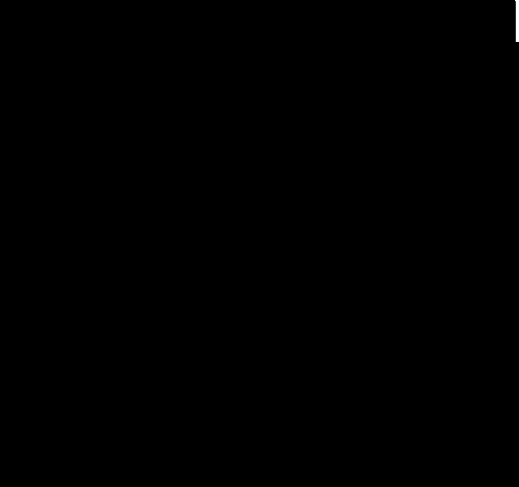
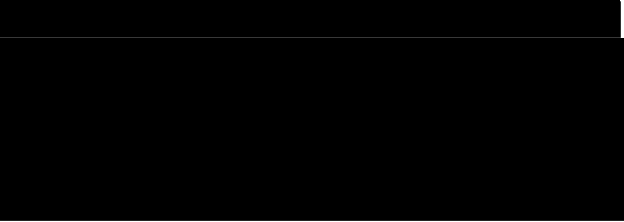
- (iv) the amount of Category 1 Product or Category 2 Product received or purchased by Buyer pursuant to this Confirmation.
- (e) “CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.
- (f) “CAISO Tariff” means the applicable tariff and protocol provisions of the CAISO (as amended from time to time).
- (g) “California RPS Program” or “California Renewables Portfolio Standard” means the “California Renewables Portfolio Standard” program jointly administered by the CEC, the CPUC and the California Air Resources Board, as such program exists as of the Trade Date, including without limitation all applicable eligibility criteria and requirements thereof in force and effect as of the Trade Date.
- (h) “Cap and Trade Regulations” means the regulations entitled California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms set forth at Article 5 of Subchapter 10 of Title 17 of the California Code of Regulations.
- (i) “Category 1 Product Eligibility Requirements” means, with respect to the Category 1 Product only, any applicable criteria or requirements of the California RPS Program in force and effect regarding the eligibility or qualification of the Category 1 Product to meet the criteria of Section 399.16(b)(1) of the California Public Utilities Code or this Confirmation or the Transaction confirmed hereby for the California RPS Program, including without limitation any eligibility criteria applicable to an out-of-state resource.
- (j) “Category 2 Product Eligibility Requirements” means, with respect to Category 2 Product only, any applicable criteria or requirements of the California RPS Program in force and effect regarding the eligibility or qualification of the Category 2 Product to meet the criteria of Section 399.16(b)(2) of the California Public Utilities Code or this Confirmation or the Transaction confirmed hereby for the California RPS Program, including without limitation any eligibility criteria applicable to an out-of-state resource.
- (k) “Category Product” means Category 1 Product or Category 2 Product, as applicable.

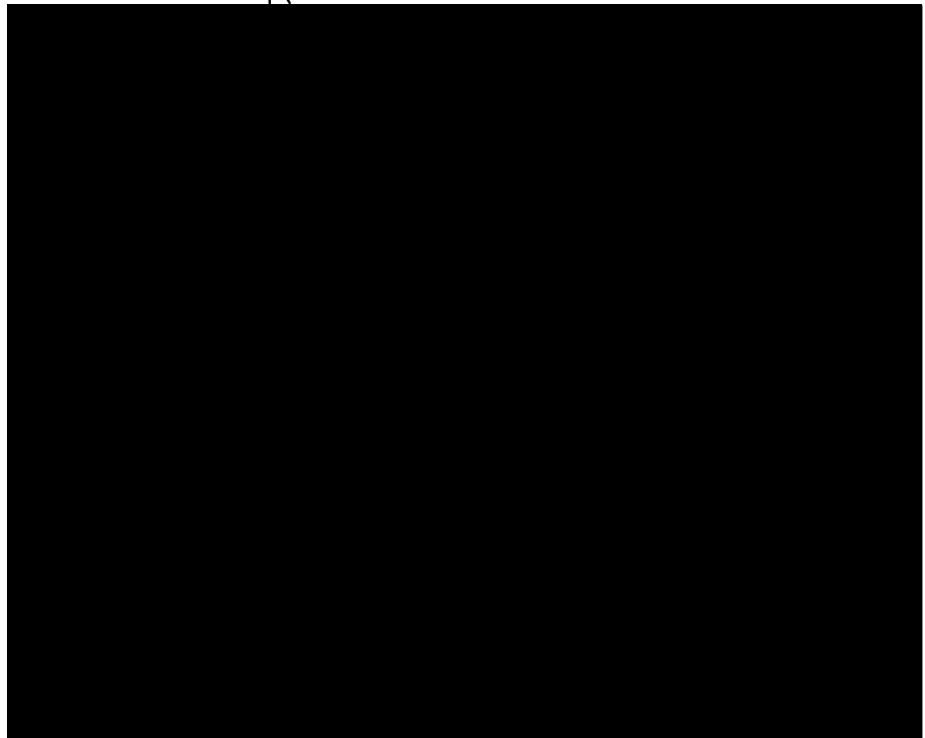
- (l) “Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.
- (m) “CPUC” means the California Public Utilities Commission.
- (n) “Effective Date” means the date on which both Parties have executed and delivered this Confirmation.
- (o) “Eligible Facility” means a generation facility that is certified as an eligible renewable energy resource for the California RPS Program and from which Seller is entitled to energy and associated Green Attributes generated during the Generation Term (or portion thereof in respect of which bundled energy and associated Green Attributes to be delivered hereunder are generated by such facility).
- (p) “Eligibility Requirements” means Category 1 Product Eligibility Requirements or Category 2 Product Eligibility Requirements, as applicable.
- (q) “Energy” means Project Energy or Substitute Energy, as applicable.
- (r) “Energy Commission” or “CEC” means the California Energy Resources Conservation and Development Commission, which is also commonly referred to as the California Energy Commission.
- (s) “Generally Accepted Utility Practice” means a practice established by the Western Electricity Coordinating Council (“WECC”) or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.
- (t) “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights

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

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

- (u) "Green Tag" and "Green Tag Reporting Rights" have the meanings set forth in the definition of "Green Attributes", and for the purposes of this Transaction, "Green Tag Purchaser" means Buyer.
- (v) "Holiday" means any day designated as a holiday by NERC.
- (w) "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.
- (x) "Off Peak" hours means Mondays through Saturdays hours ending (HE) 0100-0600 and HE 2300-2400 PPT, and all day Sundays and Holidays.
- (y) "Party" means Buyer or Seller, and "Parties" means both Buyer and Seller.
- (z) "Peak" hours means HE 0700-2200 PPT Mondays through Saturdays, excluding Holidays.

- (aa) "Pricing Node" or "PNode" has the meaning set forth in the CAISO Tariff.
- (bb) "Project" means Designated Facility up to the Seller's contractual rights to the energy and Green Attributes produced by such Designated Facility.
- (cc) "Renewable Energy Credit" or "REC" means a renewable energy credit as defined by and in accordance with the California Public Utilities Code.
- (dd) "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.
- (ee) "RPS ID" means the "California Energy Commission RPS certification number", the "identification number" and/or the "RPS ID", as such terms are used by the CEC to describe the identification number for an eligible renewable energy resource that has been certified (or will be certified for the period of deliveries) as such by the CEC for the purposes of the RPS. The RPS ID for each Designated Facility is set out beside the applicable facility under the column "RPS ID" in the table attached hereto as Schedule "A".
- (ff) "Scheduling Point" has the meaning set forth in the CAISO Tariff, including (without limitation) the SYLMARDC_2_N501 and MALIN_5_N101 Scheduling Points.
- (gg) "Seller Eligibility Failure" 
- (hh) "Seller Shortfall" 



- (ii) “Specified Source” means “specified source”, as such term is defined in the Mandatory Reporting Rule.
- (jj) “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.
- (kk) “WREGIS Certificate” means a “Certificate” as defined by WREGIS in the WREGIS Operating Rules and designated by law as eligible for complying with the California RPS Program and for evidencing the Green Attributes associated with the Product.
- (ll) “WREGIS Operating Rules” means the operating rules and requirement adopted by WREGIS, as amended from time to time.

ADDITIONAL TERMS

1. Force Majeure. For purposes of this Transaction, the Products shall be subject to Force Majeure and Section 3.3 of the Master Agreement such that, upon receipt of written notice of Force Majeure from the Party prevented by the Force Majeure from carrying out its obligations hereunder, both Parties will be relieved of their respective obligations to schedule, sell and deliver or purchase and receive the affected Category Product(s) without liability to the extent that, and for the period during which, such performance is prevented by Force Majeure, and the Master Agreement is hereby amended by editing paragraph (iii) of the definition of Force Majeure in Section 1.23 to read as follows:

“the loss or failure of Seller’s supply, except, with respect to the Green Attributes, to the extent Seller’s supply is itself subject to an event of Force Majeure;”

For greater certainty and without limiting the foregoing, neither a Regulatory Determination nor change in law shall be an event of Force Majeure for the purposes of this Transaction. In the event and to the extent that the Category 1 Product and/or Category 2 Product generated by or attributable to a Project do not meet or satisfy the Eligibility Requirements as a result of any other event or circumstance which otherwise meets the definition of Force Majeure, that will be considered an event of Force Majeure for the purposes of this Confirmation, and the Category 1 Product Contract Quantity and/or Category 2 Product Contract Quantity, as applicable, provided for in this Confirmation shall be reduced to the extent of and by the amount affected by such event of Force Majeure.

2. Negotiations Respecting Failure to Satisfy Eligibility Requirements. In the event that a Category Product generated by and/or attributable to the Projects does not meet or satisfy the Eligibility Requirements for reasons other than a Buyer Eligibility Failure or a Seller Eligibility Failure, the Parties will negotiate in good faith using commercially reasonable efforts to revise or amend this Confirmation as appropriate to meet applicable requirements so that such Category 1 Product and/or Category 2 Product meets or satisfies the applicable Eligibility Requirements, in a manner consistent with the intent of the Parties as set out in this Confirmation.
3. Anticipated Shortfall – Category 2 Product. If Seller reasonably anticipates that there will be a Seller Shortfall in respect of the Category 2 Product Contract Quantity, Seller shall provide written notice to Buyer on or before September 15 of the Delivery Term. Upon Buyer's receipt of such notice, the Parties will negotiate in good faith using commercially reasonable efforts to determine whether Seller may deliver a product comparable to the Category 2 Product generated by or attributable to an Alternate Eligible Facility or Alternate Source equal to the amount of such anticipated Seller Shortfall. If the Parties mutually agree to such arrangements, they will enter into a separate agreement respecting same and Buyer will waive the Seller Shortfall and any liquidated damages payable pursuant to this Confirmation in respect of the Seller Shortfall. In the event Seller reasonably anticipates a shortfall in delivery of Category 2 Product that is not or is not likely to be a Seller Shortfall, the Seller may elect to have this Section 3 apply (and thereupon this Section 3 will apply) by giving the written notice referred to herein stating such election.
4. Failure to Deliver/Receive. For purposes of this Transaction:
 - (a) the references to the "Contract Price" in Sections 4.1 and 4.2 of the Master Agreement, and those Sections only, shall be deemed to refer to the Energy Price only, except in the event and to the extent that there is a Seller Shortfall or a Buyer Shortfall, in which case such references shall be deemed to include the Category 1 REC Price and/or the Category 2 REC Price, as applicable, subject to Section 4(d) of this Confirmation;
 - (b) the definition of "Replacement Price" in Section 1.51 of the Master Agreement shall be amended by adding the following proviso at the end of the first sentence of such definition:

“; and further provided that the Replacement Price shall not include any premium or other amount paid or payable to replace the Category 1 Product or Category 2 Product not delivered by

Seller with electric energy from renewable sources or paid or payable for Green Attributes, renewable energy certificates, or similar credits, rights or offsets associated with replacement electric energy, except in the event and to the extent that there is a Seller Shortfall, in which case the Replacement Price shall include such premium, subject to Section 4(e) of this Agreement.”

- (c) the definition of “Sales Price” in Section 1.53 of the Master Agreement shall be amended by adding the following proviso at the end of the first sentence of such definition:

“; and further provided that the Sales Price shall not include any premium or other amount paid or payable on the basis that the energy is attributed to renewable sources or is sold with any associated Green Attributes, renewable energy certificates, or similar credits, rights or offsets, except in the event and to the extent that there is a Buyer Shortfall, in which case the Sales Price shall include such premium, subject to Section 4(f) of this Agreement.”

- (d) In the event and to the extent that there is a Seller Shortfall that is not waived pursuant to Section 3 of this Confirmation, any amount payable pursuant to Section 4.1 of the Master Agreement shall only be calculated and payable on and with respect to the amount of such Seller Shortfall that is not waived pursuant to Section 3 of this Confirmation.

(e)

(f)

5. Events of Default; Remedies. For purposes of this Transaction:

- (a) For the purposes of determining payments under Section 5.2 of the Master Agreement, with respect to this Transaction, the economic benefits or losses of the Non-Defaulting Party resulting from termination of this Transaction shall be based on both the energy and Green Attributes components of the Product.
- (b) The remedies for failure to deliver the Product (including Green Attributes) provided for in the Master Agreement as amended by this Confirmation are the sole and exclusive remedies associated with a failure to deliver, receive or schedule the Product and all other remedies related thereto are waived.

6. Seller Eligibility Requirements and Non-Modifiable or Standard Terms.

- (a) Seller shall be responsible for ensuring that: (i) each Designated Facility is certified as an eligible renewable energy resource for the California RPS Program prior to delivery of Category 1 Product or Category 2 Product hereunder; and (ii) the Green Attributes have been or will be transferred to Seller and will be transferrable to Buyer through or using WREGIS, or such similar generation information or attributes tracking system as may be approved by or other method of transfer acceptable to the Energy Commission for the purposes of meeting Buyer's obligations under the California RPS Program;
- (b) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract [STC REC-2];
- (c) Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project; and
- (d) For the purposes of this Transaction:
 - (i) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law [STC 6]; and
 - (ii) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]

For the purposes of STC 6 above, for the Category 2 Product, the Parties acknowledge that Substitute Energy, in substitution for Project Energy, and Green Attributes are delivered to Buyer.

As used in this Section 6(d), "Delivery Term" has the same meaning as "Generation Term" provided that, for the purposes of STC 6 above with respect to any Project, the Parties agree that the representation and warranty therein applies only to the portion of the Delivery Term during which the output from that Project is being delivered to the Buyer. As used in this Agreement, a "change in law" refers to any determination, decision, application of, or change in law or policy after the Trade Date by or of the CEC or the CPUC or other applicable governmental or regulatory authority or third party having authority or jurisdiction, excluding a Regulatory Determination.

The Parties agree that, so long as the Seller has used commercially reasonable efforts to comply with a change in law resulting in either of the above representations and warranties becoming incorrect, it shall not be a Seller Shortfall or Seller Eligibility Failure and the Buyer shall, subject to the "Regulatory Determination/Change in Law" section of this Confirmation, receive and pay for any Product supplied hereunder notwithstanding any non-compliance with the California RPS Program resulting from the change in law.

7. Commercially Reasonable Efforts

- (a) A Party required to use or make "commercially reasonable efforts" pursuant to this Agreement shall not be required to incur more than [REDACTED] in aggregate direct or indirect costs, including lost profits, and out-of-pocket costs and expenses, to comply with such "commercially reasonable efforts", and then only to the extent incurring such costs would be reasonably likely to achieve the desired effect.
- (b) In the event an issue or circumstance requiring a Party to use or make commercially reasonable efforts similarly affects one or more other transactions between the Parties, such [REDACTED] limit shall apply to all such transactions between the Parties and shall not be cumulative to any limits applicable to such other transactions.

8. Meter and Scheduling Information. Throughout the Delivery Term, Seller shall provide to Buyer the following information as and to the extent necessary for Buyer to comply with the requirements of the California RPS Program: (i) meter data from the Project related to the delivery of Category 1 Product, (ii) all E-tag information related to the delivery of Category 1 Product into the CAISO Balancing Authority, and (iii) any other scheduling or delivery information necessary to meet the requirements of the California RPS Program.

9. Specified Source – Category 1 Product. The Parties acknowledge that Seller intends to claim that the Category 1 Product delivered into the CAISO Balancing Authority, to meet the requirement under this Confirmation, is from a Specified Source. In order to assist Seller in claiming that Category 1 Product is from a Specified Source, Buyer agrees that by May 15 following the end of each calendar year in the Generation Term it will provide Seller with a written attestation providing a detailed breakdown of the total quantity of RECs transferred under this Confirmation associated with the Category 1 Product that have been placed in a WREGIS retirement subaccount and those that remain in a WREGIS active subaccount. This provision shall survive expiry or earlier termination of

this Transaction until such time as the information contemplated herein in respect of the last year of the Generation Term is provided to Seller by Buyer.

10. RPS Adjustment – Category 2 Product. The Parties acknowledge that Seller intends to mitigate its Compliance Obligation for the Category 2 Product, which it imports into California under this Confirmation, by claiming the RPS Adjustment. Buyer agrees to provide Seller, following Seller's written request, with the information required by Seller for the purpose of claiming the RPS Adjustment including, but not limited to, providing by May 15 following the end of each calendar year in the Generation Term a written attestation to Seller that the quantity of RECs transferred under this Confirmation associated with the immediately previous calendar year in the Generation Term as Category 2 Product have been placed in Buyer's WREGIS retirement subaccount and that these RECs have been designated for retirement for the purposes of Buyer's compliance with the California RPS Program for the applicable year in the Generation Term in accordance with the Cap and Trade Regulation. This provision shall survive expiry or earlier termination of this Transaction until such time as the information contemplated herein in respect of the last year of the Generation Term is provided to Seller by Buyer.

Buyer represents and warrants that, as of May 15 following the end of each calendar year in the Generation Term (or the date of the written attestation referenced above, whichever is earlier), the quantity of RECs transferred under this Confirmation associated with the immediately previous calendar year in the Generation Term as Category 2 Product have been placed in Buyer's WREGIS retirement subaccount and that these RECs have been designated for retirement for the purposes of Buyer's compliance with the California RPS Program for the applicable year in the Generation Term in accordance with the Cap and Trade Regulation.

Buyer will promptly notify Seller in writing if any RECs associated with Category 2 Product delivered to Buyer under this Confirmation are subsequently withdrawn from Buyer's WREGIS retirement subaccount and provide Seller with the vintage year and month, serial numbers and any other information with respect to any such RECs withdrawn from Buyer's WREGIS retirement subaccount as may be required by Seller to comply with Section 95111.g.1.M.2 of the Mandatory Reporting Rule (or any similar successor provision).

The preceding Sections 9 and 10 are based on the Cap and Trade Regulations and Mandatory Reporting Rule as of the Trade Date of this Confirmation. In the event that the regulatory requirements for mitigating the Compliance Obligation change after the Trade Date, Buyer shall make commercially reasonable efforts to assist Seller in meeting such regulatory requirements.

11. 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. [STC 17]

12.



This Confirmation is being provided pursuant to and in accordance with the Master Agreement, and constitutes part of and is subject to the terms and provisions of the Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

The Parties agree it is their intention that the Transaction provided for in this Confirmation is not capable of being agreed to orally and shall only become binding on the Parties when this Confirmation is executed by both Parties.

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *

By: _____
Name: Thomas Bechard
 Managing Director
Title: _____
Date: 10/25/2017

**Peninsula Clean Energy Authority, a
California joint powers authority**

By: _____
Name: _____
Title: _____
Date: _____

* Powerex Corp., doing business in California as Powerex Energy Corp.

Contacts:

Powerex:

Anthony Des Lauriers
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PCEA:

Jan Pepper
Tel: (415) 309-9206
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SCHEDULE “A”Designated Facility(s)**Part A – Initial Designated Facilities**

<u>Facility Name</u>	<u>State / Province</u>	<u>Technology</u>	<u>RPS ID</u>	<u>Total Facility Nameplate (MW)</u>	<u>Delivery Point (In-State Facilities Only)</u>

Part B – Additional Designated Facilities for Category 1 Product

[to be added under the terms of the section - “Additional Designated Facilities” as required]