PARAGRAPH 10

to the

COLLATERAL ANNEX

**to the**

EEI MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Please Note: PG&E is Party B

**Paragraph 10. Elections and Variables**

1. **Collateral Threshold.**
2. **Party A Collateral Threshold.**

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

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

|  |  |  |
| --- | --- | --- |
| **Party A****Collateral Threshold** | **S&P Credit Rating** | **Moody’s Credit Rating** |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ (or above) |  |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |  |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |  |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |  |
| $\_\_\_\_\_\_\_\_\_\_ | Below \_\_\_\_\_\_\_ |  |
|  |  |  |

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

|  |  |  |
| --- | --- | --- |
| **Party A****Collateral Threshold** | **S&P Credit Rating** | **Moody’s Credit Rating** |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ (or above) | \_\_\_\_\_\_\_ (or above) |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |
| $\_\_\_\_\_\_\_\_\_\_ | Below \_\_\_\_\_\_\_ | Below \_\_\_\_\_\_\_ |

**🗆** The amount of the Guaranty Agreement dated \_\_\_\_\_ from \_\_\_\_\_, as amended from time to time but in no event shall Party A’s Collateral Threshold be greater than $\_\_\_\_\_\_.

**🗆** Other – see attachedthreshold terms

1. **Party B Collateral Threshold.**

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

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

|  |  |  |
| --- | --- | --- |
| **Party B****Collateral Threshold** | **S&P Credit Rating** | **Moody’s Credit Rating** |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ (or above) |  |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |  |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |  |
| $\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_ |  |
| $\_\_\_\_\_\_\_\_\_\_ | Below \_\_\_\_\_\_\_ |  |
|  |  |  |

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

|  |  |  |
| --- | --- | --- |
| **Party B****Collateral Threshold** | **S&P Credit Rating** | **Moody’s Credit Rating** |
|  |  |  |
| $\_\_\_\_\_\_\_\_\_\_ | AA- to AAA  | Aa3 to Aaa |
| $\_\_\_\_\_\_\_\_\_\_ | A- to A+ | A3 to A1 |
| $\_\_\_\_\_\_\_\_\_\_ | BBB- to BBB+BBB- to BBB+ | Baa3 to Baa1Baa3 to Baa1 |
| $0  | Below BBB- | Below Baa3 |

**🗆** The amount of the Guaranty Agreement dated \_\_\_\_\_ from \_\_\_\_\_, as amended from time to time but in no event shall Party B’s Collateral Threshold be greater than $\_\_\_\_\_\_.

**🗆** Other – see attachedthreshold terms

1. **Eligible Collateral and Valuation Percentage.**

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

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

1. **Independent Amount.**
2. **Party A Independent Amount.**

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

**🗆** Party A shall have an Independent Amount as specified in each confirmation governed by this Master Agreement. If the Independent Amount option is selected for Party A, then for purposes of calculating Party A’s Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

**🗆** Party A shall have a Partial Floating Independent Amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Partial Floating IA Performance Assurance”) if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party’s Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

1. **Party B Independent Amount.**

**🗆** Party B shall have a Fixed Independent Amount of \_\_\_\_\_\_the Notional Value of all outstanding transactions. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Fixed IA Performance Assurance”). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B’s Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

**🗆** Party B shall have a Full Floating Independent Amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B’s Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

**🗆** Party B shall have a Partial Floating Independent Amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Partial Floating IA Performance Assurance”) if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party’s Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

**IV. Minimum Transfer Amount.**

**A. Party A Minimum Transfer Amount:** $\_100,000.00\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**B. Party B Minimum Transfer Amount:** $\_100,000.00\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**V. Rounding Amount.**

**A. Party A Rounding Amount:** $\_100,000.00\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**B. Party B Rounding Amount:** $\_100,000.00\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**VI. Administration of Cash Collateral.**

 **A. Party A Eligibility to Hold Cash.**

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

**☑** Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party A] [Party A’s Guarantor] has a Credit Rating from S&P or Moody’s and the lowest Credit Rating for [Party A] [Party A’s Guarantor] is at least BBB- from S&P or Baa3 from Moody’s; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

**Party A Interest Rate.**

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

**🗆** Other - \_\_\_\_\_\_\_\_\_\_\_\_

**B. Party B Eligibility to Hold Cash.**

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

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

**Party B Interest Rate.**

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

**🗆** Other - \_\_\_\_\_\_\_\_\_\_\_\_

**VII. Notification Time.**

**☑** Other -

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

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

**VIII. General.**

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

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

**IX. Other Changes.**

* 1. **No Waiver.**

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

* 1. **Paragraph 1. Definitions.**
1. **“Credit Rating”** is deleted in its entirety and replaced with the following language:

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

1. **“Credit Rating Event”** – Replace the words “Paragraph 6(a)(iii)” with “Paragraph 6(a)(ii).
2. **“Downgraded Party”** – Replace the words “Paragraph 6(a)(i)” with “Paragraph 6(a)(ii)”.

d) **“Guaranty”** means a guaranty issued in a form substantially as contained in Schedule 2 attached hereto and by an issuer acceptable to the Secured Party.

e) **“Letter of Credit”** is deleted in its entirety and replaced with the following definition:

**“Letter of Credit”** means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Schedule 1 attached hereto; provided that, the issuer must be a Qualified Institution.

f) **“Letter of Credit Default”** –

(i) In line 3, after the words: “Rating of at least (i)”, delete all language from that line and replace it with: “A-, with a stable outlook designation from S&P and A3, with a stable outlook designation from Moody’s, if such issuer is rated by both S&P and Moody’s.”; and (ii) Add the words, “with a stable outlook designation” after the words “‘A-’ by S&P” and “‘A3’ by Moody’s,” in line 4.

g) **“Performance Assurance”** – Replace the words “Paragraph 6(a)(iv)” with “Paragraph 6(a)(iii)”.

h) **“Qualified Institution”** is deleted in its entirety and replaced with the following definition:

**“Qualified Institution”** means either a U.S. commercial bank, or a U.S. branch of a foreign bank acceptable to the Beneficiary Party in its sole discretion; and in each case such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

 **i) “Secured Party”** – Replace the words “Paragraph 3(b)” with “Paragraph 3(a)”.

1. **Paragraph 3. Calculations of Collateral Requirement.**

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

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

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

|  |  |  |
| --- | --- | --- |
|  By: Name: Title:  |  | PACIFIC GAS AND ELECTRIC COMPANYBy: Name: Title:  |

Schedule 1: Letter of Credit Form

**FORM OF LETTER OF CREDIT**

***Issuing Bank Letterhead and Address***

STANDBY LETTER OF CREDIT NO. XXXXXXXX

**Date:** [insert issue date]

|  |  |  |  |
| --- | --- | --- | --- |
| **Beneficiary:**  |  | **Applicant:** | [Insert name of Applicant and address] |
|  |  |  |  |
|  |  |  |  |
|  | Attention:  |  |  |

**Letter of Credit Amount:** [insert amount]

**Expiry Date:** [insert expiry date]

Ladies and Gentlemen:

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

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

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

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

A. “**[ Insert name of Beneficiary]** (the “Beneficiary”) is entitled to draw the amount of **[Spell out the amount followed by (US$xxxxxxxx.xx)],** under Letter of Credit No. **[Insert number]** owed by **[Insert name of Beneficiary’s counterparty under the EEI agreement]** or its assigneeto Beneficiary under or in connection with the **[Insert identification of the EEI agreement]** Agreement between the Beneficiary and **[Insert name of Beneficiary’s counterparty under the EEI agreement]** or its assignee”

B. “Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary’s counterparty under the EEI agreement]** or its assigneehas not provided replacement Performance Assurance acceptable to **[Insert name of Beneficiary] (the Beneficiary”),** and the amount of **[Spell out the amount followed by (US$xxxxxxxx.xx)]** of the accompanying sight draft does not exceed the amount of Performance Assurance that **[Insert name of Beneficiary’s counterparty under the EEI agreement]** or its assigneeis required to transfer to the Beneficiary under the terms of the **[Insert identification of the EEI agreement]** between **[Insert name of Beneficiary’s counterparty under the EEI agreement]** and the Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount.

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

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

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

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

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

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

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

Very truly yours,

|  |
| --- |
| **[insert name of issuing bank]** |
| By: |  |
|  | Authorized Signature |
| Name: | **[print or type name]** |
| Title: |  |

**Annex A SIGHT DRAFT**

TO

[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

 DRAWER

 BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 NAME AND TITLE

Schedule 2: Guaranty Form

EXHIBIT\_\_ to contract No.

GUARANTY AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 If to Guarantor:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 If to PG&E: Pacific Gas and Electric Company

 Pacific Gas and Electric Company

 77 Beale Street, MC B28L

 San Francisco, CA 94105

 Attention: Credit Risk Management

 Fax: (415) 973.7301 \_

 Email: PGERiskCredit@exchange.pge.com

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_