



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, April 27, 2017**

San Mateo County Office of Education, Corte Madera Room
101 Twin Dolphin Drive, Redwood City, CA 94065
6:30 p.m.

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact Anne Bartoletti, Board Clerk, at least 2 working days before the meeting at abartoletti@peninsulacleanenergy.com. Notification in advance of the meeting will enable the PCEA to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Attendees to this meeting are reminded that other attendees may be sensitive to various chemical based products.

If you wish to speak to the Board, please fill out a speaker's slip located on the tables as you enter the Board meeting room. If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of PCEA staff who will distribute the information to the Board members and other staff.

CALL TO ORDER / ROLL CALL

PUBLIC COMMENT

This item is reserved for persons wishing to address the Board on any PCEA-related matters that are as follows: 1) Not otherwise on this meeting agenda; 2) Listed on the Consent Agenda and/or Closed Session Agenda; 3) Chief Executive Officer's or Staff Report on the Regular Agenda; or 4) Board Members' Reports on the Regular Agenda. Public comments on matters not listed above shall be heard at the time the matter is called.

As with all public comment, members of the public who wish to address the Board are requested to complete a speaker's slip and provide it to PCEA staff. Speakers are customarily limited to two minutes, but an extension can be provided to you at the discretion of the Board Chair.

ACTION TO SET AGENDA and TO APPROVE CONSENT AGENDA ITEMS

This item is to set the final consent and regular agenda, and for the approval of the items listed on the consent agenda. All items on the consent agenda are approved by one action.

REGULAR AGENDA -- AMENDED

1. Chair Report (Discussion)
2. CEO Report (Discussion)
3. Marketing and Outreach Report (Discussion)
4. Regulatory and Legislative Report (Discussion)
5. Integrated Resource Plan (Discussion)
6. Authorize the Chief Executive Officer to execute an EEI (Edison Electric Institute) Master Agreement and Confirmation Agreement for Purchase of Resource Adequacy from Pacific Gas and Electric Company (PG&E). Power Delivery Term: July 1, 2017 through December 31, 2017, in an amount not to exceed \$3,300,000 (Action)
7. Authorize the Chief Executive Officer to execute a contract for Purchase and Installation of Office Furniture in an amount not to exceed \$250,000 (Action)
8. Formation of a standing Audit and Finance Committee (Action)
9. Update from Ad Hoc committee on Formation of New Citizens Advisory Committee (Discussion)
10. Financial Report (Discussion)
11. Board Members' Reports

CONSENT AGENDA

12. Approval of the Minutes for the March 23th, 2017 Meeting (Action)
13. Review and Adopt Policy Regarding Coal Exclusion for Electricity and Resource Adequacy Procurement (Action)
14. Approve a Resolution Authorizing an Amendment to the Agreement with Pacific Energy Advisors (PEA) to provide professional services from May 1, 2017 through June 30, 2018, in an amount not to exceed \$100,000. (Action)

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. The Board has designated the Office of Sustainability, located at 455 County Center, 4th Floor, Redwood City, CA 94063, for the purpose of making those public records available for inspection. The documents are also available on the PCEA's Internet Web site. The website is located at: <http://www.peninsulacleanenergy.com>.



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: April 17, 2017
BOARD MEETING DATE: April 27, 2017
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Authorize the Chief Executive Officer to execute an EEI (Edison Electric Institute) Master Agreement and Confirmation Agreement for Purchase of Resource Adequacy from Pacific Gas and Electric Company (PG&E). Power Delivery Term: July 1, 2017 through December 31, 2017, in an amount not to exceed \$3,300,000.

RECOMMENDATION:

Authorize execution of an EEI Confirmation Agreement and Confirmation Agreement for Purchase of Resource Adequacy from Pacific Gas and Electric Company for July 1, 2017 through December 31, 2017, in an amount not to exceed \$3,300,000.

BACKGROUND:

The CPUC has explained Resource Adequacy as follows:

The CPUC adopted a Resource Adequacy (RA) policy framework (PU Code section 380) in 2004 in order to ensure the reliability of electric service in California. The CPUC established RA obligations applicable to all Load Serving Entities (LSEs) within the CPUC's jurisdiction, including investor owned utilities (IOUs), energy service providers (ESPs), and community choice aggregators (CCAs). The Commission's RA policy framework -- implemented as the RA program -- guides resource procurement and promotes infrastructure investment by requiring that LSEs procure capacity so that capacity is available to the CAISO when and where needed. The CPUC's RA program now contains three distinct requirements: System RA requirements (effective June 1, 2006), Local RA requirements (effective January 1, 2007) and Flexible RA requirements (effective January 1, 2015). System requirements are determined based on the each LSEs CEC

adjusted forecast plus a 15% planning reserve margin. Local requirements are determined based on an annual CAISO study using a 1-10 weather year and an N-1-1 contingency. Flexible Requirements are based on an annual CAISO study that currently looks at the largest three hour ramp for each month needed to run the system reliably. There are two types of filings; Annual filings (filed on or around October 31st) and monthly filings (filed 45 calendar days prior to the compliance month).

For the annual filings, LSEs are required to make an annual System, Local, and Flexible compliance showing for the coming year. For the System showing, LSEs are required to demonstrate that they have procured 90% of their System RA obligation for the five summer months the coming compliance year. Additionally each LSE must demonstrate that they meet 90% of its Flexible requirements and 100% of its local requirements for each month of the coming compliance year. For the monthly filings LSEs must demonstrate they have procured 100% of their monthly System and Flexible RA obligation. Additionally, on a monthly basis from May through December, LSEs must demonstrate they have met their revised (due to load migration) local obligation.

This is a regulatory requirement. PCEA is not purchasing actual energy. It is paying to ensure that there is enough generation on the grid to ensure reliability. Further, because the regulatory requirements evolve over time, PCEA is frequently having to go to market to purchase RA to ensure the regulatory requirements are met and PCEA receives the most competitive prices possible.

PCE has purchased Resource Adequacy (RA) to meet its Phase 1 requirements, as well as the Phase 2 RA requirement for June 2017. PCE needs to purchase additional RA to meet its obligations as a Load Serving Entity to ensure the reliability of electric service.

DISCUSSION:

PCE, working with its consultant PEA, solicited proposals to supply System RA for its second through fourth quarter 2017 needs (April-December). Proposals were received from eight different suppliers.

In addition, in February, Pacific Gas and Electric Company ("PG&E") issued a solicitation offering System and Local Resource Adequacy for 2017. PCE responded to this solicitation to purchase its additional needs for resource adequacy for June from PG&E, as well as for subsequent months in 2017. PCE requested that PG&E agree that it would exclude coal and nuclear resources from the RA PG&E would supply and PG&E agreed to this request.

Sufficient supplies were offered by PG&E for July through December, for which PCE is now requesting approval.

The Board is being asked to approve execution of an EEI Master Agreement as well as a separate Confirmation Agreement with PG&E, in forms approved by general counsel.

FISCAL IMPACT:

The fiscal impact of the Purchase of Resource Adequacy from PG&E for July-December 2017 will not exceed \$3,300,000.

RESOLUTION NO. _____

**PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF
CALIFORNIA**

*** * * * ***

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE A MASTER AGREEMENT AND CONFIRMATION AGREEMENT WITH
PACIFIC GAS AND ELECTRIC COMPANY FOR PURCHASE OF RESOURCE
ADEQUACY WITH TERMS CONSISTENT WITH THOSE PRESENTED, IN A FORM
APPROVED BY THE GENERAL COUNSEL AND FOR THE PERIOD OF JULY 1,
THROUGH DECEMBER 31, 2017 IN AN AMOUNT NOT TO EXCEED \$3,300,000**

RESOLVED, by the Peninsula Clean Energy Authority of the County of San
Mateo, State of California, that

WHEREAS, the Peninsula Clean Energy Authority (“Peninsula Clean Energy” or
“PCE”) was formed on February 29, 2016; and

WHEREAS, as was true in 2016, PCE has ongoing commitments to purchase
Resource Adequacy (“RA”); and

WHEREAS, in February 2017 Pacific Gas and Electric Company (“PG&E”)
issued a solicitation offering System and Local Resource Adequacy for 2017; and

WHEREAS, PCE responded to this solicitation to purchase its additional needs
for resource adequacy for July through December, 2017 from PG&E; and

WHEREAS, PCE responded to this solicitation by offering to purchase RA for the months of July through December 2017, and requested that PG&E agree to exclude coal resources from the RA PG&E would supply; and

WHEREAS, PG&E accepted PCE's offer and agreed to PCE's coal-free request; and

WHEREAS, PCE has negotiated a Master Agreement and Confirmation Agreement with PG&E for the necessary volumes, reference to which should be made for further particulars; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute the Master Agreement and Confirmation Agreement with PG&E for RA with terms consistent with those presented, in a form approved by the General Counsel and for a term covering July 1, 2017 through December 31, 2017 in an amount not to exceed \$3,300,000.

* * * * *

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Master Agreement*") is made as of the last dated signature on the signature page hereto ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name: _Peninsula Clean Energy Authority____ ("Party A")

Name: Pacific Gas and Electric Company ("Party B"), **limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions.**

All Notices:

Street: 455 County Center, 4th Floor

City: Redwood City, CA Zip: 94063

Attn: George Wiltsee

Phone: 626-890-8346

Email:

gwiltsee@peninsulacleanenergy.com

Invoices:

Attn: Anne Bartoletti

Phone: 650-350-9514

Email: abartoletti@peninsulacleanenergy.com;

jpepper@peninsulacleanenergy.com

Scheduling:

Attn: George Wiltsee

Phone: 626-890-8346

Email: gwiltsee@peninsulacleanenergy.com

Payments:

Attn: Anne Bartoletti

Phone: 650-350-9514

Email: abartoletti@peninsulacleanenergy.com;

jpepper@peninsulacleanenergy.com

Duns: 080262114

Federal Tax ID Number: 81-2708786

Wire Transfer:

BNK: MUFG Union Bank

ABA: 122000496

ACCT: 0050196984

Credit and Collections:

Attn: Janis Pepper Phone: 415-309-9206

Email: jpepper@peninsulacleanenergy.com

Confirmations:

Attn: George Wiltsee

Phone: 626-890-8346

Email: gwiltsee@peninsulacleanenergy.com

All Notices:

Street: 245 Market Street

City: San Francisco, CA Zip: 94105

Attn: Contract Management

Phone: (415) 973-8660

Facsimile: (415) 972-5507

Invoices:

Attn: Manager-Electric Settlements

Phone: (415) 973-9381

Facsimile: (415) 973-9505

Scheduling:

Attn: Mike McDermott

Phone: (415) 973-6222, 973-4072

Facsimile: (415) 973-5333

Payments:

Attn: Manager-Electric Settlements

Phone: (415) 973-9381

Facsimile: (415) 973-9505

Duns: 556650034

Federal Tax ID Number: 94-0742640

Wire Transfer:

BNK: The Bank of Mellon NY

ABA: 011001234

ACCT: 059994

Credit and Collections:

Attn: Manager, Credit Risk Management

Phone: (415) 973-5188

Facsimile: (415) 973-7301

Confirmations:

Attn: Manager-Electric Settlements

Phone: (415) 973-9381

Facsimile: (415) 973-9505

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

Party A Tariff

Tariff

Dated

Docket Number

Article Two

Transaction Terms and
Conditions

☒ Optional provision in Section 2.4. If not checked, inapplicable

Article Four

Remedies for Failure to Deliver
or Receive

☒ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

5.1(g) Cross Default for Party A:

[REDACTED]

5.1(g) Cross Default for Party B:

[REDACTED]

5.6 Closeout Setoff

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

Article Eight

Credit and Collateral
Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[REDACTED]

(b) Credit Assurances:

[REDACTED]

(c) Collateral Threshold:

[REDACTED]

If applicable, complete the following:

[REDACTED]

(d) Downgrade Event:

[Redacted]

If applicable, complete the following:

[Redacted]

(e) Guarantor for Party B [Redacted]

Guarantee Amount: [Redacted]

8.2 Party B Credit Protection:

(a) Financial Information:

[Redacted]

(b) Credit Assurances:

[Redacted]

(c) Collateral Threshold:

[Redacted]

If applicable, complete the following:

[Redacted]

(d) Downgrade Event:

[Redacted]

If applicable, complete the following:

[Redacted]

(e) Guarantor for Party A [Redacted]

Guarantee Amount: [Redacted]

Article Ten

Confidentiality

☒ Confidentiality Applicable

If not checked, inapplicable.

Schedule M

☒ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: The following changes shall be applicable.

GENERAL TERMS AND CONDITIONS.

(A) Article One: General Definitions. Amend Article One as follows:

- (1) Section 1.1 is amended in its entirety to read: “Affiliate” means (i) with respect to Party A, any entity which directly or indirectly controls, is controlled by, or is under a common control with Party A, and (ii) with respect to Party B, none. For purposes of this definition, “control” (including, with correlative meaning, the terms “controlling”, “controlled by” and “under common control with”), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies through the ownership of voting securities, by agreement or otherwise

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

- (2) Section 1.12 deleted and replaced with the definition of “Credit Rating” as set forth in Paragraph 10 to the Collateral Annex to this Agreement
- (3) Section 1.27 deleted and replaced with the definition of “Letter of Credit” as set forth in the Collateral Annex to this Agreement (as modified in Paragraph 10 to that Collateral Annex).
- (4) Section 1.45 is deleted and replaced with the definition of “Performance Assurance” as set forth in the Collateral Annex to this Agreement (as modified by Paragraph 10 to that Collateral Annex), and “Credit Assurance” as the term is used in this Cover sheet shall mean Performance Assurance as so defined in the Collateral Annex.

- (5) In Section 1.50 replace the reference to Section 2.4 with reference to Section 2.5.

- (6) In Section 1.51 replace “at Buyer’s option” in the fifth line with “absent a purchase”.

- (7) In Section 1.53 replace “at Seller’s option” in the fifth line with “absent a sale”.

- (8) A new Section 1.62 is added as follows:

“Broker or Index Quotes” means quotations solicited or obtained in good faith from (a) regularly published and widely-distributed daily forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant Products or (b) end-of-day prices for the relevant Products published by exchanges which transact in the relevant markets.”

- (9) A new Section 1.63 is added as follows:

“Market Quotation Average Price” means the arithmetic mean of the quotations solicited in good faith from not less than three (3) Reference Market-Makers (as hereinafter defined); provided, however, that the Party obtaining the quotes shall use reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-Makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to each Terminated Transaction. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. Each quotation shall be obtained, to the extent reasonably practicable, as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the Party obtaining the quotations and in accordance with the notice pursuant to Section 5.2, which designates the

Early Termination Date. If fewer than three quotations are obtained, it will be deemed that the Market Quotation Average Price in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.”

(10) A new Section 1.64 is added as follows:

“Reference Market Maker” shall have the meaning as set forth in the Collateral Annex to this Agreement.

(11) A new Section 1.65 is added as follows:

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

(B) Article Two: Transaction Terms and Conditions. Amend Article Two as follows:

(1) The following is added to the end of Section 2.5: “In the event of a dispute between the parties, any Party with a Recording shall, upon request of the other Party, provide a copy of the Recording to the other Party.”

(2) A new Section 2.6 is added to read as follows:

“2.6 Imaged Agreement. Any original executed Master Agreement, Confirmation or other related document may be photocopied and stored **in electronic format** (the ‘Imaged Agreement’). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper or into other written format, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation, or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation, or the Imaged Agreement) on the basis that such were not originated or maintained in documentary or written form under either the hearsay rule or the best evidence rule. However, nothing in this Section 2.6 shall preclude a Party from challenging the admissibility of such evidence on some other grounds, including, without limitation, the basis that such evidence has been altered from the original.”

(C) Article Three: Obligations and Deliveries. Amend Article Three as follows:

(1) Add a new Section 3.4 at the end of the Article:

“3.4 NERC Interchange Transaction Tags. The Parties acknowledge that all Transactions are subject to the North American Electric Reliability Council (“NERC”) Policy 3, Version 5 (“NERC Policy”) standards for interchange transactions, if applicable. Notwithstanding anything to the contrary contained in the NERC Policy, the Parties agree that, with respect to all Transactions between the Parties under this Agreement, the Purchasing-Selling Entity (as defined in the NERC Policy) immediately before the load serving Purchasing-Selling Entity shall be the entity responsible for providing the Interchange Transaction (as defined in the NERC Policy) tag.”

(2) Add a new Section 3.5 as follows:

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

(a) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the

Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of the price quotations for the Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by each of the Parties (for a total of four (4) price quotations).

(b) For purposes of this Section 3.5, the following definitions shall apply:

(i) "Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction.

(ii) "Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

(iii) "Floating Price" means a price per unit in \$U.S. specified in a Transaction that is based upon a Price Source.

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

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

(vi) "Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

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

(d) Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged."

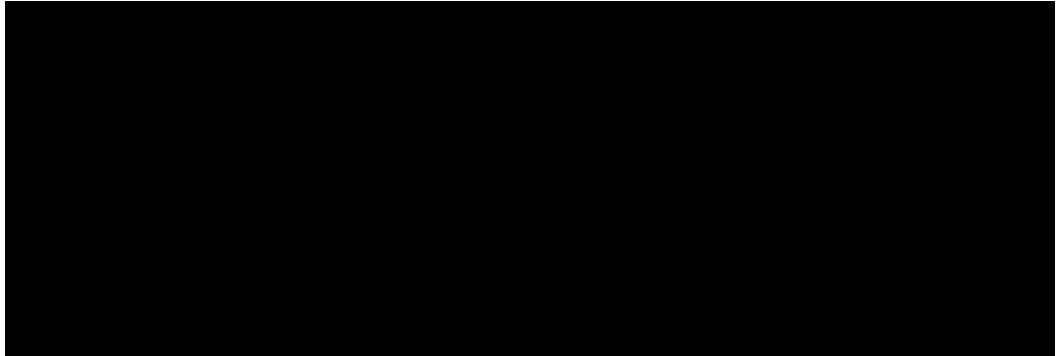
(D) Article Five: Events of Default; Remedies. Amend Article Five as follows

(1) Section 5.2 is amended to (i) add the words "and time of day" in the third line immediately following the first instance of the word "day" and (ii) add the

following at the end of the Section:

“The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for each Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price with respect to any Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by calculating the arithmetic mean of at least three (3) Broker or Index Quotes for transactions substantially similar to each Terminated Transaction. Such Broker or Index Quotes must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3) Broker or Index Quotes with respect to any Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information; provided, however, that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally.”

(2) Section 5.3 is amended by inserting “plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party Pursuant to Article Eight,” between the words “that are due to the Non-Defaulting Party,” and “plus any and all other amounts” in the sixth line.



(E) Article Ten: Miscellaneous. Amend Article Ten as follows:

(1) Section 10.2(i) is amended as follows: the phrase “... and is qualified to conduct its business in each jurisdiction in which it will perform a Transaction.” is added to the end of 10.2(i);

(2) Section 10.2(vi) is amended by deleting the phrase “or any of its Affiliates”.

(3) Section 10.2(ix) is amended by adding the phrase “it is an ‘eligible contract participant’ as defined in Section 1(a)(12) of the Commodity Exchange Act, as amended, and it is an ‘eligible commercial entity’ as defined in Section 1(a)(11) of the Commodity

Exchange Act, as amended”.

(4) Section 10.2(x) is amended by replacing “and” in the third line with a comma and adding the following at the end of the section: “and it intends to physically settle each Transaction such that if the ‘commodity option’ (as defined in the Commodity Exchange Act, as amended) associated with a Transaction is exercised, the option would result in the sale of an ‘exempt commodity’ (as defined in Section 1(a)(20) of the Commodity Exchange Act, as amended) for immediate or deferred delivery.’

(5) Section 10.5 is amended as follows: (a) the phrase “may be withheld in the exercise of its sole discretion” is deleted and replaced with “which consent may not be unreasonably withheld”; and (b) replace the word “affiliate” with the defined term “Affiliate.”

(6) Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of this Agreement or any Transaction (collectively, “Confidential Information”) to a third party (other than the Party’s or the Party’s Affiliates’ employees, lenders, counsel, accountants, advisors or ratings agencies who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request applicable to such Party or any of its Affiliates, or as Party B deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies, including, without limitation, the California Public Utilities Commission (“CPUC”) or any division thereof; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section 10.11.

Party B acknowledges that Party A is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Party A acknowledges that Party B may submit information to Party A that Party B 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). Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) to Party A pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Party A as soon practical shall notify Party B in writing that such request has been made. Party B shall be solely responsible for taking whatever legal steps are necessary to prevent release of the Requested Confidential Information to the Requestor by Party A. If Party B takes no such action, after receiving the foregoing notice from Party A, Party A shall be permitted to comply with the Requestor’s demand and is not required to defend against it. If Party B does take such action, Party A shall provide timely and reasonable cooperation to Party B if requested by Party B, for which Party B will be responsible for any agreed reasonable expenses incurred by Party A in providing such cooperation

Regardless of any other provisions of this agreement, either party shall have the right to disclose the terms and conditions of a transaction between the parties to index publishers that aggregate and report such data to the public in the form of indices.

(7) A new Section 10.12 is added as follows:

“10.12 Execution. A signature received via facsimile or e-mail shall have the same legal effect as an original.”

(8) A new Section 10.13 is added as follows:

The Parties agree that Security and Exchange Commission rules for reporting power purchase agreements may require PG&E to collect and possibly consolidate financial information. For any Transaction for which such reporting is required, PG&E is obligated to obtain information from Seller to determine whether or not consolidation is required. If PG&E determines that consolidation is required, PG&E shall require the following during every calendar quarter for the term of such Transaction:

- a) Complete financial statements and notes to financial statements and
- b) Financial schedules underlying the financial statements, all within 15 days of the end of each quarter.
- c) Access to records and personnel, so that PG&E's independent auditor can conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002).

Any information provided to PG&E shall be treated confidentially and only disclosed on an aggregate basis with other similar entities for which PG&E has power-purchase contracts. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

(9) A new Section 10.14 is added as follows:

10.14 Dispute Resolution. Mindful of the high costs of litigation, not only in dollars but time and energy as well, the Parties intend to and do hereby establish a final and binding out-of-court dispute resolution procedure to be followed in the event any controversy should arise out of or concerning the performance of a Transaction. Accordingly, it is agreed as follows:

10.14(a) Negotiation.

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

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

(3) All communication and writing exchanged between the Parties in connection with

these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(4) If the matter is not resolved within 45 calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (a) above, refuses or will not meet within 10 Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 10.14(b).

(5) If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within 10 Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute then either Party may refer the matter directly to Arbitration, as set forth in Section 10.14(c) below.

10.14(b) Mediation. If the dispute (other than a dispute regarding the Termination Payment) cannot be resolved by negotiation as set forth in Section 1 above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS shall administer. As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS's then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the arbitrator shall administer by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the Arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an Arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

10.14(c) Arbitration.

(1) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(2) The arbitrator, once chosen, shall consider any transaction tapes or any other evidence which the arbitrator deems necessary, as presented by each Party. In deciding the award, the provisions of this Agreement will be binding on the arbitrator. The arbitrator will deliver his or her decision in writing within 30 days after the conclusion of the arbitration hearing. The arbitrator shall specify the basis for his or her decision, the basis for the damages award and a breakdown of the damages awarded, and the basis of any other remedy. Except as provided in the Federal Arbitration Act, the decision of the arbitrator will be binding on and non-appealable by the Parties. Each Party agrees that any arbitration award against it may be enforced in any court of competent jurisdiction and that any Party may authorize any such court to enter judgment on the arbitrator's decision.

(3) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages.

(4) Any expenses incurred in connection with hiring the arbitrators and performing the Arbitration shall be shared and paid equally between the Parties. Each Party shall bear and pay its own expenses incurred by each in connection with the Arbitration, unless otherwise included in a solution chosen by the Arbitration panel. In the event either Party must file a court action to enforce an arbitration award under this Article, the prevailing Party shall be entitled to recover its court costs and reasonable attorney fees.

(5) In the event the Parties choose to litigate any matter hereunder, the Parties hereby waive the right to jury trial.

(6) Except as may be required by Law, the existence, contents or results of any Arbitration hereunder may not be disclosed by a Party or the arbitrator without the prior written consent of both Parties.

(10) A new Section 10.15 is added as follows:

10.15 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)

(11) A new Section 10.16 “Joint Powers Authority” is added to the Agreement as follows: “10.16 Joint Powers Authority. “Party B hereby acknowledges and agrees that Party A is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated December 4, 2012, as amended July 25, 2013 (the “Joint Powers Agreement”) and is a public entity separate from its members. Party A shall solely be responsible for all its debts, obligations and liabilities accruing and arising out of this Agreement and Party B agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party A’s members, any cities participating in Party A’s aggregation program, or any of Party A’s retail customers in connection with this Agreement or any of the Transactions.”

(F) Schedule P: Products and Definitions. Amend Schedule P as follows:

Add the following definitions, in appropriate alphabetical order:

“CAISO Energy” means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator (“CAISO”) (as amended from time to time, the “Tariff”) for which the only excuse for failure to deliver or receive is an Uncontrollable Force (as defined in the Tariff).

“WECC” means the Western Electricity Coordinating Council.

“WSPP” means the Western Systems Power Pool.

“WSPP Agreement” means the Western Systems Power Pool Agreement as amended from time to time.

“West Firm” or “WSPP Firm” means with respect to a Transaction, a Product that is or will be scheduled as firm energy and consistent with the most recent rules adopted by the WECC for which the only excuses for failure to deliver or receive are if an interruption is (i) due to an Uncontrollable Force as provided in Section 10 of the WSPP Agreement; or (ii) where applicable, to meet Seller's public utility or statutory obligations to its customers. Notwithstanding any other provision in this Master Agreement, if Seller exercises its right to interrupt to meet its public utility or statutory obligations, Seller shall be responsible for payment of damages for failure to deliver firm energy as provided in Article Four of this Agreement.

(G) Schedule M: Amend Schedule M as follows:

Add the following definition in Article One,

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

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A	Party B PACIFIC GAS AND ELECTRIC COMPANY
By: _____ Name: _____ Title: _____	By: _____ Name: _____ Title: _____

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

Master Power Purchase & Sale Agreement



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MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

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

Name ("_____ " or "Party A")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____

Phone: _____

Facsimile: _____

Name ("Counterparty" or "Party B")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____

Phone: _____

Facsimile: _____

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

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies ☐ Cross Default for Party A:
☐ Party A: _____ Cross Default Amount \$ _____
☐ Other Entity: _____ Cross Default Amount \$ _____
☐ Cross Default for Party B:
☐ Party B: _____ Cross Default Amount \$ _____
☐ Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

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

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- ☐ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

- ☐ Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- ☐ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- ☐ Not Applicable
- ☐ Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

☐ Confidentiality Applicable

If not checked, inapplicable.

Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
- ☐ Party B is a Governmental Entity or Public Power System
- ☐ Add Section 3.6. If not checked, inapplicable
- ☐ Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: _____

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

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

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

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

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

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

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

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

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

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

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

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

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

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

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

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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

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

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

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

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

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

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

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

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

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

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

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

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

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

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

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

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

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

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

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

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

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

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

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

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

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

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

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

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

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

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

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

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

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

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

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

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

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

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

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

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

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

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

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

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

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

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

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

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

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

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

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

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

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

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

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

“Capacity” has the meaning specified in the Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Transmission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT A

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

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

Seller: _____

Buyer: _____

Product:

- ☐ Into _____, Seller’s Daily Choice
- ☐ Firm (LD)
- ☐ Firm (No Force Majeure)
- ☐ System Firm
(Specify System: _____)
- ☐ Unit Firm
(Specify Unit(s): _____)
- ☐ Other _____
- ☐ Transmission Contingency (If not marked, no transmission contingency)
- | | | |
|---|---------------------------------|--------------------------------|
| <input type="checkbox"/> FT-Contract Path Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> FT-Delivery Point Contingency | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Transmission Contingent | <input type="checkbox"/> Seller | <input type="checkbox"/> Buyer |
| <input type="checkbox"/> Other transmission contingency | | |
- (Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter
Page 2

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

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

[Party A]

[Party B]

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

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

Confirmation for Resource Adequacy Capacity Product for CAISO Resources

This confirmation letter (“Confirmation”) confirms the Transaction between Pacific Gas and Electric Company (“Seller”) and Peninsula Clean Energy Authority (“Buyer”), each individually a “Party” and together the “Parties”, dated as of the Confirmation Effective Date in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of _____, along with the Cover Sheet, any amendments and annexes thereto (the “Master Agreement”) and including, Paragraph 10 of the EEI Collateral Annex to the Master Agreement (Paragraph 10 and the Collateral Annex are both referred to herein as the “Collateral Annex”) (the Master Agreement and the Collateral Annex shall be collectively referred to as the “EEI Agreement”). The EEI 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 EEI Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff and in addition includes payments under the Tariff related to Flexible RA Attributes.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “CAISO System” means the location of the Unit is not located within a Local Capacity Area.
- 1.7 “Capacity Attributes” means, with respect to a Unit, any and all of the following in each case which are attributed to or associated with the Unit at any time during the Delivery Period:
 - (a) RA Attributes,
 - (b) Local RA Attributes,
 - (c) Flexible RA Attributes, and

other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct or framework applied to any Compliance Obligations.

- 1.8 “Capacity Procurement Mechanism” or “CPM” has the meaning set forth in the Tariff.
- 1.9 “CPM Capacity” has the meaning set forth in the Tariff.
- 1.10 “Capacity Replacement Price” means (a) the price paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a), or (b) absent a purchase of Replacement Capacity, the market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, “Capacity Replacement Price” shall be deemed the “Replacement Price” for this Transaction.
- 1.11 “Competitive Solicitation Process” or “CSP” has the meaning set forth in section 43A.4 of the Tariff, as filed in Tariff Amendment to FERC, Docket No. ER15-1783.
- 1.12 “Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with the Capacity Attributes as established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.13 “Compliance Showings” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), (c) Flexible RAR compliance or advisory showings (or similar or successor showings), and (d) other Capacity Attributes compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.14 “Confirmation” has the meaning specified in the introductory paragraph.
- 1.15 “Confirmation Effective Date” means the latest signature date found on the signature page of this Confirmation.
- 1.16 “Contingent Firm RA Product” has the meaning specified in Section 3.3.
- 1.17 “Contract Log Number” is specified in Appendix A and will be used in accordance with Section 3.6.
- 1.18 “Contract Price” means, for any Showing Month, the prices specified in Table 4.1 for such period.
- 1.19 “Contract Quantity” has the meaning set forth in Section 3.5.

- 1.20 “Contract Term” has the meaning set forth in Section 2.1.
- 1.21 “CPUC” means the California Public Utilities Commission.
- 1.22 “CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 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, 16-06-045 and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.23 “CPUC Filing Guide” is 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 as provided in the CPUC Decisions.
- 1.24 “Credit Rating” means, with respect to any entity, (i) the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or (ii) if such entity does not have a rating for its unsecured, senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody’s. If the entity is rated by both S&P and Moody’s and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody’s, but not both, then the available rating shall determine the Credit Rating.
- 1.25 “Delivery Period” has the meaning specified in Section 3.4.
- 1.26 “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.27 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.28 “Firm RA Product” has the meaning specified in the Section 3.2.
- 1.29 “Flexible Capacity Category” has the meaning set forth in the Tariff.

- 1.30 “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 having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.31 “Flexible RA Quantity” means the amount of Flexible RA Attributes associated with the Product to be delivered by Seller to Buyer by each Unit, equivalent to the Unit EFC multiplied by the Prorated Percentage of Unit Flexible Factor and as specified in Appendix A.
- 1.32 “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 having jurisdiction.
- 1.33 “Governmental Body” means any federal, state, local, municipal or other government; 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 any court or governmental tribunal.
- 1.34 “Letter of Credit” means an irrevocable, non-transferable, standby letter of credit the form of which must be substantially as contained in Appendix C to this Confirmation; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, the intended beneficiary may require changes to such form; and the issuer must be a Qualified Institution on the date of delivery of the Letter of Credit to the Secured Party. In case of a conflict of this definition with any other definition of “Letter of Credit” contained in the Master Agreement or any exhibit or annex thereto, this definition shall supersede any such other definition for purposes of the Transaction to which this Confirmation applies.
- 1.35 “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) “A-“ with a stable designation” by S&P and “A3 with a stable designation” by Moody’s, if such issuer is rated by both S&P and Moody’s, (ii) “A- with a stable designation” by S&P, if such issuer is rated only by S&P, or (iii) “A3 with a stable designation” by Moody’s, if such issuer is rated only by Moody’s; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Confirmation.
- 1.36 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.37 “Local RA Attributes” means, for each Unit, any and all resource adequacy attributes or other locational attributes related to a Local Capacity Area, as may

be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO's Control Area, that can be counted toward a Local RAR, exclusive of any RA Attributes and Flexible RA Attributes.

- 1.38 "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 having 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.
- 1.39 "LSE" means load-serving entity.
- 1.40 "Marketable Emission Trading Credits" means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.41 "Master Agreement" has the meaning specified in the introductory paragraph.
- 1.42 "Monthly Payment" has the meaning specified in Section 4.1.
- 1.43 "Moody's" means Moody's Investors Services, Inc. or its successor.
- 1.44 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.45 "Non-Availability Charges" has the meaning set forth in the Tariff.
- 1.46 "Non-Summer Period" means all of the months in a calendar year other than those months in the Summer Period.
- 1.47 "Notice" or "Notify" has the meaning set forth in Section 10.
- 1.48 "Outage" means any disconnection, separation, or reduction in the capacity of any Unit.
- 1.49 "Planned Outage" means subject to and as further described the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of a 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.
- 1.50 "Planned Outage Schedule" has the meaning specified in Section 3.8.
- 1.51 "Product" has the meaning specified in Section 3.1.

- 1.52 “Prorated Percentage of Unit Factor” means the percentage of the Unit NQC or other Capacity Attributes (excluding Flexible RA Attributes) available during the Showing Month that is dedicated to Buyer under this Transaction as specified in Appendix A.
- 1.53 “Prorated Percentage of Unit Flexible Factor” means the percentage of the Unit EFC available during the Showing Month that is dedicated to Buyer under this Transaction as specified in Appendix A.
- 1.54 “Qualified Institution” means either a U.S. commercial bank or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to intended beneficiary in its sole discretion and such bank must have a Credit Rating of at least (i) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (ii) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those rating agencies.
- 1.55 “RA Attributes” mean, for each Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.56 “RA Derate Factor” means, for each Unit, expressed as a percentage, the minimum of (a) the Unit Contract Quantity for a Showing Month as reduced according to Section 3.3(b) only if applicable, divided by the Unit Contract Quantity set forth in Appendix A as of the Confirmation Effective Date and (b) the Flexible RA Quantity for a Showing Month as reduced according to Section 3.3(c) only if applicable, divided by the Flexible RA Quantity set forth in Appendix A as of the Confirmation Effective Date. The Unit’s RA Derate Factor shall not exceed 1.00.
- 1.57 “RA Derate Factor Adjustment” has the meaning specified in Section 4.2.
- 1.58 “RA Replacement Capacity” has the meaning specified in the Tariff.
- 1.59 “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 having jurisdiction.
- 1.60 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer.
- 1.61 “Replacement Rules” means rules defined for RA Replacement Capacity pursuant to the Tariff , and additionally includes any replacement rules incorporated into the Tariff with respect to Flexible RA Attributes.

- 1.62 “Replacement Unit” means a Unit providing Replacement Capacity.
- 1.63 “Residual Unit Commitment” has the meaning set forth in the Tariff.
- 1.64 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.65 “RMR Contract” means a Reliability Must-Run Contract as set forth in the Tariff.
- 1.66 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.
- 1.67 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.68 “Seller” has the meaning specified in the introductory paragraph.
- 1.69 “Showing Month” shall be each day of each calendar month of the Delivery Period that is the subject of the Compliance Showings, 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 Compliance Showings made in June are for the Showing Month of August.
- 1.70 “Substitute Capacity” means the amount of Unit Contract Quantity in which Buyer has requested Seller or Seller’s SC to not include in its Supply Plan which Buyer can utilize as (i) RA Replacement Capacity pursuant to Section 9 of the Tariff or (ii) substitute capacity pursuant to Section 40 of the CAISO Tariff.
- 1.71 “Substitution Rules” means rules defined for substitute capacity pursuant to Section 40 of the Tariff, and additionally includes any replacement rules incorporated into the Tariff with respect to Flexible RA Attributes.
- 1.72 “Summer Period” means the months May through September, inclusive.
- 1.73 “Supply Plan” has the meaning set forth in the Tariff.
- 1.74 “Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.75 “Transaction” has the meaning specified in the introductory paragraph.
- 1.76 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.77 “Unit Contract Quantity” means the amount of Product to be delivered by Seller to Buyer by each Unit, equivalent to the Unit NQC multiplied by the Prorated Percentage of Unit Factor as specified in Appendix A and as may be reduced according to Section 3.3(a)-(c) as applicable.
- 1.78 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

1.79 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit.

1.80 “Unit Quantity” means the amount of Product actually delivered by Seller to Buyer by each Unit.

2. Term

2.1 Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Effective Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under the Agreement have been fulfilled.

2.2 Binding Nature

This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

(a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as either a Firm RA Product or a Contingent Firm RA Product, as selected in Section 3.2 or 3.3 below. Product does not confer to Buyer any right to dispatch or receive the energy or ancillary services from the Units. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

(b) Notwithstanding Section 6.1, the Parties agree that the Contract Price for the Product shall not change even if the attributes or characteristics of Capacity Attributes are further applied, defined, or identified during the Delivery Period.

3.2 ☒ Firm RA Product

Seller shall provide Buyer with the Product in the amount of the Contract Quantity. If the Units are not available to provide any portion of the Product for any reason, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5.

3.3 ☐ Contingent Firm RA Product

Seller shall provide Buyer with the Product in the amount of the Contract Quantity. If the Units are not available to deliver any portion of the Product in accordance with Sections 3.6 and 3.7, then Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1 except for the events in Sections 3.3 (a)-(c). If Seller fails to provide Buyer with such Replacement Capacity pursuant to Section 5.1 or Seller fails to comply with the Planned Outage scheduling obligations in Section 3.3(a), then Seller shall be liable for damages and/or indemnify Buyer for

penalties, fines or costs pursuant to the terms of Sections 5.2 and 5.3. If the Units provide less than the Contract Quantity due to the events in Sections 3.3 (a)-(c), then Seller shall not provide Buyer with Replacement Capacity and Seller is not liable for damages and/or required to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 for the Contract Quantity reductions in Sections 3.3(a)-(c).

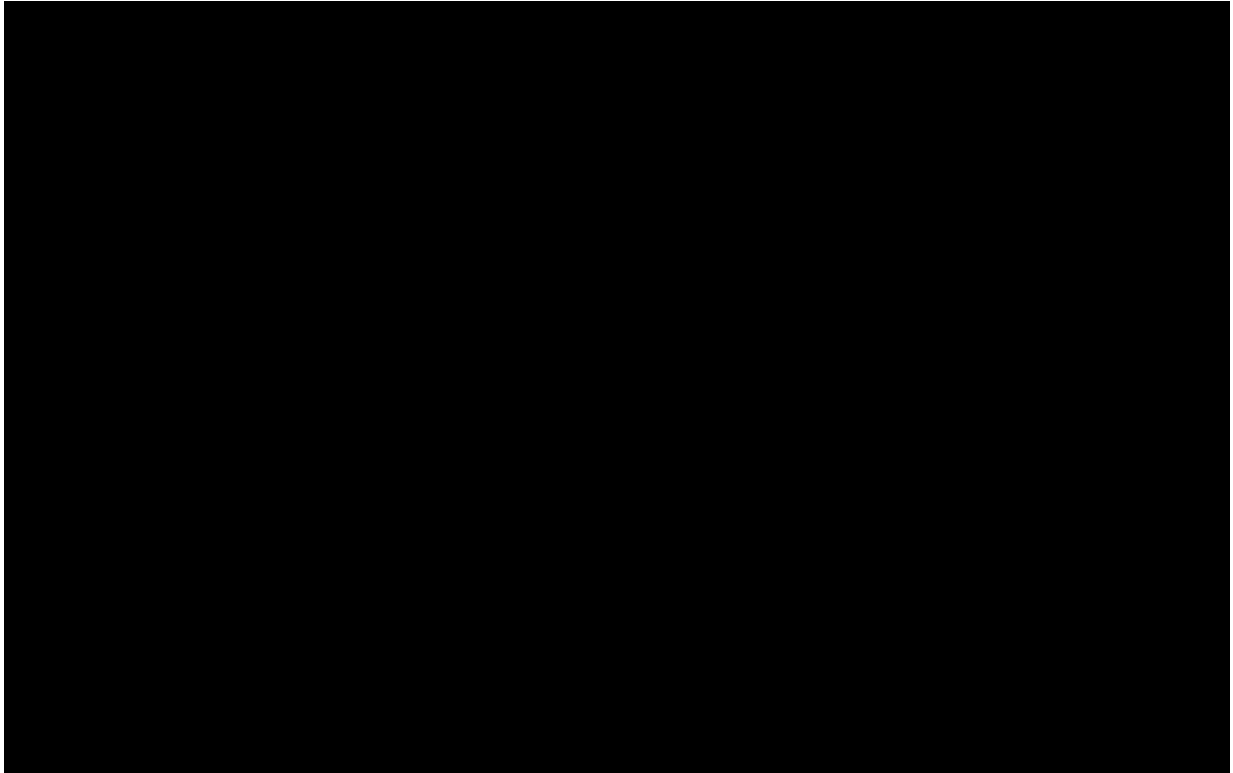
- (a) Planned Outage: Seller shall not schedule a Planned Outage in the Summer Period during the Delivery Period but may schedule a Planned Outage in the Non-Summer Period during the Delivery Period with the prior written consent from Buyer (which consent shall not be unreasonably withheld); provided that Seller may schedule a Planned Outage if it is (i) scheduled with and approved by the CAISO after the relevant deadline for the applicable Compliance Showing for the Showing Month and (ii) it does not extend into the next Showing Month. Seller's obligation to deliver the Contract Quantity for any Showing Month shall be reduced if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month, provided that Seller notifies Buyer of the Planned Outage, no later than fifteen (15) Business Days before the relevant deadline for the corresponding Compliance Showing applicable to that Showing Month. If a Unit is scheduled for a Planned Outage for the applicable Showing Month, the Unit Contract Quantity shall be reduced by the product of (i) the unavailable amount of Capacity Attributes (excluding Flexible RA Attributes) and (ii) the Prorated Percentage of Unit Factor; the Flexible RA Quantity shall be reduced by the product of (iii) the unavailable amount of Flexible RA Attributes and (iv) the Prorated Percentage of Unit Flexible Factor. For the avoidance of doubt, Seller may not provide Replacement Capacity for Units on Planned Outage whether properly Noticed and approved in accordance with this Section 3.3(a) or not.
- (b) Reduction in Unit NQC: Seller's obligation to deliver the Contract Quantity for any Showing Month shall be reduced in the event the Unit NQC is reduced from the Unit NQC as specified in Appendix A. In such an event, the Unit Contract Quantity for such Unit shall be reduced by the product of (i) the difference in the Unit NQC as specified in Appendix A and the then current Unit NQC and (ii) the applicable Prorated Percentage of Unit Factor for such Unit.
- (c) Reduction in Unit EFC: Seller's obligation to deliver the Flexible RA Quantity for any Showing Month shall be reduced in the event the Unit EFC is reduced from the Unit EFC as specified in Appendix A. In such an event, the portion of the Flexible RA Quantity representing Flexible RA Attributes for such Unit shall be reduced by the product of (i) the difference in the Unit EFC as specified in Appendix A and the then current Unit EFC and (ii) the applicable Prorated Percentage of Unit Flexible Factor for such Unit.

3.4 Delivery Period

The "Delivery Period" shall be July 2017 through and including December 2017, unless terminated earlier in accordance with the terms of this Agreement.

3.5 Contract Quantity:

During the Delivery Period, Seller shall provide the Product for each day of each Showing Month in the total amounts listed below ("Contract Quantity"), as such amounts may be reduced according to Section 3.3, if applicable:



3.6 Delivery of Product

Seller shall deliver to Buyer all Capacity Attributes associated with the Contract Quantity for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans, using as a default the Contract Log Number listed in Appendix A, to identify and confirm the Unit Quantity to be provided to Buyer from each Unit for each Showing Month so that the total amount of Unit Quantity identified and confirmed for such Showing Month equals the Contract Quantity, unless specifically requested not to do so by the Buyer pursuant to Section 3.9, and
- (b) No later than fifteen (15) Business Days before the applicable Compliance Showing deadlines for each Showing Month, Seller shall cause each Unit's SC to submit Notice to Buyer which includes Seller's proposed Supply Plan for such Showing Month in a format and to a platform as communicated by Buyer Notice to Seller prior to the Compliance Showing. Following Buyer's receipt of Seller's Notice and proposed Supply Plan, Buyer may Notify Seller no later than ten (10) Business Days before the applicable Compliance Showing deadlines for each Showing Month of any changes to the Supply Plan and Seller shall implement any such changes in the

Supply Plan to be submitted to the CAISO. In the event that Buyer does not Notify Seller of any changes to the proposed Supply Plan, Seller may submit the proposed Supply Plan to the CAISO. Notwithstanding the prior sentences in Section 3.6(b), in the event that the Confirmation Effective Date occurs later than fifteen (15) Business Days before the applicable Compliance Showing deadline for the initial Showing Month: (i) Seller shall cause each Unit's SC to submit Notice to Buyer which Notice includes Seller's proposed Supply Plan for the initial Showing Month within two (2) Business Days of the Confirmation Effective Date; and (ii) Buyer may Notify Seller no later than one (1) Business Day prior to the CAISO Compliance Showing deadline of any changes to Seller's proposed Supply Plan for the initial Showing Month; and (ii) Seller shall implement any such changes to such Supply Plan to be submitted to the CAISO.

3.7 CAISO Offer Requirements

Subject to Buyer's request under Section 3.9(a), and except to the extent any Unit is in an Outage, Seller shall, or cause each Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff, and shall, or cause each Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's SC, owner, or operator for such noncompliance.

3.8 Planned Outage Schedule

Seller shall, or cause each Unit's SC to, submit to Buyer, a schedule of proposed Planned Outages for the Unit Contract Quantity, if any, that will occur during the Delivery Period, ("Planned Outage Schedule"), on each of the following dates during the Contract Term (i) the Confirmation Effective Date, (ii) thirty (30) days before the applicable year-ahead Compliance Showings, and (iii) no later than January 1, April 1, July 1 and October 1 of each calendar year. Within twenty (20) Business Days after its receipt of a Planned Outage Schedule, Buyer shall Notify Seller of any reasonable request for changes to the Planned Outage Schedule, and Seller shall, to the extent consistent with Good Utility Practices, accommodate Buyer's requests regarding the timing of any Planned Outage for the Unit Contract Quantity. Seller or a Unit's SC shall Notify Buyer within five (5) Business Days of any change to a Planned Outage Schedule submitted to Buyer. In the event that the CAISO declares a system emergency during a Planned Outage, Seller shall make reasonable efforts to reschedule such Planned Outage.

3.9 Substitute Capacity

(a) Request for Substitute Capacity: Buyer may request Substitute Capacity from Seller no later than (i) five (5) Business Days before the relevant deadline for each Compliance Showing, or (ii) three (3) Business Days before CAISO's relevant deadline for LSEs to file RA Replacement Capacity if the Confirmation Effective Date is after Buyer's Compliance Showing to the CPUC for the relevant Showing Month. For purposes of calculating a Monthly Payment pursuant to Section 4.1, such

Substitute Capacity shall be deemed as Unit Quantity provided consistent with Section 3.6.

- (b) Seller's Obligations With Respect to Substitute Capacity: If Buyer makes a request under Section 3.9(a), then after such request, Buyer will provide Seller with three (3) Business Days' prior Notice indicating the amount and type of Substitute Capacity requested by Buyer and Seller shall (i) make such Substitute Capacity available to Buyer during the applicable Showing Month; (ii) provide timely approval to CAISO of Buyer's request to use Substitute Capacity in the applicable CAISO systems; and (iii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize the Substitution Rules or Replacement Rules, as applicable, including, but not limited to, ensuring that the Substitute Capacity will qualify for substitution or replacement under the Substitution/Replacement Rules applicable to the Unit and providing Buyer with all information needed to utilize such rules.

Seller agrees that with respect to all Substitute Capacity that is utilized under the Substitution/Replacement Rules, Seller shall either bid or schedule or cause the Unit's SC to bid or schedule with, or make available to, the CAISO such Substitute Capacity, as if the capacity had been included on the Supply Plan, in compliance with and subject to the Tariff, and shall perform all, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and comply with all Applicable Laws, in each case that are associated with such Substitute Capacity.

Seller agrees that no Substitute Capacity made available to Buyer pursuant to this Transaction shall come from Units that use coal or nuclear material to generate electricity.

- (c) Failure to Provide Substitute Capacity: If Seller fails to provide Substitute Capacity or Buyer is unable to utilize the Substitute Capacity under the Substitution/Replacement Rules, in each case, due to Seller's failure to fulfill its obligations under Section 3.9(b), then Seller shall pay for any and all costs or charges incurred by Buyer from the CAISO for such failure or inability to utilize the Substitution/Replacement Rules; provided, that if Seller fails to provide Substitute Capacity or Buyer is unable to utilize the Substitution/Replacement Rules, in each case, because the Substitute Capacity does not qualify for substitution under the Tariff, but would qualify towards meeting RAR, then Seller shall not be responsible for any such costs or charges described in this Section 3.9(c) associated with such inability.

3.10 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly Payment to Seller for each Unit after the applicable Showing Month, as follows:

$$\text{Monthly Payment} = (A \times B \times 1,000) - \text{RA Derate Factor Adjustment}$$

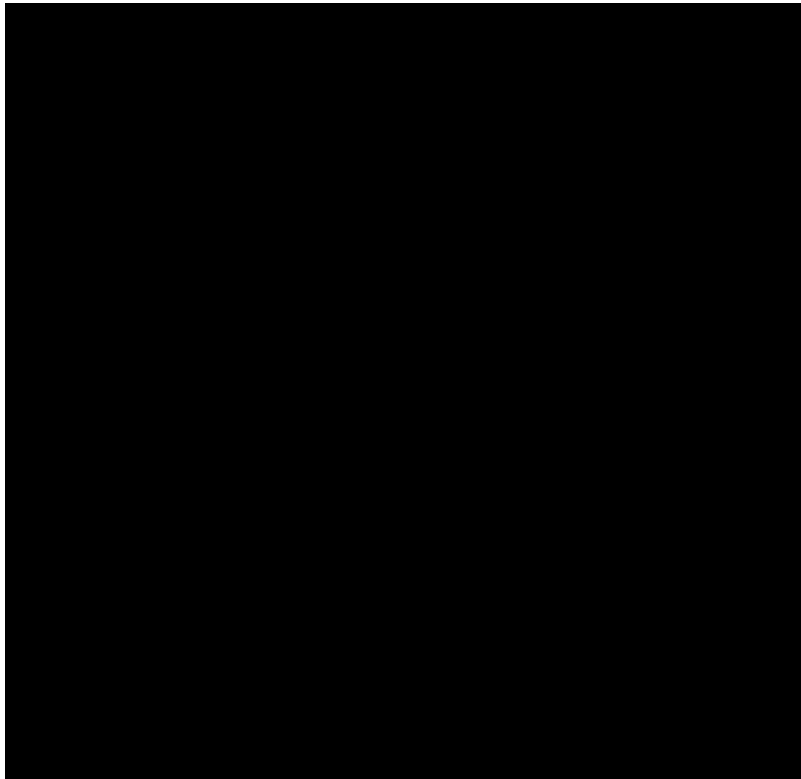
where:

A = applicable Contract Price (in \$/kW-month) for that Showing Month as set forth in Table 4.1 below

B = Unit Quantity (in MW) delivered by Seller's Unit for the Showing Month

RA Derate Factor Adjustment = RA Derate Factor Adjustment calculated pursuant to Section 4.2

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment be less than zero.



4.2 RA Derate Factor Adjustment

The Monthly Payment for each Unit shall include an RA Derate Factor Adjustment calculated as follows:

For Firm RA Product

RA Derate Factor Adjustment = 0

For Contingent Firm RA Product

(a) When the Unit's RA Derate Factor is greater than or equal to 80 percent, the RA Derate Factor Adjustment shall be zero.

(b) When the Unit's RA Derate Factor is greater than or equal to 50 percent, but less than 80 percent, the RA Derate Factor Adjustment shall be equal to:

$$(0.80 - \text{RA Derate Factor}) * 0.50 * \text{the applicable Contract Price} * \text{Unit Contract Quantity as of the Confirmation Effective Date} * 1,000.$$

(c) When the Unit's RA Derate Factor is less than 50 percent, the RA Derate Factor Adjustment shall be equal to:

$$[((0.80 - 0.50) * 0.50) + (0.50 - \text{RA Derate Factor})] * \text{the applicable Contract Price} * \text{Unit Contract Quantity as of the Confirmation Effective Date} * 1,000.$$

The final product of this RA Derate Factor Adjustment calculation shall be rounded to two decimal places. The RA Derate Factor Adjustment for each Unit shall be subtracted from the Monthly Payment as shown in Section 4.1 to determine the amount due to Seller for Unit Quantity provided hereunder from each Unit.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit including those charged to Buyer for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism or its successor including the Competitive Solicitation Process, and Residual Unit Commitment (RUC) Availability Payments, or its successor, but excluding payments described in Section 4.3(a)(i)-(iv). Revenues from CPM shall be pro-rated by the following calculation: the product of (i) the CPM quantity of the Unit, as published by CAISO, divided by the Unit NQC; and (ii) Contract Quantity.
- (c) Seller shall cause Unit's SC to not accept any proposed CPM designation by the CAISO unless and until Buyer has agreed to accept such designation; Seller shall cause the Unit's SC to promptly notify Buyer within one (1) Business Day of the time SC receives a proposal from CAISO to designate any portion of the Contract Quantity as CPM Capacity.
- (d) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if a Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable

prior Notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.

- (e) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues. If a Competitive Solicitation Process for capacity (including backstop capacity) develops within the CAISO region, Seller has not and shall not offer or commit any portion of Contract Quantity to CAISO through the CSP unless instructed by Buyer to do so.
- (f) Subject to the Units being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Units are subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under Section 40.9 of the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.
- (g) In the event that Seller fails, or fails to cause a Unit's SC, to Notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 3.3(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.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

If Seller is unable to provide the Contract Quantity for any Showing Month by delivery of the Product pursuant to Section 3.6, and is required to provide Replacement Capacity pursuant to Sections 3.2 or 3.3, as applicable, then:

- (a) Seller shall, at no cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals the Contract Quantity, and;
- (b) Seller shall identify Replacement Units (i) no later than fifteen (15) Business Days before the relevant deadline for Buyer's Compliance Showings, or (ii) in the event that the Confirmation Effective Date occurs after Buyer's Compliance Showing to the CPUC for the Delivery Period, no later than three (3) Business Days prior to CAISO's relevant deadline for filing of RA Replacement Capacity for the portion of the Contract Quantity not available to Buyer;

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1 and Buyer has approved the designation of the Replacement Unit, then any

such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that Showing Month. Notwithstanding anything to the contrary in this Confirmation, failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units by the relevant date specified in Section 5.1(b) may result in the calculation of damages payable to Buyer under Section 5.2 and/or the indemnification of Buyer against any penalties, fines or costs under Section 5.3.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Quantity from Replacement Units as required pursuant to Sections 3.2 and 3.3 for any Showing Month and pursuant to Section 5.1 or if Seller fails to comply with the Planned Outage scheduling obligations in Section 3.3(a), then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Quantity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, 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, including any penalties, fines, transaction costs and expenses incurred in connection with such procurement, plus (B) Capacity Replacement Price times the portion of Contract Quantity not provided by Seller or purchased by Buyer pursuant to Section 5.2(a), and (ii) the portion of Contract Quantity not provided for the applicable Showing Month times the Contract Price for that month.

5.3 Indemnities for Failure to Deliver Contract Quantity

If Buyer is unable to or does not purchase Replacement Capacity, then in lieu of damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Quantity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Quantity or any portion of the Replacement Capacity,
- (b) Seller's failure to provide timely Notice of the non-availability of any portion of the Contract Quantity,
- (c) A Unit's SC's failure to submit timely and accurate Supply Plans that identify Buyer's right to the Unit Contract Quantity to be delivered hereunder, or,
- (d) any other failure by Seller to perform its obligations under this Confirmation.

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, fines and costs. Seller will have no obligation to Buyer under this Section 5.3 in respect to the portion of Contract Quantity for which Seller has paid damages under Section 5.2. It is further agreed that (i) the amounts payable under this Section 5.3 shall be calculated on a \$/kW-month basis and (ii) the Contract Price (in \$/kW-month) shall be subtracted from any amounts payable under this Section 5.3 for purposes of determining the amount payable by Seller pursuant to this Section 5.3.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take 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 Compliance Obligations, if applicable. The Parties shall agree upon reasonable changes to this Confirmation necessary to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations. .

6.2 Seller's Representations, Warranties and Covenants

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

- (a) Seller owns or has the exclusive right to the Product to be sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC 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 Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or a Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and that the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;

- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period, provided that in the event that the Confirmation Effective Date occurs later than fifteen (15) Business Days before the initial Compliance Showing, then Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan for the initial Showing Month, at least one (1) Business Day before the relevant deadline for such Compliance Showing.
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, 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.

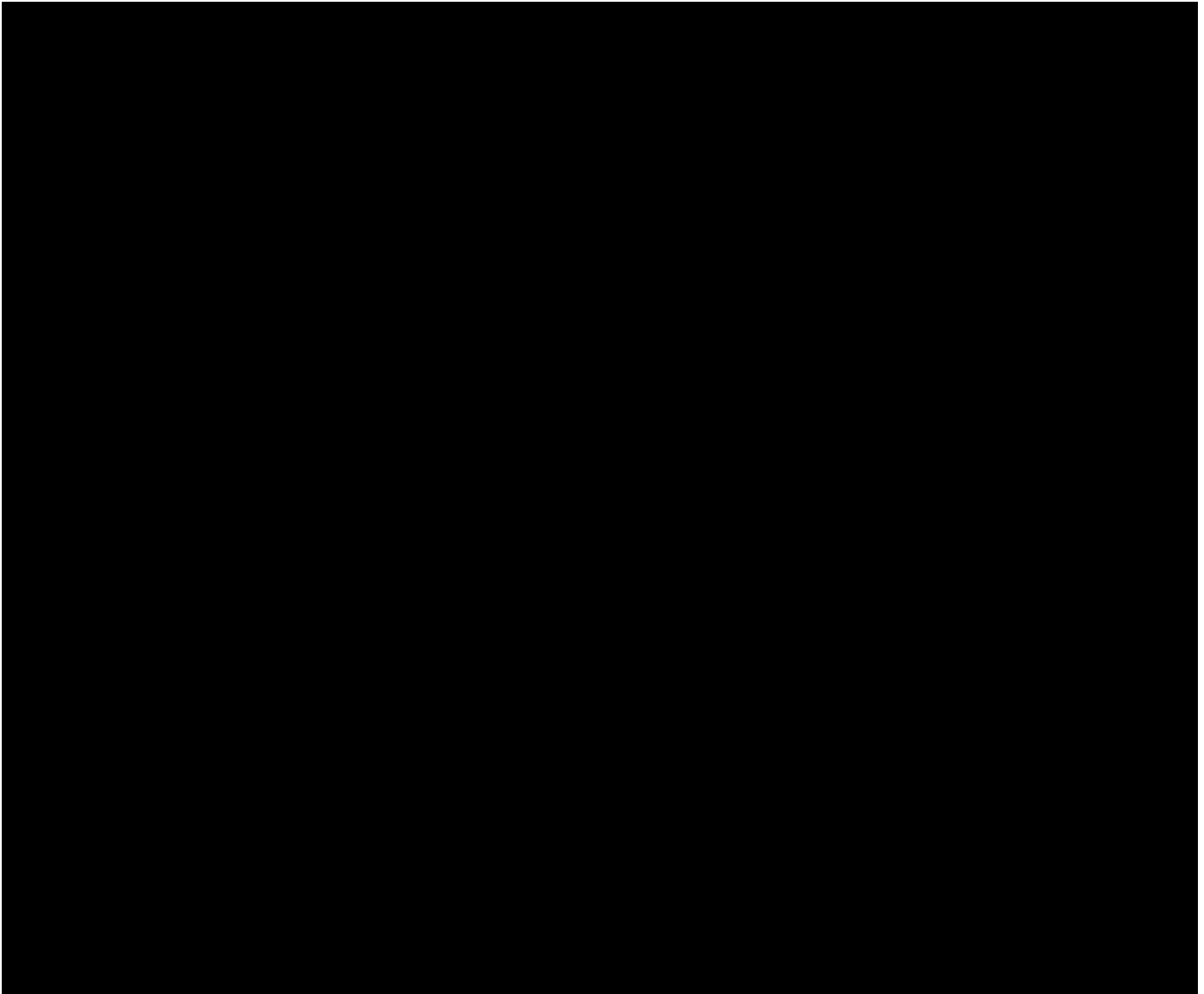
7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Seller may disclose this Agreement to the CPUC, CAISO, Seller's Procurement Review Group and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction, other than the Contract Price.

8. Market Based Rate Authority

Seller shall, upon the request of Buyer, submit a letter of concurrence in the form attached hereto as Appendix D indicating that this Transaction does not intend to transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42, as in effect on the date of this Confirmation.

9. Collateral Requirements



10. Notices

Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “Notify”), the Party with such right or obligation shall provide a written communication in the manner specified below; provided, however, that Notices of Outages regarding the Units’ operations are to be provided as required pursuant to Sections 3.3 and 3.8. Invoices may be sent by e-mail. A Notice sent by e-mail, which must be as an attached PDF, will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m. Pacific prevailing time, on the next Business Day) and a Notice by overnight mail or courier shall be deemed to have been received two Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior verbal communication, in which case any such Notice shall be deemed received on the day sent. Appendix B contains the names and addresses to be used for Notices. Either Party may periodically change any address, phone number, e-mail, website, or contact, including such information

in Appendix B, to which Notice is to be given it by providing Notice of such change to the other Party.

11. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary in this Confirmation, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the Master Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showings due to Seller’s Event of Default and Buyer has not purchased Replacement Capacity, then Buyer may, in good faith, estimate the amount of those penalties or fines on a \$/kW-month basis, provided these do not duplicate Losses for that portion of the Contract Quantity not so replaced, subtracting the Contract Price (in \$/kW-month) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

12. No Recourse Against Buyer’s Member Agencies

The Parties acknowledge and agree that Buyer is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by Buyer in connection with the Agreement are undertaken solely by Buyer and are not debts, liabilities, or obligations of its member agencies. Seller waives any recourse against Buyer’s member agencies.

13. Modifications from Master Agreement

13.1 With respect to this transaction, the Parties agree that Section 10.13 of the Master Agreement would not apply.

13.2 With respect to this transaction, the Parties agree that Section 8.2 (b) of the Master Agreement would not apply.

Signature Page

BUYER

[Peninsula Clean Energy Authority]

SELLER

[Pacific Gas and Electric Company]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A (RA CONFIRMATION)

Unit Information [Sample data included]

Contract Log Number: [33B232P01]

Name	Burney Forest Power	Burney Biomass	Wadham Energy LP	WHEELABRATOR SHASTA UNITS 1-3 AGGREGATE
Location	Shasta County, CA	Shasta Co	Colusa Co., CA	Anderson, CA
CAISO Resource ID	BURNYF_2_UNIT 1	SPBURN_2_UNIT 1	WADHAM_6_UNIT	WSENGY_1_UNIT 1
Unit SCID	PCG2	PCG2	PCG2	PCG2
Resource Type	Biomass	Biomass	Biomass	Biomass
Path 26 (North or South)	North	North	North	North
Flexible RA Quantity (MW)				

Name	Topaz Solar Farms	King City Energy Center, Unit #1	Wolfskill Energy Center, Unit #1	TEXACO EXPLORATION & PROD (SE KERN RIVER
Location	San Luis Obispo County	King City, CA	Suisun, CA.	Kern County
CAISO Resource ID	TOPAZ_2_SOLAR	KNGCTY_6_UNITA1	WOLFSK_1_UNITA1	VEDDER_1_SEKERN
Unit SCID	PCG2	PCG2	PCG2	PCG2
Resource Type	Solar	Fossil	Fossil	Fossil

Path 26 (North or South)	North	North	North	North
Flexible RA Quantity (MW)				

Name	Stockton Biomass	DYNAMIS COGEN	Five Points Solar Station	GREENLEAF #1 COGEN AGGREGATE
Location	Stockton	Sanger CA	Five Points, CA	Yuba City, CA
CAISO Resource ID	COGNAT_1_UNIT	SGREGY_6_SANGER	SCHNDR_1_FIVPTS	GRNLF1_1_UNITS
Unit SCID	PCG2	AQUN	PCG2	PCG2
Resource Type	Biomass	Cogeneration	Solar	Cogeneration
Path 26 (North or South)	North	North	North	North
Flexible RA Quantity (MW)				

Name	Henrietta Solar Project	MT.POSO COGENERATION CO.	North Star Solar 1	Old River One
Location	Kings County	Bakersfield, CA	Mendota, CA	Kern County
CAISO Resource ID	HENRTS_1_SOLAR	MTNPOS_1_UNIT	MNDOTA_1_SOLAR1	OLDRV1_6_SOLAR
Unit SCID	PCG2	PCG2	PCG2	PCG2
Resource Type	Solar	Biomass	Solar	Solar
Path 26 (North or South)	North	North	North	North
Flexible RA Quantity (MW)				

Name	Kingsburg Cogen	Shafter Solar	WOODLAND BIOMASS	Woodmere Solar Farm
Location	Kingsburg, CA	Shafter, CA	Woodland, CA	Edison, CA
CAISO Resource ID	KINGCO_1_KINGBR	7STDRD_1_SOLAR1	BIOMAS_1_UNIT 1	LAMONT_1_SOLAR3
Unit SCID	PCG2	PCG2	PCG2	PCG2
Resource Type	Cogeneration	Solar	Biomass	Solar
Path 26 (North or South)	North	North	North	North

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Flexible RA Quantity (MW)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Name	YUBA CITY COGEN	Tracy Combined Cycle Power Plant	MIDDLE FORK AND RALSTON PSP
Location	Yuba City, CA	Tracy, CA	Foresthill, CA
CAISO Resource ID	YUBACT_1_SUNSWT	SCHLTE_1_PL1X3	MDFKRL_2_PROJCT
Unit SCID	PCG2	PCG2	PCWA
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Resource Type	Cogeneration	Thermal	Hydro
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Path 26 (North or South)	North	North	North
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Flexible RA Quantity (MW)	[REDACTED]	[REDACTED]	[REDACTED]

Note: To the extent a term is used in this Appendix A but not otherwise defined in this Confirmation, such term shall have the meaning set forth in the Tariff.

APPENDIX B

NOTICES

Name: Peninsula Clean Energy Authority, , a
[include place of formation and business type]
("Buyer")

All Notices:

Delivery Address:

Street: 455 County Center, 4th Floor

City: Redwood City, CA Zip: 94063

Mail Address: (if different from above)

Attn: George Wiltsee

Phone: 626-890-8346

Email: gwiltsee@peninsulacleanenergy.com

Invoices and Payments:

Attn: Anne Bartoletti

Phone: 650-350-9514

Email: abartoletti@peninsulacleanenergy.com;

jpepper@peninsulacleanenergy.com

Scheduling:

Attn: George Wiltsee

Phone: 626-890-8346

Email: gwiltsee@peninsulacleanenergy.com

Wire Transfer:

BNK: MUFG Union Bank



Credit and Collections:

Attn: Janis Pepper

Phone: 415-309-9206

Email: jpepper@peninsulacleanenergy.com

Contract Management

Attn: George Wiltsee

Phone: 626-890-8346

Email: gwiltsee@peninsulacleanenergy.com

**With additional Notices of an Event of Default to
Contract Manager:**

Attn:

Phone:

Facsimile:

Name: Pacific Gas and Electric Company, a California
corporation

("Seller" or "PG&E")

All Notices:

Delivery Address:

77 Beale Street, Mail Code N12E

San Francisco, CA 94105-1702

Mail Address:

P.O. Box 770000, Mail Code N12E

San Francisco, CA 94177

Attn: Candice Chan (CWW9@pge.com)

Director, Contract Mgmt & Settlements

Phone: (415) 973-7780

Facsimile: (415) 972-5507

Invoices and Payments:

Attn: [Tom](mailto:Tom.Girlich@pge.com) Girlich (TAGG@pge.com)

Manager, ISO/Short Term Settlements and Reporting

Phone: (415) 973-9381

Facsimile: (415) 973-9505

Outages:

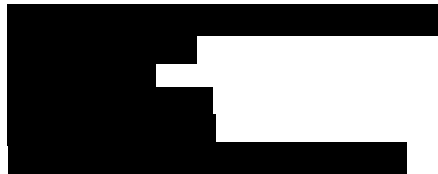
Attn: Matt Baker, Outage Coordinator

(ESMOutageCoordinator@pge.com;

RATransactionNotificationList@pge.com)

Phone: (415) 973-1721

Wire Transfer:



Credit and Collections:

Attn:

Credit Risk Management

Phone: (415) 973-5188

Facsimile: (415) 973-7301

Contract Management

Attn: Elizabeth Motley (EMMG@pge.com)

Contract Management

Phone: (415) 973-2368

Facsimile: (415) 972-5507

**With additional Notices of an Event of Default to
Contract Manager:**

Attn: [Ted](mailto:Ted.Yura@pge.com) Yura (THY@pge.com)

Senior Manager, Contract Management

Phone: (415) 973-8660

Facsimile: (415) 972-5507

APPENDIX C (RA CONFIRMATION)

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

Beneficiary: [Insert name and address of
Beneficiary]

Applicant: [Insert name and address
of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** ("Applicant"), we hereby issue in favor of **[Insert name of Beneficiary]** (the "Beneficiary") our irrevocable standby letter of credit No. **[Insert number of letter of credit]** ("Letter of Credit"), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** ("Letter of Credit Amount"). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary's signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. "The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the "Draft Amount") is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary's counterparty under the RA Confirmation]** ("Counterparty") under Confirmation for Resource Adequacy Capacity Product for CAISO Resources dated **[insert**

date of the Confirmation] between **[Insert name of Beneficiary]** and Counterparty, which entitles **[Insert name of Beneficiary]** to draw the Draft Amount under Letter of Credit No. **[Insert number];**” or

B. “Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary’s counterparty under the RA Confirmation]** has not provided replacement security acceptable to **[Insert name of Beneficiary].**”

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable, and;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount.
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank’s address for drawings]**.

All demands for payment shall be made either by presentation of originals or copies of documents, or by facsimile transmission of documents to **[Insert fax number]**, Attention: **[Insert name of bank’s receiving department]**. You may contact us at **[Insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a facsimile presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the “UCP 600”); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ **[print or type name]**

Title: _____

SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF **[INSERT NAME OF BENEFICIARY]**
THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER **[INSERT NAME OF ISSUING BANK]** LETTER OF CREDIT NO. **[INSERT NUMBER]**.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY:

NAME AND TITLE

APPENDIX D (RA CONFIRMATION)
FORM OF LETTER OF CONCURRENCE

[Date]

[Name]

[Position]

[Company Name]

[Address]

Re: Letter of Concurrence Regarding Control of [Name] Unit

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company ("PG&E") and [Company Name] with respect to [Unit Name] (the "Facility") for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission's ("Commission") Order No. 697.¹ Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.² The Commission further requires that "a seller making such an affirmative statement seek a 'letter of concurrence' from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing."³

PG&E and [Company Name] have executed a confirmation agreement for resource adequacy capacity (the "Agreement") with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] does not intend to transfer "ownership or control of generation capacity" from [Company Name] to PG&E as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

[Author]

[Position]

Pacific Gas and Electric Company

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

² Order No. 697 at P 186.

³ Order No. 697 at P 187.

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____
[Name]
[Company Position]
[Company Name]

PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEI MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Please Note: PG&E is Party B

Paragraph 10. Elections and Variables

I. Collateral Threshold.

A. Party A Collateral Threshold.

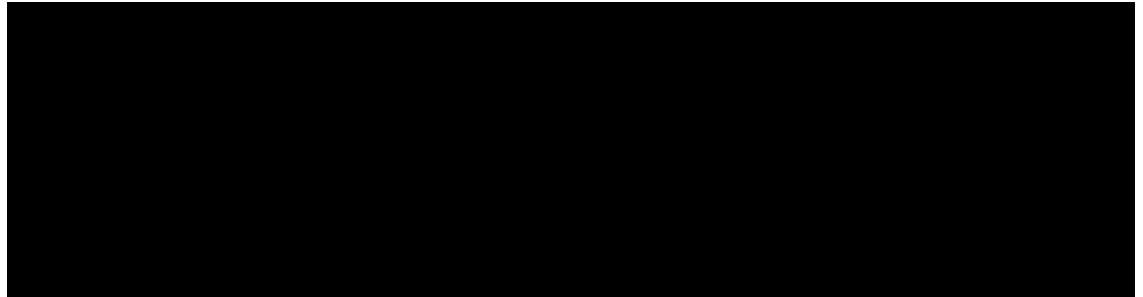
■ [REDACTED] (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

■ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

[REDACTED]

■ (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, and if [Party A’s][Party A’s Guarantor’s] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the

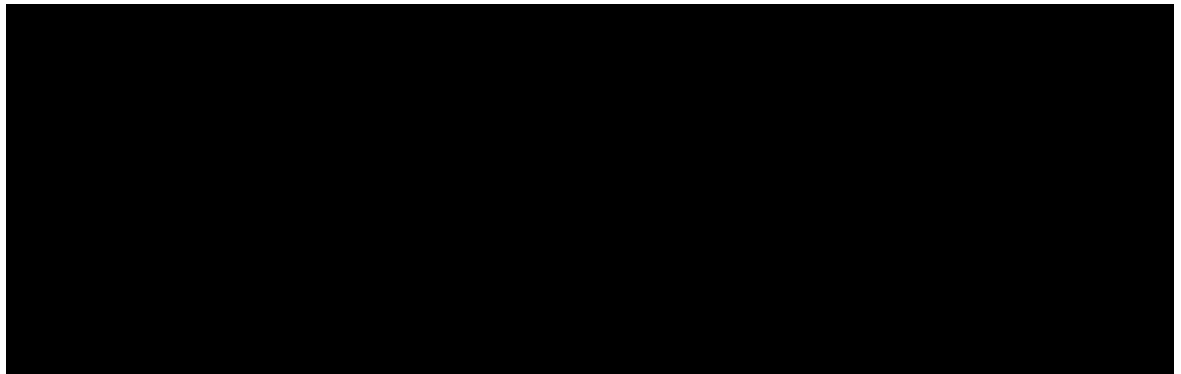
date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.



- The amount of the Guaranty Agreement dated [REDACTED] as amended from time to time but in no event shall Party A's Collateral Threshold be greater than [REDACTED].
- Other – see attached threshold terms

B. Party B Collateral Threshold.

- [REDACTED] (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party B Collateral Threshold” opposite the Credit Rating for Party B on the relevant date of determination, or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:



- (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B on the relevant date of determination, and if Party B's Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination Party B does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.



- The amount of the Guaranty Agreement dated [REDACTED] as amended from time to time but in no event shall Party B's Collateral Threshold be greater than [REDACTED].
- Other – see attached threshold terms

II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:

		<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A)	Cash	[x]	[x]	100%
(B)	Letters of Credit	[x]	[x]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) thirty (30) or fewer Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C)	Other	[]	[]	_____ %

III. Independent Amount.

A. Party A Independent Amount.

- ☐ Party A shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to

Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

- ☐ Party A shall have an Independent Amount as specified in each confirmation governed by this Master Agreement. If the Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- ☐ Party A shall have a Partial Floating Independent Amount of \$ _____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

a) Party B Independent Amount.

- ☐ Party B shall have a Fixed Independent Amount of _____ the Notional Value of all outstanding transactions. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- ☐ Party B shall have a Full Floating Independent Amount of \$ _____. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- ☐ Party B shall have a Partial Floating Independent Amount of \$ _____. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall

not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

IV. Minimum Transfer Amount.

- A. **Party A Minimum Transfer Amount:** \$ _100,000.00 _____
- B. **Party B Minimum Transfer Amount:** \$ _100,000.00 _____

V. Rounding Amount.

- A. **Party A Rounding Amount:** \$ _100,000.00 _____
- B. **Party B Rounding Amount:** \$ _100,000.00 _____

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

- ☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in accordance with a Deposit Account Agreement ("DAA"), substantially in the form as attached hereto as Exhibit A, and in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. The Bank holding the Cash pursuant to the DAA shall at all times meet the requirements for a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex.
- ☒ Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), Party A has a Credit Rating from S&P or Moody's and the lowest Credit Rating for Party A is at least BBB- from S&P or Baa3 from Moody's; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- ☒ Federal Funds Effective Rate - the rate per annum equal to the "Monthly" Federal Funds Rate (as reset on a monthly basis based on the latest Month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.
- ☐ Other - _____

B. Party B Eligibility to Hold Cash.

- ☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in accordance with a Deposit Account Agreement ("DAA"), substantially in the form as attached hereto as Exhibit A and in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. The Bank holding the Cash pursuant to the DAA shall at all times meet the requirements for a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex.

- ☒ Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2) Party B has a Credit Rating from S&P or Moody's and the lowest Credit Rating for Party B is at least BBB- from S&P or Baa3 from Moody's; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- ☒ Federal Funds Effective Rate - the rate per annum equal to the "Monthly" Federal Funds Rate (as reset on a monthly basis based on the latest Month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.
- ☐ Other - _____

VII. Notification Time.

- ☒ Other -

All demands, specifications and notices to Party A under this Collateral Annex will be made to the person specified under "Credit and Collections" for Party A on the Cover Sheet.

All demands, specifications and notices to Party B under this Annex will be made to the person specified under "Credit and Collections" for Party B on the Cover Sheet.

VIII. General.

If, as part of its obligations under the Agreement, including one or more Confirmations, a Party posts Performance Assurance, which Performance Assurance must be in a form and amount determined in accordance with and as set forth in Paragraph 10 of the Agreement, each Transaction to which the Parties agree shall be supported by this Performance Assurance, so that the counterparty may draw on the Performance Assurance to pay amounts owed and for which the payment period has run under any Confirmation. Further, at the non-defaulting Party's election, a default under any Confirmation shall be a default under all Confirmations between the Parties, so that all Transactions under the Agreement may be subject to termination by the non-defaulting Party.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

IX. Other Changes.

A. No Waiver.

Notwithstanding any other provision in this Agreement to the contrary, no full or partial failure to exercise and no delay in exercising, on the part of Party A (or its Custodian) or Party B (or its Custodian), any right, remedy, power or privilege permitted with respect to transfer timing (or any other deadline) pursuant to Paragraph 4, as modified by the preceding paragraph (or any other applicable provision), regardless of the frequency or constancy of such failure or delay, shall operate in any way as a waiver thereof by such party.

B. Paragraph 1. Definitions.

- a) "Credit Rating" is deleted in its entirety and replaced with the following language:

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

- b) **“Credit Rating Event”** – Replace the words “Paragraph 6(a)(iii)” with “Paragraph 6(a)(ii).”
- c) **“Downgraded Party”** – Replace the words “Paragraph 6(a)(i)” with “Paragraph 6(a)(ii).”
- d) **“Guaranty”** means a guaranty issued in a form substantially as contained in Schedule 2 attached hereto and by an issuer acceptable to the Secured Party.
- e) **“Letter of Credit”** is deleted in its entirety and replaced with the following definition:
“Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Schedule 1 attached hereto; provided that, the issuer must be a Qualified Institution.
- f) **“Letter of Credit Default”** –
 - (i) In line 3, after the words: “Rating of at least (i)”, delete all language from that line and replace it with: “A-, with a stable outlook designation from S&P and A3, with a stable outlook designation from Moody’s, if such issuer is rated by both S&P and Moody’s.”; and (ii) Add the words, “with a stable outlook designation” after the words “‘A-’ by S&P” and “‘A3’ by Moody’s,” in line 4.
- g) **“Performance Assurance”** – Replace the words “Paragraph 6(a)(iv)” with “Paragraph 6(a)(iii).”
- h) **“Qualified Institution”** is deleted in its entirety and replaced with the following definition:
“Qualified Institution” means either a U.S. commercial bank, or a U.S. branch of a foreign bank acceptable to the Beneficiary Party in its sole discretion; and in each case such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.
- i) **“Secured Party”** – Replace the words “Paragraph 3(b)” with “Paragraph 3(a).”

C. Paragraph 3. Calculations of Collateral Requirement.

In Paragraph 3(b)(2), is amended by replacing the comma after “Secured Party” with “and” and deleting the phrase, “,and any Interest Amount that has not yet been Transferred to the Pledging Party”.

D. Schedule 1 to the Collateral Annex is deleted in its entirety and replaced as noted herein.

IN WITNESS WHEREOF, the parties have executed this Collateral Annex by their duly authorized officers as of the date hereof.

PENINSULA CLEAN ENERGY AUTHORITY

PACIFIC GAS AND ELECTRIC COMPANY

By:
Name:
Title:

By:
Name:
Title:

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

Beneficiary:

Applicant: [Insert name of Applicant and address]

Attention:

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** ("Applicant"), we hereby issue in favor of **[Insert name of Beneficiary]** (the "Beneficiary") our irrevocable standby letter of credit No. **[Insert number of letter of credit]** ("Letter of Credit"), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** ("Letter of Credit Amount"). This Letter of Credit is available with **[Insert name of bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately. This Letter of Credit will expire at our close of business on **[Insert expiry date]** (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary's signed and dated sight draft in the form of Annex A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and
2. One of the following dated statements signed by an authorized representative or officer of Beneficiary:
 - A. "[**Insert name of Beneficiary**] (the "Beneficiary") is entitled to draw the amount of **[Spell out the amount followed by (US\$xxxxxxx.xx)]**, under Letter of Credit No. **[Insert number]** owed by **[Insert name of Beneficiary's counterparty under the EEI agreement]** or its assignee to Beneficiary under or in connection with the **[Insert identification of the EEI agreement]** Agreement between the Beneficiary and **[Insert name of Beneficiary's counterparty under the EEI agreement]** or its assignee"
 - B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the EEI agreement]** or its assignee has not provided replacement Performance Assurance acceptable to **[Insert name of Beneficiary] (the Beneficiary)**, and the amount of **[Spell out the amount followed by (US\$xxxxxxx.xx)]** of the accompanying sight draft does not exceed the amount of Performance Assurance that **[Insert name of Beneficiary's counterparty under the EEI agreement]** or its assignee is required to transfer to the Beneficiary under the terms of the **[Insert identification of the EEI agreement]** between **[Insert name of Beneficiary's counterparty under the EEI agreement]** and the Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and

4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount.

We engage with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored upon presentation, if presented on or before the Expiry Date (or after the Expiry Date as provided below regarding events of Force Majeure), at **[Insert bank's address for drawings]**.

All demands for payment shall be made by presentation of copies or original documents, or by facsimile transmission of documents to **[Insert fax number or numbers]**, Attention: **[Insert name of bank's receiving department]**. If a demand is made by facsimile transmission, the originals or copies of documents must follow by overnight mail, and you may contact us at **[Insert phone number(s)]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: **[print or type name]** _____

Title: _____

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF [insert name of Beneficiary] THE AMOUNT OF
U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

EXHIBIT__ to contract No.

GUARANTY AGREEMENT

_____, a [corporation ?] organized under the laws of _____ (referred to herein as "Counterparty") and PACIFIC GAS AND ELECTRIC COMPANY (referred to herein as "PG&E") are entering into a Master Power Purchase and Sale Agreement and individual transactions thereunder or related thereto (all collectively and individually referred to herein as "the Contract"). The Counterparty is a [subsidiary??] of _____ organized under the laws of _____, with its principal place of business at _____ (referred to herein as "Guarantor"). To induce PG&E to enter into the Contract with the Counterparty, and for valuable consideration, the Guarantor is entering into this Guaranty Agreement (referred to herein also as the "Guaranty") and hereby agrees as follows:

(a) **Guaranty and Obligations.** The Guarantor, irrevocably and unconditionally guarantees to PG&E, its successors, endorsees and assigns, the due and punctual performance and payment in full of all obligations and amounts owed by the Counterparty to PG&E under the Contract, whether due or to become due, secured or unsecured, absolute or contingent (all referred to herein as "Obligations"). The liability of the Guarantor hereunder is a continuing guaranty of payment and performance when any Obligation is owing or when the Counterparty is in default or breach under the Contract, without regard to whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable. In case of the failure of the Counterparty to pay or perform the Obligations punctually, the Guarantor hereby agrees, upon written demand by PG&E, to perform the Obligations or pay or cause to be paid any such amounts punctually when and as the same shall become due and payable. The Guarantor hereby also agrees to reimburse PG&E for any reasonable attorneys' fees and all other costs and expenses incurred by PG&E in enforcing this Guaranty. If at any time during the term of this Guaranty PG&E determines that the creditworthiness of the Guarantor has materially changed, PG&E may declare the Guarantor to be in default under this Guaranty.

(b) **Guaranty of Payment.** The Guarantor hereby agrees that its obligations under this Guaranty constitute a guaranty of payment when due and not of collection.

(c) **Nature of Guaranty.** The Guarantor hereby agrees that its obligations under this Guaranty shall be irrevocable and unconditional, irrespective of the validity, or enforceability of the Contract against the Counterparty (other than as a result of the unenforceability thereof against PG&E), the absence of any action or measure to enforce the Counterparty's Obligations under the Contract, any waiver or consent of PG&E with respect to any provisions thereof, the entry by the Counterparty and PG&E into amendments to the Contract for additional services under the Contract or otherwise, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor (excluding the defense of payment). The Guarantor agrees that the obligations of the Guarantor under this Guaranty will upon the execution of any such amendment by the Counterparty and PG&E extend to all such amendments without the taking of further action by the Guarantor, the Counterparty, or PG&E. The Guarantor agrees that the Counterparty and PG&E may, without prior written consent of the Guarantor, mutually agree to modify the Obligations or the Contract or any agreement between the Counterparty and PG&E, without in any way impairing or affecting this Guaranty.

(d) **Termination.** This Guaranty may not be terminated by the Guarantor and shall remain in full force and effect until all of the Obligations of the Counterparty under or arising out of the Contract have been fully performed.

(e) **Rescinded Payment; Independent Liability.** The Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time, payment, or any part thereof, of any Obligation or interest thereon is rescinded or must otherwise be restored or returned for any reason whatsoever, and the Guarantor shall remain liable hereunder in respect of such payments or obligations or interest thereon as if such payment had not been made. PG&E shall not be obligated to file

any claim relating to the Obligations owing to it in the event that the Counterparty becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of PG&E to file shall not affect the Guarantor's obligations hereunder. The Guarantor's obligations hereunder are independent of the Obligations of the Counterparty. The liability of the Guarantor hereunder is independent of any security for or other guaranty of payment received by PG&E in connection with the Contract, is not affected or impaired by (a) any voluntary or involuntary liquidation, dissolution, receivership, attachment, injunction, restraint, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, the Counterparty or any of its assets, including but not limited to any rejection or other discharge of the Counterparty's obligations imposed or asserted by any Court, trustee or custodian or any similar official or imposed by any law, statute or regulation in such event, or (b) the extension of time for the payment of any sum, in whole or in part, owing or payable to PG&E under the Contract or this Guaranty or the extension of the time for the performance of any other obligation under or arising out of or on account of the Contract or this Guaranty, or (c) any failure, omission or delay on the part of PG&E to enforce, assert or exercise any right, power or remedy conferred on PG&E in the Contract or this Guaranty or any action on PG&E's part granting indulgence or extension in any form, or (d) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or (e) any payment to PG&E by the Counterparty that PG&E subsequently returns to the Counterparty pursuant to court order in any bankruptcy or other debtor-relief proceeding, or (f) any amendment, modification or other alteration of the Contract, or (g) any indemnity agreement the Counterparty may have from any party, or (h) any insurance that may be available to cover any loss. The Guarantor waives any right to the deferral or modification of the Guarantor's obligations hereunder by virtue of any such debtor-relief proceeding involving the Counterparty.

(f) **Guarantor Waivers.** The Guarantor hereby waives (i) promptness, diligence, presentment, demand of payment, protest, order and, except as set forth in paragraph (a) hereof, notice of any kind in connection with the Contract and this Guaranty; (ii) any requirement that PG&E exhaust any right to take any action against the Counterparty or any other person prior to or contemporaneously with proceeding to exercise any right against the Guarantor under this Guaranty; (iii) to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under or the enforcement of this Guaranty; (iv) any right to require PG&E to (A) proceed against or exhaust any insurance or security held from the Counterparty or any other party, or (B) pursue any other remedy available to PG&E; (v) any defense based on or arising out of any defense of the Counterparty other than payment in full of the amount(s) owed, including without limitation any defense based on or arising out of the disability of the Counterparty, the unenforceability of the indebtedness from any cause, or the cessation from any cause of the liability of the Counterparty, other than payment in full of the amount(s) owed. The Guarantor agrees that PG&E may, at its election, foreclose on any security held by PG&E, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to PG&E without affecting or impairing in any way the liability of the Guarantor under this Guaranty, except to the extent the amount(s) owed to PG&E by the Counterparty have been paid. The Guarantor further agrees that until all amounts owed by the Counterparty to PG&E are paid in full, even though such amounts may in total exceed the Guarantor's liability hereunder, the Guarantor shall have no right of subrogation, waives any right to enforce any remedy that PG&E has or may have against the Counterparty, and waives any benefit of and any right to participation in any security from the Counterparty now or later held by the Guarantor. The Guarantor assumes all responsibility for keeping itself informed of the Counterparty's financial condition and all other factors affecting the risks and liability assumed by the Guarantor hereunder, and PG&E shall have no duty to advise the Guarantor of information known to it regarding such risks.

(g) **No Assignment of Guaranty Obligations Without Consent.** The Guarantor may not assign or otherwise transfer its obligations under this Guaranty to any other party without the prior written consent of PG&E, the exercise of which shall be in PG&E's sole discretion.

(h) **Governing Law.** This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine.

(i) **Jurisdiction.** With respect to any suit, action or proceedings (collectively "Proceedings") relating to this Guaranty Agreement, Guarantor irrevocably: (i) submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City; and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, and any claim of inconvenient forum, and any objection to the jurisdiction of any such court.

(j) **Severability.** In the event that any provision of this Guaranty conflicts with the law or if any such provision is held to be invalid, illegal or unenforceable, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law or, if that is not possible, the provision shall be deleted, and the remainder of this Guaranty shall remain in full force and effect.

(k) **Representations and Warranties.** The Guarantor, through its undersigned officer, represents and warrants to PG&E that (i) the Counterparty is a subsidiary or other affiliate of the Guarantor, (ii) the Guarantor is a duly organized and validly existing corporation or other legal entity in good standing under the laws of the jurisdiction of its incorporation or formation, (iii) the Guarantor has the corporate power and legal authority to execute, deliver and perform the terms and provisions of this Guaranty and has taken all necessary corporate and other action to authorize the execution, delivery and performance by it of this Guaranty, (iv) the Guarantor has duly executed and delivered this Guaranty, and (v) this Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms.

(l) **No Amendment; No PG&E Waiver.** This Guaranty shall not be amended without the prior written consent of PG&E. Any amendment to this Guaranty made in violation of this provision shall be null and void. No right, power, remedy or privilege of PG&E under this Guaranty shall be deemed to have been waived by any act or conduct on the part of PG&E, or by any neglect to exercise any right, power, remedy or privilege, or by any delay in doing so, and every right, power, remedy or privilege of PG&E hereunder shall continue in full force and effect until specifically waived or released in a written document executed by PG&E. Any such written waiver or release of a right, power, remedy or privilege on any one occasion shall not be construed as a bar to any right, power, remedy or privilege which PG&E would otherwise have on any future occasion. No single or partial exercise of any right, power, remedy or privilege by PG&E shall preclude any other or further exercise by PG&E of any other right, power, remedy or privilege. The rights and remedies provided in this Guaranty are cumulative and may be exercise singly or concurrently, and are not exclusive of any rights or remedies provided by law.

(m) **Notices.** All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be delivered, mailed, or sent by facsimile transmission to the address and to the individuals indicated below. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

If to Guarantor:

If to PG&E: Pacific Gas and Electric Company

Pacific Gas and Electric Company
77 Beale Street, MC B28L
San Francisco, CA 94105
Attention: Credit Risk Management
Fax: (415) 973.7301 _
Email: PGERiskCredit@exchange.pge.com

Any notice provided hereunder shall be effective upon actual receipt, if received during the recipient's normal business hour; or it shall be effective at the beginning of the recipient's next business day after receipt, if received after the recipient's normal business hours. If notice is provided by facsimile, the sender shall be responsible for obtaining facsimile receipt confirmation.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name by its duly authorized officer as of the date set forth below.

By: _____

Name: _____

Title: _____

Date_____



**EDISON ELECTRIC
INSTITUTE**

Collateral Annex

Version 1.0
2/21/02

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COLLATERAL ANNEX

This Collateral Annex, together with the Paragraph 10 Elections, (the "Collateral Annex") supplements, forms a part of, and is subject to, the EEI Master Power Purchase and Sale Agreement, dated _____, including the Cover Sheet and any other annexes thereto between _____ ("Party A") and _____ ("Party B"). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.

The obligations of each Party under the Agreement shall be secured in accordance with the provisions of this Collateral Annex, which, except as provided below, sets forth the exclusive conditions under which a Party will be required to Transfer Performance Assurance in the form of Cash, a Letter of Credit or other property as agreed to by the Parties, as well as the exclusive conditions under which a Party will release such Performance Assurance. This Collateral Annex supercedes and replaces in its entirety Sections 8.1(c), 8.2(c) and 8.3 of the Agreement and the defined terms used therein to the extent that such terms are otherwise defined and used in this Collateral Annex. In addition, to the extent that the Parties have specified on the Cover Sheet that Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement are applicable, then the definition of Performance Assurance as used in this Collateral Annex shall apply and Paragraphs 2, 6, 7 and 9 of this Collateral Annex shall apply to any such Performance Assurance posted under such provisions, it being understood that nothing contained in this Collateral Annex shall change any election that the Parties have specified on the Cover Sheet with respect to Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement, which provisions require a Party to Transfer Performance Assurance under certain circumstances not contemplated by this Collateral Annex.

Paragraph 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below:

"Calculation Date" means any Local Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraphs 3, 4, 5 or 8 of this Collateral Annex.

"Cash" means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

"Collateral Account" shall have the meaning attributed to it in Paragraph 6(a)(ii)(B).

"Paragraph 10 Cover Sheet" means the Cover Sheet attached to this Collateral Annex setting forth certain elections governing this Collateral Annex.

"Collateral Requirement" shall have the meaning attributed to it in Paragraph 3(b).

"Collateral Threshold" means, with respect to a Party, the collateral threshold, if any, set forth in the Paragraph 10 Cover Sheet for a Party.

"Collateral Value" means (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the Valuation Percentage multiplied by the stated amount then available under the Letter of Credit to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the Valuation Percentage multiplied by the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, a Party pursuant to this Collateral Annex as determined by such Party in a commercially reasonable manner.

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

"Credit Rating Event" shall have the meaning attributed to it in Paragraph 6(a)(iii).

"Current Mark-to-Market Value" of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction.

"Custodian" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Downgraded Party" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Eligible Collateral" means, with respect to a Party, the Performance Assurance specified for such Party on the Paragraph 10 Cover Sheet.

"Exposure" of one Party ("Party X") to the other Party ("Party Y") for each Transaction means (without duplication) as of any Calculation Date the sum of the following:

- (a) the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party X and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or

could be invoiced) to Party Y and that remain unpaid as of such Calculation Date; plus

(b) the Current Mark-to-Market Value of such Transaction to Party X.

"Exposure Amount" shall have the meaning set forth in Paragraph 3(a).

"Independent Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party (which amount, if designated, shall either be a Fixed Independent Amount, a Full Floating Independent Amount or a Partial Floating Independent Amount, in each case, as designated on the Paragraph 10 Cover Sheet), or if no amount is specified, zero, or with respect to either Party, an additional or reduced amount agreed to as such for that Party in respect of a Transaction.

"Interest Amount" means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day; multiplied by (b) the Interest Rate for that day, divided by (c) 360.

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Local Business Day on which Cash was Transferred to such Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" means, in respect of a Party holding Cash, the rate specified for such Party in the Paragraph 10 Cover Sheet.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, substantially in the form set forth in Schedule 1 attached hereto, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter

of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex.

"Local Business Day" means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient.

"Minimum Transfer Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Net Exposure" shall have the meaning attributed to it in Paragraph 3(a).

"Notification Time" means 11:00, New York time, on any Calculation Date or any different time specified in the Paragraph 10 Cover Sheet.

"Obligations" shall have the meaning attributed to it in Paragraph 2.

"Performance Assurance" means all Eligible Collateral, all other property acceptable to the Party to which it is Transferred, and all proceeds thereof, that has been Transferred to or received by a Party hereunder and not subsequently Transferred to the other Party pursuant to Paragraph 5 or otherwise received by the other Party. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(a)(iv) and any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash, until all or any portion of such Cash is applied against Obligations owing to such Party pursuant to the provisions of this Collateral Annex. Any guaranty agreement executed by a Guarantor of a Party shall not constitute Performance Assurance hereunder.

"Pledging Party" shall have the meaning attributed to it in Paragraph 3(b).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party determining its Exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Rounding Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Secured Party" shall have the meaning attributed to it in Paragraph 3(b).

"Transfer" means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

- (a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient;
- (b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient; and
- (c) in the case of any other type of Performance Assurance, delivery thereof as specified by the recipient.

"Valuation Percentage" means, with respect to any Performance Assurance designated as Eligible Collateral on the Paragraph 10 Cover Sheet, the Valuation Percentage specified for such Performance Assurance on the Paragraph 10 Cover Sheet.

Paragraph 2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the "Obligations"), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, the other Party and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

Paragraph 3. Calculations of Collateral Requirement.

(a) On any Calculation Date, the "Exposure Amount" for each Party shall be calculated for all Transactions for which there are any Obligations remaining unpaid or unperformed, by calculating each Party's Exposure to the other Party in respect of each such Transaction and determining the net aggregate sum of all Exposures for all Transactions for each Party. The Party having the greater Exposure Amount at any time (the "Secured Party") shall be deemed to have a "Net Exposure" to the other Party equal to the Secured Party's Exposure Amount.

(b) The "Collateral Requirement" for a Party (the "Pledging Party") means the Secured Party's Net Exposure minus the sum of:

- (1) the Pledging Party's Collateral Threshold; plus
- (2) the amount of Cash previously Transferred to the Secured Party, the amount of Cash held by the Secured Party as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to the Pledging Party; plus
- (3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party; provided, however, that, the Collateral Requirement of a Party will be deemed to be zero (0) whenever the calculation of such Party's Collateral Requirement yields a number less than zero (0).

Paragraph 4. Delivery of Performance Assurance.

On any Calculation Date on which (a) no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, and (c) the Pledging Party's Collateral Requirement equals or exceeds its Minimum Transfer Amount, then the Secured Party may demand that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall, after receiving such notice from the Secured Party, Transfer, or cause to be Transferred to the Secured Party, Performance Assurance for the benefit of the Secured Party, having a Collateral Value at least equal to the Pledging Party's Collateral Requirement. The amount of Performance Assurance required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by the close of business on the next Local Business Day and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Paragraph 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be Transferred.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) On any Local Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Performance Assurance previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Performance Assurance, (i) the Pledging Party shall in fact have a Collateral Requirement of zero; (ii) no Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of

Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The amount of Performance Assurance required to be reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. The Pledging Party shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the Pledging Party. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Pledging Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, the Pledging Party may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon one (1) Local Business Day's written notice (provided such notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Local Business Days) to the Secured Party; provided, however, that if such substitute Performance Assurance is of a type not otherwise approved by this Collateral Annex, then the Secured Party must consent to such substitution. Upon the Transfer to the Secured Party and/or its Custodian of the substitute Performance Assurance, the Secured Party and/or its Custodian shall Transfer the relevant replaced Performance Assurance to the Pledging Party within two (2) Local Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to the Secured Party and/or its Custodian prior to the release of the Performance Assurance to be returned to the Pledging Party and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal the greater of the Pledging Party's Collateral Requirement or the Pledging Party's Minimum Transfer Amount. Each substitution of Performance Assurance shall constitute a representation and warranty by the Pledging Party that the substituted Performance Assurance shall be

subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by the Secured Party and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to a Party that is the Secured Party shall be subject to the following provisions.

(i) If such Party is entitled to hold Cash, then it will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a "Custodian") to hold Cash for it provided that the conditions for holding Cash that are set forth on the Paragraph 10 Cover Sheet for such Party are satisfied. If such Party is not entitled to hold Cash, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to such Party and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B). Upon notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. If the Secured Party or its Custodian fails to satisfy any conditions for holding Cash as set forth above or in the Paragraph 10 Cover Sheet or if the Secured Party is not entitled to hold Cash at any time, then the Secured Party will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(ii)(B), with the Party not eligible to hold Cash being considered the "Downgraded Party" (as defined below). Except as set forth in Paragraph 6(c), the Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to the Secured Party and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party; provided, however, that if a Party or its Custodian is not eligible to hold Cash pursuant to

Paragraph 6(a) (such Party shall be the "Downgraded Party" and the event that caused it or its Custodian to be ineligible to hold Cash shall be a "Credit Rating Event") then:

(A) the provisions of this Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business on the next Local Business Day following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution approved by the non-Downgraded Party (which approval shall not be unreasonably withheld), to a segregated, safekeeping or custody account (the "Collateral Account") within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for the Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Collateral Annex and for the security interest of the Downgraded Party and execute such account control agreements as are necessary or applicable to perfect the security interest of the Non-Downgraded Party therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of the non-Downgraded Party. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in accordance with the written instructions of the Pledging Party, subject to the approval of such instructions by the Downgraded Party (which approval shall not be unreasonably withheld), provided that the Qualified Institution shall not be required to so invest or reinvest or procure such investment or reinvestment if an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing. The Downgraded Party shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with the Pledging Party's instructions.

(iii) Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Local Business Day of the first month after the last month to which such invoice relates or (B) the third Local Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder

until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within one (1) Local Business Day after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (A), (B), or (C) above, the Pledging Party's Collateral Requirement would be greater than zero.

(ii) As one method of providing Performance Assurance, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Pledging Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for

any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

(c) Care of Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii) and beyond the exercise of reasonable care in the custody thereof, the Secured Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by the Secured Party in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence. Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of the Secured Party shall be deemed to be the holding and possession of such Performance Assurance by the Secured Party for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided in Paragraph 6(a)(ii), nothing in this Collateral Annex shall be construed as requiring the Secured Party to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, the Secured Party may exercise any one or more of the rights and remedies provided under the Agreement, in this Collateral Annex or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may, in its sole discretion, exercise any one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;

- (ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations;
- (iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or
- (iv) the right to liquidate any Performance Assurance held by or for the benefit of the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledging Party, including any right of equity or redemption by the Pledging Party (with the Secured Party having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations in such order as the Secured Party may elect.

(b) The Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).

(c) Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

(d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party, then:

- (1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including any Letter of Credit) and the Interest Amount, if any, to the Pledging Party;
- (2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (y) to the extent that the Performance Assurance or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against

the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and

(3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.

Paragraph 8. Disputed Calculations

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 4. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 5(a). In all such cases, the Parties thereafter shall promptly consult with each other in

order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) The Pledging Party will execute and deliver to the Secured Party (and to the extent permitted by applicable law, the Pledging Party hereby authorizes the Secured Party to execute and deliver, in the name of the Pledging Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex, including any action the Secured Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Pledging Party shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by the Secured Party and/or its Custodian under the Agreement and this Collateral Annex, the Pledging Party hereby represents and warrants that:

(i) the Pledging Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Performance Assurance, other than the security interests and liens created under the Agreement and this Collateral Annex;

(ii) upon the Transfer of Performance Assurance by the Pledging Party to the Secured Party and/or its Custodian, the Secured Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) it is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Collateral Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(d) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Collateral Annex or the execution, delivery, performance or enforcement of the Agreement and this Collateral Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Collateral Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

SCHEDULE 1 to Collateral Annex

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT

DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$_____), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by a representative of the beneficiary:

1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit"; or
2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit".

This Letter of Credit shall expire on _____.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.

With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: April 20, 2017

BOARD MEETING DATE: April 27, 2017

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy

SUBJECT: Authorize the Chief Executive Officer to execute a contract for Purchase and Installation of Office Furniture in an amount not to exceed \$250,000

RECOMMENDATION: Authorize the Chief Executive Officer to execute a contract for the purchase and Installation of office furniture in an amount not to exceed \$250,000.

BACKGROUND:

In 2016, Peninsula Clean Energy (PCE) was housed within San Mateo County's Office of Sustainability (OOS), using their existing office furniture, including desks, tables, chairs, filing cabinets and storage areas. PCE did not have to commit funds to purchase office furniture at the start of doing business. While in the OOS space, PCE started with 1 employee and grew to 6 employees, outgrowing the space that OOS had allowed PCE to use.

PCE's 6 employees moved to temporary office space at the beginning of February 2017, and at that location has been able to use surplus furniture that was being stored in that facility, including cubicle walls, desks, tables, chairs, filing cabinets, and credenzas. Again, PCE did not have to commit funds to purchase office furniture. PCE recently grew to 8 employees, and expects to grow to 10 employees within the next couple of months.

As PCE prepares for its permanent headquarters that will be located at 2075 Woodside Rd, the building architect and contractors have directed PCE to decide on office furniture as soon as possible so that all electrical and cabling needs and locations can be identified. There are a number of dependencies in the construction timeline: in order for construction on PCE's new office to proceed, PCE needs to sign-off on the final architectural plans, which will be dependent upon the size, type, and location of office furniture and cubicles. As soon as PCE decides on a furniture vendor, that vendor must immediately begin consultations with the building architect and contractors to ensure PCE's electrical and cabling needs are built into the final architectural drawings without requiring added change orders, avoiding costly corrective construction, and to ensure the build-out of PCE's office space is not delayed by PCE.

DISCUSSION:

PCE staff has been in discussion with three corporate furniture suppliers and office design companies. Several factors are being weighed, including functionality and ease of use, a clean modern look, low environmental impact, and cost considerations. Visitors to PCE's permanent office will hopefully feel that the office reflects PCE's forward-thinking clean energy focus, while balancing fiscal responsibility. One vendor also provides PCE access to the county's discount for office furniture, which would allow PCE to procure furniture similar to that used in the Office of Sustainability at a discounted price.

Cost estimates include the purchase price of the furniture to support up to 26 employees; shipping, storage, and installation of the furniture and cubicles; design fees; project management; consultation with PCE staff; coordination with the building architect/contractor; and sales tax. Because this location will also be used for PCE board and committee meetings, the furniture also includes flexible use tables and chairs that can be used for board meetings, then reconfigured for use in the conference rooms and entry lobby. Additional cabling will also be required to support the audio/visual and recording requirements for the PCE Board meetings.

Estimates range from approximately \$150,000 - \$180,000 on the low end to \$250,000 on the high end. The agreement with the chosen vendor will be in a form approved by counsel. It is of note that PCE has benefitted financially from keeping its staff lean and postponing the purchase of office furniture until now. PCE is in a phase of rapid growth of both customers and employees. The current and planned expenditure of time, resources, and funds for the purchase of a long-term work space solution is an investment in the future of PCE.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

* * * * *

**RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE A
CONTRACT FOR PURCHASE AND INSTALLATION OF OFFICE FURNITURE IN AN
AMOUNT NOT TO EXCEED \$250,000.**

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California (“Peninsula Clean Energy” or “PCE”), that

WHEREAS, PCE was formed on February 29, 2016; and

WHEREAS, in 2016, Peninsula Clean Energy (PCE) was housed within San Mateo County’s Office of Sustainability (OOS), using their existing office furniture, including desks, tables, chairs, filing cabinets and storage areas, and therefore did not have to commit funds to purchase office furniture; and

WHEREAS, PCE’s 6 employees moved to temporary office space at the beginning of February 2017, and at that location has been able to use surplus furniture that was being stored in that facility, including cubicle walls, desks, tables, chairs, filing cabinets, and credenzas, and therefore PCE did not have to commit funds to purchase office furniture; and

WHEREAS, PCE is preparing for its permanent headquarters that will be located at 2075 Woodside Rd; and

WHEREAS, the building architect and contractors at 2075 Woodside Rd have directed PCE to decide on office furniture as soon as possible so that all electrical and cabling needs and locations can be identified; and

WHEREAS, in order for construction on PCE's new office to proceed, PCE needs to sign-off on the final architectural plans, which will be dependent upon the size, type, and location of office furniture and cubicles; and

WHEREAS, as soon as PCE decides on a furniture vendor, they must immediately begin consultations with the building architect and contractors to ensure PCE's electrical and cabling needs are built into the final architectural drawings without requiring added change orders, avoiding costly corrective construction, and to ensure the build-out of PCE's office space is not delayed by PCE, the timing of which makes it infeasible for staff to choose a vendor and present a completely negotiated agreement to the Board without significantly delaying the move to the new office space;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board authorize the Chief Executive Officer to execute a contract for the purchase and installation of office furniture in an amount not to exceed \$250,000 in a form approved by counsel.

* * * * *



**PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence**

DATE: April 24, 2017
BOARD MEETING DATE: April 27, 2017
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors
FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy Authority
SUBJECT: Formation of a standing Audit and Finance Committee

BACKGROUND:

Peninsula Clean Energy (PCE) is the new Community Choice Energy program that is operated as a Joint Powers Authority with San Mateo County and all twenty cities residing in the County. As local elected officials appointed to the board, board members have a fiduciary responsibility to their constituencies and energy users to operate the business in a fiscally sound manner with prudent budgets and industry standard audit procedures. To that end, it is proposed that the PCE Board approve creating a new Audit and Finance Committee.

DISCUSSION:

Committee Work

As a permanent standing committee of the Board of Directors, the Audit and Finance Committee is subject to the Brown Act for all meetings. The Committee will advise and work with staff on matters relating to audit, finance, and budget. As PCE is coming up on the end of its first fiscal year, the Audit and Finance Committee will work with staff to retain an audit firm and complete the first annual audit in the third quarter of this year, just after the close of the fiscal year which is June 30.

The Audit and Finance Committee will review the completed audit report for clarity, soundness and ask any detailed questions that might surface prior to the Board review. The Audit and Finance Committee can also be available to review the proposed budget or any financial transactions that might require an in-depth review prior to Board approval.

Meetings

It is expected that Audit and Finance Committee will meet to advise in hiring an auditor during the May/June time frame. After the close of the fiscal year, the Committee would likely meet only a few times: once to review the draft audit and as needed throughout the year to assist staff as requested. Due to the Brown Act, we will conduct meetings in person and on-site. Members may attend via phone assuming proper Brown Act compliance.

Composition

The Audit and Finance Committee should be at least three and no more than five members. Members should have an interest and some background with financial, accounting, investment or other such business-related activities (may include the audit/financial work done for City Council or other municipal agencies, non-profits, or corporate positions.) There will be a Chair and no other officers. Staff will set the agenda with the Chair, notice meetings and take notes for approval at the next convening.

FISCAL IMPACT:

The new standing Audit and Finance Committee will require PCE staff time to prepare for and conduct the Audit and Finance Committee meetings.



**PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence**

DATE: April 11, 2017
BOARD MEETING DATE: April 27, 2017
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy Authority

SUBJECT: Update from Ad Hoc Committee on Formation of New Citizens Advisory Committee

BACKGROUND:

The San Mateo County Community Choice Energy (CCE) Advisory Committee held its first meeting on May 28, 2015. The Advisory Committee was comprised of elected officials from all 20 cities in the County and the County itself, as well as representatives from several labor, environmental and other community organizations.

On March 24, 2016, the Board of Directors of Peninsula Clean Energy (PCE), comprised only of local officials, met for the first time and an Ad-Hoc Citizens Advisory Committee (CAC) was formed of the non-elected CCE Advisory Committee members, with the intent of having this committee serve until PCE was launched in October. On September 22, 2016, the PCE Board voted to extend the Ad-Hoc CAC until the end of 2016.

On December 12, 2016, an ad-hoc committee of PCE's Board was formed to develop a recommendation for the full Board as to objectives, composition and structure of a new CAC. Public input on this matter was received from Menlo Spark, San Mateo Community Choice, and former members of the original Ad-Hoc Citizens Advisory Committee. The Board ad-hoc committee's recommendations were also reviewed by the PCE Executive Committee.

An Application process has been published on PCE's website, announced through PCE's newsletter, and shared with City and County Sustainability contacts. The deadline to apply is April 30th, 2017.

DISCUSSION:

The ad-hoc committee has recommended the following objectives, composition and structure for the new CAC:

Proposed Objectives for the CAC

A primary goal of PCE is to reduce greenhouse gas emissions by providing cleaner power to County residents and businesses at competitive rates. PCE will also develop new renewable energy sources, including within San Mateo County, and implement programs to further reduce greenhouse gas emissions. To further PCE's mission, the Citizens Advisory Committee would:

- Act as a liaison to the community.
- Provide feedback on PCE policy and operational objectives.
- Engage in outreach to the community, including encouraging ratepayers to opt-up to ECO100 (PCE's 100% renewable energy product offering) and implement other carbon reducing practices.
- Assist with legislative advocacy in conjunction with staff and board.
- Provide a forum for community discussions on a wide variety of strategies to reduce carbon emissions in conjunction with staff and board.

Proposed Composition and Structure of the CAC

- The CAC would be comprised of 11 to 15 members drawn from the community and appointed by the PCE Board. Members might be affiliated with a community group, but would not formally represent any group on the CAC.
- The Citizens Advisory Committee is subject to the Brown Act. Meetings will be publicly noticed, and will be open to the public in an accessible location.
- Composition & Qualifications:
 - Reside or work in San Mateo County.
 - Represent geographically diverse areas of the County.
 - Have a relevant background in, or expertise related to, one or more of the following fields: electricity, community outreach and engagement, or policy advocacy.
 - § Expertise in the electricity field may include experience with electrical utilities or with energy production, efficiency, demand reduction, technology, financing, policy, or environmental impacts.
 - Have the capability to build connections to local communities to encourage adoption of ECO100 and other carbon reducing practices.
 - Make a personal commitment of time and energy to attending CAC and PCE meetings and to helping the organization attain its full potential.
 - Attend at least one PCE board meeting prior to being approved to serve on the CAC.

- Terms:
 - Inaugural members of the PCE Citizens Advisory Committee will serve one, two, or three year terms, so that one third of the committee members' terms expire each year. Initial term lengths for each member will be chosen randomly after the initial cohort is selected.
 - Subsequent Citizens Advisory Committee members will serve three-year terms.
 - Committee members may serve a total of three terms.
 - Citizens Advisory Committee members serve at the pleasure of the board.
- Meetings:
 - The Citizens Advisory Committee will meet on a monthly basis. Initial meetings will take place the third Thursday of the month from 6:30 to 8:30 pm, typically one week prior to PCE's monthly Board meeting.
 - Members are expected to attend 75% of the Citizens Advisory Committee meetings. To ensure the committee regularly reaches a quorum and functions with consistency, missing additional meetings may result in removal from the committee.
- Other:
 - The Citizens Advisory Committee membership will elect a Chair.
 - Duties of the Chair include helping to set agendas and facilitate meetings for the Citizens Advisory Committee. The Chair, or the Chair's designee, will also provide a brief report back from the Citizens Advisory Committee to the PCE Board at each PCE Board meeting.
 - Minutes will be recorded by PCE staff.
 - The members of the Citizens Advisory Committee will be subject to all applicable conflict of interest laws.

Application Information

Note that PCE Citizens Advisory Committee members must reside or work in San Mateo County. The employee of a San Mateo county company must work at a location in the County.

Below is a copy of the information from the website:

Application Instructions: To apply please fill out the [following form](https://goo.gl/forms/sCSgl6eVekF669QA2) no later than April 30th, 2017. See form at <https://goo.gl/forms/sCSgl6eVekF669QA2>.

The form will prompt you for the following information:

1. Your Email
2. Your Name
3. Home Address
4. Primary Phone Number
5. Alternate Phone Number
6. Occupation and Employer
7. Workplace

8. If you work in San Mateo County, address where your office is located

Please limit responses to the following questions to 300 words or fewer.

Peninsula Clean Energy seeks applicants with experience in **at least one of the three** of the following areas. Experience in more than one of these areas is welcome, but not necessary. Resumes and letters of recommendation may be submitted as optional supplemental materials.

9. Please briefly describe your involvement in your local community, or experience with building connections and conducting outreach to communities in San Mateo County. This may include experience in local neighborhood, business, labor, environmental, social justice, faith, service, or other community organizations.

Note that Citizens Advisory Committee members will represent themselves personally and will not represent any organization on the committee.

10. Please briefly describe your experience in legislative or regulatory advocacy.

11. Please briefly describe your experience or expertise in the electricity field. Expertise in the electricity field may include experience with electrical utilities or with energy production, efficiency, demand reduction, technology, financing, policy, or environmental impacts.

Peninsula Clean Energy requests members of the Citizens Advisory Committee make a personal commitment of time and energy to attending meetings of this committee, and to helping the organization meet its mission and goals to attain its full potential. The Citizens Advisory Committee will meet on a monthly basis, initially in the evening on the third Thursday of the month.

Members are expected to attend 75% of the Citizens Advisory Committee meetings, to ensure the committee regularly attains a quorum and functions with consistency.

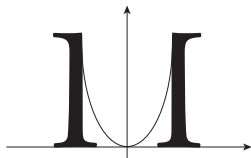
12. Please describe why you are interested in serving on the PCE Citizens Advisory Committee, and what you would like to achieve while serving on it.

13. Please describe your ability to make the commitment described above.

14. Please list any potential conflicts of interest you may have.

FISCAL IMPACT:

The new CAC will require PCE staff time to prepare for and conduct the CAC meetings.



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Peninsula Clean Energy Authority

Management is responsible for the accompanying special purpose statement of Peninsula Clean Energy Authority (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended March 31, 2017, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of PCE.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user's conclusions about the Authority's results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
April 18, 2017



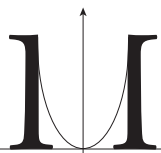
**PENINSULA CLEAN ENERGY AUTHORITY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
July 1, 2016 through March 31, 2017**

	2016/17 YTD Budget	2016/17 YTD Actual	2016/17 YTD Budget Variance (Under) Over	2016/17 YTD Actual/Budget %	2016/17 Annual Budget	2016/17 Budget Remaining
REVENUE AND OTHER SOURCES						
Revenue - Electricity	\$ 34,291,600	\$ 38,769,428	\$ 4,477,828	113%	\$ 85,882,760	\$ 47,113,332
Revenue - Green Premium	117,780	91,659	(26,121)	78%	267,843	176,184
Other Source - bank loan proceeds *	12,000,000	-	(12,000,000)	0%	12,000,000	12,000,000
Interest income	-	7,757	7,757	na	-	(7,757)
Total revenue and other sources	<u>46,409,380</u>	<u>38,868,844</u>	<u>(7,540,536)</u>	<u>84%</u>	<u>98,150,603</u>	<u>59,281,759</u>
EXPENDITURES AND OTHER USES						
CURRENT EXPENDITURES						
Cost of energy	32,888,462	29,547,699	(3,340,763)	90%	73,298,147	43,750,448
Internal staffing	1,156,249	508,923	(647,326)	44%	1,711,250	1,202,327
Benefits	428,499	101,801	(326,698)	24%	673,000	571,199
Outreach and communications	310,000	341,004	31,004	110%	440,000	98,996
Technical consultants	202,500	156,685	(45,815)	77%	255,000	98,315
Legal and regulatory	420,000	492,940	72,940	117%	450,000	(42,940)
Data manager	477,147	519,402	42,255	109%	1,363,853	844,451
Customer noticing	385,000	337,441	(47,559)	88%	755,000	417,559
Energy Programs (including NEM)	507,498	-	(507,498)	0%	1,022,500	1,022,500
PG&E service fees	195,475	176,692	(18,783)	90%	564,892	388,200
General and administration	575,313	212,366	(362,947)	37%	800,625	588,259
Total current expenditures	<u>37,546,143</u>	<u>32,394,953</u>	<u>(5,151,190)</u>	<u>86%</u>	<u>81,334,267</u>	<u>48,939,314</u>
OTHER USES						
Rate stabilization reserve	2,170,470	-	(2,170,470)	0%	4,757,530	4,757,530
Bad debt reserve	120,020	136,014	15,994	113%	300,590	164,576
CCA Bond, CAISO and PG&E deposits	635,000	100,000	(535,000)	16%	635,000	535,000
Capital outlay (grouped with G&A)						
Total other uses	<u>2,925,490</u>	<u>236,014</u>	<u>(2,689,476)</u>	<u>8%</u>	<u>5,693,120</u>	<u>5,457,106</u>
DEBT SERVICE	<u>247,125</u>	<u>197,100</u>	<u>(50,025)</u>	<u>80%</u>	<u>376,675</u>	<u>179,575</u>
Total expenditures, Other Uses and Debt Service	<u>40,718,758</u>	<u>32,828,067</u>	<u>(7,890,691)</u>	<u>81%</u>	<u>87,404,062</u>	<u>54,575,995</u>
Net increase (decrease) in available fund balance	<u>\$ 5,690,622</u>	<u>\$ 6,040,777</u>	<u>\$ 350,155</u>	<u>106%</u>	<u>\$ 10,746,541</u>	<u>\$ 4,705,764</u>

* \$3,000,000 proceeds from Barclays loan occurred prior to this fiscal year

PENINSULA CLEAN ENERGY AUTHORITY
OPERATING FUND
BUDGET RECONCILIATION TO STATEMENT OF
REVENUES, EXPENSES AND CHANGES IN NET POSITION
July 1, 2016 through March 31, 2017

Net increase (decrease) in available fund balance per budgetary comparison schedule:	\$ 6,040,777
Adjustments needed to reconcile to the changes in net position in the Statement of Revenues, Expenses and Changes in Net Position:	
Subtract depreciation expense	(1,903)
Add back capital asset acquisitions	19,022
Add back collateral deposits	<u>100,000</u>
Change in net position	<u><u>\$ 6,157,896</u></u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Peninsula Clean Energy Authority

Management is responsible for the accompanying financial statements of Peninsula Clean Energy Authority (a California Joint Powers Authority) which comprise the statement of net position as of March 31, 2017, and the related statement of revenues, expenses, and changes in net position, and the statement cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, the financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
April 18, 2017



PENINSULA CLEAN ENERGY AUTHORITY

STATEMENT OF NET POSITION

As of March 31, 2017

ASSETS

Current assets

Cash and cash equivalents	\$ 14,055,842
Accounts receivable, net of allowance	6,844,663
Other receivables	109,645
Accrued revenue	3,276,547
Prepaid expenses	204,348
Total current assets	<u>24,491,045</u>

Noncurrent assets

Capital assets, net of depreciation	17,119
Deposits	130,000
Total noncurrent assets	<u>147,119</u>
Total assets	<u>24,638,164</u>

LIABILITIES

Current liabilities

Accounts payable	396,174
Accrued cost of electricity	11,172,362
Accrued interest payable	24,457
Accrued payroll and related liabilities	91,554
Other accrued liabilities	70,000
User taxes and energy surcharges due to other governments	287,245
Total current liabilities	<u>12,041,792</u>

Noncurrent liabilities

Loan payable to bank	3,000,000
Loans payable to County of San Mateo	4,480,800
Total noncurrent liabilities	<u>7,480,800</u>

Total liabilities	<u>19,522,592</u>
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NET POSITION

Net investment in capital assets	17,119
Unrestricted	5,098,453
Total net position	<u><u>\$ 5,115,572</u></u>

PENINSULA CLEAN ENERGY AUTHORITY

STATEMENT OF REVENUES, EXPENSES

AND CHANGES IN NET POSITION

July 1, 2016 through March 31, 2017

OPERATING REVENUES

Electricity sales, net	\$ 38,633,414
Green electricity premium	91,659
Total operating revenues	<u>38,725,073</u>

OPERATING EXPENSES

Cost of electricity	29,547,699
Staff compensation and benefits	610,724
Data manager	519,402
Service fees - PG&E	176,692
Consultants and other professional fees	241,646
Legal	492,940
Communications and noticing	678,445
General and administration	108,383
Depreciation	1,903
Total operating expenses	<u>32,377,834</u>
Operating income (loss)	<u>6,347,239</u>

NONOPERATING REVENUES (EXPENSES)

Interest income	7,757
Interest and related expense	(109,310)
Financing costs	(87,790)
Total nonoperating revenues (expenses)	<u>(189,343)</u>

CHANGE IN NET POSITION

	6,157,896
Net position at beginning of period	<u>(1,042,324)</u>
Net position at end of period	<u>\$ 5,115,572</u>

PENINSULA CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS
July 1, 2016 through March 31, 2017

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from electricity sales	\$ 28,695,418
Tax and surcharge receipts from customers	493,291
Payments to purchase electricity	(18,625,732)
Payments for staff compensation and benefits	(546,816)
Payments for consultants and other professional fees	(624,837)
Payments for legal fees	(709,562)
Payments for communications and noticing	(648,078)
Payments for general and administration	(119,078)
Tax and surcharge payments to other governments	(297,600)
Net cash provided (used) by operating activities	<u>7,617,006</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Loan proceeds from bank notes and loans	1,421,333
Deposits and collateral paid	(130,000)
Interest and related expense payments	(86,210)
Finance costs	(87,790)
Net cash provided (used) by non-capital financing activities	<u>1,117,333</u>

**CASH FLOWS FROM CAPITAL AND RELATED
FINANCING ACTIVITIES**

Acquisition of capital assets	<u>(19,022)</u>
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CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>7,757</u>
Net change in cash and cash equivalents	8,723,074
Cash and cash equivalents at beginning of year	5,332,768
Cash and cash equivalents at end of period	<u><u>\$ 14,055,842</u></u>

PENINSULA CLEAN ENERGY AUTHORITY

STATEMENT OF CASH FLOWS (continued)

July 1, 2016 through March 31, 2017

**RECONCILIATION OF OPERATING INCOME (LOSS) TO NET
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating income (loss)	\$ 6,347,239
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation expense	1,903
Revenue reduced for uncollectible accounts	136,014
(Increase) decrease in net accounts receivable	(6,980,677)
(Increase) decrease in other receivables	(109,645)
(Increase) decrease in accrued revenue	(3,276,547)
(Increase) decrease in prepaid expenses	(204,348)
Increase (decrease) in accounts payable	396,174
Increase (decrease) in accrued payroll and related	65,908
Increase (decrease) in accrued cost of electricity	11,172,362
Increase (decrease) in accrued liabilities	(218,622)
Increase (decrease) in user taxes and energy surcharges due to other governments	287,245
Net cash provided (used) by operating activities	<u>\$ 7,617,006</u>



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, March 23, 2017
MINUTES**

San Mateo County Office of Education, Corte Madera Room
101 Twin Dolphin Drive, Redwood City, CA 94065
6:30pm

CALL TO ORDER

Meeting was called to order at 6:38 pm.

ROLL CALL

Present: Dave Pine, County of San Mateo, *Chair*
Carole Groom, County of San Mateo
Rick DeGolia, Town of Atherton
Greg Scoles, City of Belmont
Lori Liu, City of Brisbane
Donna Colson, City of Burlingame
Rae P. Gonzalez, Town of Colma
Glenn Sylvester, City of Daly City
Carlos Romero, City of East Palo Alto
Harvey Rarback, City of Half Moon Bay
Elizabeth Cullinan, Town of Hillsborough
Catherine Carlton, City of Menlo Park
Wayne Lee, City of Millbrae
John Keener, City of Pacifica
Jeff Aalfs, Town of Portola Valley, *Vice Chair*
Diane Howard, City of Redwood City
Marty Medina, City of San Bruno
Cameron Johnson, City of San Carlos
Rick Bonilla, City of San Mateo
Pradeep Gupta, City of South San Francisco
Daniel Yost, Town of Woodside

Absent: City of Foster City

Staff: Jan Pepper, Chief Executive Officer

Dan Lieberman, Director of Marketing and Public Affairs
Kirsten Andrews-Schwind, Communications and Outreach Manager
Leslie Brown, Manager of Customer Care
Anne Bartoletti, Board Clerk / Executive Assistant to the CEO
Nirit Eriksson, Associate General Counsel

A quorum was established.

PUBLIC COMMENT:

No public comment.

ACTION TO SET THE AGENDA AND APPROVE CONSENT AGENDA ITEMS

Motion Made / Seconded: Lee / Bonilla

Motion passed unanimously 21-0 (Absent: Foster City)

PUBLIC COMMENT

No public comment.

REGULAR AGENDA

1. CHAIR REPORT

Dave Pine—Chair—welcomed Board members and attendees. He reported on San Diego Gas and Electric (SDG&E) efforts to create a separate entity to lobby against Community Choice Aggregators (CCAs). Dave also reported that Peninsula Clean Energy's (PCE's) 200 MegaWatt solar contract received industry attention because no other CCA has contracted for this large of a project to date.

Chair Pine recognized the Board's hard work and contributions between meetings, working on ad hoc committees to interview potential power providers, and efforts to get the new Citizen's Advisory Committee (CAC) up and running. He thanked the PPA (Power Purchase Agreement) Ad Hoc Committee; the ESP (Energy Service Provider) Ad Hoc Committee; the initial CAC Ad Hoc Committee that developed the structure of the new CAC; and the new CAC Ad Hoc Committee that is creating the application process. He also thanked PCE staff for taking PCE from 20% of the county to 100% as PCE launches the largest CCA rollout.

2. CEO REPORT

Jan introduced Leslie Brown, Manager of Customer Care, who started with PCE on January 30th. She announced that two more people have been hired—Joseph Wiedman, Senior Regulatory/Legislative Analyst, and Siobhan Doherty, Manager of Contracts—and that they'll be starting on Monday, March 27, 2017.

Jan Pepper—Chief Executive Officer—reported that Peninsula Clean Energy (PCE) received refreshed pricing from three ESPs (Energy Service Providers) since the last Board meeting. She thanked the Rick Bonilla, Donna Colson, Rick DeGolia, and John Keener for assisting in the review of the refreshed pricing, stating the pricing was much better than in Phase 1. She also thanked the PPA Ad Hoc Committee for their time and effort assisting with interviews of potential Power Providers.

Jan announced that success was achieved in the Diablo Canyon proceedings, when Pacific Gas and Electric Company (PG&E) withdrew a portion of their testimony that would have created another non-bypassable charge and agreed that such issues should be considered in the Integrated Resource Planning (IRP) proceeding at the CPUC. An en banc hearing on retail choice will take place on May 19th in Sacramento.

3. MARKETING AND OUTREACH REPORT

Kirsten Andrews-Schwind—Communications and Outreach Manager—reported on recent outreach efforts.

Dan Lieberman—Director of Marketing and Public Affairs—reported on marketing efforts.

PUBLIC COMMENT

Sri Sukhi, Leaveoil.org

Mark Roest, Green Fleets Group

4. AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE POWER PURCHASE AGREEMENTS AND ANCILLARY DOCUMENTS FOR RENEWABLE SUPPLY WITH:

4.1 BUENA VISTA ENERGY, LLC (BUENA VISTA WIND)—POWER DELIVERY TERM: 5 YEARS. NOT TO EXCEED \$25 MILLION

4.2 ENERGY DEVELOPMENT & CONSTRUCTION CORPORATION (KAREN AVENUE WIND) — POWER DELIVERY TERM: 3 YEARS. NOT TO EXCEED \$5 MILLION

4.3 CUYAMA SOLAR, LLC (CUYAMA SOLAR)—POWER DELIVERY TERM: 1 YEAR. NOT TO EXCEED \$6 MILLION

George Wiltsee—Director of Power Resources and Energy Programs—thanked the PPA Ad Hoc Committee for their assistance reviewing the PPAs, Joe Karp and Lisa Cottle from Winston & Strawn for their assistance in negotiating the PPAs, and Nirit Erikson for her instrumental guidance finalizing the three PPAs being presented tonight. Joe Karp from Winston & Strawn was present for questions.

George presented two wind projects and one solar project, explaining that these are designed to deliver this year. George introduced Andrew Flanagan, Sr. Vice President of Development for Leeward Renewable Energy LLC, which is the parent company for Buena Vista. Mr. Flanagan answered questions from the Board regarding the Buena Vista Energy wind project and the

turbines that are used. George presented background information on Energy Development Construction Corporation (EDCC), and First Solar which is the parent company of Cuyama Solar.

There was a request from the board to review the criteria that PCE is using to evaluate the long-term PPAs and to discuss the overall supply portfolio at a future board meeting.

PUBLIC COMMENT

No public comment.

Motion Made to Authorize 4.1, 4.2, 4.3 / Seconded: Lee / Scoles

Motion passed 20-0 (Absent: Foster City. Abstained: Yost)

5. AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE WSPP CONFIRMATION FOR PURCHASE OF RESOURCE ADEQUACY FROM PG&E FOR JUNE 2017, IN AN AMOUNT NOT TO EXCEED \$375,000

Jan Pepper reported that PG&E issued a solicitation for Resource Adequacy. PCE had an open position for June 2017, so PCE placed a bid on their RFP. She explained that PG&E has agreed that the RA will not be sourced from nuclear or coal resources.

Motion Made / Seconded: Bonilla / Lee

Motion passed 20-0 (Absent: Foster City. Abstained: Yost)

6. AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE WSPP CONFIRMATION FOR PURCHASE OF GREENHOUSE GAS FREE ENERGY FROM MORGAN STANLEY CAPITAL GROUP, INC. FOR 2017 IN AN AMOUNT NOT TO EXCEED \$350,000

Jan Pepper explained that this purchase of greenhouse gas (GHG) free energy is designed to ensure PCE meets GHG free goals.

Motion Made / Seconded: Bonilla / May

Motion passed 20-0 (Absent: Foster City. Abstained: Yost)

7. RECEIVE UPDATE ON STATUS OF WRIGHT SOLAR PARK AND DELEGATE AUTHORITY TO CEO TO MODIFY CERTAIN DATES IN THE POWER PURCHASE AGREEMENT BETWEEN PCE AND WRIGHT SOLAR PARK

Jan Pepper explained that the Wright Solar Park project was progressing, but that some interim dates may need to be modified to provide more time to finalize their financing partner. She said Wright Solar still plans to meet its commercial operation date. Rick DeGolia described the analysis and level of detail that Wright Solar provided on their potential investor, and Joe Karp explained that PCE has the right to consent, but without undue delay.

Motion Made / Seconded: Keener / Bonilla

Motion passed 21-0 (Absent: Pollard)

8. UPDATE FROM AD HOC COMMITTEE ON FORMATION OF NEW CITIZENS ADVISORY COMMITTEE

Donna Colson reported on the Ad Hoc Committee formation and application process.

9. POWER CHARGE INDIFFERENCE ADJUSTMENT (PCIA) VINTAGING AND PCIA WORKGROUP UPDATE

John Keener presented an overview of the PCIA as it is currently mandated by the legislature, through the California Public Utilities Commission, and paid by CCA customers.

Pradeep Gupta detailed the current PCIA methodology with the key issues including 1) lack or data about PG&E's contracts, 2) a lack of transparency overall , and 3) the absence of an annual true-up of the market price benchmark. He described how Resource Adequacy requirements and CAISO overview of the grid ensures that sufficient energy and capacity is delivered through the grid. He also discussed the Cost Allocation Methodology (CAM) and the Portfolio Allocation Methodology (PAM). Pradeep offered to provide a two to three-hour workshop for Board members who are interested in a more detailed description of these issues.

PUBLIC COMMENT

Mark Roest, Green Fleets Group
Byron Pakter, Optony Inc.

10. FINANCIAL REPORTS

Jan Pepper presented PCE's most recent financial reports, showing January assets of \$23 Million. She reported that PCE is ahead of revenue forecasts.

11. BOARD MEMBERS' REPORTS

None.

ADJOURNMENT

Meeting was adjourned at 9:16 pm.



Policy Number: 12
Adoption Date:

Subject: Coal Exclusion for Electricity and Resource Adequacy Procurement

Policy: In sourcing electricity, Peninsula Clean Energy Authority (PCEA) will not procure electricity from coal facilities.

In sourcing resource adequacy, Peninsula Clean Energy Authority (PCEA) will not procure resource adequacy from coal facilities.



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: April 20, 2017
BOARD MEETING DATE: April 27, 2017
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Authorize an Amendment to the Agreement with Pacific Energy Advisors (PEA) to provide professional services from May 1, 2017 through June 30, 2018, in an amount not to exceed \$100,000.

RECOMMENDATION:

Authorize an Amendment to the Agreement with Pacific Energy Advisors (PEA) to provide professional services from May 1, 2017 through June 30, 2018, in an amount not to exceed \$100,000.

BACKGROUND:

PCE has ongoing needs for implementation and operational support to its programs and to ensure the reliability of electric service.

DISCUSSION:

In October 2016 PCE and PEA executed an agreement for implementation and operational support to PCE's programs. The existing PCE/PEA services agreement is for \$95,000 and nearly all of those funds have been expended. The term of the agreement began on October 26, 2016 and will end on April 30, 2017. The parties wish to continue receiving/providing those professional services.

PEA has unique capabilities to provide implementation and operational support to PCE, in view of the facts that PEA has been providing these services since prior to formation of PCE and has been advising most of the active CCAs in California. There are no other vendors with the same skill set and experience directly related to the implementation, operational and compliance issues relevant to California CCAs.

RESOLUTION NO. _____

**PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF
CALIFORNIA**

* * * * *

**RESOLUTION AUTHORIZING AN AMENDMENT TO THE AGREEMENT WITH
PACIFIC ENERGY ADVISORS (PEA) TO PROVIDE PROFESSIONAL SERVICES BY
INCREASING THE AMOUNT BY \$100,000 TO AN AMOUNT NOT TO EXCEED
\$195,000 FOR A TERM ENDING JUNE 30, 2018. (ACTION)**

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, the Peninsula Clean Energy Authority (“Peninsula Clean Energy” or “PCE”) was formed on February 29, 2016; and

WHEREAS, as was true in 2016, PCE has ongoing needs for implementation and operational support for its programs; and

WHEREAS, in October 2016 PCE and PEA executed an agreement for implementation and operational support; and

WHEREAS, both parties are agreeable to amending the existing agreement for this purchase; and

WHEREAS, the amendment has been furnished to the Board, reference to which should be made for further particulars.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board authorizes an amendment to the agreement with Pacific Energy Advisors (PEA) to provide professional services by increasing the amount by \$100,000 to an amount not to exceed \$195,000 for a term ending June 30, 2018.

* * * * *