



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, May 25, 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

1. Chair Report (Discussion)
2. CEO Report (Discussion)
3. Marketing and Outreach Report (Discussion)
4. Regulatory and Legislative Report (Discussion)
5. Approve Amendment to the 2016-2017 Budget (Action)
6. Review Draft Budget (Discussion)
7. Financial Report (Discussion)
8. Review and Adopt Policy Regarding Customer Debt Collections (Action)
9. Authorize the Chief Executive Officer to execute a Power Purchase Agreement (PPA) for Renewable Supply with Shiloh 1 Wind Project LLC, an Oregon limited liability company, and any necessary ancillary documents. Power Delivery Term: Five years, in an amount not to exceed \$65,000,000 (Action)
10. Authorize the Chief Executive Officer to execute an EEI (Edison Electric Institute) Master Agreement and Confirmation Agreement for Purchase of Carbon Free Energy from Powerex. Power Delivery Term: July 1, 2017 through June 30, 2018, in an amount not to exceed \$700,000 (Action)
11. Authorize the Chief Executive Officer to execute an EEI (Edison Electric Institute) Confirmation Agreement, and any necessary ancillary documents, for Purchase of PCC1 Renewable Energy from Powerex. Power Delivery Term: May 1, 2017 through December 31, 2017, in an amount not to exceed \$1,600,000 (Action)
12. Appoint Citizens Advisory Committee members (Action)
13. Board Members' Reports (Discussion)

CONSENT AGENDA

14. Approval of the Minutes for the April 27th, 2017 Meeting (Action)
15. Authorize the Chief Executive Officer to execute an EEI (Edison Electric Institute) Confirmation Agreement for purchase of Resource Adequacy from Energy America (Direct Energy). Delivery Term: August 1 through September 30, 2017, in an amount not to exceed \$120,000. (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 Peninsula Clean Energy office, located at 555 Marshall St, 2nd 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: May 19, 2017
BOARD MEETING DATE: May 25, 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: Approve amendment to the 2016-2017 Budget.

RECOMMENDATION:

Approve an amendment to the 2016-2017 budget.

BACKGROUND:

On July 14, 2016, the Board approved the 2016-17 fiscal year budget. Certain factors have changed since PCE staff made the original assumptions which necessitate an adjustment to the budget. The main reasons for the adjustments are: 1) lower than expected opt out rates, 2) legal counsel costs associated with the negotiation of energy procurement contracts, and 3) increased costs for outreach and communication.

DISCUSSION:

The amended budget lines and a brief description of each are as follows in order of presentation:

Revenue-Electricity – The combination of lower opt out rates and greater overall customer electricity usage than anticipated requires an increase to budgeted revenue. **The proposed Revenue-Electricity budget increase is \$10,687,000.**

Other Source-bank loan proceeds – In June 2016 PCE obtained a bank loan from Barclay's Bank of \$12,000,000 to provide for operational costs, particularly to fund large energy purchases. Since that time, PCE has entered into contracts with favorable rates and terms and does not anticipate needing the entire available balance. PCE drew \$3,000,000 just prior to the 2016/17 fiscal year. The original budget that was adopted expected that the \$3,000,000 draw to occur in the current fiscal year. Although we do

not think PCE will need to draw any more on the loan, we are providing for the possibility of a total of \$4,000,000 of bank loans to provide for certain energy costs that may be accelerated into the fiscal year outside of our control. **The proposed Other Source-bank loan proceeds budget decrease is \$8,000,000.**

Cost of Energy – The original budget included conservative estimates for cost of energy that had not yet been procured. PCE was able to procure energy at rates lower than originally assumed. These favorable rates outweigh the additional volume that was procured due to lower opt out rates. **The proposed Cost of Energy budget decrease is \$2,850,000.**

Internal Staffing – Staffing costs are under budget mostly due to delays in the timing of new hires. **The proposed Internal Staffing budget decrease is \$500,000.**

Benefits – Staffing Benefits costs are under budget mostly due to delays in the timing of new hires. **The proposed Internal Benefits budget decrease is \$255,000.**

Outreach and Communications – Additional budget is needed to allow for the massive advertising push for phase 2. **The proposed Outreach and Communications budget increase is \$100,000.**

Technical Consultants – In house staff has assumed some of the responsibility for this work. **The proposed Technical Consultants budget decrease is \$25,000.**

Legal and Regulatory – PCE's energy procurement during the year has occurred at a faster pace than expected. Due to the complexities and importance of the underlying agreements, all contracts are thoroughly reviewed by outside legal firms. **The proposed Legal and Regulatory budget increase is \$450,000.**

Data Manager – PCE contracts with Calpine Energy Solutions to maintain the customer database, perform billing data validation, manage the call center and billing support, and many other services. Our contract with Calpine is a single fixed per meter charge. Due to customer opt outs being lower than expected, the aggregate cost of the per meter charge has increased. This budget increase will account for the additional charges related to these unanticipated customers. **The proposed Data Manager budget increase is \$175,000.**

Customer Noticing – Costs of designing and delivering required mailers to PCE's customers is proving to be less than originally estimated. Part of this decrease is due to delivery of Phase 2 notifications by bulk mail rather than first class mail. **The proposed Customer Noticing budget decrease is \$75,000.**

Energy Programs – The original budget provided for certain program expenses outside the normal operational scope of PCE, as well as a provision for Net Energy Metering (NEM) cash outs. Subsequently, PCE has determined that the NEM cash outs are not a separate budget expense, because the cost of the NEM program is effectively included in the cost of energy. The true cost of the NEM program is not reflected by the year end

cash out; there are benefits to the customers throughout the year regardless of whether a cash out is received. PCE does intend to leave \$100,000 in this program budget to allow for local demonstration project costs that may be incurred in the fiscal year. **The proposed Energy Programs budget decrease is \$922,500.**

PG&E Service Fees – As mandated by the California Public Utilities Commission (CPUC), PG&E charges PCE a service fee of \$0.44 per account per month. In addition to these per account charges, this budget category also includes minor fees associated with data requests from PG&E. Due to customer opt outs being lower than expected, the aggregate cost of the per account charge has increased. This budget increase will account for the additional charges related to these unanticipated customers. **The proposed PG&E Service Fee budget increase is \$30,000.**

General and Administration– Costs have been less than anticipated, largely driven by lower rent than expected. **The proposed General and Administration budget decrease is \$100,000.**

Rate Stabilization Reserve– The reserve has been adjusted to reflect 5% of the amended revenue (excluding Other Sources). **The proposed Rate Stabilization Reserve budget increase is \$2,440,000.**

Bad Debt Reserve– Bad debt is now reported as a reduction in revenue. The rate is 0.35% of revenues. **The proposed Bad Debt Reserve budget decrease is \$300,590.**

CCA Bond, CAISO and PG&E deposits – Only the \$100,000 CCA bond was required of PCE. **The proposed CCA Bond, CAISO and PG&E deposits budget decrease is \$535,000.**

FISCAL IMPACT:

The net fiscal impact shows a budgeted increase in net position for FY 2016-2017 of \$14,960,090, for a total of \$19,099,161.

ATTACHMENTS:

- A. PCE 2016-2017 Budget Adjustment Spreadsheet

**PENINSULA CLEAN ENERGY AUTHORITY
OPERATING FUND
PROPOSE BUDGET AMENDMENT
FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017**

| | <u>2016/17 Annual Budget</u> | <u>Proposed Amendment</u> | <u>2016/17 Proposed Amended</u> |
|--------------------------------------------------|------------------------------|---------------------------|---------------------------------|
| REVENUE AND OTHER SOURCES | | | |
| Revenue - Electricity, net | \$ 85,882,760 | \$ 10,687,000 | \$ 96,569,760 |
| Revenue - Green Premium, net | 267,843 | | 267,843 |
| Other Source - bank loan proceeds | 12,000,000 | (8,000,000) | 4,000,000 |
| Total revenue and other sources | <u>98,150,603</u> | <u>2,687,000</u> | <u>100,837,603</u> |
| EXPENDITURES AND OTHER USES | | | |
| CURRENT EXPENDITURES | | | |
| Cost of energy | 73,298,147 | (2,850,000) | 70,448,147 |
| Internal staffing | 1,711,250 | (500,000) | 1,211,250 |
| Benefits | 673,000 | (255,000) | 418,000 |
| Outreach and communications | 440,000 | 100,000 | 540,000 |
| Technical consultants | 255,000 | (25,000) | 230,000 |
| Legal and regulatory | 450,000 | 450,000 | 900,000 |
| Data manager | 1,363,853 | 175,000 | 1,538,853 |
| Customer noticing | 755,000 | (75,000) | 680,000 |
| Energy Programs (including NEM) | 1,022,500 | (922,500) | 100,000 |
| PG&E service fees | 564,892 | 30,000 | 594,892 |
| General and administration | 800,625 | (100,000) | 700,625 |
| Total current expenditures | <u>81,334,267</u> | <u>(3,972,500)</u> | <u>77,361,767</u> |
| OTHER USES | | | |
| Rate stabilization reserve | 4,757,530 | 2,440,000 | 7,197,530 |
| Bad debt reserve | 300,590 | (300,590) | - |
| CCA Bond, CAISO and PG&E deposits | 635,000 | (535,000) | 100,000 |
| Total other uses | <u>5,693,120</u> | <u>1,604,410</u> | <u>7,297,530</u> |
| DEBT SERVICE | <u>376,675</u> | <u>-</u> | <u>376,675</u> |
| Total expenditures, Other Uses and Debt Service | <u>87,404,062</u> | <u>(2,368,090)</u> | <u>85,035,972</u> |
| Net increase (decrease) | <u>\$ 10,746,541</u> | <u>\$ 5,055,090</u> | <u>\$ 15,801,631</u> |
| <i>Reconciliation to change in net position:</i> | | | |
| Remove: Other Source - bank loan proceeds | (12,000,000) | 8,000,000 | (4,000,000) |
| Add: Rate stabilization reserve | 4,757,530 | 2,440,000 | 7,197,530 |
| Add: CCA Bond, CAISO and PG&E deposits | 635,000 | (535,000) | 100,000 |
| Net increase (decrease) in net position | <u>\$ 4,139,071</u> | <u>\$ 14,960,090</u> | <u>\$ 19,099,161</u> |



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: May 19, 2017
BOARD MEETING DATE: May 25, 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: Review Draft Budget (Discussion)

DISCUSSION:

A draft of the Peninsula Clean Energy budget for Fiscal Year 2017-2018 will be provided at the May 25 board meeting for general discussion. Based on this discussion, the budget will be more closely reviewed by the PCE Audit and Finance Committee in early June. Upon that Committee's recommendation, the final budget will be presented to the board at the June 22 board meeting for discussion and approval.



7. Financial Report (Discussion)

Place holder – to be distributed separately.



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: May 17, 2017
BOARD MEETING DATE: May 25, 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: Adopt Policy regarding Peninsula Clean Energy Authority Delinquent Accounts and Bad Debt Collections

RECOMMENDATION:

Adopt policy specifying the terms for delinquent accounts to be returned to PG&E and addressing bad debt from closed accounts.

BACKGROUND:

PCEA currently has very broad policies regarding returning customers to PG&E bundled service within our Terms and Conditions. This policy will clarify the timeframe and threshold for Delinquent Accounts to be notified and, if necessary, returned to PG&E bundled service. This policy also addresses thresholds for Bad Debt collections and write-offs from closed accounts.

DISCUSSION:

Since beginning service in October 2016, PCEA has been accruing balances from both Delinquent Accounts from active customers and Bad Debt from closed accounts. In the case of active customers, PG&E continues to send monthly billing notices with past due balance alerts. However, to ensure that PCEA is being appropriately compensated for energy procurement services, it is prudent to set thresholds for returning non-paying customers to PG&E bundled service.

Delinquent Accounts from Active Customers

It is proposed that PCEA set Delinquent Account thresholds for active customers of 90 days/\$250 for residential customers and 60 days/\$500 non-residential customers.

These thresholds are consistent with the practices of the other CCAs currently in operation.

Bad Debt from Closed Accounts

When an account discontinues service with PG&E, PG&E will attempt to collect any unpaid balances for a period of 52 days. After 52 days any unpaid balances owed to PCEA will be returned to PCEA to collect or discharge at its discretion. Staff is proposing that the Board adopt a policy to discharge debts below \$50 and authorize debts over \$50 to be turned over to a collections service selected by Staff. In surveying other CCAs with regards to debt collection, a \$50 threshold was determined to be the most appropriate level.

FISCAL IMPACT:

Defining Delinquent Account actions for account termination and allowing for Bad Debt collection for closed accounts is in line with creating sound fiscal management policies for Peninsula Clean Energy Authority. Expected revenue from Bad Debt collections is expected to be consistent with what other CCAs have experienced, with approximately 10% of debts recovered. PCE has previously set a policy to create a Bad Debt reserve of 0.35% of total revenues which should cover the non-recovered amounts.



Subject: Delinquent Accounts and Bad Debt Collections Policy

Policy:

DELINQUENT ACCOUNTS

Residential: Peninsula Clean Energy customer accounts exceeding \$250 in charges overdue for more than 90 days will be sent a late payment notification by PCE. The customer will be provided 60 days to pay or make payment arrangements. If payment in full is not received within 60 days, or the terms of an activated payment arrangement are not fulfilled, the PCE customer account will be closed and returned to PG&E bundled generation service on the next account meter read date. Residential customers returned to PG&E will be charged the applicable PCE opt-out fee and are subject to the applicable terms and conditions provided in PG&E Electric Rule 23.

Non-residential: Non-residential customer accounts exceeding \$500 in aggregate in unpaid charges for 60 days or more will be sent a late payment notification by PCE. The customer will be provided 30 days to pay or make payment arrangements. If payment in full is not received within 30 days, or the terms of an activated payment arrangement are not fulfilled, the PCE customer account will be closed and returned to PG&E bundled generation service on the next account meter read date. Non-residential customers returned to PG&E will be charged the applicable PCE opt-out fee and are subject to the applicable terms and conditions provided in PG&E Electric Rule 23.

BAD DEBT AND COLLECTIONS

Closed Peninsula Clean Energy accounts with overdue amounts greater than \$50 may be referred to a collection agent. Amounts of \$50 or less may be written off.

PG&E may close customer accounts before payment delinquencies bring them to the attention of Peninsula Clean Energy operations. When PG&E closes customer accounts, these accounts are also closed in the Peninsula Clean Energy program. In these cases, the thresholds outlined in the preceding paragraph apply in either referring closed accounts to collections or writing off balances.





**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: May 22, 2017
BOARD MEETING DATE: May 25, 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: Renewable Supply (Shiloh)

RECOMMENDATION:

Authorize the Chief Executive Officer to execute a Power Purchase Agreement (PPA) for Renewable Supply with Shiloh I Wind Project LLC, an Oregon limited liability company, and any necessary ancillary documents. Power Delivery Term: Five years, in an amount not to exceed \$65,000,000

BACKGROUND:

The Peninsula Clean Energy board adopted a strategic goal to source 100% of PCE's energy from California RPS eligible renewables by 2025. As a first step in meeting this strategic goal, PCE issued a request for proposals for renewable energy on October 17, 2016. On November 7, 2016, PCE received 242 responses from 62 projects. Over the past several months, PCE staff has been evaluating the proposals and conducting negotiations with some of the bidders. In previous Board meetings, the PCE board has approved seven PPAs (two solar, two wind and three small hydro projects). In this board meeting, PCE staff is presenting one additional agreement that is the subject of this memo and expects to present several more as we continue to evaluate and finalize negotiations with the projects that best fit PCE's needs.

DISCUSSION:

At the October 27, 2016 board meeting, PCE described its strategy to diversify its power supply, and consider contract length, project ownership, project location, and project technology in selecting projects. Other key issues considered in the evaluation include

the proper mix of renewables in terms of Bucket 1 and Bucket 2 resources, power price, and the use of labor agreements for new projects.

One transaction is presented to the PCE board for approval today. We are asking that the board authorize the Chief Executive Officer to execute an agreement, with terms consistent with those shown in the attached forms, as well as any necessary ancillary documents, subject to the condition that the average cost of power purchased through the agreement shall not exceed a cost threshold of \$50 per megawatt-hour (MWh) over the term of the agreement.

The project is an agreement with Shiloh I Wind Project LLC for an existing wind project in Solano County, California (Shiloh I Wind Project LLC), with a five year power delivery term.

The Shiloh I Wind Project LLC is an existing 150 MW project with PCE's energy deliveries to start on January 1, 2019 and to end on December 31, 2023. During 2019 and 2020, PCE will have a 16.7% share of the project output; during 2021, PCE's share will increase in two steps to 83.3%; and during 2022 and 2023, PCE will receive 100% of the project's output. These percentages correspond to the dates on which three existing contracts for the project's output are scheduled to expire.

FISCAL IMPACT:

Payments for power purchased through the Shiloh project will not exceed \$65 million over the term of this agreement.

RESOLUTION NO. _____

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

*** * * * ***

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO (A) EXECUTE A POWER PURCHASE AGREEMENT WITH SHILOH I WIND
PROJECT LLC, AN OREGON LIMITED LIABILITY COMPANY, WITH TERMS
CONSISTENT WITH THOSE PRESENTED, IN A FORM APPROVED BY THE
GENERAL COUNSEL AND FOR A POWER DELIVERY TERM OF UP TO 5 YEARS,
IN AN AMOUNT NOT TO EXCEED \$65,000,000;**

**(B) EXECUTE SUCH OTHER ANCILLARY DOCUMENTS, IN A FORM APPROVED
BY GENERAL COUNSEL, AS MAY BE NECESSARY TO EFFECTUATE PURCHASE
OF SUCH POWER FROM SHILOH I WIND PROJECT LLC.**

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
“PCEA”) was formed on February 29, 2016; and

WHEREAS, launch of service for Phase I occurred in October 2016, and launch
of service for Phase II occurred in April 2017; and

WHEREAS, Peninsula Clean Energy is ready to purchase energy, renewable energy, carbon free energy, and related products and services (the “Products”) to supply Phase II of its launch; and

WHEREAS, in Fall 2016, consistent with its mission of reducing greenhouse gas emissions and offering customer choice at competitive rates, Peninsula Clean Energy administered a competitive process to select one or more power supply contractors; and

WHEREAS, one of the providers selected by Peninsula Clean Energy through this competitive process is Shiloh I Wind Project LLC, an Oregon limited liability company, (“Contractor”), based on its desirable offering of Products, pricing, and terms; and

WHEREAS, staff is presenting to the Board for its review the negotiated Power Purchase Agreement, reference to which should be made for further particulars; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the aforementioned Power Purchase Agreement and any other ancillary documents required for said purchase of power from the Contractor.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

(A) Execute the Power Purchase Agreement with the Contractor with terms consistent with those presented, in a form approved by the General Counsel and for a power delivery term of up to 5 years, in an amount not to exceed \$65,000,000;

(B) Execute such other ancillary documents, in a form approved by General Counsel, as may be necessary to effectuate purchase of such power from the Contractor.

* * * * *

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Shiloh I Wind Project LLC, an Oregon limited liability company

Buyer: Peninsula Clean Energy, a California joint powers authority

Description of Facility: A 150 MW AC wind generating facility located in Solano County, California

Delivery Start Date: January 1, 2019

Delivery Term: 5 Contract Years

Delivery Term Expected Energy:

| Contract Year | Guaranteed Capacity (MW) | Expected Energy (MWh) |
|----------------------|---------------------------------|------------------------------|
| 2019 | 25 | |
| 2020 | 25 | |
| 2021 | January 1-April 30, 2021 = 25 | |
| | May 1-May 31, 2021 = 100 | |
| | June 1-December 31, 2021 = 125 | |
| 2022 | 150 | |
| 2023 | 150 | |

Contract Year 1 Expected Energy:

| Month | Expected Energy (MWh) |
|-------|-----------------------|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |

Contract Price:



Product:

- x Energy
- x Green Attributes:
 - x Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
- x Capacity Attributes

Deliverability:

- ☐ Energy Only Status
- ☒ Full Capacity Deliverability Status

Scheduling Coordinator: Seller or Seller's Agent

Performance Security: [REDACTED]

Notice Addresses:

Seller: Shiloh I Wind Project LLC

Shiloh I Wind Project LLC
1125 NW Couch St. Ste 700
Portland, OR 97209

Attention: Contract Administration
Phone No.: 503-796-7034
Fax No.: 503-796-6907
Email: contracts.admin@avangrid.com

With a copy to:

Avangrid Renewables, LLC
1125 NW Couch St. Ste 700
Portland, OR 97209
Office of the General Counsel

Phone No.: 503-796-7127
Fax No.: 503-796-6904
Email: benjamin.lackey@avangrid.com

Scheduling:

Avangrid Renewables, LLC
1125 NW Couch St. Ste 700
Portland, OR 97209
Attention: Real-Time

Phone No.: (503) 796-7013
Fax No.: (503) 796-7044
Email: ibrrealtime@iberdrolaren.com

Buyer:

Peninsula Clean Energy
455 County Center, 4th Floor
Redwood City, CA 94063
Attention: George Wiltsee, Director of Power Resources
Fax No.: TBD
Phone No.: (626) 890-8346
Email: gwiltsee@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy
400 County Center, 6th Floor
Redwood City, CA 94063
Attention: Nirit Eriksson, Deputy County Counsel
Fax No.: (650) 363-4034
Phone No.: (650) 363-4461
Email: neriksson@smcgov.org

[Signatures on following page.]

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

SELLER

Shiloh I Wind Project LLC

By: 

Name:

Laura Beane

Title:

Authorized Representative

By: 

Name:

Scott Jacobson

Authorized Representative

Title:

BUYER

Peninsula Clean Energy Authority

By: _____

PCE Executive Officer

LEGAL
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POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("**Agreement**") is entered into as of May 26, 2017 (the "**Effective Date**"), between Seller and Buyer (each also referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, Seller owns and operates the electric generating facility as described in Exhibit A (the "**Facility**"); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, Buyer's MW Share of the Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and all Capacity Attributes;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.10.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit D.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly Controls, is Controlled by, or is under common Control with such designated Person.

"**Agreement**" has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

"**Ancillary Services**" has the meaning set forth in the CAISO Tariff.

"**Available Capacity**" means the capacity from the Facility, expressed in whole MWs, that is available at a particular time to generate Product.

"**Bankrupt**" means with respect to any entity, such entity that (a) 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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of

ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

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

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Bid Curtailment” means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to produce less Energy from the Facility than is reflected in the VER Forecast for the Facility for a period of time;

(b) for the same time period as referenced in (a), Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility; and

(c) no other circumstances exist that constitute a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order, which instruction may be communicated to Seller in writing by electronic notice or other commercially reasonable means.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which (a) Seller reduces generation from the Facility pursuant to (i) Buyer Bid Curtailment or (ii) a Buyer Curtailment Order.

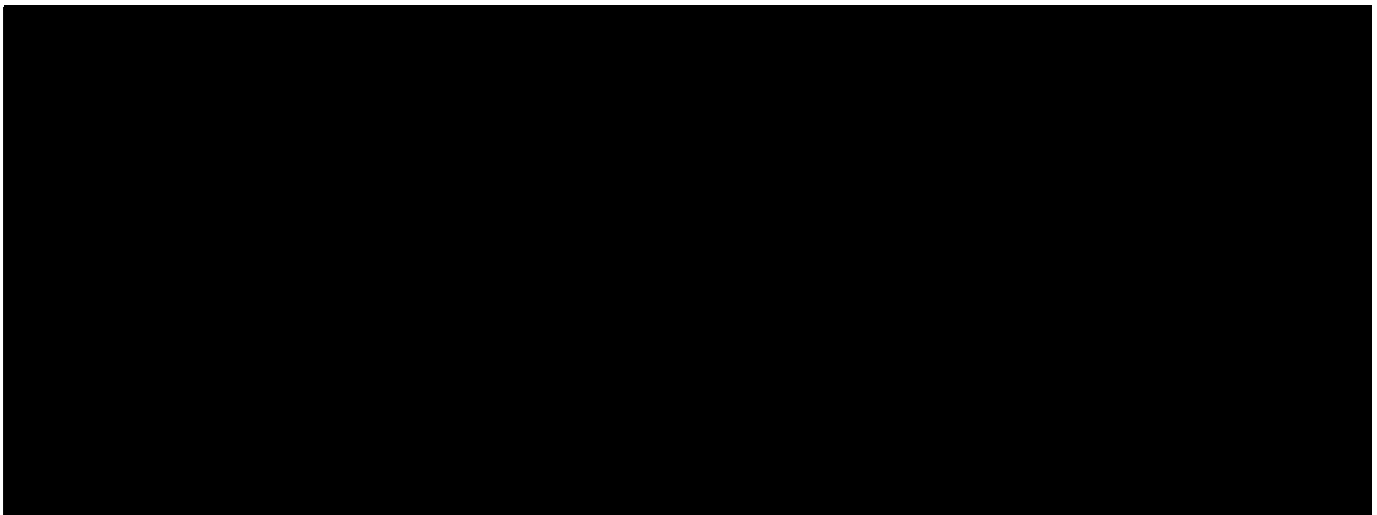
“Buyer Default” means a failure by Buyer to perform its obligations hereunder.

“Buyer’s MW Share” the percentage of the electric energy generated by the Facility for the applicable Contract Year as set forth in Exhibit G; provided, that if there is a curtailment of Other Buyers’ respective shares of the Facility energy, then Buyer’s MW Share shall mean the ratio, calculated to the thousandths of a MW (i.e., rounded to three decimal places), of (i) the Guaranteed Capacity to (ii) 150 MW minus Other Buyers’ curtailed capacity (in MW).

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

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility less Electrical Losses and Station Use, in accordance with the CAISO Tariff.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.



“CAISO Operating Order” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), and X-1 2 (2011), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff) if applicable to wind generation.

“CEC” means the California Energy Resources Conservation and Development Commission or its successor agency.

“Change of Control” in the case of Seller, means any circumstance in which Seller’s [REDACTED] ceases to be an interim parent or the ultimate parent, respectively, or to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by its Interim Parent or Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards the Interim Parent’s or Ultimate Parent’s ownership interest in Seller unless the Interim Parent or Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

[REDACTED]

“Compliance Actions” has the meaning set forth in Section 3.10.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.10.

“Confidential Information” has the meaning set forth in Section 19.1.

“Contract Price” has the meaning set forth in the Cover Sheet, as may be adjusted by Section 3.3.

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

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Delivery Start Date, and each subsequent Contract Year shall commence on the anniversary of the Delivery Start Date.

“Control” (including, with correlative meanings, the terms “Controlled by” and “under common Control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Costs” means, with respect to Buyer, in the event of a Change of Control Settlement Amount and, otherwise, 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 the Agreement; and all reasonable attorneys’ fees and expenses incurred by Buyer or the Non-Defaulting Party, as the case may be, in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement.

“CPUC” means the California Public Utilities Commission, or successor entity.

“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 issuer rating, in either case by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Curtailment Cap” means Guaranteed Capacity times 50 hours per Contract Year.

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail Energy deliveries for any reason other than a Buyer Bid Curtailment;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if the Facility is interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s or distribution operator’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller’s obligations under its

Interconnection Agreement with the Participating Transmission Owner or distribution operator

For the avoidance of doubt, if Buyer or Buyer's SC submitted a Self-Schedule and/or an Energy Supply Bid in its final CAISO market participation in respect of a given time period that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

"Day-Ahead Forecast" has the meaning set forth in Section 4.4(c).

"Day-Ahead LMP" has the meaning set forth in the CAISO Tariff.

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

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.

"Deemed Delivered Energy" means Buyer's MW Share of the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to the result of the equation employed pursuant to Section 4.10(a)(vii), which is reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, and wind speed and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period, in either case less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"Defaulting Party" has the meaning set forth in Section 11.1(a).

"Deficient Month" has the meaning set forth in Section 4.8(e).

"Delivery Point" means the PNode designated by the CAISO for the Facility.

"Delivery Start Date" means January 1, 2019.

"Delivery Term" shall mean the period of Contract Years specified on the Cover Sheet, beginning on the Delivery Start Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"Early Termination Date" has the meaning set forth in Section 11.2.

"Economic Bid" has the meaning set forth in the CAISO Tariff.

“Effective Date” has the meaning set forth on the Preamble.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point.

“Eligible Intermittent Resources Protocol” or “EIRP” has the meaning set forth in the CAISO Tariff.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means metered electrical energy, measured in MWh, which is produced by the Facility.

“Energy Payment Amount” means the manner in which the Contract Price and CAISO Delivery Revenues will be settled under this Agreement, as set forth in Exhibit F.

“Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Section 3.3(c).

“Expected Energy” has the meaning set forth in Section 4.7.

“Facility” means the facility described more fully in Exhibit A attached hereto.

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

“FMM” means the CAISO’s Fifteen Minute Market as set forth in the CAISO Tariff.

“FMM Schedule” has the meaning set forth in the CAISO Tariff.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.

“Future Environmental Attributes” shall mean any and all emissions, air quality or other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission

measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, 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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local

environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Guaranteed Capacity” means the MW AC capacity for the applicable Contract Year measured at the Delivery Point as set forth in Exhibit G.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guarantor” means, with respect to Seller, (a) Avangrid, Inc., provided that (i) Avangrid, Inc. Controls, directly or indirectly, Seller and (ii) the creditworthiness of Avangrid, Inc. as of the Effective Date has not materially deteriorated following the Effective Date, as reasonably determined by Buyer, or (b) any other Person proposed by Seller and accepted by Buyer in Buyer’s sole discretion.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit C.

“Indemnified Party” has the meaning set forth in Section 17.1.

“Indemnifying Party” has the meaning set forth in Section 17.1.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility is interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities will be operated and maintained during the Contract Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated February 29, 2016 under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt, equity or tax equity financing or refinancing for or in connection with the purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, 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- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, 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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, and Capacity Attributes.

“Lost Output” has the meaning set forth in Exhibit D.

“Metered Energy” means the product of (a) the electric energy generated by the Facility, expressed in MWh, as recorded by the CAISO Approved Meter(s) and net of all Electrical Losses and Station Use, multiplied by (b) Buyer’s MW Share.

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour measured in AC.

“Negative LMP” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP is less than zero dollars (\$0).

“Negative LMP Costs” has the meaning set forth in Section 3.3(c).

“Net Qualifying Capacity” or **“NQC”** has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“Other Buyers” shall mean any entity other than Buyer with a contract to purchase energy from the Facility that was in effect on or before the Effective Date

“Participating Intermittent Resource Program” or **“PIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas & Electric Company.

“Party” has the meaning set forth in the Preamble.

“Performance Security” means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty, in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

“Performance Measurement Period” has the meaning set forth in Section 4.7.

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

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Product” means (i) Metered Energy, (ii) Green Attributes, (iii) Capacity Attributes, and (iv) to the extent applicable in accordance with Section 3.5, any Future Environmental Attributes.

“Prudent Operating Practice” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry in the Western United States for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.7(b).

“RA Guarantee Date” means the Delivery Start Date.

“RA Shortfall Month” means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.7(b).

“Real-Time Market” or **“RTM”** has the meaning set forth in the CAISO Tariff.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, provided in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“Replacement Energy” has the meaning given in Exhibit D.

“Replacement Green Attributes” has the meaning given in Exhibit D.

“Replacement Product” has the meaning given in Exhibit D.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within the Northern Area TAC Area (as described in the CAISO Tariff) and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Resource Adequacy Benefits” means the rights and privileges attached to Buyer’s MW Share of the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include any local, zonal or otherwise locational attributes associated with the Facility.

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

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

“Scheduled Energy” means the Day-Ahead Schedule, FMM Schedule, and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time.

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

“Security Interest” has the meaning set forth in Section 8.9.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

“Settlement Interval” has the meaning set forth in the CAISO Tariff.

“Settlement Period” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A.

“Site Control” means that Seller: (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“Station Use” means:

(a) The electric energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The electric energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“System Emergency” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Termination Payment” has the meaning set forth in Section 11.3.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

[REDACTED]

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“Variable Energy Resource Forecast” or **“VER Forecast”** means, for a given period, the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

“WECC” means the Western Electricity Coordinating Council or its successor.

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(d).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”).

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

ARTICLE 3

PURCHASE AND SALE

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller at the Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Except for Deemed Delivered Energy, Buyer has no obligation to pay Seller for any Product that is not delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA and Replacement Product.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced by the Facility.

3.3 **Compensation.** Buyer shall compensate Seller for the Product in accordance with this Section 3.3.

(a)

Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead price for the applicable Settlement Interval.

(c) If during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Metered Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times the number of such Excess MWh ("**Negative LMP Costs**").

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable

Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 Future Environmental Attributes.

(a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes; *provided*, that Buyer shall be responsible for any additional costs required to effectuate this right. Subject to Section 3.10, Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 Capacity Attributes.

(a) Throughout the Delivery Term, subject to Section 3.10, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility; provided that Buyer shall be responsible for any additional costs related to the provision of Ancillary Services.

(b) Throughout the Delivery Term, subject to Section 3.10, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, subject to Section 3.10, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer. (c) For the duration of the Delivery Term, subject to Section 3.10, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.7 Resource Adequacy Failure.

(a) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, the Parties acknowledge and agree that if Seller has indicated that the Facility will have FCDS on the Cover Sheet, but has failed to provide Resource Adequacy Benefits as required hereunder, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the

Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied by \$3.00/kW-mo.; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated to Buyer at least sixty (60) calendar days before the CPUC operating month for the purpose of monthly RA reporting.

3.8 Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. The term “commercially reasonable efforts” as used in this Section 3.8 means efforts consistent with and subject to Section 3.10.

3.9 California Renewables Portfolio Standard. Subject to Section 3.10, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by California statute or by the CPUC or CEC from time to time.

3.10 Compliance Expenditure Cap. If Seller establishes to Buyer’s reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller’s cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable), the items listed in Sections 3.10(a) and (b), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at [REDACTED] per MW of Guaranteed Capacity (“**Compliance Expenditure Cap**”):

- (a) Green Attributes; and,
- (b) Capacity Attributes.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice

to Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.10 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller.

ARTICLE 4 **OBLIGATIONS AND DELIVERIES**

4.1 Delivery.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Metered Energy on an as-generated, instantaneous basis. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Facility as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS Operating Rules.

4.3 Scheduling Coordinator Responsibilities.

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. Buyer shall have the right to direct Seller to Bid into the Day-Ahead Market or Real-Time Market, which Bid shall be based on [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) Notices. Seller shall provide Buyer with access to all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, Forced Facility Outages, Forced Facility Outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. Seller shall promptly submit such information to the CAISO and Buyer (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(e) [REDACTED]

[REDACTED]

(f) CAISO Settlements. Seller shall be responsible for all settlement functions with the CAISO related to the Facility. [REDACTED]

[REDACTED] Seller shall provide Buyer settlement information once it becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller will review, validate, and if requested by Buyer, dispute any charges that are the responsibility of Buyer in a timely manner and consistent with Seller's existing settlement processes for charges that are Seller's responsibilities. Buyer may request that Seller dispute CAISO settlements with respect to the Facility.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld.

(h) NERC Reliability Standards. Buyer shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards.

4.4 **Forecasting.** Seller shall provide the forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity and expected Metered Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Expected Metered Energy. No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of the Delivery Term, and thereafter ten (10) Business Days before the

beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy).

(d) Real-Time Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Capacity of five (5) MW or more, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must likewise notify Buyer. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone and e-mail to Buyer.

4.5 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, or for any Product that could not be delivered due to Force Majeure.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch notice delivered to Seller (at least fifteen (15) minutes before the applicable scheduling interval), provided that any such

Curtailment Order shall apply to at least two (2) settlement intervals Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the applicable Contract Price.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Cost, if any, for the Buyer Curtailment Period or Curtailment Period. In addition, Seller shall bear any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit D:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period, or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

(f)



4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Product, as measured by Metered Energy, that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet ("**Expected Energy**"). Seller shall be

required to deliver to Buyer an amount of Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the average Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent that Buyer failed to take delivery of energy, or Seller was unable to deliver energy as a result of any Force Majeure Events, Buyer Default, Curtailment Periods and Buyer Curtailment Periods; to effectuate the foregoing excuse, Seller shall be deemed to have generated (1) the Deemed Delivered Energy in respect of Buyer Curtailment Periods and in the case of a Buyer failure to take or receive Product, and (2) an amount of Energy determined in accordance with Exhibit D in respect of Lost Output. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer, in the first Contract Year of each Performance Measurement Period following a Performance Measurement Period as to which Seller as paid damages calculated in accordance with Exhibit D, the Product in the amount equal to the greater of the amount of Metered Energy actually delivered in such Contract Year, less Excess MWh, or eighty percent (80%) of the Expected Energy for such Contract Year. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit D; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit D) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer; provided further that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.10, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy are issued, tracked and transferred to Buyer for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification, issuance and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(a) Seller shall be responsible for all expenses associated with paying WREGIS Certificate issuance and transfer fees. Buyer shall be responsible for all expenses associated with establishing and maintaining Buyer's WREGIS account.

(b) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Metered Energy for such calendar month as evidenced by the Facility's metered data.

(c) Due to the ninety (90) day delay in the creation of WREGIS Certificates

relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally issued to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(d) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates issued to Buyer for a calendar month as compared to the Metered Energy for the same calendar month (“**Deficient Month**”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller or its agent, then the amount of Metered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller provides Replacement Product (as defined in Exhibit D) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Deficient Month, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. Seller shall use commercially reasonable efforts to rectify any WREGIS Certificate Deficit as expeditiously as possible.

(e) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Metered Energy in the same calendar month.

(f) Seller warrants that all necessary steps to allow the Renewable Energy Credits to be issued to Buyer and tracked in WREGIS will be taken prior to the first delivery under the contract.

4.9 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.10 **Access to Data and Installation and Maintenance of Weather Station.**

(a) Commencing thirty (30) days prior to the Delivery Start Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested

by Buyer, throughout the Delivery Term, which changes Buyer determines are necessary to forecast output from the Facility, and/or comply with Law:

- (i) read-only access to meteorological measurements, transformer availability, any other facility availability information, and, if applicable, all parameters necessary for use in the equation under item (vii) of this list;

- (ii) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in 1 minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

- (iii) read-only access to the Facility's CAISO revenue meter and all Facility meter data at the Site;

- (iv) full, real time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system;

- (v) net plant electrical output at the CAISO revenue meter;

- (vi) instantaneous data measurements at sixty (60) second or increased frequency for the following parameters, which measurements shall be provided by Seller to Buyer in a consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup: (i) wind speed (measured at hub height), (ii) peak wind speed (within one minute, measured at hub height), (iii) wind direction (measured at hub height), (iv) wind speed standard deviation, (v) wind direction standard deviation, (vi) ambient air temperature (measured at hub height), and (vii) barometric pressure (measured at hub height); and

- (vii) an equation, updated on an ongoing basis to reflect the potential generation of the Project as a function of wind speed (and, if applicable, other weather factors). Such equation shall employ the power curve provided by the Facility's turbine supplier and will take into account the expected availability of the Facility. Seller shall reasonably cooperate with any request from Buyer to adjust the equation due to results that are inconsistent with the observed Facility output.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly actual available capacity in a form reasonably acceptable to Buyer.

- (b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.10(a), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10)

minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) Installation, Maintenance and Repair.

(i) Seller, at its own expense, shall install and maintain at least one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 4.10(a) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.10(a) of this Agreement.

(ii) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical.

(iv) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(d) No later than ninety (90) days before the Commercial Operation Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (i) the parameters identified in Section 4.10(a)(vi) above (all data, except peak values, should be 1-second samples averaged into 10-minute periods); (ii) elevation, latitude and longitude of the weather station; and (iii) any other data reasonably requested by Buyer.

ARTICLE 5

TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available Energy to Buyer, that are imposed on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Energy that are

imposed on Energy at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6

MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

ARTICLE 7

METERING

7.1 **Metering.** Seller shall measure the amount of Energy produced by the Facility using a CAISO Approved Meter, using a CAISO-approved methodology. Such meter shall be installed on the high side of the Seller's transformer and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO

meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8

INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall deliver an invoice to Buyer for Product no later the tenth (10th) day of the month following the monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh produced by the facility as read by the CAISO Approved Meter, the amount and calculation of CAISO Delivery Revenue, the amount of Replacement RA and Replacement Product delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Energy Payment Amount; and (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer to the bank account provided on each monthly invoice or by check. If Seller's invoice is received on or before the fifteenth (15th) day of the month, Buyer shall pay undisputed invoice amounts by the twenty-fifth (25th) day of the month following the monthly billing period. If Seller's invoice is received after the fifteenth (15th) day of the month, Buyer shall pay undisputed invoice amounts by the twenty-fifth (25th) day of the month following the month that Buyer receives Seller's invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

8.5 **Billing Disputes.** 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. 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 five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original 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 if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a party other than the Party seeking the adjustment and such party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **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 through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, 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.

8.7 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or the day that is thirty (30) days following the Effective Date, in the amount of [REDACTED]. If the Performance Security is provided in the form of a Guaranty, it shall be substantially in the form set forth in Exhibit C. [REDACTED]

Seller shall maintain the Performance Security in full force and effect and Seller shall replenish the Performance Security (including by issuing a new Guaranty) in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, [REDACTED] indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.8 **Buyer's Financial Statements.** Promptly following Seller's request, Buyer will provide to Seller a copy of Buyer's most recently completed annual report containing audited consolidated financial statements for the prior fiscal year; provided that such request will be deemed satisfied if Buyer's annual report is available at www.peninsulacleanenergy.com. As soon as practicable following Seller's request, Buyer will provide to Seller a copy of Buyer's quarterly unaudited consolidated financial statements for the most recent quarterly accounting period. It shall not be a default of Buyer if such financial statements cannot be provided to Seller because of a delay in their completion.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Section 8.7 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion

provided for in this Agreement where Buyer is authorized to retain all or a portion of the Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Performance Security; and

(c) Liquidate all Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 9

NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10

FORCE MAJEURE

10.1 Definition.

(a) **"Force Majeure Event"** means any act or event that delays or prevents a

Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price or Energy Payment Amount unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price or Energy Payment Amount); (ii) Seller's inability to obtain permits or approvals of any type for the operation or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer.

ARTICLE 11

DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) 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, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as applicable; or

(vi) 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.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility, except for Replacement Product;

(ii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iii) failure by Seller to satisfy the collateral requirements pursuant to Section 8.7, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Termination Payment, if such failure is not remedied within five (5) Business Days after Notice thereof;

(iv) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty which remains uncured after five (5) Business Days' Notice;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in clauses (a) or (b) of the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(v) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this

Agreement;

(d) to suspend performance; and/or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this Section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this Section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, 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 from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **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 five (5) Business Days of receipt of the 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. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY 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. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT D, THE PARTIES ACKNOWLEDGE THAT THE

DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Oregon, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Prior to the Effective Date, Seller has delivered a written notice to Buyer identifying the Other Buyers, which notice is true and correct as of the Effective Date. Seller's

contracts with the Other Buyer's, and its implementation thereof, do not conflict with and will not place a material and adverse burden on Buyer's rights and benefits under this Agreement.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(g) Buyer is a "local public entity" as defined in Section 900.4 of the

Government Code of the State of California.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

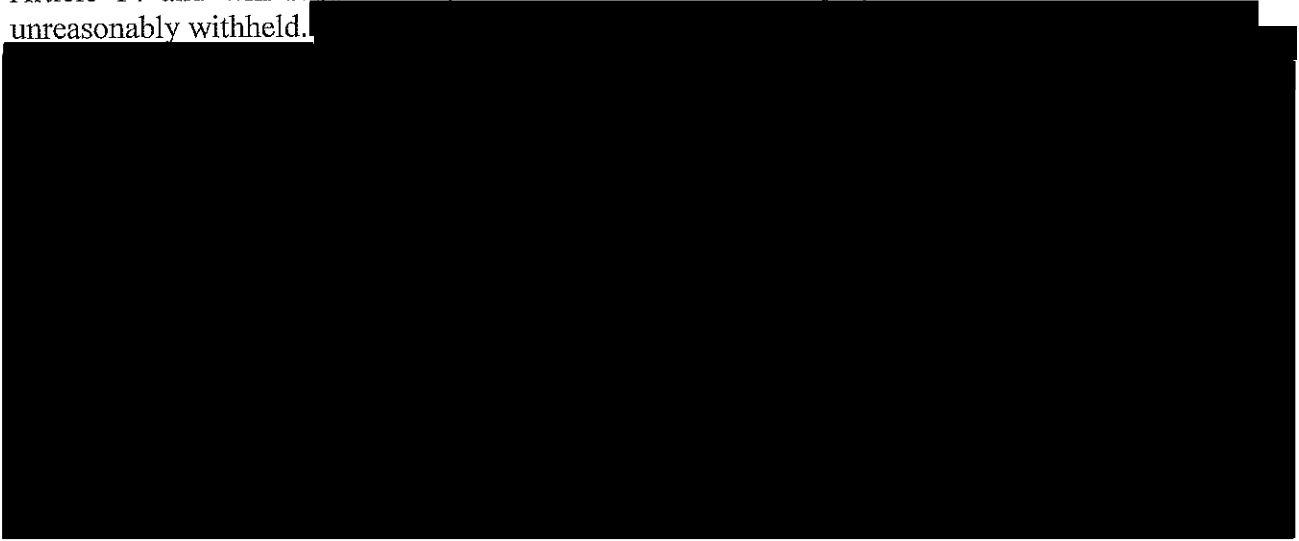
(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 14 **ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; or (b) subject to Section 15.1, a Lender as collateral. Any direct or indirect Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld.



14.3 **Permitted Assignment; Change of Control of Buyer.** Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided*, that in each of the foregoing situations, the assignee (a) has a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, and (b) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California; *provided, further*, that in each such case, no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b). Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

ARTICLE 15

LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender.** If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2 and such act performed by Lender shall be

as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement; *provided, further*, that the non-granting Party shall have no obligation to offer more favorable terms to Lender in such consents or other agreements than those in this Agreement.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 Cure Rights of Lender. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder but shall not be required to accept a cure period longer than that provided in this Agreement except in its sole discretion. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16

DISPUTE RESOLUTION

16.1 Governing Law. This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. The Parties agree that any litigation arising with respect to this Agreement is to be venued in the Superior Court for the county of San Mateo, California.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

16.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 17

INDEMNIFICATION

17.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or

warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18

INSURANCE

18.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage, in each case, with limits determined to be appropriate by Seller. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(e).

(f) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of

insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(g) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 19

CONFIDENTIAL INFORMATION

19.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Upon request or demand of any third person or entity not a party to this Contract for production, inspection and/or copying of this Agreement (in whole or in part) or any information

designated by Seller as Confidential Information, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any information designated as Confidential Information by Seller whether or not advance written notice has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect information deemed by it to be Confidential Information.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

19.5 **Public Statements.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

ARTICLE 20

MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. 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.

20.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and

employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

20.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.6 **Mobile-Sierra.** Notwithstanding any other 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 FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other 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 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).

20.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.8 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its

constituent members, in connection with this Agreement.

20.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event.

EXHIBIT A
DESCRIPTION OF THE FACILITY

Site Name: Shiloh I Wind Project

APNs:

0048-040-160
0048-040-260
0048-040-250
0900-100-240
0090-100-350
0090-100-360
0090-090-230
0090-090-170
0090-110-080
0090-090-100
0048-040-180
0048-070-410
0048-070-420
0048-070-400
0048-070-430
0048-060-120
0090-090-220
0090-090-280
0090-100-040
0048-060-090
0090-090-270
0090-090-260
0048-050-070
0048-060-200
0090-090-240
0090-090-250
0090-090-180
0090-090-190
0048-060-070
0048-060-050
0048-040-160
0048-040-260
0048-040-250
0048-070-170
0048-060-100
0048-050-080 (part)
0090-100-030
0090-090-140
0048-040-060

0048-040-070
0048-040-140
0048-040-170
0048-060-190
0048-060-170
0090-070-260
0090-070-400
0048-070-200
0048-070-330
0048-060-180
0048-070-340
0090-070-070
0090-090-010
0048-060-160
0090-070-380

County: Solano County

Installed Capacity: 150 MW AC (net, at the Delivery Point)

P-node/Delivery Point: the PNode designated by the CAISO for the Facility at the **PG&E Bird's Landing** Substation

EXHIBIT B

EMERGENCY CONTACT INFORMATION

BUYER:

George Wiltsee, Director of Power Resources
Peninsula Clean Energy

Fax No.:

Phone No.: 626-890-8346

Email: gwiltsee@peninsulacleanenergy.com

SELLER:

Contract Administration
Avangrid Renewables, LLC

Phone No.: 503-796-7034

Fax No.: 503-796-6907

Email: contracts.admin@avangrid.com

With a copy to:

Office of the General Counsel
Avangrid Renewables, LLC

Phone No.: 503-796-7127

Fax No.: 503-796-6904

Email: benjamin.lackey@avangrid.com

EXHIBIT C

FORM OF GUARANTY

This Guaranty (this "Guaranty") is entered into as of [_____] (the "Effective Date") by and between [_____] a [_____] ("Guarantor"), and Peninsula Clean Energy, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

Recitals

- A. Buyer and [_____] a [_____] ("Seller"), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [____], 2016.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.7 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA in an aggregate liability not to exceed [_____] (the "Guaranteed Amount"). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly, after giving effect to all applicable notice and grace, pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed

Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller). Notwithstanding the foregoing, this Guaranty shall automatically terminate and be of no further force or effect if Seller replaces this Guaranty with an alternative form of Performance Security acceptable to Buyer. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount,
- or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

Notwithstanding any other provision of this Guaranty to the contrary, Guarantor hereby reserves all rights and remedies accorded by applicable laws to sureties or guarantors based on the defense of the statute of limitations related to the enforceability of this Guaranty in any action or proceeding for the payment of any Guaranteed Amount.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's

organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

Peninsula Clean Energy

Attn: George Wiltsee, Director of Power
Resources

Fax:

If delivered to Guarantor, to it at

[]

Attn: []

Fax: []

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full

force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY

PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signatures on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

PENINSULA CLEAN ENERGY

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT D

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) \$50/MWh and (y) the market value of Replacement Green Attributes.

D = the Contract Price for the Performance Measurement Period, in \$/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

Additional Definitions:

“Adjusted Energy Production” shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output + Replacement Product – Excess MWh.

“Lost Output” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using an equation provided by Seller, as approved by Buyer in its reasonable discretion, to reflect the potential generation of the Facility as a function of Available Capacity, wind speed and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (e.g., PCC1) as the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement Energy” means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“Replacement Product” means (a) Replacement Energy, and (b) all Replacement Green Attributes.

EXHIBIT E

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$ [XXXXXXXX]

Expiry Date:

Beneficiary:

Peninsula Clean Energy

[Address]

Ladies and Gentlemen:

On behalf of [XXXXXXXX] ("Applicant"), we, **[insert bank name and address]** ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") in favor of Peninsula Clean Energy, Address _____, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXXXX] and 00/100), (the "**Available Amount**") pursuant to that certain **[Agreement]** dated as of _____ (the "**Agreement**") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry date of _____, 201_ subject to the automatic extension provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer in person, by courier at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

Partial draws are permitted under this Letter of Credit, provided that the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least sixty (60) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Article 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at **[insert bank address information]**, referring specifically to Issuer's Letter of Credit No. **[XXXXXXXX]**. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at **[XXX-XXX-XXXX]** and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Peninsula Clean Energy, Address _____ as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. **[XXXXXXXX]** (the "Letter of Credit") issued by **[insert bank name]** (the "Bank") by order of **[XXXXXXXX]** (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of **[XXXXXXXX]** (the "Agreement").
2. Pursuant to the Agreement, an Event of Default as defined in said Agreement has occurred and as a result, Beneficiary is entitled to payment of an amount equal to \$_____. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which amount does not exceed (i) the amount under which Beneficiary is entitled under the Agreement and (ii) the Available Amount under the Letter of Credit as of the date hereof.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.

3. The undersigned is a duly authorized representative of Peninsula Clean Energy and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Peninsula Clean Energy by wire transfer in immediately available funds to the following account:

[Specify account information]

Peninsula Clean Energy

Name and Title of Authorized Representative

Date _____

EXHIBIT F
ENERGY PAYMENT AMOUNT

The Energy Payment Amount shall be calculated as follows:

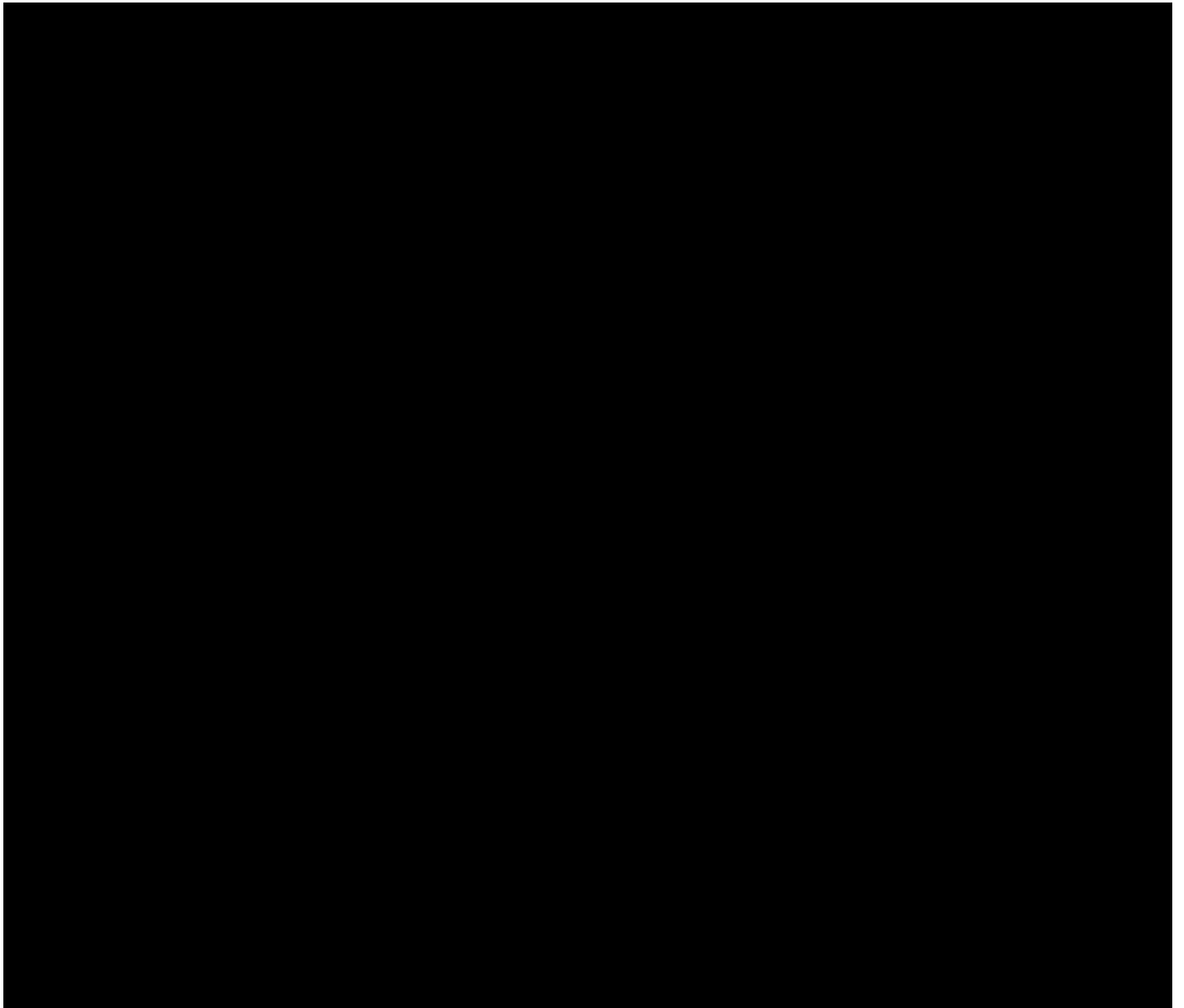


EXHIBIT G

GUARANTEED CAPACITY and

BUYER'S MW SHARE

| Contract Year | Guaranteed Capacity (MW) | Buyer's MW Share |
|----------------------|---------------------------------|-------------------------|
| 2019 | 25 | 16.667% |
| 2020 | 25 | 16.667% |
| 2021 | January 1-April 30, 2021 = 25 | 16.667% |
| | May 1-May 31, 2021 = 100 | 66.667% |
| | June 1-December 31, 2021 = 125 | 83.333% |
| 2022 | 150 | 100% |
| 2023 | 150 | 100% |



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: May 18, 2017

BOARD MEETING DATE: May 25, 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: Carbon Free Energy (Powerex)

RECOMMENDATION:

Authorize the Chief Executive Officer to execute an EEI (Edison Electric Institute) Master Agreement and Confirmation Agreement for Purchase of Carbon Free Energy from Powerex, and any necessary ancillary documents. Power Delivery Term: July 1, 2017 through June 30, 2018, in an amount not to exceed \$700,000. (Action)

BACKGROUND:

PCE has purchased Carbon Free Energy to meet its Phase 1 obligations to customers. With the launch of Phase 2, PCE needs to purchase additional Carbon Free Energy to meet its obligations to customers.

DISCUSSION:

PCE, working with its consultant PEA, solicited bids to supply Carbon Free Energy for its 2017 Phase 2 needs. Bids were received from five different suppliers to satisfy PCE's carbon free energy needs for 2017 and 2018. Powerex provided quantity and pricing that met PCE's objectives.

PCE and Powerex have agreed to use the EEI Master Agreement for this purchase of Carbon Free Energy. The Board is being asked to authorize the CEO to execute an EEI Master Agreement and Confirmation Agreement with Powerex, and any necessary ancillary documents, in forms approved by General Counsel.

FISCAL IMPACT:

Payments for the purchase of Carbon Free Energy from Powerex for July 1, 2017 through June 30, 2018 will not exceed \$700,000.

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 A CONFIRMATION AGREEMENT
WITH POWEREX CORP. FOR CARBON FREE ENERGY WITH TERMS
CONSISTENT WITH THOSE PRESENTED, IN A FORM APPROVED BY THE
GENERAL COUNSEL AND FOR THE PERIOD OF JULY 1, 2017 THROUGH JUNE
30, 2018 IN AN AMOUNT NOT TO EXCEED \$700,000**

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
Carbon Free Energy; and

WHEREAS, in January 2017 PCE requested prices for Carbon Free Energy from
multiple energy suppliers to serve Phase 2 customers in 2017 and 2018; and

WHEREAS, Powerex Corp. provided a competitively priced option for Carbon
Free Energy for July 1, 2017 through June 30, 2018; and

WHEREAS, PCE has negotiated a Confirmation Agreement with Powerex Corp. for the necessary volumes, reference to which should be made for further particulars; and

WHEREAS, both parties are agreeable to using the Edison Electric Institute (“EEI”) model master agreement for this purchase.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute a Master Agreement and a Confirmation Agreement with Powerex Corp. for Carbon Free Energy with terms consistent with those presented, in a form approved by the General Counsel and for a term covering July 1, 2017 through June 30, 2018 in an amount not to exceed \$700,000.

* * * * *

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 following date: May 18, 2017 ("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: **Powerex Corp.*** ("Powerex" or "Party A")

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

All Notices:

Street: Suite 1300 – 666 Burrard Street

City: Vancouver, B.C. Zip: V6C 2X8

Attn: Manager, Contracts

Phone: (604) 891-6090

Facsimile: (604) 891-5006

E-mail: powerex.legalservices@powerex.com

Duns: 25-330-1949

Federal Tax ID Number: 98-0164470

Invoices:

Attn: Finance Department

Phone: (604) 891-5023

Facsimile: (604) 891-6011

Email: powerex.finance@powerex.com

Scheduling:

Attn: Daily Optimization & Scheduling

Phone: (604) 891-5007

Facsimile: (604) 891-5045

Email: presched@powerex.com

Payments:

Attn: Finance Department

Phone: (604) 891-5023

Facsimile: (604) 891-6011

E-mail: powerex.finance@powerex.com

Wire Transfer:

[REDACTED]

Beneficiary's Bank:

[REDACTED]

Name: **Peninsula Clean Energy Authority**, a
California joint powers authority ("PCEA" or "Party B")

All Notices:

Street: 455 County Center, 4th Floor

City: Redwood City, CA Zip: 94063

Attn: Siobhan Doherty, Contracts Manager

Phone: (650) 561-6645

Facsimile: (650) 363-4034

E-mail: sdoherty@peninsulacleanenergy.com

Duns: 080262114

Federal Tax ID Number: 81-2708786

Invoices:

Attn: Anne Bartoletti

Phone: (650) 350-9514

Facsimile: (650) 363-4034

Scheduling:

Phone: (650) 561-6645

Address: 455 County Center, 4th Floor

Redwood City, CA 94063

Email: sdoherty@peninsulacleanenergy.com

Payments:

Attn: Anne Bartoletti

Phone: (650) 350-9514

Facsimile: (650) 363-4034

E-mail: abartoletti@peninsulacleanenergy.com

Wire Transfer:

[REDACTED]

Credit and Collections:Attn: Credit ManagerPhone: (604) 891-6095Facsimile: (604) 891-5025With additional Notices of an Event of Default or
Potential Event of Default to:Attn: Director, Risk ManagementPhone: (604) 891- 5041Facsimile: (604) 891-5056**Credit and Collections:**Attn: Janis PepperPhone: (415) 309-9206Facsimile: (650) 363-4034With additional Notices of an Event of Default or
Potential Event of Default to:Attn: Janis PepperPhone: (415) 309-9206Facsimile: (650) 363-4034

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

Party A Tariff: FERC Rate Schedule No. 1, effective April 7, 2014, Docket No. ER14-1281-000.

Party B Tariff: Tariff _____ Dated _____ Docket Number _____

Article TwoTransaction 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**

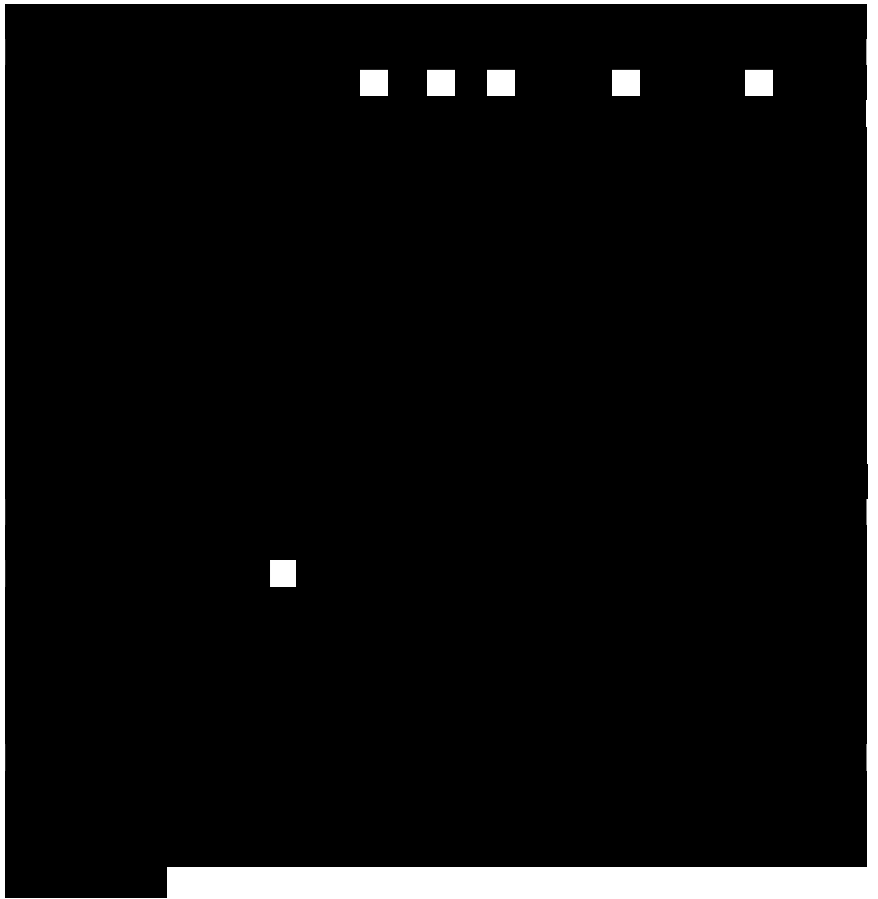
Events of Default; Remedies

☒ _____
☒ _____
☒ _____
☒ _____
☒ _____
☒ _____
☒ _____

5.6 Closeout Setoff☐ Option A (Applicable if no other selection is made.)☒ Option B - Affiliates shall have the meaning set forth in the Agreement.☐ Option C (No Setoff)**Article 8**Credit and Collateral
Requirements**8.1 Party A Credit Protection:**

(a) Financial Information:

☒ _____
☒ _____
☒ _____



(b) Credit Assurances:



(c) Collateral Threshold:



(d) Downgrade Event:



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(e) Guarantor for Party B: [REDACTED]

[REDACTED]

8.2 Party B Credit Protection:

(a) [REDACTED]

[REDACTED]

[REDACTED]

(b) Credit Assurances:

[REDACTED]

(c) Collateral Threshold:

[REDACTED]

[REDACTED]

[REDACTED]

| | | |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
(d) Downgrade Event:

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

(e) Guarantor for Party A: [REDACTED]
[REDACTED]

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

Cover Sheet: Schedule M

The Cover Sheet is revised by deleting the reference “Section 8.6” and replacing it with “Section 8.4”.

Article One: General Definitions

Section 1.1 is revised by adding the following sentence to the end of the definition:

“Notwithstanding the foregoing, (i) the sole Affiliate with respect to Party A shall be British Columbia Hydro and Power Authority, and (ii) the public entities that are or hereafter become “Parties” under the Joint Powers Agreement (referred to herein as “members” of Party B) shall not constitute or otherwise be deemed an “Affiliate” of Party B for the purposes of this Master Agreement or any Confirmation.”

Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday, Easter Monday, a Canadian bank or Federal Reserve holiday or any statutory holiday in British Columbia”.

Section 1.12 is revised to read as follows:

“1.12 “Credit Rating” means, with respect to any entity, the rating then assigned by

Moody's, S&P or any other rating agency agreed by the Parties as set forth in the Cover Sheet, to such entity's senior unsecured long-term debt obligations (not supported by insurance provider 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 issuer rating by Moody's or as an issuer or corporate credit rating by S&P or another rating by any other rating agency agreed by the Parties as set forth in the Cover Sheet. In the event that the Party or its Guarantor has multiple ratings, the lower rating shall prevail."

The following defined term is added as Section 1.26A:

"1.26A "Joint Powers Agreement" means the "Joint Exercise of Powers Agreement Relating to and Creating Peninsula Clean Power Authority of San Mateo County", as amended, providing for the formation of Party B, as such agreement may be further amended, amended and restated or acceded to."

Section 1.27 is revised by (A) deleting the word "transferable" in the first line and replacing it with "non-transferable", (B) adding the phrase ", a Canadian commercial bank" in the second line immediately after the words "U.S. commercial bank", (C) deleting the words "credit rating" in third line and replacing it with "long term debt rating or deposit rating", and (D) adding the phrase "and at least \$10 billion in total assets" in the third line immediately after the word "Moody's".

The following defined term is added as Section 1.49A:

"1.49A "Ratings Agency" means S&P, Moody's or any other rating agency agreed by the Parties in writing."

Section 1.50 is revised to read as follows:

"1.50 "Recording" has the meaning set forth in Section 2.5."

Section 1.52 is deleted in its entirety as replaced with the following:

"1.52 "S&P" means S&P Global Market Intelligence, a division of S&P Global Inc., or its successor."

Article Two: Transaction Terms and Conditions

Section 2.1 is revised by deleting the word "A" in the first line thereof and replacing it with the following: "Subject to Section 2.3, a".

Section 2.2 is amended by deleting "(including any Confirmations accepted in accordance with Section 2.3)" from the second sentence and is further revised by adding the following to the end of the section:

"Party A and Party B agree that from and after the Effective Date, all new transactions with respect to the purchase and sale of any Product shall be made or deemed to be made pursuant to this Master Agreement (unless otherwise specifically agreed in writing)."

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

"2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties ("Confirmation"). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the

Parties”.

Section 2.4 is amended by deleting the words “either orally or” in the seventh line thereof.

Section 2.5 is revised by deleting the last two sentences thereof in their entirety and by adding the following sentence at the end of the remaining text: “In the event of a dispute between the Parties, any Party with a Recording of a telephone conversation(s) between the Parties relevant to the dispute shall, upon the request of the other Party, provide a copy of such Recording to the other Party which shall be held in accordance with this Section by such Party.”

Article Three: Obligations and Deliveries

Section 3.2 is revised to add the following to the end of the section: “From time to time the Parties may agree to bookout Transactions until further notice. Bookouts are undertaken as a scheduling convenience and do not modify the terms of any Transaction.”

Article Five: Events of Default; Remedies

Section 5.1(g) is revised (A) by adding “(after giving effect to any applicable notice requirement or grace period)” in the second line after the word “continuation”, (B) by adding “required to be made under one or more agreements for such Party or any other party specified in the Cover Sheet,” in the eleventh line before the word “individually”, and (C) by adding the following phrase at the end of the section “provided, an Event of Default shall not occur under this Section 5.1(g) if, as demonstrated to the reasonable satisfaction of the other Party, the Event of Default or the failure to pay is the result of a failure to pay caused by an error or omission of an administrative or operational nature, funds were available to such Party to enable it to make the relevant payment when due, and such relevant payment is made within three (3) Business Days following receipt of written notice from the party to whom the payment is owed.”.

Section 5.1(h)(ii) is revised to add the phrase “or any other agreement between Party A or its Affiliate and Party B or its Affiliates,” after the word “Agreement”.

Section 5.1(h)(v) is revised by adding the phrase “made in connection with this Agreement” after “any guaranty”.

The “.” at the end of subparagraph (v) of Section 5.1(h) is replaced with “;” and the following two paragraphs are added to the end of Section 5.1:

- “(i) a Letter of Credit Failure that is not cured within three (3) Business Days after the occurrence thereof; or
- (j) a default, event of default, termination event, breach or any other similar event (howsoever expressed) that has not been remedied within the applicable grace period under any other agreement or instrument (including without limitation commodity or financial derivative agreements or transactions) between a Party or its Affiliate and the other Party or its Affiliate, that results in the other party being entitled under the terms of such other agreement to terminate and liquidate transactions and arrive at a net settlement payment thereunder by invoking a process similar in substance to the process described in Sections 5.2, 5.3 and 5.6 regardless of the defined terms used to describe the same.”

Section 5.2 is revised by reversing the placement of “(i)” and “to”.

Clause (b) of Section 5.3 is revised so that the phrase “plus, at the option of the Non-Defaulting Party, any cash then available to the Defaulting Party pursuant to Article Eight,”

is inserted after the first occurrence of the words “Non-Defaulting Party”.

Section 5.3 is amended by adding the following sentence at the end of the section:

“Notwithstanding the immediately preceding sentence, no Termination Payment shall be due or payable to the Defaulting Party.”

The following is added as a new Section 5.8:

“5.8 Letter of Credit Failure. For the purposes of this Article Five, “Letter of Credit Failure” shall mean, with respect to a Party that has provided a Letter of Credit as Performance Assurance:

- (a) a failure to renew or substitute a Letter of Credit by no later than fifteen Business Days prior to any expiry or termination thereof;
- (b) the issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P or at least “A3” by Moody’s and fails to maintain at least \$10 billion in total assets;
- (c) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit if such failure continues after the lapse of any applicable grace period;
- (d) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
- (e) such Letter of Credit shall (other than in accordance with its terms) expire or terminate or fail or cease to be in full force and effect for purposes of this Agreement at any time during the term of the Agreement or any outstanding Transaction; or
- (f) any event analogous to an event specified in Subsection 5.1(d) or (f) of this Agreement occurs with respect to the issuer of such Letter of Credit.

However, no Letter of Credit Failure will occur with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.”

Article Six: Payment and Netting

Section 6.4 is revised by adding the following sentence to the end of the section:

“In the event the Parties are transacting under additional agreements, all transactions completed in the same month shall be netted against each other using the procedure described above.”

Article Eight: Credit and Collateral Requirements

Section 8.1(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.



Section 8.2(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Article Ten: Miscellaneous

Section 10.2(iii) is revised by inserting the text “(including, with respect to Party B, the Joint Powers Agreement)” immediately after the words “governing documents”.

Section 10.11 is revised to read as follows:

“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 (i) the terms or conditions of a Transaction or any other information exchanged relating to a Transaction or potential Transaction, or (ii) the completed Cover Sheet to this Master Agreement (collectively, “Confidential Information”), 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 (a) 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 (b) to the extent necessary to provide commercial terms of a Transaction, except the details pertaining to Seller or Buyer or either Party's name, to a third party for the sole purpose of calculating a published index; 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. This Section 10.11 is in addition to, and not in substitution for, any other written assurances of non-disclosure between and executed by the Parties.

Party A acknowledges that Party B is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that Party A 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). Party B acknowledges that Party A is not 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 to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), the receiving Party as soon as practical shall notify the disclosing Party in writing that such request has been made. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to prevent release of the Requested Confidential Information to the Requestor by the receiving Party. If the disclosing Party takes no such action, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. If the disclosing Party does take such action, the receiving Party shall provide timely and reasonable cooperation to the disclosing Party if requested by the disclosing Party, for which the disclosing Party will be responsible for any agreed reasonable expenses incurred by the receiving Party in providing such cooperation."

The following is added as Section 10.12:

"10.12 Arbitration.

- (a) Any claim, counterclaim, demand, cause of action, dispute or controversy arising out of or relating to this Agreement, or in respect of any legal relationship associated therewith or derived there from or relating to the subject matter of this Agreement, whether contractual in nature or not, shall be referred to and finally resolved by arbitration administered pursuant to the International Arbitration Rules of the American Arbitration Association (or such other rules of arbitration as the Parties may agree). The number of arbitrators shall be three, and each Party shall choose one arbitrator and the two arbitrators shall choose the third arbitrator, who shall serve as chair. The place of arbitration shall be San Francisco, California. The language of the arbitration shall be English. It is agreed that the arbitrators shall have no jurisdiction or authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under any applicable law, and each of the Parties hereby waives its rights, if any, to recover any such damages. To the fullest extent permitted by law, the Parties shall maintain in confidence the fact that an arbitration has been commenced, all

documents and information exchanged during the course of the arbitration proceeding, and the arbitrators' award, provided that each of the Parties shall be entitled to disclose such matters to its own officers, directors and employees, its professional advisors and other representatives as necessary for the purposes of conducting the arbitration, and may make such disclosures in the course of legal proceedings as may be required to pursue any legal right arising out of or in connection with the arbitration.

- (b) If any applicable law or statute authorizes any form of court proceeding in any of the courts of the United States that in any way arises out of or is related to an arbitration conducted pursuant to this Agreement ("Related Proceedings"), then, to the extent that any such matter is in whole or in part eligible for resolution by a United States District Court, whether or not the dispute may in whole or in part also be eligible for resolution in a state court, each party irrevocably:
 - (i) submits to the exclusive jurisdiction of the United States District Court located in the City of Portland, Oregon for the purposes of such Related Proceedings; and
 - (ii) waives any objection which it may have at any time to the laying of venue of any Related Proceedings brought in any such court, waives any claim that such Related Proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such Related Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either Party from bringing a proceeding in any jurisdiction to enforce an arbitration award or any judgment enforcing an arbitration award, nor will the bringing of such proceedings in any one or more jurisdictions preclude the bringing of enforcement proceedings in any other jurisdiction. In connection with any court proceedings, each Party waives its respective right to any jury trial."

The following is added as Section 10.13:

"10.13 Waiver. FERC Standard of Review.

(A) Absent the agreement of all parties to the proposed change, the standard of review for changes to any provision of this Agreement (including all Power Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties herein, whether proposed by a party, a non-party or FERC acting *sua sponte*, shall solely be the "public interest" standard of review set forth in United 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 165 (2010) (the "Mobile-Sierra" doctrine).

(B) The parties, for themselves and their successors and assigns, (y) agree that "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with this Agreement and (z) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard of review, provided that this standard of review

and the other provisions of this Section 10.13 shall only apply to proceedings before the FERC or appeals thereof.

(C) In addition, and notwithstanding the foregoing clauses (A) and (B), to the fullest extent permitted by applicable law, each party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any provision of this Agreement (including any applicable Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties, it being the express intent of the parties that, to the fullest extent permitted by applicable law, neither party shall unilaterally seek to obtain from FERC any relief changing the rate(s) and/or other material economic terms and conditions of their agreement(s), as set forth in this Agreement and in any Transactions or Confirmations, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 10.13 shall not apply, provided that, consistent with this Section 10.13 neither party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in clauses (A) and (B) above.

The following is added as Section 10.14:

“10.14 Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

- (a) Market Disruption. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “Disrupted Day”), then:
 - (i) The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
 - (ii) If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.
 - (iii) If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a “Delayed Floating Price”) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price

for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.

- (iv) If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties (“Specified Dealers”), without regard to the quotations with the highest and lowest values, subject to the following qualifications:
 - A. If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.
 - B. If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
 - C. If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.
 - (v) Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.
- (b) Definitions. For the purposes of this Section 10.14, the following terms shall have the following meanings:
- (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 as applicable to the relevant Transaction.
 - (iii) “Floating Price” means a Contract Price 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, publish or make available the specified Floating Price or information necessary

for determining the Floating Price for a particular day;

- B. the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO 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 or RTO specified for determining a Floating Price; or
 - E. a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.
- (v) “Price Source” means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or information from which a price is determined, as specified in the relevant Transaction.
- (vi) “RTO” means any regional transmission operator or independent system operator.
- (vii) “RTO Transaction” means a Transaction in which the Price Source is an RTO.
- (viii) “Trading Day” means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.
- (c) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO’s procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, 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. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.
- (d) Rounding. When calculating a Floating Price, all numbers shall be

rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

The following is added as Section 10.15:

“10.15 Counterparts / Electronic Delivery.

This Agreement may be executed in counterparts each of which is an original, and all of which shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement and any Confirmation by facsimile or electronic mail transmission (in portable document format (PDF)) shall be as effective as delivery of a manually executed signature page.”

The following is added as Section 10.16:

“10.16 Joint Powers Authority.

Party A hereby acknowledges and agrees that Party B 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 and is a public entity separate from its members. Party B shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party B’s members in connection with this Agreement.”

Schedule M: Governmental Entity or Public Power System

Section A of Schedule M is hereby amended by deleting the defined term “Act” and replacing it with the following:

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

Section D of Schedule M is hereby amended by deleting paragraph (ii) of Section 3.4 and replacing it with the following:

“(ii) an opinion of counsel for Party B, in form and substance reasonably satisfactory to Party A, regarding the validity, binding effect and enforceability of this Master Agreement against Party B in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.”

Section E of Schedule M is hereby amended by inserting the text “Governmental Entity or” immediately after the word “cover” in the second sentence of Section 3.6.

Section G of Schedule M is hereby deleted in its entirety and replaced with the following:

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

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

Schedule P: Products and Related Definitions

The following definition and provision are added to Schedule P:

1. "CAISO Energy" means with respect to any 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). A CAISO "Schedule Adjustment" (defined as a schedule change implemented by the CAISO that is neither caused by, or within the control of, either Party) shall not constitute an Uncontrollable Force (as defined in the Tariff).

2. Other Products and Service Levels: In addition to the Products set out in Schedule P, the Parties may agree to use a product or service level defined by a different agreement (i.e., the Tariff, the WSPP Agreement, etc.) for a particular Transaction under this Master Agreement. If so, then the Transaction shall be subject to all the terms of this Master Agreement, except that (1) the product or service level definition, (2) force majeure, uncontrollable force definitions or other excuses for performance, (3) applicable regional reliability requirements and guidelines, and (4) other terms and conditions as mutually agreed in writing, shall have the meaning given to them in the different agreement or in the applicable Confirmation.

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

POWEREX CORP.*

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

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.

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

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

Seller: Powerex

Buyer: PCEA

Trade Date: May 18, 2017

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

Product: Carbon Free Energy, being energy delivered from a Carbon Free Source and scheduled into the CAISO Balancing Authority or onto the CAISO Controlled Grid, in quantities as provided for under “Delivery Term and Contract Quantity” Section of this Confirmation.

The Parties recognize that a schedule of energy into the California Independent System Operator (“**CAISO**”) balancing authority (“**CAISO Balancing Authority**”) or onto the CAISO Controlled Grid is a delivery to the CAISO and not directly to the Buyer. Scheduling energy into the CAISO Balancing Authority or onto the CAISO Controlled Grid shall constitute delivery of Carbon Free Energy provided such energy was delivered from a Carbon Free Source.

Contract Price: In this Confirmation,

“**CAISO Credit**” means the Energy Price paid by the CAISO for the

[REDACTED]

[REDACTED]

Payment:

Invoicing and payment for the Carbon Free Energy delivered to Buyer shall be in accordance with Article 6 of the Master Agreement and Buyer shall pay such invoices in accordance with the Master Agreement and this Confirmation. Seller's invoices prepared in accordance with Article 6 of the Master Agreement may be delivered by email from Seller to Buyer.

[REDACTED]

Change in Law:

If due to (i) any action by a Governmental Authority, or (ii) any change in Applicable Law ((i) and (ii), collectively, a "**Change in Law**"), occurring after the Trade Date that results in material change(s) to Buyer's or Seller's obligations with regard to the Product(s) sold under this Agreement or that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Product(s) sold hereunder in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated under this Change in Law provision to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected.

Delivery Term and Contract Quantity:

The Delivery Term for the Product is (i) July 1, 2017 through December 31, 2017, and (ii) January 1, 2018 through June 30, 2018 inclusive (each a "**Delivery Period**" and collectively the "**Delivery Term**").

During the Delivery Term, Seller shall deliver to Buyer the Contract Quantity of Carbon Free Energy allocated to each Delivery Period as specified in the table below ("**Contract Quantity**"):

| <u>Product</u> | <u>Delivery Period</u> | <u>Contract Quantity</u> (MWh) |
|--------------------|-------------------------------------------------|-----------------------------------|
| Carbon Free Energy | July 1, 2017 through December 31, 2017 | ██████████ |
| Carbon Free Energy | January 1, 2018 through June 30, 2018 | ██████████ |

For greater certainty, there shall be no minimum or maximum obligation to deliver Carbon Free Energy in any hour during the Delivery Term.



Carbon Free Energy shall be scheduled in accordance with “Scheduling” below.

Delivery Point: Out-of-State Carbon Free Sources: Seller may deliver Carbon Free Energy to any Scheduling Point (as defined in the CAISO Tariff) including but not limited to the SYLMARDC_2_N501 and MALIN_5_N101 Scheduling Points.

In-State Carbon Free Sources: Seller shall deliver Carbon Free Energy from an in-state Carbon Free Source to the Delivery Point as specified in Schedule “A”.

Title: Title to the Carbon Free Energy shall be deemed to pass from Seller to Buyer at the Delivery Point.

Scheduling: Seller will perform or cause to be performed all scheduling and tagging requirements for Carbon Free Energy. Energy deliveries shall be scheduled pursuant to WECC and CAISO requirements to the Delivery Point.

Scheduling: Seller shall schedule or cause to be scheduled, at its sole discretion, Carbon Free Energy from Carbon Free Sources into the CAISO Balancing Authority or onto the CAISO Controlled Grid on a day-ahead, hour-ahead, sub-hourly and/or real-time basis. Without limiting the generality of the foregoing, Seller may schedule the Carbon Free Energy during any or all HLH and LLH hours during the Delivery Term until the total Contract Quantity is delivered.

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

Tagging – Out-of-State Carbon Free Sources: The CARB ID(s) of the Carbon Free Source shall be entered as the “Value” in the Misc(Token/Value) field of the e-tag. Each e-Tag shall show the CAISO Balancing Authority as the last CA (Control Area) under ‘Physical Path’; Buyer shall be designated by inserting “Peninsula Clean Energy” in the Comment section on each NERC e-Tag.

For greater certainty, no e-Tags shall be generated for Carbon Free Energy delivered from an in-state Carbon Free Source.

Any scheduling provisions may be altered by mutual agreement of the Parties.

Seller scheduling contacts:

| | Phone | Fax |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

Generation Resources:

Seller’s list of generation resources from which it will supply Carbon Free Energy to Buyer will be specified in Schedule A in accordance with this provision. A completed Schedule A will be provided to Buyer at least 5 Business Days prior to the initial delivery of Carbon Free Energy (which requirement may be satisfied if a completed Schedule A is attached hereto on the Trade Date) and, thereafter, Seller may update this generation resources list (including to add additional generation resources that qualify as Carbon Free Sources) from time to time by delivering a revised Schedule A to Buyer which shall thereupon replace the existing Schedule A. In the event Seller delivers Carbon Free Energy from a Carbon Free Source not listed in Schedule A, such delivery shall still constitute delivery of Carbon Free Energy hereunder and Seller shall use commercially reasonable efforts to update Schedule A as soon as is reasonably practicable after delivery to add the applicable generation resource(s).

Definitions Applicable to this Transaction

For the purposes of this Confirmation, the following terms used in this Confirmation shall have the following meanings:

- (a) “Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of or guidance with respect to the foregoing, as any of them is

amended or supplemented from time to time, that apply to either or both of the Parties, the Generation Resource(s), or the terms of the Agreement.

- (b) “CAISO Controlled Grid” has the meaning set forth in the CAISO Tariff.
- (c) “CAISO Tariff” means the applicable tariff and protocol provisions of the CAISO (as amended from time to time).
- (d) “Cap and Trade Regulation” means the regulations entitled California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms set forth at Article 5 of Subchapter 10 of Title 17 of the California Code of Regulations.
- (e) “CARB” means the California Air Resources Board of the California Environmental Protection Agency.
- (f) “Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the Western Energy Coordinating Council (“WECC”) area and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Mandatory Reporting Rule and the Cap and Trade Regulation. Carbon Free Source does not include any Category 3 Renewables, “asset controlling supplier” (ACS) resources (as such term is used in the Mandatory Reporting Rule) or any energy source with an e-tag with a source point associated with a nuclear, [REDACTED] or coal-fired generating facility.
- (g) “Category 3 Renewable” means renewable energy credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code.
- (h) “Effective Date” means the date on which both Parties have executed and delivered this Confirmation.
- (i) “Generally Accepted Utility Practice” means a practice established by WECC or any successor regional reliability council, as such practice may be revised from time to time, or if no practice is so established, means a practice otherwise generally accepted in the WECC region.
- (j) “Governmental Authority” means any federal, provincial, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or any applicable transmission authority, having or asserting jurisdiction over a Party or this Transaction.
- (k) “HLH” means hours ending (“HE”) 0700-2200 PPT Mondays through Saturdays, excluding Holidays.

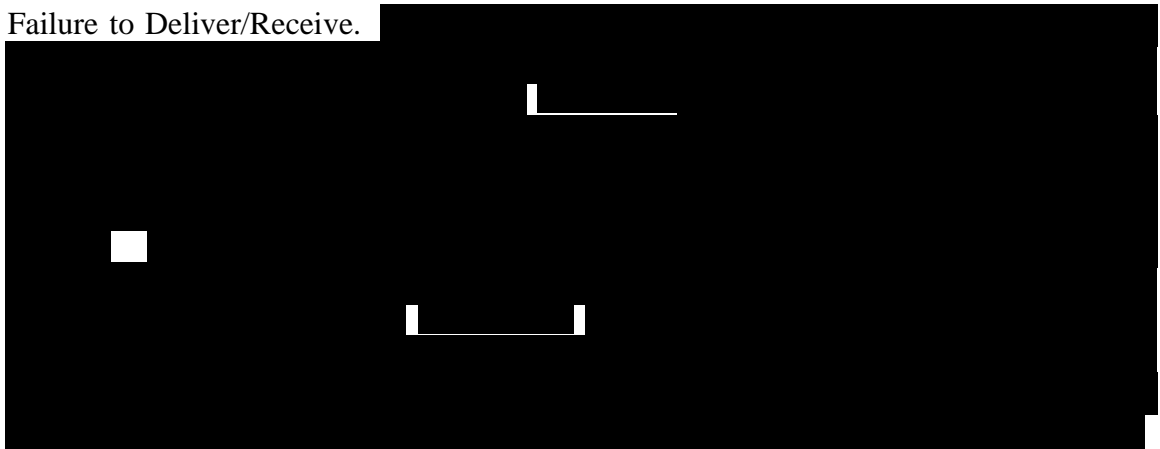
- (l) “Holiday” means any day designated as a holiday by NERC.
- (m) “LLH” means Mondays through Saturdays HE 0100-0600 and HE 2300-2400 PPT, and all day Sundays and Holidays.
- (n) “Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth at Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.
- (o) “Pricing Node” or “PNode” has the meaning set forth in the CAISO Tariff.

Special Conditions

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

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

2. Failure to Deliver/Receive.



3. Importer/Compliance Obligation. For Carbon Free Energy imported from an out-of-state Carbon Free Source, Seller will be the electricity importer into California for purposes of the Cap and Trade Regulations. The Parties acknowledge that Seller will be responsible for satisfying the Compliance Obligation (as such term is defined in the Cap and Trade Regulations) under the Cap and Trade Regulations associated with any Carbon Free Energy that Seller schedules and delivers into the CAISO Balancing Authority and that they will work together such that Seller may claim that such Carbon Free Energy is from a “specified source” (as such term is defined in the Mandatory Reporting Rule) to mitigate such Compliance Obligation. This provision is based on the Cap and Trade Regulations and Mandatory Reporting Rule as of the Trade Date of this Confirmation. In the event that the regulatory requirements for mitigating the Compliance Obligation change after the Trade Date, Buyer shall make commercially reasonable efforts to assist Seller in meeting such regulatory requirements.

4.

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

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

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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

Contacts:

Powerex:

PCEA:

Anthony Des Lauriers

Tel: (604) 891-6018

Fax: (604) 891-5056

Jan Pepper

Tel: (415) 309-9206

Fax: (415) 363-4034

SCHEDULE A

Generation Resources

[illegible]



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: May 18, 2017

BOARD MEETING DATE: May 25, 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: Renewable Supply (Powerex)

RECOMMENDATION:

Authorize the Chief Executive Officer to execute an EEI (Edison Electric Institute) Confirmation Agreement, and any necessary ancillary documents, for Purchase of PCC1 Renewable Energy from Powerex. Power Delivery Term: June 1, 2017 through December 31, 2017, in an amount not to exceed \$1,600,000.

BACKGROUND:

PCE has purchased PCC1 Renewable Energy to meet its Phase 1 obligations to customers. With the launch of Phase 2, PCE needs to purchase additional PCC1 Renewable Energy to meet its obligations to customers. PCC1 renewable energy refers to bundled renewable energy, whereby the energy and renewable energy attributes are delivered together. These resources consist of in-state renewable energy projects or out-of-state projects that deliver the renewable energy to the California Independent System Operator (CAISO) at the time the energy is produced.

DISCUSSION:

PCE, working with its consultant PEA, solicited bids to supply PCC1 Renewable Energy for its 2017 Phase 2 needs.

Bids were received from six different suppliers to satisfy PCE's PCC1 Renewable Energy needs for 2017. Powerex submitted a competitive bid at a price and quantity that meets PCE's needs.

PCE and Powerex have agreed to use the EEI Master Agreement for this purchase of PCC1 Renewable Energy. The Board is being asked to authorize the CEO to execute an EEI Confirmation with Powerex, in a form approved by General Counsel, and any necessary ancillary documents.

FISCAL IMPACT:

Payments for the purchase of PCC1 Renewable Energy from Powerex for June 1, 2017 through December 31, 2017 will not exceed \$1,600,000.

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE A CONFIRMATION AGREEMENT WITH POWEREX CORP. FOR
PURCHASE OF PCC1 RENEWABLE ENERGY WITH TERMS CONSISTENT WITH
THOSE PRESENTED, IN A FORM APPROVED BY THE GENERAL COUNSEL AND
FOR THE PERIOD OF JUNE 1, 2017 THROUGH DECEMBER 31, 2017 IN AN
AMOUNT NOT TO EXCEED \$1,600,000**

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
PCC1 Renewable Energy; and

WHEREAS, in January 2017 PCE requested prices for PCC1 Renewable Energy
from multiple energy suppliers to serve Phase 2 customers in 2017 and 2018; and

WHEREAS, Powerex Corp. provided a competitively priced option for PCC1
Renewable Energy for June 1, 2017 through December 31, 2017; and

WHEREAS, PCE has negotiated a Confirmation Agreement with Powerex Corp. for the necessary volumes, reference to which should be made for further particulars; and

WHEREAS, both parties are agreeable to using the Edison Electric Institute (“EEI”) model master agreement for this purchase.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute a Confirmation Agreement with Powerex Corp. for PCC1 Renewable Energy with terms consistent with those presented, in a form approved by the General Counsel and for a power delivery term covering June 1, 2017 through December 31, 2017 in an amount not to exceed \$1,600,000.

* * * * *



Supply. Flexibility. Commitment.

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

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

Seller: Powerex

Buyer: PCEA

Trade Date: May 18, 2017

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

Generation Term: For the purposes of this Confirmation and the Bundled Renewable Energy to be delivered pursuant hereto, the generation term for Bundled Renewable Energy is June 1, 2017, through December 31, 2017, inclusive.

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

Delivery and Passage of Title:

Delivery – Out-of-State Designated Facilities

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

Delivery – In-State Designated Facilities

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

Passage of Title

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

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

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

Delivery Method Election:

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

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

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

Bundled Renewable Energy

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

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

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

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

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

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

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

Delivery Method Quantity:

Delivery Term

The delivery term is June 1, 2017, through the date that all Green Attributes transacted under this Confirmation have been delivered from Seller to Buyer in accordance with this Confirmation, and in any case no later than April 30, 2018 (the **“Delivery Term”**).

Quantity

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

Category 1 Product

| <u>Generation Term</u> | <u>Category 1 Product Contract Quantity (MWh)</u> |
|----------------------------------------|---------------------------------------------------|
| June 1, 2017 through December 31, 2017 | ██████████ |

Category 2 Product

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

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

| <u>Generation Term</u> | <u>Total Contract Quantity (MWh)</u> |
|----------------------------------------|--------------------------------------|
| June 1, 2017 through December 31, 2017 | ██████████ |

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

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

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

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

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

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

[REDACTED]

Contract Price:

In this Confirmation,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

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

Additional Designated Facilities – Applicable to Category 1 Product only:

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

Facilities for Category 1 Product” of Schedule “A”, which shall thereupon replace the existing Schedule “A” to this Confirmation. Any additional Designated Facility shall be considered to be a Designated Facility with respect to Category 1 Product deliveries for all purposes of this Confirmation.

Eligibility Requirements:

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

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

Regulatory Determination/Change in Law:

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

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

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

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

Scheduling and Tagging:

Scheduling

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

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

e-tagging – Out-of-State Designated Facilities

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

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

Category 1 Product

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

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

Category 2 Product

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

Seller scheduling contacts:

| | Phone | Fax |
|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] |

Importer for Cap and Trade Purposes:

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

Definitions Applicable

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

- (a) “Alternate Eligible Facility” means an alternate Eligible Facility.

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

and the amount of such shortfall is the difference between:

 - (iii) the greater of:
 - A. the actual quantity of Category 1 Product or Category 2 Product generated by and/or attributable to the Project(s) up to the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, and delivered to Buyer pursuant to this Confirmation, or
 - B. the actual quantity of Category 1 Product or Category 2 Product generated by and/or attributable to the Project(s) up to the Category 1 Product Contract Quantity or Category 2 Product Contract Quantity, respectively, that would have been delivered to Buyer pursuant to this Confirmation if

the Buyer had met or satisfied the applicable Eligibility Requirements

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



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

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

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

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

- (u) "Green Tag" and "Green Tag Reporting Rights" have the meanings set forth in the definition of "Green Attributes", and for the purposes of this Transaction, "Green Tag Purchaser" means Buyer.
- (v) "Holiday" means any day designated as a holiday by NERC.
- (w) "Mandatory Reporting Rule" means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth at Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.
- (x) "Off Peak" hours means Mondays through Saturdays hours ending (HE) 0100-0600 and HE 2300-2400 PPT, and all day Sundays and Holidays.
- (y) "Party" means Buyer or Seller, and "Parties" means both Buyer and Seller.
- (z) "Peak" hours means HE 0700-2200 PPT Mondays through Saturdays, excluding Holidays.

- (aa) “Pricing Node” or “PNode” has the meaning set forth in the CAISO Tariff.
- (bb) “Project” means Designated Facility up to the Seller’s contractual rights to the energy and Green Attributes produced by such Designated Facility.
- (cc) “Renewable Energy Credit” or “REC” means a renewable energy credit as defined by and in accordance with the California Public Utilities Code.
- (dd) “RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.
- (ee) “RPS ID” means the “California Energy Commission RPS certification number”, the “identification number” and/or the “RPS ID”, as such terms are used by the CEC to describe the identification number for an eligible renewable energy resource that has been certified (or will be certified for the period of deliveries) as such by the CEC for the purposes of the RPS. The RPS ID for each Designated Facility is set out beside the applicable facility under the column “RPS ID” in the table attached hereto as Schedule “A”.
- (ff) “Scheduling Point” has the meaning set forth in the CAISO Tariff, including (without limitation) the SYLMARDC_2_N501 and MALIN_5_N101 Scheduling Points.
- (gg) “Seller Eligibility Failure” 
- (hh) “Seller Shortfall” 

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

ADDITIONAL TERMS

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

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

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

2. Negotiations Respecting Failure to Satisfy Eligibility Requirements. In the event that a Category Product generated by and/or attributable to the Projects does not meet or satisfy the Eligibility Requirements for reasons other than a Buyer Eligibility Failure or a Seller Eligibility Failure, the Parties will negotiate in good faith using commercially reasonable efforts to revise or amend this Confirmation as appropriate to meet applicable requirements so that such Category 1 Product and/or Category 2 Product meets or satisfies the applicable Eligibility Requirements, in a manner consistent with the intent of the Parties as set out in this Confirmation.

3. Anticipated Shortfall – Category 2 Product. If Seller reasonably anticipates that there will be a Seller Shortfall in respect of the Category 2 Product Contract Quantity, Seller shall provide written notice to Buyer on or before September 15 of the Delivery Term. Upon Buyer's receipt of such notice, the Parties will negotiate in good faith using commercially reasonable efforts to determine whether Seller may deliver a product comparable to the Category 2 Product generated by or attributable to an Alternate Eligible Facility or Alternate Source equal to the amount of such anticipated Seller Shortfall. If the Parties mutually agree to such arrangements, they will enter into a separate agreement respecting same and Buyer will waive the Seller Shortfall and any liquidated damages payable pursuant to this Confirmation in respect of the Seller Shortfall. In the event Seller reasonably anticipates a shortfall in delivery of Category 2 Product that is not or is not likely to be a Seller Shortfall, the Seller may elect to have this Section 3 apply (and thereupon this Section 3 will apply) by giving the written notice referred to herein stating such election.

4. Failure to Deliver/Receive. For purposes of this Transaction:
 - (a) the references to the "Contract Price" in Sections 4.1 and 4.2 of the Master Agreement, and those Sections only, shall be deemed to refer to the Energy Price only, except in the event and to the extent that there is a Seller Shortfall or a Buyer Shortfall, in which case such references shall be deemed to include the Category 1 REC Price and/or the Category 2 REC Price, as applicable, subject to Section 4(d) of this Confirmation;

 - (b) the definition of "Replacement Price" in Section 1.51 of the Master Agreement shall be amended by adding the following proviso at the end of the first sentence of such definition:

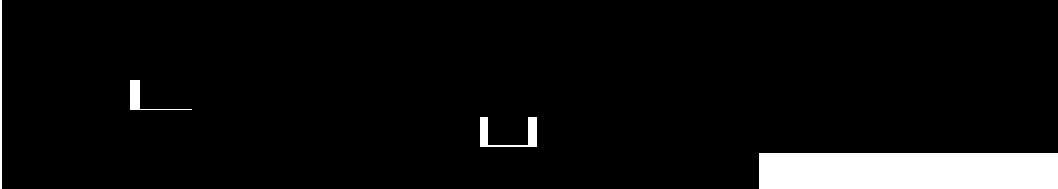
“; and further provided that the Replacement Price shall not include any premium or other amount paid or payable to replace the Category 1 Product or Category 2 Product not delivered by


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

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

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

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

- (e) 

- (f) 

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

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

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

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

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

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

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

7. Commercially Reasonable Efforts

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

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

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

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

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

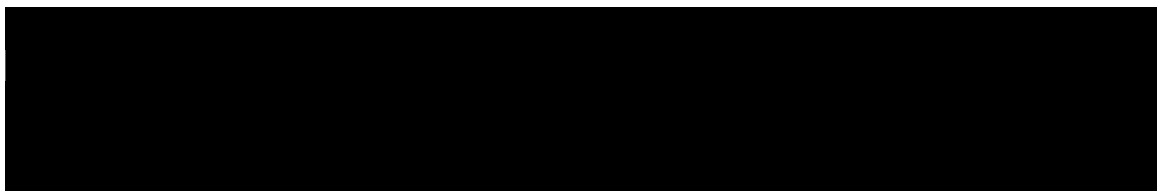
Buyer represents and warrants that, as of May 15 following the end of each calendar year in the Generation Term (or the date of the written attestation referenced above, whichever is earlier), the quantity of RECs transferred under this Confirmation associated with the immediately previous calendar year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

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

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

11. Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]

- 12.



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

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

ACKNOWLEDGED AND AGREED TO:

Powerex Corp. *

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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

Contacts:

Powerex:

PCEA:

Anthony Des Lauriers

Tel: (604) 891-6018

Fax: (604) 891-5056

Jan Pepper

Tel: (415) 309-9206

Fax: (415) 363-4034

SCHEDULE “A”Designated Facility(s)**Part A – Initial Designated Facilities**

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

[REDACTED]

Part B – Additional Designated Facilities for Category 1 Product

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

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

* * * * *

**RESOLUTION APPOINTING MEMBERS OF THE PENINSULA CLEAN ENERGY
AUTHORITY CITIZENS ADVISORY COMMITTEE.**

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, Section 3.5 of the PCE Joint Powers Agreement states that the “Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board”; and

WHEREAS, PCE believes that establishment of an advisory committee, made up of members drawn from the community, would assist PCE in carrying out its mission; and

WHEREAS, the Board approved the creation of a Citizens Advisory Committee (“Committee” or “CAC”) on February 23, 2017, to be appointed by the PCE Board through an application process including review and recommendation by an ad hoc committee of the PCE Board; and

WHEREAS, the Board publicly solicited applications for the Citizens Advisory Committee from throughout the county during the period of April 1, 2017, through April 30, 2017, these applications were reviewed by the ad hoc committee, and that ad hoc committee has recommended specific applicants for appointment.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board appoints the individuals listed in Attachment 1 hereto as members of the Citizens Advisory Committee.

* * * * *



**REGULAR MEETING and SPECIAL MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, April 27, 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 6:36 pm.

ROLL CALL

Present: Dave Pine, County of San Mateo, *Chair*
Carole Groom, County of San Mateo
Rick DeGolia, Town of Atherton
Charles Stone, City of Belmont
Donna Colson, City of Burlingame
Rae P. Gonzalez, Town of Colma
Larry Moody, City of East Palo Alto
Elizabeth Cullinan, Town of Hillsborough
Ann Schneider, City of Millbrae
John Keener, City of Pacifica
Jeff Aalfs, Town of Portola Valley, *Vice Chair*
Ian Bain, City of Redwood City
Marty Medina, City of San Bruno
Ron Collins, 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 Brisbane
City of Daly City
City of Foster City
City of Half Moon Bay
City of Menlo Park

Staff: Jan Pepper, Chief Executive Officer

George Wiltsee, Director of Power Resources
Dan Lieberman, Director of Marketing and Public Affairs
Siobhan Doherty, Manager of Contracts
Joseph Wiedman, Senior Regulatory/Legislative Analyst
Kirsten Andrews-Schwind, Communications and Outreach Manager
Leslie Brown, Manager of Customer Care
Anne Bartoletti, Board Clerk/Executive Assistant to the CEO
David Silberman, General Counsel

A quorum was established.

PUBLIC COMMENT:

No public comment.

ACTION TO SET THE AGENDA AND APPROVE CONSENT AGENDA ITEMS

Motion Made / Seconded: Bain / Stone

Motion passed unanimously 16-0 (Absent: Brisbane, Daly City, Foster City, Half Moon Bay, Menlo Park, San Mateo)

PUBLIC COMMENT

No public comment.

REGULAR AGENDA

1. CHAIR REPORT

Dave Pine—Chair—welcomed Board members and attendees. He noted that there would be a special meeting tonight as well as the regular meeting. He announced that Peninsula Clean Energy (PCE) is completing Phase 2 of customer enrollment, so the entire County of San Mateo is on at least 50% clean energy.

2. CEO REPORT

Jan Pepper—Chief Executive Officer—announced that PCE is now the largest CCA (Community Choice Aggregator) in California, and that several Board members attended PCE's Phase 2 press event on April 19th at Hillsdale shopping center. She reported that PCE still maintains a low opt out rate of 1.3% and customer accounts now near 300,000. She announced that PCE staff has been expanded by 25% with the addition of two new employees: Siobhan Doherty, Manager of Contracts, and Joe Wiedman, Senior Regulatory/Legislative Analyst. She announced that an Energy Analyst position has been posted, that will be open for applications until May 3rd. She also announced several important dates coming up: the online application for the Citizens

Advisory Committee will be open until April 30th; PCE staff will present “PCE 101” energy basics training for new Board members the week of May 15th; and “PCE 202”—the deeper dive into PCIA, will take place the 1st week of June.

3. MARKETING AND OUTREACH REPORT

Dan Lieberman—Director of Marketing and Public Affairs—reported on marketing and outreach efforts, including Earth Day events, and PCE sponsorship and conferences.

4. REGULATORY AND LEGISLATIVE REPORT

Joseph Wiedman—Senior Regulatory/Legislative Analyst—reported on regulatory and legislative efforts, including meeting with State Senator Scott Wiener on March 31 regarding SB 618; attending the Senate Energy Utilities & Communications Committee Hearing on SB 618 on April 18th; an April 20th meeting with PG&E (Pacific Gas and Electric Company), MCE (Marin Clean Energy), and SCP (Sonoma Clean Power) on a default TOU (Time Of Use) pilot program. Joe provided updates on several pieces of legislation that would impact CCAs, including SB 618, AB 79, AB 1405, SB 338, and SB 679.

5. INTEGRATED RESOURCE PLAN

Joe Wiedman and George Wiltsee—Director of Power Resources—presented considerations for an Integrated Resource Plan (IRP), including resource planning goals, electric load forecasts, the mix of resources, procurement methods, and risk management, and how those relate to PCE’s strategic procurement targets. They reported that although there are currently no final requirements from the CPUC on the components of an IRP, PCE is working on an IRP to submit to the Board for approval, and then ultimately to the CPUC to be certified.

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

Siobhan Doherty—Manager of Contracts—reported that while PCE solicited proposals for Resource Adequacy (RA) for July through December 2017, PG&E posted its own proposal and PCE bid on it for this purchase. She explained that this is not energy, it is capacity. Jan Pepper explained that in the bid, PCE specifically requested that coal and nuclear be excluded. The Board discussed the pros and cons of biomass, how it’s handled in California, and the option of creating a policy in the future.

Motion Made / Seconded: Gupta / Moody

Motion passed 15-1 (Opposed: Schneider. Abstain: Yost. Absent: Brisbane, Daly City, Foster City, Half Moon Bay, Menlo Park)

SPECIAL MEETING AGENDA

1. **AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE A LONG FORM CONFIRMATION AGREEMENT WITH PACIFIC GAS AND ELECTRIC COMPANY (PG&E) FOR PURCHASE OF PCC1 RENEWABLE ENERGY. POWER DELIVERY TERM: JULY 1, 2017 THROUGH DECEMBER 31, 2017, IN AN AMOUNT NOT TO EXCEED \$7,000,000**

Siobhan Doherty reported that PCE has already purchased energy for Phase 1, and is now purchasing for Phase 2 power delivery. She explained that PCE responded to a solicitation from PG&E for this purchase. Jan explained that a number of suppliers were approached, but this purchase represents the best price and it falls within PCE's projected budget.

Motion Made / Seconded: Stone / DeGolia

Motion passed 16-0 (Abstain: Yost. Absent: Brisbane, Daly City, Foster City, Half Moon Bay, Menlo Park)

2. **AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE TWO EEI (EDISON ELECTRIC INSTITUTE) CONFIRMATION AGREEMENTS FOR PURCHASE OF RESOURCE ADEQUACY FROM SHELL ENERGY NORTH AMERICA (SHELL) WITH (1) POWER DELIVERY TERM: JULY 1, 2017 THORUGH DECEMBER 31, 2017 IN AN AMOUNT NOT TO EXCEED \$85,000; AND (2) POWER DELIVERY TERM: JULY 2017, IN AN AMOUNT NOT TO EXCEED \$40,000**

Siobhan Doherty reported that this purchase has the lowest price, and that PCE already had a master agreement with Shell.

Motion Made / Seconded: Stone / DeGolia

Motion passed 16-0 (Abstain: Yost. Absent: Brisbane, Daly City, Foster City, Half Moon Bay, Menlo Park)

RETURN TO REGULAR AGENDA

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**

Jan Pepper reported that the landlord at the new office building hired a contractor and construction is about to begin on PCE's new office space. She said PCE's office design will support 26 employees and will be able to host the monthly Board meetings. She explained that she needs authorization to move forward in the process of selecting a furniture vendor before the next Board meeting so the vendor can immediately begin coordinating with the landlord and contractor on electrical needs and cabling locations. Some Board members requested that union labor be considered for the installation, and that American-made furniture be considered in the purchase decision.

Motion Made / Seconded: Bain / Yost

Motion passed unanimously 17-0 (Absent: Brisbane, Daly City, Foster City, Half Moon Bay, Menlo Park)

8. FORMATION OF A STANDING AUDIT AND FINANCE COMMITTEE

Donna Colson—City of Burlingame—reported that the Audit and Finance Committee will have three goals, help PCE: 1) hire an auditor for the fiscal year end, 2) get ready for the first annual audit, and 3) with the budgeting process. David Silberman explained that the Board, among its options, can appoint members, or decide on the size of the committee and delegate to the Chair of the Board appointment of the members. Dave Pine noted that the following members expressed interest: Lori Liu, Larry May, Daniel Yost, and Donna Colson. Donna reported that the committee would also select an auditor in the near future. Motion to approve creation of a Committee of between 3 and 5 members appointed by the Chair of the Board.

Motion Made / Seconded: Stone / Gupta

Motion passed unanimously 17-0 (Absent: Brisbane, Daly City, Foster City, Half Moon Bay, Menlo Park)

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

Kirsten Andrews-Schwind—Communications and Outreach Manager—reported that the deadline to apply for the Citizens Advisory Committee (CAC) is April 30th. After the deadline has passed, a committee will meet to review the candidates with the intent that recommended members might be presented at the next Board meeting.

10. FINANCIAL REPORT

Jan Pepper presented PCE's most recent financial reports, showing March assets of \$24 Million. She reported that PCE is ahead of initial revenue forecasts, and may be able to pay off loans by the end of 2017. She reported that she's working on a job description for a Finance Director so that position can be posted in the near future.

11. BOARD MEMBERS' REPORTS

Charles Stone announced Earth Day activities in Belmont on Saturday the 29th. Marty Medina announced the Relay for Life in San Bruno on Saturday the 29th. Larry Moody announced the Council of Cities on May 19th at 5pm in East Palo Alto. Pradeep Gupta announced he would participate in a panel discussion on CCAs in San Francisco on May 3rd.

ADJOURNMENT

Meeting was adjourned at 8:51 pm.



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: May 18, 2017
BOARD MEETING DATE: May 25, 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: Resource Adequacy (Energy America)

RECOMMENDATION:

Authorize the Chief Executive Office to execute an EEI Confirmation Agreement for purchase of Resource Adequacy from Energy America (Direct Energy). Delivery Term: August 1, 2017 through September 30, 2017, in an amount not to exceed \$120,000.

BACKGROUND:

The CPUC has explained Resource Adequacy as follows:

The CPUC adopted a Resource Adequacy (RA) policy framework (PU Code section 380) in 2004 to 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 each LSE's 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.

DISCUSSION:

PCE, working with its consultant PEA, solicited proposals to supply System and Local RA for its third and fourth quarter 2017 needs (July-December). Proposals were received from four different suppliers.

Direct Energy offered a competitive response to provide sufficient quantities to meet PCE's outstanding System RA requirements for August through September 2017.

PCE has previously executed an EEI Master Agreement and Confirmation for RA with Direct Energy. The Confirmation Agreement for this transaction is in substantially the same form as the one previously executed.

The Board is being asked to approve execution of a Confirmation Agreement with Direct Energy, in a form approved by General Counsel.

RESOLUTION NO. _____

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

*** * * * ***

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE A CONFIRMATION AGREEMENT WITH ENERGY AMERICA FOR
PURCHASE OF RESOURCE ADEQUACY WITH TERMS CONSISTENT WITH
THOSE PRESENTED, IN A FORM APPROVED BY THE GENERAL COUNSEL AND
FOR A POWER DELIVERY TERM OF AUGUST 1, THROUGH SEPTEMBER 30, 2017
IN AN AMOUNT NOT TO EXCEED \$120,000**

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 April 2017 PCE solicited pricing on additional volumes for
Resource Adequacy for 2017; and

WHEREAS, Energy America (“Direct Energy”) responded to this solicitation to fulfill a portion of PCE’s additional needs for resource adequacy for August through September, 2017; and

WHEREAS, PCE has negotiated a Confirmation Agreement with Direct Energy for the necessary volumes, reference to which should be made for further particulars.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute the Confirmation Agreement with Direct Energy for RA with terms consistent with those presented, in a form approved by the General Counsel and for a power deliver term covering August 1, 2017 through September 30, 2017 in an amount not to exceed \$120,000.

* * * * *

L DL 9040

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

This Confirmation Letter ("Confirmation") confirms the Transaction between Energy America, LLC, a Delaware limited liability company ("Seller") and Peninsula Clean Energy Authority, a California joint powers authority ("Buyer"), and each individually a "Party" and together the "Parties", dated as of April 28, 2017 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of June 24, 2016 along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) and amendments thereto (collectively, the "Master Agreement"). The Master 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 Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1** "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3** "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4** "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6** "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7** "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10** "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11** "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12** "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13** "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "June 29 2016 Confirmation" means that certain confirmation entered into by the Parties on June 29, 2016.
- 1.23 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.24 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.25 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.26 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.27 "LRA" means Local Regulatory Authority as defined in the .
- 1.28 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

- 1.29 "Master Agreement" has the meaning specified in the introductory paragraph hereof.
- 1.30 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.31 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.32 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.33 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.34 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.35 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.36 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.37 "Product" has the meaning specified in Article 3 hereof.
- 1.38 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.39 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.40 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.41 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.42 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.43 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.44 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.45 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.46 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.47 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.48 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.49 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.50 "Transaction" for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
- 1.51 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.52 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.53 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION [COMPLETED FOR ALL UNITS AND REPLACEMENT UNITS TO BE USED BY SELLER FOR PURPOSES OF SUPPLYING BUYER'S RAR, LOCAL RAR AND/OR FLEXIBLE RAR]

| | |
|-------------------|-----------------------|
| Name | Metcalf Energy Center |
| Location | San Jose, CA |
| CAISO Resource ID | METEC_2_PL1X3 |
| Unit SCID | CALJ |

| | |
|---------------|------------|
| Resource Type | I_Phys_Res |
|---------------|------------|

| | |
|--------------------------------------------------------------------------------------------------|-------|
| Path 26 (North or South) | North |
| Local Capacity Area (if any, as of Confirmation Effective Date) | N/A |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | None |
| Run Hour Restrictions | None |



ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

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

3.1 RA Attributes LAR Attributes and Flexible RA Attributes

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

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the Master Agreement.

ARTICLE 4. DELIVERY AND PAYMENT

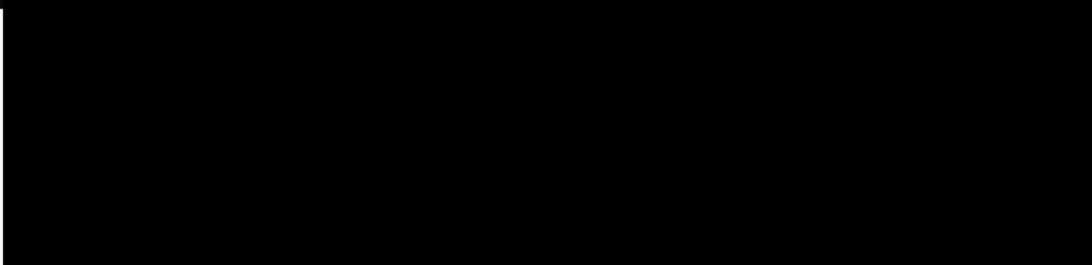
4.1 Delivery Period

The Delivery Period shall be: August 1, 2017, through September 30, 2017, inclusive. ✓

4.2 Delivery Point

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

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



4.4 Adjustments to Contract Quantity

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

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

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

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if

applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes (Replacement Capacity) by entering into purchase transactions with one or more parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: 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, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5;
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder; 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 and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement and Section 7 of the June 29, 2016 Confirmation, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.



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4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

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

ARTICLE 6. ADDITIONAL PROVISIONS

The Parties agree that this Transaction shall be subject to the following provisions from the June 29, 2016 Confirmation: Sections 7 (Monthly Billing Settlement), 8 (Compliance Reporting), 9 (No Restriction), 12 (Standard

of Care and Good Faith), 13 (Customer Information and Non-Circumvention), 14 (Security Provisions) and 15 (Seller Performance Assurance).

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

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

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

- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
- (l) Seller will use commercially reasonable efforts to facilitate the future replacement, if necessary, of the Designated RA Capacity provided under this Confirmation from electricity generators that do not utilize coal as a source of fuel.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

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

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

ENERGY AMERICA, LLC

PENINSULA CLEAN ENERGY AUTHORITY,
a California joint powers authority

By:

By:

Name:

Name:

Darron Iron

Title:
Senior Director, Product Control

Title: