**DISTRIBUTION SERVICES AGREEMENT**

between

**PACIFIC GAS AND ELECTRIC COMPANY**

(as “Buyer”)

and

**SELLER INSERT**

(as “Seller”)

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**DISTRIBUTION SERVICES AGREEMENT**

This Distribution Services Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation (“PG&E” or “Buyer”) SELLER INSERT a SELLER INSERT company (“Seller”) as of the Execution Date. Seller and Buyer are referred to individually as “Party” and together as “Parties”.

**RECITALS**

I. Buyer seeks to purchase Distribution Services from Seller in order to defer upgrades to its distribution system and to further the objective of CPUC Decision 21-02-006.

II. Seller desires to sell Distribution Services as defined herein to Buyer from the Project in accordance with the terms of this Agreement that fulfill Buyer’s need for procuring such resources pursuant to CPUC Decision 21-02-006.

Now, therefore, in consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

**ARTICLE ONE: TERM**

1.1 Term .

(a) The “Term” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Term, or the exercise of an Elective Early Termination, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including until any compensation for Distribution Services, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Assurance is released and/or returned as applicable. In addition to the foregoing sentence, provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 15.1 through 15.7 (Indemnities and Insurance) and any other indemnity rights shall survive the end of the Term for an additional twelve (12) months; (ii) all rights and obligations under Article Nineteen (Confidentiality) survive the end of the Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability shall survive in perpetuity.

(b) The “Expected Initial Delivery Date” (“Expected IDD”) is the date on which Seller expects the Project to be available to provide Distribution Services. The Expected IDD is Confidential Month, 2025.

(c) The “Delivery Term” is the period commencing on the Initial Delivery Date (“IDD”) and continuing until Confidential Month, 2031**,** unless earlier terminated in accordance with the terms and conditions of this Agreement. Pursuant to Appendix XIV, Section 4, the IDD shall not occur during a Remediation Period. The IDD may only be extended or delayed as follows:

(i) by Seller due to Force Majeure in accordance with Article Eight; or

(ii) if Seller has not achieved the IDD on or before the Expected IDD for reasons other than a Force Majeure in accordance with Article Eight, then for every calendar day, but not more than for a total of thirty (30) days, beginning with the calendar day after the Expected IDD through and including the date on which the IDD occurs, Seller shall pay to Buyer liquidated damages in the amount of one thousand three hundred thirty three dollars per MW per day ($1,333.00/MW per day); all or any portion of such damages are “Delay Damages”. Buyer shall provide Notice to Seller of the amounts of Delay Damages due, if any. Upon Notice to Seller, Buyer may draw such amounts due from the Project Development Security. Each Party agrees that (A) the damages that Buyer would incur due to Seller’s delay in achieving the IDD would be difficult or impossible to predict with certainty and (B) the Delay Damages are an appropriate approximation of such damages.

1.2 Binding Nature . This Agreement shall be effective and binding as of the Execution Date

**ARTICLE TWO: DELIVERY CONDITIONS AND MILESTONES**

2.1 Project Development . Seller shall take all actions and obtain all approvals necessary to deliver to Buyer Distribution Services pursuant to the terms and conditions of this Agreement, which include those obligations set forth below in Section 2.2(a) (collectively the “Delivery Conditions”). Seller must complete the Delivery Conditions at Seller’s expense and in accordance with Section 2.2(b).

2.2 Delivery Conditions .

(a) The Delivery Conditions are as follows:

(i) Seller shall have secured all Governmental and grid operations approvals as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver Distribution Services at the Initial Contract Capacity to Buyer.

(ii) Seller shall have posted collateral as required by Section 10.4(a)(ii).

(iii) Seller shall have submitted for Buyer’s review a Safety Attestation incorporating the elements described in Appendix XII as applicable, which must demonstrate Seller’s ability to comply with the Safety Requirements on the IDD and for the Delivery Term, and the Safety Attestation shall be substantially in the form attached hereto as Appendix VII-B.

(iv) Seller shall have delivered to Buyer the Safety Attestation in accordance with Section 2(a) of Appendix XIV.

(v) As of the IDD, no Seller’s Event of Default shall have occurred and remain uncured.

(vi) Seller or Contractor shall have constructed or caused to be constructed the Project as of the IDD to enable (A) Seller to satisfy the obligations of the Seller herein and (B) the Project to deliver Distribution Services at the Contract Capacity to Buyer.

(vii) Seller shall have installed any necessary metering to provide the applicable Distribution Services in accordance with Section 4.1 and any applicable tariffs of the Utility Distribution Company.

(viii) Seller shall have met each Milestone set forth in Appendix VI pursuant to Section 2.3.

(b) Satisfaction of Delivery Conditions.

(i) Seller shall satisfy the Delivery Conditions set forth in Section 2.2(a) above by in accordance with the deadlines set forth in the table below.

|  |  |
| --- | --- |
| **Delivery Condition Section Reference** | **Deadline** |
| 2.2(a)(i), (iii), (vii) | No later than 30 calendar days before IDD |
| 2.2(a)(ii) | As set forth in 10.4(a)(ii) |
| 2.2(a)(iv) | As set forth in Appendix XIV Section 2(a) |
| 2.2(a)(v), (vi),  | As of IDD |
| 2.2(a)(viii) | As set forth in Appendix VI pursuant to Section 2.3 |

(ii) Seller shall Notify Buyer of the satisfaction of each Delivery Condition, and of each Milestone, in accordance with this Section 2.2(b). Seller’s Notices hereunder must contain sufficient documentation to demonstrate completion of the Delivery Condition or Critical Milestone, as applicable. Once all of the Delivery Conditions to the IDD have been satisfied or waived by both Parties in writing, the Parties shall execute and exchange on the IDD the “Initial Delivery Date Confirmation Letter” attached as Appendix V.

(iii) Within ninety (90) calendar days after the close of the first month following the Execution Date until the Commercial Operation Date, Seller shall provide to Buyer a Quarterly Progress Report as contained in Appendix VI-Attachment A and hold regularly scheduled meetings between representatives of Buyer and Seller to review such quarterly reports and discuss Seller’s construction progress. The Quarterly Progress Report shall indicate whether Seller has met or is on target to meet the Milestones.

2.3 Failure to Meet Delivery Conditions. If Seller fails to satisfy all of the Delivery Conditions by the deadlines set forth in Section 2.2(b), then a Seller’s Event of Default shall be deemed to have occured in accordance with Section 7.1(a)(vi), and Buyer shall have no obligation to purchase any Distribution Services from Seller hereunder; provided that if Seller (a) anticipates that due to a Seller claim of Force Majeure, it will be unable to satisfy the Delivery Conditions set forth in Sections 2.2(a)(i) and 2.2(a)(iii) through 2.2(a)(viii) by the deadlines set forth in Section 2.2(b), then Seller may Notify Buyer of a Force Majeure Extension in accordance with Article Eight and such failure shall not be a Seller Event of Default during the course of the Force Majeure Extension period; or (b) fails to satisfy one (1) Milestone by the deadlines set forth in Appendix VI (as extended), but otherwise satisfies all other Milestones by the deadlines set forth in Appendix VI, then such failure shall not be a Seller Event of Default.

**ARTICLE THREE: TRANSACTION**

3.1 Transaction . Subject to Section 2.3, on and after the IDD through the end of the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, Distribution Services exclusively from the Project at the delivery point(s) in the amount of the Contract Capacity. Seller shall deliver Distribution Services to Buyer hereunder in accordance with Buyer’s Instructions pursuant to Section 4.6. Seller may sell (a) Distribution Services in excess of Distribution Services referenced by Buyer’s Instructions, and (b) Energy, Ancillary Services and Resource Adequacy (as such terms are defined in the CAISO Tariff), to third parties or into the applicable market (“Third Party Sales”). Seller shall receive and retain any revenues from such Third Party Sales. In no event will Buyer be obligated to purchase Distribution Services before the earliest applicable IDD. If Seller uses the Project to provide any services or products to any other entity in addition to the Distribution Services provided to Buyer under this Agreement, Seller shall:

(i) inform Buyer regarding such additional products or services in writing. Upon Buyer’s request, Seller shall provide Buyer with an update regarding any previously reported additional services or products or any new additional services or products delivered to any other entity; and

(ii) provide the services or products in compliance with the rules set forth in the MUA Decision regarding multiple-use application issues for energy storage devices, as such rules are amended, modified or updated from time to time. Buyer has the right to request from Seller an attestation, in the form attached hereto as Appendix VII-C, that Seller is fulfilling its obligations set forth in the MUA Decision and Section 14.2(d).

3.2 Distribution Services . Seller shall provide Buyer with Distribution Services exclusively from the Project. “Distribution Services” shall consist of the Project’s ability to provide, and the provision of, services described in Appendix II.

3.3 Contract Capacity . During the Delivery Term, Seller grants, pledges, assigns and otherwise commits and shall deliver to Buyer for its exclusive use, Distribution Services pursuant to the terms and conditions contained herein at the “Contract Capacity,” which shall be the lower of (a) the Initial Contract Capacity or (b) the quantity of Distribution Services specified in Section 5.1(b) as a result of a Performance Test. The “Initial Contract Capacity” is the amount specified in Appendix II.

3.4 Information Sharing and Shared Learning . Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and general market information regarding the performance, efficiency, operations, maintenance, and uses of Distribution Services from Distributed Resources as an integral part of Buyer’s portfolio of assets to meet its customers’ needs as well as to gain an understanding of the impact of Distributed Resources on distribution planning operations. Throughout the Term, Seller agrees to share such information, including meter data but excluding cost or similar proprietary information reasonably available to Seller that Buyer reasonably deems necessary for Buyer to comply with requests of Governmental Authorities in connection with this Agreement, upon Buyer’s reasonable request, with such information to be treated by Buyer as Confidential Information. Buyer shall provide Seller with reasonable advance notice of the filing of any of Seller’s Confidential Information with any Governmental Authority. Seller shall provide such applicable meter data to Buyer in a format and to a platform as Notified by Buyer to Seller prior to such request. For information related to Seller’s multiple uses of Distributed Resources comprising the Project, Seller shall promptly provide Notice to Buyer any time Seller provides any services or products from such Distributed Resources to a third party.

**ARTICLE FOUR: INTERCONNECTION & OPERATIONS**

4.1 Interconnection . The Distributed Resources that comprise the Project shall each be electrically interconnected to the location described in Appendix III. If an interconnection agreement is required, Seller shall interconnect the Project in accordance with the requirements and terms and conditions set forth in the Utility Distribution Company’s applicable tariffs, and if applicable, the Participating Transmission Owner’s applicable tariffs and the CAISO Tariff, in order to safely and reliably deliver Distribution Services to Buyer. Seller shall be responsible for all delays, costs and expenses associated with such interconnection.

4.2 Interconnection Agreement .

(a) Seller Obligations. At Seller’s expense, Seller shall (A) execute all necessary Interconnection Agreements, (B) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of Distribution Services, and (C) arrange, schedule and be responsible for any and all electric distribution and transmission service (including any Governmental Approvals required for the foregoing). At no cost or liability to Buyer pursuant this Agreement, Seller shall fulfill all applicable contractual, metering and applicable interconnection requirements, including Electric System Upgrades and those requirements set forth in the Utility Distribution Company’s applicable tariffs, the Participating Transmission Owner’s applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Distribution Services to Buyer.  Buyer will not bear any costs or liability under this Agreement related to interconnection, electric distribution or transmission service for the Project, regardless of whether PG&E is the Utility Distribution Company for the Project.  To the extent Seller undertakes Third-Party Sales, Seller is solely responsible for executing interconnection agreements with the Transmission Provider and Participating Transmission Owner and fulfilling all contractual, metering and applicable interconnection requirements necessary to make such Third-Party Sales.

(b) Electric System Upgrades Cost Termination Right.  Seller shall provide Buyer within ten (10) Business Days of receipt thereof, copies of any Interconnection Study or Interconnection Agreement tendered to Seller by CAISO, the Participating Transmission Owner, or the Utility Distribution Company.  If Seller has received any Interconnection Study or Interconnection Agreement tendered to Seller by CAISO, the Participating Transmission Owner, or the Utility Distribution Company prior to the Interconnection Study Date, and (B) such study or agreement estimates, includes, specifies or reflects that the maximum total cost of the Electric System Upgrades is equal to or greater than [**Seller to insert amount equal to $250,000/MW],** Sellershall have the right, but not the obligation, to terminate this Agreement by Notice to Buyerwithin sixty (60) Calendar Days of Seller’s receipt of such study or agreement.  This termination right is irrespective of any subsequent amendments of such Interconnection Study or Interconnection Agreement or any contingencies or assumptions upon which such Interconnection Study or Interconnection Agreement is based. Seller’s termination of this Agreement will be effective five (5) Business Days after Seller’s Notice to terminate is given to Buyer.

(c) Delayed Interconnection Study Termination Right. If Seller has not received an Interconnection Study or Interconnection Agreement tendered to Seller by CAISO, the Participating Transmission Owner, or the Utility Distribution Company by March 1, 2024, then Seller shall have the right, but not the obligation to terminate this Agreement by Notice to Buyer within ten (10) Business Days following the Interconnection Study Deadline.  Seller’s termination of this Agreement will be effective five (5) Business Days after Seller’s Notice to terminate is given to Buyer.

(d) Effect of Termination for Electric System Upgrades Cost and Delayed Interconnection Study. If Seller exercises its termination right in connection with either (A) Electric Systems Upgrades under Section 4.2(b) or (B) a delayed Interconnection Study or Interconnection Agreement under Section 4.2(c), then this Agreement shall terminate and Seller shall owe Buyer an amount equal to [**Seller to insert amount equal to $20/kw**] (“Early Termination Payment”), subject to each Party’s satisfaction of all of the final payment and survival obligations set forth in Section 1.1(a).

4.3 Operational Control . During the Delivery Term, Seller shall operate and maintain the Project such that the Project is able to deliver Distribution Services to Buyer in accordance with this Agreement. Notwithstanding Seller’s obligations to deliver Distribution Services, Seller will have sole operational control of the Project and be solely responsible for operation and maintenance of the Project. Buyer will not bear any costs or liability related to ownership, operation, scheduling, dispatch, or maintenance of the Project. In addition, Buyer shall have no liability for any failure by Seller to comply with the Utility Distribution Company tariff or CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller for such noncompliance.

4.4 Intentionally Omitted

4.5 Metering and Communications Systems . To the extent applicable as set forth in Appendix VIII, Seller shall install all metering, communications systems, and equipment for the Project (“Communications Systems”) at Seller’s sole cost and expense that is necessary to, at all times during the Delivery Term, (a) enable Seller to meet Buyer’s instructions in accordance with Section 4.6, (b) enable Buyer to remotely monitor the status of the Project on an aggregate and individual resource basis, (c) permit Buyer to have real time information access to the operations of the Project, including the ability to measure increases and decreases in real time load, and (d) provide Distribution Services during the Delivery Term. All electric metering equipment and submeters, whether owned by Seller or by a third party, which are installed on Seller’s side of the delivery point, as applicable, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Electrical Practices; provided that if the electric metering equipment test is conducted by the interconnecting utility or the Transmission Provider, testing shall be conducted in accordance with the procedures and the standards generally applied by such utility or the Transmission Provider, as applicable. In the event that, during the Delivery Term, Buyer develops its own system that allows Buyer to exercise greater monitoring or more efficient dispatch of the Project, upon Buyer’s notice Seller shall take commercially reasonable actions to enable its Communications Systems to interface with Buyer’s system such that Buyer may monitor and request that Seller dispatch the Project via Buyer’s system.

4.6 Dispatch Requests . During the Delivery Term, Buyer may request that Seller cause the Project to deliver Distribution Services at any amount up to the Contract Capacity by providing an instruction to Seller by 8:00 am Pacific prevailing time the calendar day before the requested delivery in a manner to be determined by Buyer in its reasonable discretion, which may include written, verbal or electronic notification (“Buyer’s Instructions”). Buyer’s Instructions to Seller will state the quantity of the applicable Distribution Service to be delivered by Seller during such Delivery Hour covered by Buyer’s Instructions. All Buyer’s Instructions will comply with the Operating Parameters set forth in Appendix II.

4.7 Supplier Diversity . Seller shall comply with Buyer’s Supply Chain Responsibility Policy in accordance with Appendix XIII.

4.8 Standards of Care . Seller shall comply with all applicable requirements of Law, the Transmission Provider, Utility Distribution Company, Governmental Approvals, the CPUC, CAISO, CARB, FERC, NERC and WECC in its scheduling, interconnection, operation and maintenance of the Project and as contemplated by this Agreement. Seller shall (a) acquire and maintain all Governmental Approvals necessary for the construction, operation, and maintenance of the Project consistent with Safety Requirements; (b) Notify Buyer of any material modifications or lapse in renewal of Governmental Approvals; and (c) at Buyer’s request, provide to Buyer digital copies of any Governmental Approvals. For the avoidance of doubt, Seller shall be responsible for procuring and maintaining, at its expense, all emissions credits required for operation of the Project throughout the Delivery Term in compliance with Law and to permit operation of the Project in accordance with this Agreement. Promptly following Buyer’s written request, Seller agrees to take all commercially reasonable actions and execute or provide any documents, information, or instruments with respect to delivered Distribution Services reasonably necessary to enable Buyer to comply with the requirements of any Governmental Authority. Nothing hereunder shall cause Buyer to assume any liability or obligation with respect to Seller’s compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

**ARTICLE FIVE: TESTING AND VERIFICATION**

5.1 Performance Testing .

(a) All performance tests of the Project, including any Initial Performance Test required in Section 2 of Appendix VIII, will be performed in accordance with the test procedures set forth in Appendix VIII (each test a “Performance Test”), including additional procedures and protocols related to Performance Testing as mutually agreed between Buyer and Seller (“Test Procedures”). Seller shall bear all costs and receive all revenues, if applicable, associated with all Performance Tests.

(b) After the IDD and during the Delivery Term, Buyer will have the right to request Seller to conduct a Performance Test (“Buyer Performance Test”) no more than once a calendar year to demonstrate whether the Project is capable of delivering the Distribution Services at the Contract Capacity. Within 30 calendar days following a Buyer Performance Test, Seller will have the right to retest the Project with a Performance Test (“Seller Retest”). For the avoidance of doubt, the results of any Seller Retest will supersede the results of the preceding Buyer Performance Test.

(i) If a Buyer Performance Test or a corresponding Seller Retest demonstrates the Project is capable of delivering Distribution Services at or above ninety-nine percent (99%) of the Initial Contract Capacity, the Contract Capacity will remain the Initial Contract Capacity;

(ii) If a Buyer Performance Test or a corresponding Seller Retest demonstrates the Project is capable of delivering Distribution Services at more than or equal to eighty-five (85%) of the Initial Contract Capacity, but less than ninety-nine percent (99%) of the Initial Contract Capacity (“Testing Band”), the Contract Capacity will be automatically adjusted (upwards or downwards) to the capacity commensurate with the amount of Distribution Services the Project delivered during the Performance Test within the Testing Band.

5.2 Measurement and Verification . The amount of Distribution Services the Project delivers will be measured for all purposes under this Agreement based on the meters installed pursuant to the specifications in Appendix VIII.

**ARTICLE SIX: COMPENSATION**

6.1 Contract Pricing . The payments for Distribution Services are calculated using a Contract Fixed Price as set forth in Appendix IV and described in more detail below.

6.2 Monthly Payment . A monthly payment (“Monthly Payment” or “MP”) for the Distribution Services provided by Seller in each Delivery Month shall be calculated in accordance with the formula set forth below.

Buyer shall pay to Seller a monthly payment for the Distribution Services in each of the Delivery Months:

MPm = (FPm × AFm)

where,

MPm = Monthly Payment for Delivery Month *m*

FPm = Fixed Payment for Delivery Month *m* (pursuant to section (a) below)

AFm = Availability Factor for Delivery Month *m* (pursuant to section (b) below)

(a) Fixed Payment

FPm = CCm × CPm × Delivery Services Adjustmentm

*where,*

CCm = Contract Capacity for Delivery Month *m*

CPm = Contract Fixed Price for Delivery Month *m* pursuant to Appendix IV

Delivery Services Adjustmentm = for Delivery Month *m* pursuant to table below:

|  |  |
| --- | --- |
| **DSFm** | **Delivery Services Adjustmentm** |
| ≥0.90 and ≤ 1.00 | DSFm |
| ≥0.75 and < 0.90 | DSFm x 0.5 |
| < 0.75 | 0 |

DSFm = “Distribution Services Factor” calculation for Delivery Month *m* is defined as the ratio of ∑ min (DSPi, DSEi) / ∑ DSEi, *where*:

∑ = the sum from i = 1 to n, where n = number of settlement intervals Buyer requests Distribution Services from Seller for a Delivery Month;

DSPi = the amount of Distribution Services delivered by Seller in response to Buyer’s dispatch or notification i; and

DSEi = the amount of Distribution Services Buyer requests from Seller for each dispatch or notification i;

Settlement interval (i) shall be 15 minute intervals, unless otherwise agreed upon by Buyer and Seller

For any Delivery Month in which n=0, the DSFm will be equal to 1.0.

The DSFm calculation shall exclude all settlement intervals during any Dispatch Day where Seller’s performance is excused due to a Force Majeure under Article Eight.

(b) Availability Factor. The “Availability Factor” shall be the amount resulting from dividing the number of actual hours the Project is providing Distribution Services in a Delivery Month by the total number of Delivery Hours in that month, as represented by the equation below:

AFm $=\frac{ (DMHm - FMHm)}{ DMHm}$

*where,*

DMHm = The number of Delivery Hours in Delivery Month *m*

FMHm = The number of Delivery Hours in which the Project is unavailable to provide Distribution Services due to a Force Majeure event in Delivery Month *m*.

**ARTICLE SEVEN: EVENTS OF DEFAULT; REMEDIES**

7.1 Events of Default .

(a) Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a “Seller’s Event of Default”):

(i) any asset of Seller that is material to its performance under this Agreement is taken by or is subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within sixty (60) calendar days after its levy;

(ii) Seller fails to satisfy the creditworthiness and collateral requirements under this Agreement and Seller fails to provide alternate collateral acceptable to Buyer within ten (10) Business Days of Buyer’s written demand therefor pursuant to Sections 10.3, 10.4, and 10.5;

(iii) any material misrepresentation or omission in any metering (or submetering) or any report or Notice with regard to delivery or replacement of Distribution Services required to be made or delivered by Seller to Buyer, or undue delay or withholding of such data, report or Notice, which misrepresentation, omission or undue delay or withholding is not cured within ten (10) Business Days of Buyer’s written demand therefor;

(iv) Seller intentionally or knowingly delivers, or attempts to deliver, Distribution Services that is not produced by the Project;

(v) Seller fails to achieve the IDD no later than thirty (30) calendar days after Expected IDD, unless Seller notifies Buyer of a Force Majeure Extension pursuant to Article Eight in which IDD may be extended past the thirty (30) calendar days after Expected IDD by the number of calendar days of the Force Majeure Extension;

(vi) Seller fails to satisfy the Delivery Conditions by the applicable deadlines set forth in Section 2.2(b), unless (A) Seller notifies Buyer of a Force Majeure Extension for the Delivery Conditions set forth in Sections 2.2(a)(i) and 2.2(a)(iii) through 2.2(a)(viii) pursuant to Article Eight; or (B) Seller’s failure to satisfy the Delivery Conditions is due to one (1) missed Critical Milestone and Section 2.3(b) is applicable;

(vii) the average of the monthly Distribution Services Factors for the four (4) Delivery Months in any calendar year during the Delivery Term is less than eighty percent (80%) for any reason other than Force Majeure.

(viii) the results of a Performance Test and Seller Retest show that the Project is not capabable of providing Distribution Services of at least eighty-five percent (85%) of the Initial Contract Capacity for any reason other than Force Majeure, or

(b) Either Party will be deemed a Defaulting Party upon the occurrence of any of the following (each a “Party’s Event of Default”):

(i) a Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws;

(ii) absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) calendar days;

(iii) a Party fails to pay an amount when due and such failure continues for ten (10) Business Days after Notice thereof is received by the Party failing to make such payment;

(iv) any representation or warranty made by a Party pursuant to Appendix XIV Section 1(a) or Article Fourteen is false or misleading in any material respect when made, if not cured within thirty (30) calendar days after delivery of Notice from the other Party that a material representation or warranty made in Appendix XIV Section 1(a) or Article Fourteen is false, misleading or erroneous in any material respect;

(v) a 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 transferring entity fails to assume all of 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 assumption agreement reasonably satisfactory to the other Party;

(vi) a Party fails to perform any of its material obligations or covenants under this Agreement not otherwise addressed in this Section 7.1, and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) calendar days after Notice specifying the failure is received; provided, however, to the extent that the default cannot be cured within thirty (30) calendar days after Notice and if the Defaulting Party has initiated and is diligently pursuing corrective action that is reasonably expected to cure the default within a reasonable period of time, and the Defaulting Party has provided Notice to the Non-Defaulting Party with reasonable explanation of its cure plan, then the initial thirty (30) calendar day period shall be extended for an additional reasonable period not to exceed one hundred twenty (120) calendar days.

7.2 Early Termination .

(a) If and for as long as an Event of Default has occurred and is continuing with respect to a Defaulting Party, the other Party (“Non-Defaulting Party”) has the right to (i) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 21.1) and no later than twenty (20) calendar days after such Notice is deemed to be received (as provided in Section 21.1), as an early termination date of this Agreement (“Early Termination Date”), (ii) accelerate all amounts owing between the Parties (except for disputed amounts as provided in Section 9.4), (iii) end the Term effective as of the Early Termination Date, (iv) collect the Termination Payment pursuant to the provisions of Section 7.2(c), (v) withhold any payments due to the Defaulting Party under this Agreement until the Non-Defaulting Party has received the full amount of Delay Damages and Termination Payment; any excess amount shall be returned to the Defaulting Party, (vi) suspend performance, and/or (vii) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement.

(b) In the event of early termination, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date. The “Termination Payment” will be equal to:

(i) the Project Development Security, less any Delay Damages paid by the Defaulting Party, if the Early Termination Date occurs prior to the IDD, or equal to the Delivery Term Security (B

(c) As soon as practicable after establishing the Early Termination Date, the Non-Defaulting Party shall Notify the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is owed to the Non-Defaulting Party. The Notice will include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Party that owes the Termination Payment shall make such payment to the other Party within ten (10) Business Days after such Notice is effective.

(d) 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 Notice 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 resolved in accordance with Article Eighteen.

7.3 Rights And Remedies Are Cumulative . The rights and remedies of a Party pursuant to this Article Seven are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement; provided that the Termination Payment will be the Non-Defaulting Party’s sole remedy for damage in the event of the early termination of this Agreement and the Defaulting Party shall owe such amount without duplication to any other damages sustained by the Non-Defaulting Party.

7.4 Waiver . The Non-Defaulting Party will be deemed to have waived its rights to declare an Early Termination Date and to demand remedies under Section 7.2 if the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) calendar days of the date on which the Event of Default becomes known, or reasonably knowable, to the Non-Defaulting Party; provided, however, that the time period for providing Notice of an Early Termination Date and a demand for remedies will not be deemed waived if (a) the Defaulting Party has consented to an extension of time or (b) the Non-Defaulting Party has provided Notice of the Event of Default and the Defaulting Party has represented that it is seeking to cure and the delay in providing such Notice is in reliance by the Non-Defaulting Party on the good faith attempt by the Defaulting Party to cure. A Party may not withhold payments or suspend performance under Section 7.2 for a period of more than twenty (20) Business Days unless an Early Termination Date has been declared, and Notice thereof given, in accordance with Section 7.2.

**ARTICLE EIGHT: FORCE MAJEURE**

8.1 Effect of Force Majeure.  A Party shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that the failure or delay of its performance is due to a Force Majeure event, and the non-affected Party shall be excused from its corresponding performance obligations for the period of the affected Party’s failure or delay of performance. The burden of proof for establishing the existence and consequences of an event of Force Majeure lies with the Party invoking Force Majeure.

8.2 Notice of Force Majeure.  Within ten (10) Business Days of an event of Force Majeure, the Party desiring to invoke the Force Majeure event as a cause for delay in its performance of, or failure to perform, any obligation hereunder, shall provide the other Party with Notice in the form of a letter identifying the event of Force Majeure and describing in detail the particulars of the occurrence giving rise to the Force Majeure event including the expected duration, when known, and the effect of such Force Majeure event. Failure to provide timely Notice constitutes a waiver of a claim of Force Majeure. Promptly, but in any event within ten (10) calendar days after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such event of Force Majeure. If the Force Majeure event giving rise to the need for Notice pursuant to this Section of the Agreement is related to the existence of an epidemic or pandemic, whether directly or indirectly impacting Seller and/or any Third Parties performing any Work, including those failures caused by quarantine restrictions issued pursuant to applicable Law after the Execution Date, then Seller shall also provide to Buyer a demonstration that, because epidemics or pandemics are now reasonably foreseeable, that Seller had taken all due care to put mitigation in place to bolster against any performance failures related to an epidemic or pandemic and how, nonetheless, such failures persisted.

8.3 Mitigation of Force Majeure.  In addition to the requirements of Section 8.4 below, if applicable, the suspension of a Party’s performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the IDD as a result of a Force Majeure or a Force Majeure Extension as Notified by Seller in the case of Delivery Conditions in Sections 2.2(a)(i) and 2.2(a)(iii) through 2.2(a)(viii), in accordance with this Article Eight, then Sections 8.4 and 8.5 shall apply. Within five (5) Business Days of the cessation of a Force Majeure event, the Party that invoked the Force Majeure event shall provide the other Party with Notice in the form of a letter stating that the event has ceased.

8.4 Force Majeure Extension.  Notwithstanding anything to the contrary in this Agreement, only the IDD and the respective due dates for the Delivery Conditions in Sections 2.2(a)(i) and 2.2(a)(iii) through 2.2(a)(viii) may be extended in the event of Force Majeure (“Force Majeure Extension”); provided that Seller provides Notice to Buyer of such Force Majeure Extension, works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer’s written request.

(a) Seller’s claims for a Force Majeure Extension cannot cumulatively exceed sixty (60) days; and

(b) In order to request a Force Majeure Extension, Seller shall provide Buyer with Notice of the requested Force Majeure Extension no later than sixty (60) calendar days prior to the IDD, which Notice must clearly identify the Force Majeure Extension and the length of the Force Majeure Extension subject to the limitations in this Section 8.4; provided that if sixty (60) days prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

8.5 Failure to Achieve IDD after Force Majeure Extension.  Either Party shall have the right, but not the obligation, to terminate this Agreement due to Seller’s failure to achieve the IDD due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i) and 2.2(a)(iii) through 2.2(a)(viii) following a Force Majeure Extension.

8.6 Force Majeure Failure.  Notwithstanding anything to the contrary herein, Buyer shall have the right, but not the obligation, to terminate this Agreement if, during the Delivery Term, a Force Majeure event exceeds one hundred eighty (180) consecutive Delivery Days from the date of a Party’s Notice of Force Majeure pursuant to Section 8.2 (a “Force Majeure Failure”). Seller shall have the right, but not the obligation, to terminate this Agreement if, during the Delivery Term, a Force Majeure event exceeds three hundred sixty (360) consecutive Delivery Days from the date of a Party’s Notice of Force Majeure pursuant to Section 8.2 (a “Force Majeure Failure”). Notwithstanding any of the previous provisions, this Agreement shall not extend past the end date specified in Section 1.1(c).

8.7 Effect of Termination.  If either Party exercises its termination right under Section 8.5, or Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.6, then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in the Notice of termination, subject to each Party’s satisfaction of all of the final payments, any amount owed to a Party that remains unpaid for reasons other than the Force Majeure termination, and survival obligations set forth in Section 1.1(a).

**ARTICLE NINE: PAYMENT AND NETTING**

9.1 Billing and Payment . On or before the fifteenth (15th) calendar day following each Delivery Month of the Delivery Term, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller under this Agreement, including, as applicable:

(a) the Monthly Payment, and

(b) other compensatory adjustments required by this Agreement, including adjustments for Governmental Charges.

9.2 Netting . If each Party is required to pay the other an amount in the same month pursuant to this Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Buyer is expressly authorized to set off from any of its payments hereunder an amount owed by Seller to Buyer in accordance with this Agreement.

9.3 Payment . Payment of all undisputed amounts owed to one Party shall be paid by the other on the later of the twenty-fifth (25th) calendar day of the month or ten (10) calendar days after receipt of invoice (“Monthly Payment Date”). If the Monthly Payment Date is not a Business Day, then such payment shall be made on the next Business Day. All payments shall be made by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the Party owed the payment. Any undisputed amounts not paid by the Monthly Payment Date will accrue interest at the Interest Rate calculated from, and including, the Monthly Payment Date to, but excluding, the date the delinquent amount is paid in full.

9.4 Disputes and Adjustments of Invoices . In the event an invoice or portion thereof or any other claim or adjustments arising hereunder is disputed by a Party, payment of the undisputed portion of the invoice shall be made when due with Notice of the dispute and disputed amount given to the other Party. Such Notice shall state the basis for the dispute with sufficient detail to reasonably establish the grounds for such dispute. The Parties agree to use good faith efforts to resolve the dispute as soon as possible in accordance with the provisions of Article Eighteen (Dispute Resolution). Upon resolution of the dispute any amounts owed or owing by a Party shall be paid to the other within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date on which the payment is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent invoices, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date such overpayment amount is repaid or deducted by the Party receiving such overpayment. Any right to dispute a payment or an invoice is waived unless such dispute is properly raised in accordance with this Section 9.4 within twelve (12) months after the payment is made or invoice is issued. If an invoice is not rendered within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred (or in the case of amounts based on CAISO invoices within twelve (12) months after the close of the month during which such invoice or revised invoice giving rise to the payment obligation was rendered), the right to payment for such performance is waived.

**ARTICLE TEN: CREDIT AND COLLATERAL REQUIREMENTS**

10.1 Buyer Financial Information . If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) calendar days after the end of each fiscal year with respect to Buyer, a copy of Buyer’s annual report containing audited consolidated financial statements for such fiscal year, if available, and (b) within sixty (60) calendar days after the end of each of Buyer’s first three fiscal quarters of each fiscal year, a copy of Buyer’s quarterly report containing unaudited consolidated financial statements for each accounting period, if available, prepared in accordance with Generally Accepted Accounting Principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on Buyer’s website or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

10.2 Seller Financial Information . If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) calendar days following the end of each fiscal year, a copy of Seller’s annual report containing audited consolidated financial statements for such fiscal year, if available, (or unaudited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter, if available. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles.

10.3 Grant of Security Interest/Remedies . To secure its obligations under this Agreement and to the extent Seller delivers the Performance Assurance hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash-equivalent collateral and any proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) calendar days of the delivery of the Performance Assurance, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence, and during the continuation, of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer’s agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Performance Assurance, 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 remaining liable for any amounts owing to Buyer after such application), subject to the Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10.4 Performance Assurance .

(a) Performance Assurance. Seller agrees to deliver to Buyer Performance Assurance in a form acceptable to Buyer to secure its obligations under this Agreement (including, if applicable under Section 7.1(a)(vii)), which Performance Assurance Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security. Within ten (10) Business Days following the Execution Date, Seller shall post Project Development Security in the form of cash or Letter of Credit, equal to [***$Seller to insert amount equal to $40/kw].***

(ii) Delivery Term Security. Prior to the IDD, Seller shall post Delivery Term Security in the form of cash or Letter of Credit, in an amount equal to [***$Seller to insert amount equal to $40/kw].*** With Buyer’s consent, Seller may elect to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security.

(iii) The amount of Performance Assurance required under this Agreement is not a limitation of damages. For the avoidance of doubt, Buyer has no obligation to post collateral under this Agreement.

(b) Use of Project Development Security. Buyer is entitled to draw upon the Project Development Security posted by Seller for Delay Damages in accordance with Article One until such time as the Project Development Security is exhausted. Buyer is also entitled to draw upon the Project Development Security for any damages arising upon Buyer’s declaration of an Early Termination Date in accordance with Section 7.2(b).

(c) Return of Project Development Security. If, after the IDD, no damages are due and owing to Buyer under this Agreement, Buyer shall return to Seller the Project Development Security, less any amounts drawn in accordance with Section 1.1(c)(ii) unless Seller elects to apply the Project Development Security to the Delivery Term Security in accordance with Section 10.4(a)(ii). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Buyer’s receipt and acceptance of the Delivery Term Security unless, with Buyer’s consent, Seller elects to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security posted pursuant to Section 10.4(a)(ii). Buyer shall return to Seller the Project Development Security after any early termination of the this Agreement except to the extent either (i) previously returned to Seller pursuant to the forgoing provisions of this Section 10.4(c) or (ii) retained by Buyer to offset an early termination payment owed by Seller to Buyer as expressely permitted by Section 1.1(a)(A) of this Agreement.

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Performance Assurance, at the Interest Rate and on the Interest Payment Date. Buyer will transfer to Seller all accrued Interest Amount on the unused cash Performance Assurance in the form of cash by wire transfer to the bank account specified under “Wire Transfer” in Appendix XI (Notices).

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any Interest Amount due thereon pursuant to Section 10.4(d) above, to Seller promptly after the following has occurred: (i) the Term has ended, or subject to Section 1.1(a)(A), an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including the Termination Payment, indemnification payments or other damages are paid in full. Buyer shall return to Seller the Delivery Term Security promptly after Buyer’s Notice of termination due to Force Majeure pursuant to Section 8.6.

10.5 Letter of Credit . Performance Assurance provided in the form of a Letter of Credit (see Appendix IX) is subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Ten, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or 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, Seller shall cure such occurrence by complying with either subsection 10.5(b)(A) or 10.5(b)(B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer’s Notice to Seller of an occurrence listed in this subsection (Seller’s compliance with either subsections (A) or (B) below is considered the “Cure”):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer’s Notice to Seller in Section 10.5(b) above, or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Ten.

(c) Notwithstanding the provisions of Section 10.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on “credit watch” negative or developing by S&P, or is on Moody’s “watch list” under review for downgrade or uncertain ratings action (either a “Watch”), then Buyer may make a demand to Seller by Notice (“LC Notice”) to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch (“Substitute Letter of Credit”) and Seller shall cause to have a Substitute Letter of Credit issued by an Eligible LC Bank in the form provided in Appendix IX. The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit (“Substitute Bank Period”).

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period (“Ineligible LC Bank Notice Period”) that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank (“Ineligible LC Bank”) and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) calendar days from the date of Buyer’s Notice to Cure pursuant to Section 10.5(b) and, if Seller fails to Cure, then the last paragraph in Section 10.5(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(d) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

**ARTICLE ELEVEN: SAFETY**

11.1 Safety . Seller shall comply with the safety provisions set forth in Appendix XIV.

**ARTICLE TWELVE: GOVERNMENTAL CHARGES**

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

12.2 Governmental Charges . Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to Distribution Services, by reason of the execution, delivery, performance or enforcement of this Agreement or by reason of transactions contemplated by this Agreement, but not with respect to Buyer’s use of Distribution Services after delivery by Seller, including any resales or transfers of the Distribution Services. If either Party is required by Law to remit or pay Governmental Charges which are the other Party’s responsibility hereunder, the Party paying or remitting the other Party’s Governmental Charges may deduct the amount of any such Governmental Charges from the sums due to the other Party under Article Nine of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Law.

**ARTICLE THIRTEEN: LIMITATIONS**

13.1 Limitation of Remedies, Liability and Damages . EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION (OTHER THAN IN SECTIONS 15.1 THROUGH 15.6) OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTIONS 15.1 THROUGH 15.6, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**ARTICLE FOURTEEN: REPRESENTATIONS; WARRANTIES; COVENANTS**

14.1 Representations and Warranties of Both Parties .

(a) On the Execution Date, Seller represents and warrants to Buyer that:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to transact business in the State of California and in all jurisdictions where the ownership of its properties or its operations require such qualification, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(ii) except for the Governmental Approvals necessary to install, operate and maintain the Project, it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(iii) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement, and the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;

(iv) execution and delivery of this Agreement and performance or compliance with any provision hereof will not result in the creation or imposition of any lien upon its properties, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of any agreement to which it is a party or by which any of its respective properties is bound or affected;

(v) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(vi) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vii) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

(x) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of Distribution Services as provided in this Agreement; and

(xi) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

(b) On the Execution Date, Buyer represents and warrants to Seller that:

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

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement;

(iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws applicable to it;

(iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(v) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(vi) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

(vii) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of Distribution Services as provided in this Agreement; and

(viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the Seller in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

14.2 General Covenants . Each Party covenants throughout the Term of this Agreement as follows:

(a) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and qualified to conduct business in the State of California and in all jurisdictions where ownership of its properties or its operations require such qualifications, except where the failure to do so would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;

(d) it shall follow all the rules set forth in Appendix A of the MUA Decision with respect to any energy storage Distributed Resources comprising the Project.

14.3 Covenants of Seller . Seller covenants to and for the benefit of Buyer that throughout the Delivery Term (unless another time period is specified):

(a) it will deliver Distribution Services to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person;

(b) it shall operate the Project during the Delivery Term in accordance with the Operating Parameters in Appendix II and the Safety Requirements; and

(c) it shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to the Project.

**ARTICLE FIFTEEN: INDEMNITIES AND INSURANCE**

15.1 Indemnity by Seller .

(a) Seller shall release, defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, representatives and Affiliates (“Buyer Group”) against and from any Indemnifiable Losses, which arise out of or relate to or are in any way connected with (i) the Seller’s delivery of Distribution Services to Buyer, (ii) Seller’s or its Affiliates’ ownership, development, construction, operation and/or maintenance of the Project, including the Sites(s); (iii) Third Party Claims arising from Seller’s or its Affiliates’ actions or inactions, including Seller’s breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Project or Site; (iv) any environmental matters associated with the Project, including the disposal and transportation of Hazardous Substances by or on behalf of the Seller or at the Seller’s direction or agreement; (v) Third Party Claims arising under any agreement between Seller or its Affiliates; or (vi) resulting from Seller’s or its Affiliates’ violation of any applicable Law, or requirements of Transmission Provider, Utility Distribution Company, NERC, WECC or Reliability Organization; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller’s Affiliates, or others, excepting only such Indemnifiable Losses, to the extent solely caused by the willful misconduct or gross negligence of a member of the Buyer Group.

(b) Seller shall indemnify, defend and hold the Buyer Group harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.

15.2 No Indemnity by Buyer . Buyer does not indemnify Seller.

15.3 Notice of Claim .

(a) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article Fifteen, Buyer seeking indemnification for it or a member of the Buyer’s Group (“Indemnitee”) will promptly Notify Seller (“Indemnitor”) in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to an Indemnifiable Loss under Sections 15.1 or 15.2. (The Notice is referred to as a “Notice of Claim”). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the Indemnifiable Loss.

(b) Notice of Third Party Claim. If the Indemnitee receives Notice of the assertion or commencement of a Third Party Claim against it with respect to which the Indemnitor is obligated to provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) calendar days after such Indemnitee’s receipt of Notice of such Third Party Claim. Such Notice of Claim will describe the Third Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if reasonably practicable, the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving Notice to the Indemnitee, to assume the defense of any Third Party Claim at such Indemnitor’s own expense and by such Indemnitor’s own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.

(c) Direct Claim. Any Direct Claim must be asserted by giving the Indemnitor Notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) calendar days from receipt of such Notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty (60) calendar day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.

(d) Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 15.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.4 Defense of Third Party Claims . If, within ten (10) calendar days after giving a Notice of Claim regarding a Third Party Claim to the Indemnitor pursuant to Section 15.3(b), the Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 15.3(b), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) calendar days after receiving Notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release of the Third Party Claim to the Indemnitee and no requirement that the Indemnitee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give Notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such Notice.

15.5 Subrogation of Rights . Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee’s rights against such Third Party. Without limiting the generality or effect of any other provision hereof, the Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

15.6 Rights and Remedies are Cumulative . The rights and remedies of a Party pursuant to this Article Fifteen are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

15.7 Insurance . Throughout the Term, Seller shall, at its sole cost and expense, procure and maintain the following insurance coverage and be responsible for its Contractors obtaining and maintaining sufficient limits of the appropriate insurance coverage. For the avoidance of doubt, the obligations of the Seller in this Section 15.7 constitute a material obligation of this Agreement.

(a) Workers’ Compensation and Employers’ Liability.

(i) Workers’ Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers’ Liability insurance will not be less than one million dollars ($1,000,000.00).

(b) Commercial General Liability.

(i) Coverage will be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “occurrence” form or the Associated Electric & Gas Insurance Services Limited (AEGIS) “claims made” form, or similar “claims made” form acceptable to Buyer.

(ii) The limit will not be less than three million dollars ($3,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OCP) policy.

(iii) Coverage shall:

(A) by endorsement add the Buyer Group as additional insured " with respect to liability arising out of the Work performed by or for the Seller, including Seller’s Contractors. In the event the Commercial General Liability policy includes a “blanket endorsement by contract,” the following language added to the certificate of insurance will satisfy Buyer’s requirement: “PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;”

(B) be endorsed (blanket or otherwise) to specify that the Seller's or its Contractor’s insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it; and

(C) include a severability of interest clause.

(c) Commercial Automobile Liability.

(i) Coverage will be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, symbol 1 "any auto."

(ii) The limit will not be less than one million dollars ($1,000,000.00) each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage will be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 and the CA 99 48 endorsement.

(d) Seller’s Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit will not be less than one million dollars ($1,000,000.00) each occurrence for bodily injury and property damage.

(iii) The policies will endorse Buyer Group as additional insured.

(e) Additional Insurance Provisions.

(i) Upon Buyer’s request, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller and its Contractors.

(ii) The insurance documentation will state that coverage shall not be cancelled except after thirty (30) calendar days prior written Notice has been given to Buyer.

(f) Form and Content. All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

**ARTICLE SIXTEEN: RECORDS AND AUDIT RIGHTS**

16.1 Operations Logs . Seller shall maintain a complete and accurate log of all material operations. Such log shall include information on dispatch instructions provided to customers, customer response to dispatch direction, availability, maintenance performed, outages, electrical characteristics of any energy storage systems and similar information relating to the availability, testing and operation of the Project.] Seller shall provide this information electronically to Buyer within thirty (30) calendar days of Buyer’s written request. At the request of Buyer, the CPUC, or any Governmental Authority, or the staff of the CPUC, Seller shall provide all records demonstrating that the Project is operated and maintained in accordance with Prudent Electrical Practices and applicable Laws, including CPUC General Order 167 if applicable.

16.2 Records and Audit .

(a) Records and Audit. Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller’s financial information. Seller shall provide access to financial records and personnel required by Buyer to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Delivery Term all within forty-five (45) calendar days after the end of each fiscal quarter:

(i) Seller’s unaudited financial statements and notes to financial statements; and

(ii) financial schedules underlying the financial statements.

(b) Any information provided to Buyer pursuant to this Section 16.2 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other entities for which Buyer has similar agreements. Buyer shall use this information only for financial statement purposes and shall share such information with (i) internal or external parties or (ii) regulatory, administrative or legal entities or authorities only as necessary in connection with the preparation and audit of Buyer’s financial statements.

(c) The Parties shall, for five (5) years after creation or such longer period as may be required by applicable Law, each keep and maintain accurate and detailed records relating to the Project’s deliveries of Distribution Services and such other information as required to support the amounts due and payable as between the Parties pursuant to this Agreement. Such records shall be made available by the Party holding such records to the other Party for inspection during normal business hours upon reasonable Notice.

16.3 General Audit Right . Each Party has the right, at its sole expense, during normal working hours, and after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement (including the Project Safety Plan or other documents that supplement this Agreement), charge, or computation made pursuant to this Agreement. If such examination reveals any material inaccuracy in any statement, the necessary adjustments shall be made promptly; provided that, if the examining Party raises its objection more than twelve (12) months after the date of the statement in question, that objection shall be deemed waived.

16.4 Data Request Cooperation . Each Party shall use reasonable efforts to assist the other Party in gathering information for and preparing responses to data requests and other inquiries from Governmental Authorities that are related to or associated with the Project, delivery of Distribution Services and/or this Agreement, subject to the requirements of Article Nineteen (Confidentiality).

16.5 Access Rights . Buyer, its authorized agents, employees and inspectors, have, while observing and abiding by safety and security procedures of the Parties and Seller’s Affiliate, and subject to the insurance requirements of Section 15.7, the right of ingress to and egress from the Project, including the Site(s) with reasonable advance Notice and for any purposes reasonably connected with this Agreement. Buyer shall make reasonable efforts to request from Seller access during normal business hours and to coordinate its emergency activities with the safety and security departments, if any, of the Project operator and/or Seller’s Affiliate. Seller shall keep Buyer advised of current procedures for contacting the Project operator’s and/or Seller’s Affiliate safety and security departments.

**ARTICLE SEVENTEEN: ASSIGNMENT**

17.1 General Assignment . Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent will not be unreasonably conditioned, delayed, or withheld so long as among other things (a) the assignee assumes the transferring Party’s payment and performance, credit and collateral obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee’s technical and financial capability to fulfill the assigning Party’s obligations hereunder, (d) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request, and (e) in the case of Seller as the transferring Party with a transfer to an assignee that will have operational control of the Project, Seller delivers to Buyer, upon Buyer’s request, documentation to demonstrate the assignee is capable of satisfying and complying with the Safety Requirements.

17.2 Assignment to Financing Providers . Seller may assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent will not be unreasonably conditioned, delayed, or withheld. If Buyer gives its consent, then the consent will be in a form substantially similar to the Form of Financing Consent to Assignment attached as Appendix X provided that (a) Buyer will not be required to consent to any additional terms or conditions beyond those contained in Appendix X, including extension of any cure periods or additional remedies for financing providers, and (b) Seller is responsible, at Buyer’s request, for Buyer’s reasonable costs and attorneys’ fees associated with the review, negotiation, execution and delivery of documents in connection with such assignment.

17.3 Notice of Change in Control .

Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller’s Affiliates’, Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

17.4 Unauthorized Assignment . Any assignment or purported assignment in violation of this Article Seventeen is void.

**ARTICLE EIGHTEEN: DISPUTE RESOLUTION**

18.1 Intent of the Parties . Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article Eighteen. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of this procedure.

18.2 Management Negotiations .

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

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

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(d) If the matter is not resolved within forty-five (45) calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Subsection 18.2(b), refuses or does not meet within the thirty (30) calendar day period specified in Subsection 18.2(b), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 18.3.

18.3 Mediation . If the dispute cannot be so resolved by negotiation as set forth in Section 18.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by JAMS. As the first step the Parties agree to mediate any controversy before a mediator from the JAMS panel, pursuant to JAMS’s commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) calendar days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a retired judge or justice from the JAMS panel conducted in San Francisco, California, administered by and in accordance with JAMS’s Commercial Arbitration Rules (“Arbitration”). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) calendar day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. If the dispute is not resolved within sixty (60) calendar days of service of the written demand for mediation, then either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within five (5) calendar days following the end of the mediation period.

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

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two “last and best” offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator’s award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. The California Superior Court of the City and County of San Francisco may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp., 9 Cal. 4th 362 (1994)*, and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys’ fees.

(d) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him.

(e) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

**ARTICLE NINETEEN: CONFIDENTIALITY**

19.1 Confidential Information . Throughout the Term, neither Party shall disclose the non-public terms or conditions of this Agreement or the Parties’ bidding or negotiation process or any technical, commercial, or operating information marked as proprietary or confidential (the “Confidential Information”) to a third party. Either Party may publicly disclose the Agreement without notification to or consent from the other Party three years after the IDD.

19.2 Permitted Disclosures . A Party may disclose Confidential Information: (a) to the Party’s Affiliates and the Party’s and its Affiliate’s employees, counsel, accountants, advisors, lenders, prospective lenders, equity investors, or prospective equity investors who have a need to know such information and have agreed to keep such terms confidential; (b) to Buyer’s Procurement Review Group, as defined in CPUC Decision (D.) 02‑08‑071 and made applicable to this Agreement by D.04-06-015, subject to a confidentiality agreement; (c) to the CPUC (including CPUC staff) under seal for purposes of review (if such seal is applicable to the nature of the Confidential Information); (d) pursuant to Section 19.4; (e) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”), other than to those entities set forth in subsection (f); (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC; or (g) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to a duly authorized Governmental Authority including the CPUC or any division thereof; or (h) to the Independent Evaluator.

(i) Procedure for Permitted Disclosures. In connection with requests made pursuant to Section 19.2(e) (“Disclosure Order”) and disclosures pursuant to Sections 19.2(e) or 19.2(f) (“Regulatory Disclosure”) each Party shall, to the extent practicable, use reasonable efforts to: (A) notify the other Party prior to disclosing the Confidential Information and (B) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (I) prohibited from complying with a Disclosure Order or making the Regulatory Disclosure or (II) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the Confidential Information.

19.3 Remedies . Except as provided in Section 19.2 with respect to the Parties’ permitted disclosures, 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.

19.4 Exceptions . Notwithstanding Section 19.1 of this Agreement, either Party shall be permitted to disclose those terms required to be made public by the CPUC in its then-current application or advice-letter template, as applicable, including the following: Party names, resource type, Delivery Term, Project location, terms relating to the capacity of the Project, and anticipated Commercial Operation Date. Seller acknowledges and agrees that the CPUC may require the public disclosure of this Agreement prior to the termination of the confidentiality protections and that Buyer shall be held harmless with respect to such disclosure.

19.5 Other Confidential Information . The Parties agree that the confidentiality provisions under this Article Nineteen are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Article Nineteen shall govern confidential treatment of all non-public information exchanged between the Parties related directly or indirectly to this Agreement as of and after the Execution Date.

**ARTICLE TWENTY: GENERAL PROVISIONS**

20.1 General . 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. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will provide the original signed Agreement; provided, however, that the execution and delivery of this Agreement and its counterparts is subject to Section 20.3. The Parties acknowledge and agree that this Agreement is a forward contract (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). This Agreement shall be binding on each Party’s successors and permitted assigns.

20.2 Severability . If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

20.3 Counterparts . This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which, when taken together, constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by e-mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California’s Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by e-mail will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

20.4 Mobile Sierra . Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting sua sponte shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)* , and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008)*.

20.5 Interpretation . The following rules of interpretation apply:

(a) The term “including” means “including without limitation”; the term “or” shall not be exclusive; the terms “year” and “calendar year” mean the period of months from January 1 through and including December 31; the term “month” means a calendar month unless otherwise indicated, and a “day” means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight saving time begins or ends, respectively.

(b) Unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld or unreasonably delayed.

(c) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies unless otherwise specified.

(d) Capitalized terms used in this Agreement, including the appendices hereto, have the meaning set forth in Appendix I, unless otherwise specified.

(e) References in the singular include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons include partnerships, firms, companies, corporations, limited liability companies, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(f) Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. Words referring to market rules, activities and practice have the meaning generally ascribed to such words in California.

(g) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment will, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(h) Any reference in this Agreement to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity succeeding to its functions.

(i) All references to dollars or “$” are to U.S. dollars.

(j) When an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific prevailing time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day.

(k) All references to Distribution Services mean each and all components of Distribution Services unless the context infers a particular component of Distribution Services.

20.6 Recordings . Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of an electronic recording of all telephone conversations between the Parties to this Agreement related to the scheduling of any Distribution Services, and that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, subject to the confidentiality provisions of Article Nineteen. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the recordings pursuant to this Agreement.

20.7 Authorized Representatives . Each Party shall provide Notice to the other Party of the persons authorized to make or receive other Notices on behalf of such Party or to represent a Party (“Authorized Representative”) within 30 calendar days of Execution Date and in connection with such Notices and specify the scope of their individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time in its sole discretion by providing Notice.

20.8 No Dedication . Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other Party under any provision of this Agreement shall constitute the dedication of that Party’s system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

20.9 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.

**ARTICLE TWENTY-ONE: NOTICES**

21.1 Notices . Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “Notify”), the Party with such right or obligation shall provide a written communication in the manner specified below. Notices may be sent by overnight mail or courier or e-mail. Invoices may be sent by e-mail. A Notice sent by e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Appendix XI contains the names and addresses to be used for Notices.

**SIGNATURES**

**Agreement Execution**

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its Authorized Representative as of the dates provided below:

|  |  |
| --- | --- |
| **SELLER to INSERT** | **PACIFIC GAS AND ELECTRIC COMPANY, a California corporation** |
| Signature: |  | Signature: |  |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
| Date: |  | Date: |  |

**APPENDIX I**

**GENERAL DEFINITIONS**

“Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, through one or more intermediaries, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

“Agreement” means this Distribution Services Agreement and every appendix, attachment, amendment, schedule and written supplement hereto.

“Arbitration” has the meaning set forth in Section 18.3.

“Authorized Representative” has the meaning set forth in Section 20.7.

“Availability Factor” or “AFm” has the meaning set forth in Section 6.2(b).

“Balancing Authority” has the meaning set forth in the CAISO Tariff.

“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, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) calendar days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.

“Business Day” means any day except Saturday, Sunday, or a Federal Reserve member bank holiday.

“Buyer” means PG&E in its capacity as a purchaser of Distribution Services, as distinct from the function of PG&E as a Participating TO.

“Buyer Group” has the meaning set forth in Section 15.1(a).

“Buyer Performance Test” has the meaning set forth in Section 5.1(b).

“Buyer’s Instructions” has the meaning set forth in Section 4.6.

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

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

“CARB” means the California Air Resources Board or any successor entity performing similar functions.

“CEC” means the California Energy Commission or any successor entity performing similar functions.

“Charge” means the process by which a Project withdraws energy from the Utility Distribution Company’s electrical system, Participating Transmission Owner’s electrical system or the CAISO Grid.

“Commercially Operable” with respect to the Project, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, and the Project has been released by the EPC Contractor to Seller for commercial operations.

“Commercial Operation Date” means the date stated in Seller’s Notice, substantially in the form of Appendix VII-A, upon which the Project became Commercially Operable.

“Communications Systems” has the meaning set forth in Section 4.5.

"Confidential Customer Information” has the meaning set for in Section 9.1.

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

“Contractor” means the EPC Contractor and its subcontractors, as well as Seller or Seller’s Affiliates if any such entities are developing, constructing, operating or maintaining the Project during the Term, and any entity or person under contract with Seller or Seller’s Affiliates for the purpose of developing, constructing, operating or maintaining the Project during the Term.

“Contract Capacity” has the meaning set forth in Section 3.3.

“Contract Fixed Price” means the amount described in Section 6.1.

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

“CPUC” or “Commission” means the California Public Utilities Commission or any successor entity performing similar functions.

“CPUC General Order 167” issued by the CPUC directs the implementation and enforcement of standards for the maintenance and operation of electric generating facilities and power plants and can be found at the link below:

http://docs.cpuc.ca.gov/PUBLISHED/GENERAL\_ORDER/108114.htm

“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.

“Cure” has the meaning set forth in Section 10.5(b).

“Defaulting Party” means the Party that is subject to an Event of Default.

“Delay Damages” has the meaning set forth in Section 1.1(c)(ii).

“Delivery Condition” has the meaning set forth in Section 2.1.

“Delivery Day” means a day during a Delivery Month on which Seller may be required to deliver Distribution Services if requested by Buyer’s Instructions.

“Delivery Hour” means a hour during a Delivery Day in which Seller may be required to deliver Distribution Services if requested by Buyer’s Instructions.

“Delivery Month” means a calendar month during the Delivery Term in which Seller may be required to deliver Distribution Services if requested by Buyer’s Instructions.

“Delivery Services Adjustment” means the adjustment to the Monthly Payment based on the Distribution Services Factor.

“Delivery Term” has the meaning set forth in Section 1.1(c).

“Delivery Term Security” means the Performance Assurance required of Seller, as specified and referred to in Section 10.4(a)(ii).

“Direct Claim” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

“Discharge” means the process by which a Project delivers energy to the Utility Distribution Company’s electrical system, Participating Transmission Owner’s electrical system, or the CAISO Grid.

“Disclosing Party” has the meaning set forth in Section 19.2.

“Disclosure Order” has the meaning set forth in Section 19.2(i).

“Dispatch Day” means a Delivery Day in which delivery of Distribution Services from the Project are requested by Buyer’s Instructions to the Seller.

“Distributed Resource” has the meaning given to the term in California Public Utilities Code Section 769.

“Distribution Services” has the meaning set forth in Section 3.2.

“Distribution Services Factor” or “DSF” has the meaning set forth in Section 6.2.

“Early Termination Date” has the meaning set forth in Section 7.2(a).

“Elective Early Termination” has the meaning set forth in Section 1.1(a)(A).

“Elective Termination Payment” has the meaning set forth in Section 7.2(e).

“Electric System Upgrades” means any upgrades, including, Network Upgrades, Distribution Upgrades, or Interconnection Facilities (as these terms are defined in the CAISO Tariff), that are determined to be necessary by the CAISO, Participating TO, or Utility Distribution Company as applicable, to physically and electrically interconnect the Project to the Utility Distribution Company’s/Participating TO’s electric system for delivery of Energy from the Project such that the Project can provide Distribution Services at all times during the Delivery Term.

“Eligible LC Bank” means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and 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.

“Emergency” means an actual or imminent condition or situation, that jeopardizes PG&E electric system integrity or the integrity of other systems to which PG&E is connected, as determined by PG&E in its sole discretion, or any condition so defined and declared by the Transmission Provider.

“Emission Reduction Credits” means emission reductions that have been authorized by a local air pollution control district pursuant to California Health and Safety Code, Division 26 Air Resources, Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

“Energy” means single- or three-phase, 60-cycle alternating current electric energy, measured in kw-hours.

“Energy Storage Decision” means the CPUC Decision No. 13-10-040, or any subsequent related decision(s).

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for Distribution Services as defined in this Agreement with Seller, and Seller’s compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license with respect to Seller’s Distribution Services or Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits, Marketable Emission Trading Credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate the Project, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Project by Seller or Contractors, and the decontamination or remediation, on or off a Site or the Project, necessitated by the introduction of such hazardous substances on a Site or the Project by Seller or Contractors.

“EPA” means the U.S. Environmental Protection Agency or any successor entity performing similar functions.

“EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“EPC Contractor” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.

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

“Event of Default” means a Seller’s Event of Default and/or a Party’s Event of Default.

“Execution Date” means the date of the last signature to this Agreement as evidenced by the latest signature date found on the signature page of this Agreement.

“Executive(s)” has the meaning set forth in Section 18.2(a).

“Exigent Circumstance” means actual or imminent harm to life or safety, public health, third-party owned property, including a Site, or the environment due to or arising from the Project or portion thereof.

“Expected Initial Delivery Date” has the meaning set forth in Section 1.1(b).

“FERC” means the Federal Energy Regulatory Commission or any successor entity performing similar functions.

“Fixed Payment” or “FPm” is the payment calculated using the equation set forth in Section 6.2(a).

“Force Majeure” means any event or circumstance to the extent beyond the control of and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Additionally:

(a) Force Majeure may include:

(i) acts of God, including epidemics, pandemics, landslide, lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events affecting an entire region which caused failure of performance;

(ii) transportation accidents affecting delivery of equipment only if such accident occurs prior to the Commercial Operation Date;

(iii) sabotage, riot, acts of terrorism, war and acts of public enemy; or

(iv) restraint by court order or other Governmental Authority, including quarantine restrictions issued pursuant to applicable Law after the Execution Date.

(b) Force Majeure does not include:

(i) a failure of performance of any Third Party or PG&E acting in its capacity as (A) Participating TO or (B) Utility Distribution Company, including any party providing electric interconnection, distribution or transmission service (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above),

(ii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above);

(iii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other Third Party employed by Seller to work on the Project;

(iv) Seller’s ability to sell Distribution Services at a price greater than the price set forth in this Agreement;

(v) Seller’s inability to obtain permits or approvals of any type for the construction, operation or maintenance of the Project, unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) Seller’s inability to complete interconnection by the applicable IDD, unless such delay is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vii) Seller’s inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller’s inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) Seller’s failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement; and

(ix) Seller’s inability to obtain or retain any Site that is a part of the Project (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above).

“Force Majeure Extension” has the meaning set forth in Section 8.4.

“Force Majeure Failure” has the meaning set forth in Section 8.6.

“Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

“Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Authority and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the use and operation of the Project.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, independent system operator, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Governmental Charges” has the meaning set forth in Section 12.2.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls ("PCBs"), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“Indemnifiable Loss(es)” means any damages, claims, losses, liabilities, obligations, fines, penalties, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

“Indemnitee” has the meaning set forth in Section 15.1(a).

“Indemnitor” has the meaning set forth in Section 15.3(a).

“Independent Evaluator” means the independent, third-party evaluator who is required by the CPUC to monitor and evaluate the competitive solicitation issued by PG&E on September 15, 2021 in accordance with CPUC Decision No. 21-02-006.

“Ineligible LC Bank” has the meaning set forth in Section 10.5(c)(i)(A).

“Ineligible LC Bank Notice Period” has the meaning set forth in Section 10.5(c)(i).

“Initial Contract Capacity” means the total declared capacity of the Project as specified in Appendix II as of the Execution Date of this Agreement.

“Initial Delivery Date” or “IDD” means the date the Project begins providing Distribution Services to Seller after meeting all Delivery Conditions as specified in Section 2.2, as extended pursuant to Section 1.1(c).

“Initial Negotiation End Date” has the meaning set forth in Section 18.2(a).

“Initial Performance Test” has the meaning set forth in Section 5.1(a).

“Installation Report” has the meaning set forth in Appendix VI.

“Interconnection Agreement” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC or the CPUC) by and among Seller and, as applicable, the Utility Distribution Company, the Participating Transmission Owner, and the CAISO, governing the terms and conditions of the interconnection of the Project with the Utility Distribution Company’s or CAISO’s grid, including any description of the plan for interconnecting the Project to the applicable grid.

“Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

“Interest Payment Date” means the date of returning unused Performance Assurance held in the form of cash.

“Interest Period” means the monthly period beginning on the first calendar day of each month and ending on the last calendar day of each month.

“Interest Rate” means 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.

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

“kW” means kilowatts.

“Law” means any statute, law, treaty, rule, 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, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Term; or any binding interpretation of the foregoing.

“LC Notice” has the meaning set forth in Section 10.5(c).

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix IX to this Agreement; provided, that if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount exceeding ten million dollars ($10,000,000.00) requires Buyer’s prior written consent.

“Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

“Manager” has the meaning set forth in Section 18.2(a).

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Health & Safety Code Division 26 Air Resources, Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).

“Mechanical Completion” means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; (b) the Project is ready for testing and commissioning, as applicable; (c) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.

“Meter Service Agreement” has the meaning set forth in the CAISO Tariff.

“Milestone” means a key development activity required for construction, installation and operation of the Project, as set forth in Appendix VI.

“Monthly Payment” or “MPm” has the meaning set forth in Section 6.2.

“Monthly Payment Date” has the meaning set forth in Section 9.3.

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

“MUA” means multiple-use applications as such term applies to energy storage facilities.

“MUA Decision” means CPUC Decision 18-01-003 on Multiple-Use Application Issues, issued January 17, 2018, regarding the multiple-use applications of energy storage facilities.

“MW” means megawatts.

“NERC” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

“Non-Defaulting Party” has the meaning set forth in Section 7.2(a).

“Notice” unless otherwise specified in this Agreement, means a written communication which is delivered by overnight mail or courier service or electronic messaging (e‑mail), and in the manner required by Section 21.1, as applicable to a given communication.

“Notice of Claim” has the meaning set forth in Section 15.3(a).

“Notify” means to provide a Notice.

“Obligor” mean the Party breaching the terms of this Agreememt.

“Operating Parameters” shall mean the parameters set forth in Appendix II.

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

“Party” or “Parties” has the meaning set forth in the preamble of this Agreement.

“Party’s Event of Default” has the meaning set forth in Section 7.1(b).

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations under this Agreement and includes Project Development Security and Delivery Term Security. Buyer only accepts two forms of collateral to satisfy the Performance Assurance obligations : (a) cash via wire transfer in immediately available funds, or (b) a Letter of Credit.

“Performance Payment” has the meaning set forth in Section 6.2.

“Performance Test” has the meaning set forth in Section 5.1(a), and includes Buyer Performance Tests and Seller Retests.

“Permit” means any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits or imposes conditions upon a specified activity.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

“PG&E” means Pacific Gas and Electric Company.

“PG&E Data” has the meaning set forth in Appendix XV, Section 5.

“PG&E Tariff” means the tariff schedules applicable to retail electric service (including unbundled delivery service) of PG&E on file with the CPUC, including all associated preliminary statements, rate schedules and electric rules, as they may be amended, suspended or replaced from time to time.

“Project” means all Distributed Resources, together with all appurtenant facilities and equipment, including any control and Communication Systems, necessary to provide Distribution Services as depicted in Appendix III.

“Project Development Security” is the Performance Assurance required of Seller, as specified and referred to in Section 10.4(a)(i).

“Project Meter” has the meaning set forth in Appendix VIII.

“Project Safety Plan” means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements and shall include the items that are generally outlined in Appendix XII.

“Project Safety Plan Documents” means that information and documentation listed in Appendix XII.

“Prudent Electrical Practices” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to resources composing the Project during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Safeguards are implemented and maintained for the Project and at each Site and are sufficient to address reasonably foreseeable incidents;

(b) equipment, material, and supplies are sufficient and accessible to operate the Project safety and reliably;

(c) operating personnel are trained, equipped, and capable of responsible operation and maintenance of the Project and at each Site, including identifying and responding to System Emergencies, Emergencies, or Exigent Circumstances originating from or impacting the Project or Site;

(d) the Project’s material components and control systems are designed, manufactured, and configured to meet the standard of durability and safety generally used for electric power operating in the relevant region; and

(e) the Project is appropriately designed, operated, maintained, monitored, and tested to ensure it continues to function safely, reliably, and consistent with the intended design specifications, applicable Laws, and Permits, and over the complete range of environmental conditions reasonably expected to occur at each Site.

“Referral Date” has the meaning set forth in Section 18.2(a).

“Regulatory Disclosure” has the meaning set forth in Section 19.2(i).

“Reliability Organization” means an “Electric Reliability Organization” as defined in Section 215(a)(2) of the Federal Power Act or a “regional entity” as defined in Section 215(a)(7) of the Federal Power Act.

“Remediation Event” means the occurrence of any of the following with respect to the Project or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer’s guidelines that requires modification to equipment or the Project’s operating procedures; (e) a material failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Appendix XIV Section 2, in its sole discretion, that the Seller, Safety Attestation, as applicable, is not consistent with the Safety Requirements; (g) failure by Seller to provide the Attestation during the Delivery Term pursuant to Appendix XII; or (h) any actual condition related to the Project or a Site with the potential to materially adversely impact the safe construction, operation, or maintenance of the Project or a Site.

“Remediation Period” means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) calendar days unless extended pursuant to Appendix XIV Section 4.

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

“Safeguard” means any procedures, practices, or actions with respect to the Project, a Site or Work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

“Safety Attestation” means a written attestation or certification from a Licensed Professional Engineer substantially in the form attached hereto as Appendix VII-B.

“Safety Remediation Plan” means a written Notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller’s plans to resolve the Remediation Event.

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, and all applicable requirements of Law, PG&E, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC.

“Scheduling Coordinator” or “SC” has the meaning set forth the CAISO Tariff. Under the terms of this Agreement, the SC may be Seller or Seller’s designated agent (i.e., a third-party).

“SEC” means the U.S. Securities and Exchange Commission, or any successor entity performing similar functions.

“Seller” is the entity named in the preamble to this Agreement.

“Seller Group” means Seller, its directors, officers, agents, attorneys, representatives and Affiliates.

“Seller Retest” has the meaning set forth in Section 5.1(b).

“Seller’s Event of Default” has the meaning set forth in Section 7.1(a).

“Seller’s Parent” means any entity or Person that directly holds fifty percent (50%) or more of the equity interests in Seller.

“Serious Incident” means a harmful event that occurs on a Site during the Term arising out of, related to, or connected with the Project or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent disabling injury to operating personnel, Seller’s Contractors or subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than one hundred thousand dollars ($100,000.00); (d) release of hazardous material above the limits, or violating the requirements, established by Permits, codes, standards, regulations, Laws or Governmental Authorities; (e) environmental impacts exceeding those authorized by Permits or applicable Law.

“Service Agreement” means an agreement between a person or entity and Buyer,in its function as Utility Distribution Company, for electric distribution service under a PG&E Tariff; the Service Agreement will be denoted by a unique service identification number.

“Service Territory” means the geographic area within which PG&E as a Utility Distribution Company is authorized and required to provide electric transmission and distribution service.

“Site(s)” means the real property or properties on which one or more Distributed Resources comprising the Project is located, as identified in Appendix III and as may be updated from time to time.

“Substitute Bank Period” has the meaning set forth in Section 10.5(c).

“Substitute Letter of Credit” has the meaning set forth in Section 10.5(c).

“System Emergency” has the meaning set forth in the CAISO Tariff.

“Term” has the meaning set forth in Section 1.1(a).

“Termination Payment” has the meaning set forth in 7.2(b).

“Test Procedures” has the meaning set forth in Section 5.1(a).

“Third Party” means a Person that is not a member of the Buyer Group or the Seller Group.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

“Third Party Sales” has the meaning set forth in Section 3.1.

“Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

“Transmission Provider” means the CAISO.

“Utility Distribution Company” has the meaning set forth in the CAISO Tariff.

“Watch” has the meaning set forth in Section 10.5(c).

“WECC” means the Western Electricity Coordinating Council or its successor entity with similar functions.

“Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”; and (ii) the providing of, or failure to provide, warnings or instructions.

**APPENDIX II**

**DISTRIBUTION SERVICES TYPE(S), INITIAL CONTRACT CAPACITY AND OPERATION PARAMETERS**

1. Distribution Services Type(s).

 “Distribution Services” shall consist of the Project’s ability to charge storage or increase load pursuant to Buyer’s Instructions, measured in kWh.

2. Initial Contract Capacity.

 The Initial Contract Capacity is **SELLER TO INSERT** MW. Initial Contract Capacity shall be delivered at the location(s) specified in Appendix III and checked below:

[ ] Blackwell Bank 1

[ ]Blackwell 1102

[ ]Blackwell 2101

3. Operation Parameters.

a) The Project must be available to respond to Buyer’s Instructions to charge storage or increase load up to **SELLER TO INSERT** MW from the Project within the following periods:

Delivery Months: Confidential

Delivery Days: Confidential

Delivery Hours: Confidential (HE = “Hour Ending”)

4. Dispatch Days.

 Through the Buyer’s Instructions, Buyer may instruct Seller to:Discharge energy, increase generation or reduce load from the Project to deliver Distribution Services no more than **Confidential** times per calendar year

**APPENDIX III**

**DESCRIPTION OF PROJECT & UNITS**

The following describes the Project to be constructed, operated and maintained by Seller through the Term in accordance with the Agreement.

[X] Dispatchable Front of the Meter Storage

**[*Note: description fields to be revised as applicable for the technology and project type specified*]**

**INTERCONNECTION**: The Distributed Resources that comprise the Project shall each be interconnected to circuits or loads, or associated with load facilities, that are electrically interconnected to the following:

1. ***PG&E Blackwell Bank 1***

[ ] Blackwell Bank 1

[ ]Blackwell 1102

[ ]Blackwell 2101

2. Contract Capacity and Duration

Initial Contract Capacity: SELLER TO INSERT MW

Duration: CONFIDENTIAL

. Technology type/ Description of Measure types:

* SELLER TO INSERT DESCRIPTION

**APPENDIX IV**

**PRICING**

The price for Distribution Services shall be as follows:

**Contract Fixed Price** = the applicable price for capacity for each Delivery Month is set forth in the table below

Note: Seller to insert prices and MW for the appropriate months; Grid needs are confidential at solicitation issuance unless Seller has signed NDA

|  |  |  |
| --- | --- | --- |
| **Month** | **Contract Fixed Price****($/MW-month)** | **MW** |
| January | $[ ] | Confidential |
| February | $[ ] | Confidential |
| March | $[ ] | Confidential |
| April | $[ ] | Confidential |
| May | $[ ] | Confidential |
| June | $[ ] | Confidential |
| July | $[ ] | Confidential |
| August | $[ ] | Confidential |
| September | $[ ] | Confidential |
| October | $[ ] | Confidential |
| November | $[ ] | Confidential |
| December | $[ ] | Confidential |

**APPENDIX V**

**INITIAL DELIVERY DATE CONFIRMATION LETTER**

In accordance with the terms of that certain Distribution Services Agreement, dated \_\_\_\_\_\_\_ (“Agreement”) by and between Pacific Gas and Electric Company(“Buyer”) and SELLER TO INSERT (“Seller”), and Section 2.2(b)(ii) of that Agreement, this letter (“Initial Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that the Delivery Conditions to the IDD have been satisfied or waived in writing by Buyer. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

Additionally, Seller provides the following FERC Tariff information, if applicable, for reference purposes only:

Tariff: Dated: Docket Number:

IN WITNESS WHEREOF, each Party has caused this Initial Delivery Date Confirmation Letter to be duly executed by its Authorized Representative as of the date of last signature provided below:

|  |  |
| --- | --- |
| ***SELLER TO INSERT*** | **PACIFIC GAS AND ELECTRIC COMPANY** |
| Signature: |  | Signature: |  |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
| Date: |  | Date: |  |

**APPENDIX VI**

**MILESTONES**

Each of the deadlines set forth below is considered a “Milestone” and shall satisfy the Delivery Conditions of Section 2.2(b).

* Completed interconnection application ***[30 days post execution]***
* Site Control: ***[30 days post execution]***
* Executed Interconnection Agreements: ***[June 1, 2024]***
* Construction Start: ***[March 31, 2025]***
* Initial Performance Test Completed: ***[May 31, 2025, dispatchable resources only]***
* Commercial Operation: ***[June 1, 2025]***

**Appendix VI- Attachment A**

**FORM OF QUARTERLY PROGRESS REPORT**

Quarterly Progress Report

of

SELLER TO INSERT

(“Seller”)

provided to

Pacific Gas and Electric Company

(“Buyer”)

[Date]

**Instructions**.

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase Agreement by and between \_\_\_\_\_\_\_\_\_\_\_, (“Seller”) and Pacific Gas and Electric Company dated \_\_\_\_\_\_\_\_\_\_\_\_, (the “Agreement”).

Seller shall review the status of each Milestone of the construction schedule for the Project and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller’s reasonable judgment are expected to adversely affect the schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller’s ability to attain any Milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller’s business or prospects which reasonably could be expected to materially threaten financing of the Project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller’s ability to attain any Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller’s ability to attain any Milestone;

(iv) Any material change in the Seller’s schedule for initiating or completing any material aspect of Project;

(v) The status of any matter or issue identified as outstanding in any prior Quarterly Progress Report and any material change in the Seller’s proposed actions to remedy or overcome such matter or issue.

For guidance, each “overview” subsection shall include a summary of the status and progress of major activities associated with that section, whether planned, in progress, or completed, including relevant dates. Each “recent activities” subsection shall include details of activities during the previous quarter. Each “expected activities” subsection shall include a brief list of major activities planned for the current quarter.

Seller shall complete, certify, and deliver this form of Quarterly Progress Report together with all attachments and exhibits, with copies of this report delivered to the Contract Manager identified in Appendix XI.

1. **Executive Summary**

Please provide an overview of the Project, including technology, size, location, and ownership.

Please provide a brief chronological cumulative summary of the **major** activities completed for each of the following aspects of the Project. Include the date each item was added to the summary (*e.g., in Milestone section “January 2012 – notice of Construction Start Date milestone achieved was reported to PG&E on January 15, 2012” and in Construction section “January 2012 - Full Notice to Proceed was issued to EPC contractor on January 10, 2012”* ):

* 1. **Milestones**
	2. **Governmental Approvals**
	3. **Financing**
	4. **Installation Activities**
	5. **Startup**
1. **Milestones**

In this section, please include information on each Milestone listed in Appendix VI, plus any additional significant milestones related to the project.

* 1. **Milestone schedule**

Please state the status and progress of each Milestone. Provide the date of completion of completed Milestone(s) and the expected date of completion of uncompleted Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

* 1. **Missed Milestone Plan (applicable if Seller fails to achieve a Milestone by the Milestone date)**

Please describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates. Describe the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Describe Seller’s detailed plans to achieve the missed Milestone and subsequent Milestones.

1. **Governmental Approvals**

In this section, please include information on each of the Governmental Approvals required for the construction of the Project and the status thereof. List the applicable government agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination, and/or issuance of permit. If the government agency maintains a website with information on the approval process for the Project, please provide a link.

1. **Financing Activities**

In this section, please include information on each separate phase of financing for the Project. Include information on debt, equity, and/or federal or state loans or grants.

* 1. **Overview of financing activities**

Please provide a summary of the status and progress of each major financing activity, including the date of execution of significant documents, and information on the expected timing of future significant activities.

* 1. **Recent financing activities**

Please describe in detail the financing activities that occurred during the previous quarter.

* 1. **Expected financing activities**

Please list the financing activities that are expected to be performed during the current quarter.

1. **Installation Activities**

In this section, please include information on the status of any installation-related factors that may affect the ability of the Project to deliver Distribution Services to the Buyer.

* 1. **Overview of major installation activities**

Please provide a summary of the status and progress of acquisition and installation activities.

* 1. **Recent installation activities**

Please describe in detail the installation activities that occurred during the previous quarter.

* 1. **Expected installation activities**

Please list the installation activities that are expected to be performed during the current and upcoming quarters.

* 1. **OSHA Recordables**

Please list all OSHA recordables from the previous quarter.

* 1. **Work stoppages**

Please describe any work stoppage from the previous quarter and its effect on the construction schedule.

1. **Startup**

In this section, please include information on the status of activities related to preparations of the Project to become Commercially Operable, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Project may deliver Energy to the grid and/or declare the Project Commercially Operable.

* 1. **Overview of startup activities**

Please provide a summary of the status and progress of each major startup activity including dates of completion of significant activities and expected timing of future activities.

* 1. **Recent startup activities**

Please describe in detail the startup activities that occurred during the previous quarter.

* 1. **Expected startup activities**

Please list the startup activities that are expected to be performed during the current quarter.

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on behalf of and as an authorized representative of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby certify that any and all information contained in this Seller’s Quarterly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

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

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

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

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**APPENDIX VII**

**ATTESTATIONS & CERTIFICATIONS**

**APPENDIX VII-A**

**CERTIFICATION**

**FOR COMMERCIAL OPERATION**

This certification of commercial operation (“Certification”) is delivered by \_\_\_\_\_\_\_(“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Distribution Services Agreement with an Execution Date of \_\_\_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) The Project became Commercially Operable on ***[\_\_\_\_\_\_\_\_\_\_]***.

(2) The Project has been constructed consistent with Appendix III

(3) The Project is capable of producing and delivering the Distribution Services at the Contract Capacity.

(4) Seller has designed and constructed the Project to perform for the Delivery Term.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided to certify as to the statements in this Certification.

EXECUTED by SELLER this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

|  |  |
| --- | --- |
|  | **[Licensed Professional Engineer]** |
| Signature: |  | Signature: |  |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
|  |  | Date: |  |
|  |  | License Number |  |
|  | LPE Stamp |  |

**APPENDIX VII-B**

**SAFETY ATTESTATION**

This Safety Attestation is delivered by \_\_\_\_\_\_\_(“Licensed Professional Engineer”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Distribution Services Agreement with an Execution Date of \_\_\_\_\_\_\_ (“Agreement”) by and between \_\_\_\_\_\_\_(“Seller”) and Buyer. All capitalized terms used in this Safety Attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Licensed Professional Engineer ***[insert person’s name]*** hereby certifies the following:

(1) The Project is able to operate in a manner consistent with the Safety Requirements;

(2) The Project has a written Project Safety Plan for the safe construction and operation of the Facility in accordance with Prudent Electrical Practices, that demonstrates compliance with all applicable Safety Requirements and reasonably takes into account the items in Appendix XII to the Agreement,

(3) A copy of the Project Safety Plan as referenced in item (2) above is provided as an exhibit to this Appendix VII-B; and

(3) If a Remediation Event has occurred, Seller has taken into account its Safety Remediation Plan for the Project.

|  |
| --- |
| **[Licensed Professional Engineer]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| Signature: |  |
| Name: |  |
| Title: |  |
| Date: |  |
| License Number and LPE Stamp |  |

**APPENDIX VII-C**

**MULTIPLE-USE ATTESTATION**

This Multiple-Use Attestation is delivered by SELLER TO INSERT (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Distribution Services Agreement with an Execution Date of \_\_\_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer, as of the date set forth below, that with regard to the Project, Seller is following all the rules set forth in Appendix A of the MUA Decision.

EXECUTED by SELLER this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

|  |
| --- |
|  |
| Signature: |  |
| Name: |  |
| Title: |  |

**APPENDIX VIII**

**METERING, MEASUREMENT, VERIFICATION AND PERFORMANCE TESTING**

1. **Metering**

(a) Each Site must have a meter that meets ANSI C12.20 certification at the 0.5% accuracy class, or equivalent industry standard specification agreed to by Buyer and Seller (such meter is designated as a “Project Meter”), and Project Meter communications equipment installed and operating prior to participating in the Project.

(b) All Distribution Services must be measured by the Project(s) Meter to be eligible for compensation under this Agreement.

(c) Seller shall, at its sole expense, cause the installation, maintenance, operation and replacement (as needed) of a meter to be used as the Project Meter and if applicable any back-up meters, to measure the Distribution Services.

(d) Seller shall provide Buyer with access to all real-time metered data, billing meter data, and back-up metered data for all individual Project Meters. Seller shall provide aggregate Project data via an IEEE 2030.5 connection or equivalent industry standard specification agreed to by Buyer and Seller.

(e) Seller consents to Buyer obtaining meter data for the Delivery Months and all inspection, testing and calibration data and reports for the meters. Seller agrees to provide to Buyer all meter data, inspection, testing and calibration data and reports for the submeter(s) upon Buyer’s request.

2. Testing

(a) Initial Performance Test

The Initial Performance Test shall demonstrate that the Project is capable of delivering Distribution Services at one hundred percent (100%) of Initial Contract Capacity. Seller’s performance will be measured based on the Distribution Service delivered relative to the Distribution Services requested on the day of the Initial Performance Test.. Seller shall provide Buyer Notice of the time of the Initial Performance Test at least ten (10) Business Days prior to the Initial Performance Test Milestone date specified in Appendix VI that the Project is ready for an Initial Performance Test. Upon receipt of such Notice, Buyer shall acknowledge receipt of Seller’s Notice and provide Seller, by 8:00 am PPT the calendar day before the requested Initial Performance Test, a dispatch instruction to Seller to provide Distribution Services at the Initial Contract Capacity, provided that the date of the Initial Performance Test is no later than the Initial Performance Test Milestone date specified in Appendix VI.

(b) Buyer Performance Test

For a Buyer Performance Test, Buyer shall provide Seller Notice with Buyer’s Instructions as described in Section 4.6 of the Agreement that the delivery of Distribution Services for such day also qualifies as a Buyer Performance Test.

(c) Seller Retest

Seller may perform a Seller Retest by (i) Notifying Buyer prior to any Buyer scheduled delivery of Distribution Services that such delivery of Distribution Services constitutes a Seller Retest, or (ii) Notifying Buyer of a Seller Retest by 10:00 am PPT the calendar day before such Seller Retest if Buyer has not scheduled delivery of any Distribution Services for such day. Such Seller Retest under this subsection (ii) shall not count as a Dispatch Day.

**APPENDIX IX**

**FORM OF LETTER OF CREDIT**

***Issuing Bank Letterhead and Address***

**STANDBY LETTER OF CREDIT NO.** XXXXXXXX

**Date:** ***[insert issue date]***

|  |  |  |  |
| --- | --- | --- | --- |
| **Beneficiary:** | Pacific Gas and Electric Company77 Beale Street, Mail Code B28L | **Applicant:** | [Insert name and address of Applicant] |
|  | San Francisco, CA 94105 |  |  |
|  | Attention: Credit Risk Management |  |  |

**Letter of Credit Amount: *[Insert the amount]***

**Expiry Date: *[Insert the expiry date]***

Ladies and Gentlemen:

By order of ***[Insert the name of Applicant]*** (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. ***[Insert the letter of credit number]*** (“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 the name of issuing bank, and the city and state in which it is located]*** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on ***[Insert the expiry date]*** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents (which may be presented by physical delivery or by facsimile, e-mail or other electronic transmission):

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

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

A. “Pursuant to the terms of that certain ***[Insert the name of the Agreement]*** (the “Agreement”), dated ***[Insert the date of the Agreement]***, between Beneficiary and ***[Insert the name of Seller under the Agreement]*,** Beneficiary is entitled to draw under Letter of Credit No. ***[Insert the Letter of Credit number]*** amounts owed by ***[Insert the name of Seller under the Agreement]*** under the Agreement; or

B. “Letter of Credit No. ***[Insert the Letter of Credit number]*** will expire in thirty (30) calendar days or earlier and ***[Insert the name of Seller under the Agreement]*** has not provided replacement security acceptable to 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. The Expiry Date of this Letter of Credit shall be automatically extended, without a written amendment, for a period of one (1) year, and it shall also be so extended on each successive Expiry Date, unless at least sixty (60) calendar days before the then current Expiry Date we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such an additional period.

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

All demands for payment shall be made by presentation of copies or original documents, or by facsimile, e-mail, or other electronic transmission of documents to ***[Insert fax number, email or other electronic transmission]***, Attention: ***[Insert name of bank’s receiving department]*** or ***[Insert e-mail or other electronic transmission address].*** If a demand is made by facsimile, e-mail or other electronic 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, if they are presented within thirty (30) calendar days after the resumption of our business, and we will effect payment accordingly.

The electronic copy of this Letter of Credit shall be the operative instrument until such time as the original is received. This Letter of credit can be amended or terminated by facsimile, e-mail or other electronic transmission.

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: | ***[print or type title]*** |

***[Note: All pages must contain the Letter of Credit number and page number for identification purposes.]***

**Exhibit A SIGHT DRAFT**

TO

[INSERT NAME AND ADDRESS OF PAYING BANK]

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

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC COMPANY 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

**APPENDIX X – FORM OF FINANCING CONSENT TO ASSIGNMENT**

**FINANCING CONSENT AND AGREEMENT**

This FINANCING CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of ***[*\_\_\_\_\_ \_\_, 2\_\_\_*]***, between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (“PG&E”), and ***[*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*]***, a ***[include place of formation and business type]*** as collateral agent[[1]](#footnote-2)[1] (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to ***[*\_\_\_\_\_\_\_*]*** (“Seller”). PG&E, Seller, and the Financing Provider shall each individually be referred to as a “Party” and collectively as the “Parties”.

**Recitals**

A. Pursuant to that certain Distribution Services Agreement dated as of ***[*\_\_\_\_\_\_\_\_\_\_\_\_\_, 2\_\_\_*]*** (as amended, modified, supplemented or restated from time to time, and including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between PG&E and Seller, PG&E has agreed to purchase Distribution Services from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including, but not limited to, a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, PG&E has agreed to enter into this Consent and Agreement for the benefit of Seller.

**Agreement**

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing Documentsof (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).

3. Limitations on Assignment.

3.1 Limitations. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party designated by Financing Provider, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement is a Permitted Transferee. Financing Provider further acknowledges that this assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to designate a Permitted Transferee, after completing the process of obtaining PG&E’s acceptance in accordance with Section 3.2(a), to assume all of the rights and benefits and be subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if the Permitted Transferee were an original party to the Assigned Agreement.

3.2 “Permitted Transferee”.

(a) A Permitted Transferee is a person or entity that: (i) cures any and all defaults of Seller under the Assigned Agreement which are “Capable of Being Cured” as defined in Section 3.2(b); (ii) executes and delivers to PG&E a written assumption of all of Seller’s rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to PG&E; (iii) otherwise satisfies and complies with all requirements of the Assigned Agreement, including credit and collateral requirements; (iv) if requested by PG&E, provides (A) tax and enforceability assurance as PG&E may reasonably request, to ensure that PG&E does not incur any costs or lose any benefits by such assignment; (B) documentation to demonstrate the Permitted Transferee’s safety record and ability to meet applicable safety obligations; and (C) its ability to construct (if applicable), operate, and maintain the Project, and evidence that the Permitted Transferee has operated other facilities with a similar technology and operating profile; and (v) is reasonably acceptable to PG&E.

(b) “Capable of Being Cured” means that the Assigned Agreement specifies that a cure is available to Seller for a default(s), whether such cure is financial or by performance, and the terms of the cure as specified in the Assigned Agreement remain unfulfilled and available as set forth in the Assigned Agreement without modification. If the Assigned Agreement does not specify that a cure is available for a default(s), or a cure is specified but is no longer available as a cure (due to the passage of time or for any other reason), then the default(s) shall not be “Capable of Being Cured”. An incurable default by Seller shall be cause for termination by PG&E of the Assigned Agreement and the Assigned Agreement will not be available for assignment to a Permitted Transferee.

(c) Financing Provider shall, following the occurrence of a Financing Default, Notify PG&E of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider’s rights under the Financing Documents, and PG&E shall, within thirty (30) Business Days of its receipt of such Notice, confirm to Financing Provider whether or not such proposed transferee is a Permitted Transferee (together with a written statement of the reason(s) for any negative determination), it being understood that if PG&E shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a Permitted Transferee.

4. Cure Rights.

4.1 Notice to Financing Provider by PG&E. Concurrently with the delivery to Seller of any Notice of an event of default under the Assigned Agreement (each, an “Event of Default”) (and, a “Default Notice”), PG&E shall provide a copy of such Default Notice to Financing Provider pursuant to Section 7.1 of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next Business Day after receipt from PG&E, independent of any agreement of PG&E to deliver such Default Notice.

4.2 Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, but only if the default is Capable of Being Cured, PG&E agrees not to terminate the Assigned Agreement unless it or Seller first provides Financing Provider with Notice of the Event of Default and PG&E affords Financing Provider an additional cure period of ten (10) calendar days for a financial cure or thirty (30) calendar days for a non-financial cure.

4.3 Failure to Deliver Default Notice. If neither PG&E nor Seller delivers a Default Notice to Financing Provider as provided in Section 4.1, then the Financing Provider’s applicable cure period shall begin on the date on which Notice of an Event of Default is delivered to Financing Provider by either PG&E or Seller, whichever is received first. Except for a delay in the commencement of the cure period for Financing Provider and a delay in PG&E’s ability to terminate the Assigned Agreement (in each case only if both PG&E and Seller fail to deliver Notice of an Event of Default to Financing Provider), failure of PG&E to deliver any Default Notice shall not waive PG&E’s right to take any action under the Assigned Agreement and will not subject PG&E to any damages or liability for failure to provide such Notice.

4.4 Extension for Foreclosure Proceedings. If (a) it is necessary for the Financing Provider to have possession of the Project (as defined in the Assigned Agreement) in order for Financing Provider to cure an Event of Default which is Capable of Being Cured, as defined in Section 3.2(b), and (b) Financing Provider commences foreclosure proceedings against Seller within thirty (30) calendar days of receiving Notice of an Event of Default from PG&E or Seller, whichever is received first, then Financing Provider shall be allowed an additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) calendar days; provided, however, that Financing Provider shall provide a Notice to PG&E that it intends to commence foreclosure proceedings with respect to Seller within ten (10) calendar days of receiving a Notice of such Event of Default from PG&E or Seller, whichever is received first. In the event Financing Provider or its designated Permitted Transferee succeeds to Seller’s interest in the Project as a result of foreclosure proceedings, the Financing Provider or Permitted Transferee shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that PG&E shall have the right to set off or deduct from payments due to Seller each and every amount due PG&E from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action PG&E may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that PG&E makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller’s right, title, and interest in the Assigned Agreement, and Financing Provider releases PG&E from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that PG&E may agree with Seller to modify or amend the Assigned Agreement, and that PG&E is not obligated to Notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases PG&E from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. PG&E shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to ***[\_\_\_\_\_\_\_\_\_\_]***, as depositary agent, to ABA No. ***[\_\_\_\_\_\_\_\_\_\_]***, Account No. ***[\_\_\_\_\_\_\_\_\_\_]***, and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, PG&E and Financing Provider agrees that each such payment by PG&E to such depositary agent of amounts due to Seller from PG&E under the Assigned Agreement shall satisfy PG&E’s corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

9.1 Notices. All Notices given or requirements of a Party to Notify hereunder shall be in writing, receipt of which shall be deemed complete (i) at the close of business of the date of receipt, if delivered by hand or by electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such Notice was properly addressed to the appropriate address set forth below or to such other address that a Party may designate by prior Notice to the other Parties.:

|  |
| --- |
| To Financing Provider: |
| Attn: |  |
| Department |  |
| Street Address: |  |
|  |  |
| Telephone: |  |
| Facsimile |  |
| Email: |  |

|  |  |
| --- | --- |
| To PG&E: |  |
| Attn: |  |
| Department |  |
| Street Address: |  |
|  |  |
| Telephone: |  |
| Facsimile |  |
| Email: |  |

9.2 No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of PG&E, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and Permitted Transferees and assigns under the Financing Documents.

9.3 No Modification. This Consent and Agreement is neither a modification of, nor an amendment to, the Assigned Agreement.

9.4 Choice of Law. The Parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

9.5 No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the Party claimed to have so waived or excused.

9.6 Counterparts. This Consent and Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which, when taken together, constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by e-mail (including pdf or any electronic signature complying with the federal ESIGN Act of 2000, California’s Uniform Electronic Transactions Act (Cal. Civ. Code Section 1633.1, et seq.) or other applicable law) will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by e-mail will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

9.7 No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

9.8 Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

9.9 Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all Parties hereto.

IN WITNESS WHEREOF, each of PG&E and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

|  |  |
| --- | --- |
| **PACIFIC GAS AND ELECTRIC COMPANY, a California corporation** | **[*FINANCING PROVIDER*, a *(include place of formation and business type)], as collateral agent*** |
| Signature: |  | Signature: |  |
| Name: |  | Name: |  |
| Title: |  | Title: |  |
| Date: |  | Date: |  |

**ACKNOWLEDGEMENT**

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from PG&E to Financing Provider the next Business Day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned Seller.

|  |
| --- |
| [**SELLER, a *(include place of formation and business type)]*** |
| Signature: |  |
| Name: |  |
| Title: |  |
| Date: |  |

**APPENDIX XI**

**NOTICES**

|  |  |
| --- | --- |
| **Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”) | **Name:** Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”) |
| All Notices:  | All Notices: |
| **Delivery Address:** | **Delivery Address:** |
| Street:  | 77 Beale Street, 14th Floor |
| City:  | San Francisco, CA 94105 |
|  |  |
| **Mail Address**:  | **Mail Address**: |
|  | P.O. Box 770000San Francisco, CA 94177 |
|  |  |
| Attn:  | Attn: Sr. Director, Distribution Asset Management |
| Phone:  | Phone: (415) 973- |
|  |  |
| **Invoices and Payments:**  | **Invoices and Payments:** |
| Attn:  | Attn:  |
| Phone:  | Phone: (415) 973- |
|  |  |
| **Wire Transfer:**  | **Wire Transfer:** |
| BNK: ACCT Title: ABA: ACCT: DUNS: Federal Tax ID Number:  | BNK: ACC Title: ABA: ACCT: DUNS: Federal Tax ID Number:  |
|  |  |
| **Credit and Collections:**  | **Credit and Collections:** |
| Attn:  | Attn: Credit Risk Management  PGERiskCredit@Exchange.pge.com |
| Phone:  | Phone: (415) 972-5188Fax: (415) 973-7301 |
|  |  |
|  |  |
| **With additional Notices of an Event of Default to Contract Manager:** | **With additional Notices of an Event of Default to Contract Manager:** |
| Attn:  | Attn:  |
| Phone:  | Phone: (415) 973-  |

**APPENDIX XII**

**PROJECT SAFETY PLAN AND DOCUMENTATION**

**Project Safety Plan Elements:**

**Part One: Safety Requirements and Safety Programs**

Identify the applicable safety-related Laws which govern the design, construction, operation, maintenance of the Project using the proposed technology.

Describe the Seller’s and the Seller’s Contractor(s)’ safety programs and policies. Describe Seller’s compliance with any safety-related industry standards or any industry certifications (American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.), if applicable.

**Part Two: Project Design and Description**

Describe the results of any failure mode effects analyses (FMEA) or similar safety engineering evaluations. In the case of lithium ion batteries, describe the safety-related reasons, including design features and historical safety records, for selecting particular anode and cathode materials and a particular manufacturer.

Provide a list of major facility components, systems, materials, and associated equipment, which includes but is not limited to, the following information:

a) equipment manufacturer’s datasheet, model numbers, etc.,

b) technical specifications,

c) equipment safety-related certifications (e.g. UL),

d) safety-related systems, and

e) approximate volumes and types of hazardous materials expected to be on Site.

**Part Three: Project Safety Management**

Identify and describe any hazards and risks to life, safety, public health, property, or the environment due to or arising from the Project. Describe the Seller’s applicable site-specific safety plans, risk mitigation, Safeguards and layers of protection, including but not necessarily limited to:

a) engineering controls,

b) Work practices,

c) administrative controls,

d) personal protective equipment and procedures,

e) incident response and recovery plans,

f) Contractor management,

g) operating procedures,

h) Emergency plans,

i) training and qualification programs,

j) disposal, recycle, transportation and reuse procedures, and

k) physical security measures.

**APPENDIX XIII**

**PG&E’S SUPPLY CHAIN RESPONSIBILITY POLICY**

PG&E is committed to supply chain responsibility which includes supplier diversity, sustainability, and ethnical supply chain practices.

The Supplier Diversity Program, launched in 1981, aims to provide diverse suppliers with economic opportunities to supply products and services to PG&E. The Supplier Sustainability Program, launched in 2007, encourages supplier responsibility, excellence and innovation.

Promoting an ethical supply chain means that Health and Safety, Labor Issues, Human Rights, Ethical Business Conduct and Conflicts of Interest are important considerations in supplier selection.

SELLER AND SELLER’S SUBCONTRACTORS OF ALL TIERS MUST COMPLY WITH PG&E’S SUPPLY CHAIN RESPONSIBILITY POLICY IN THE AWARD OF ALL SUBCONTRACTS. This policy requires that Small, Diverse businesses – Small Business Enterprises (SBE), Women, Minority and Disabled Veteran Business Enterprises (WMDVBEs), and Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBEs) - shall have the maximum practicable opportunity to participate in the performance of work.

In order to be considered for this solicitation;

1. Seller shall provide a copy of this Appendix to each prospective subcontractor.

2. In order for subcontractors to qualify as such, they must be certified as follows:

a. Small Businesses must be registered as a small business with a state or federal agency (e.g. Department of General Services or Small Business Administration);

b. Women- and minority-owned businesses must be certified by the California Public Utilities Commission’s Supplier Clearinghouse;

c. Service disabled veteran-owned businesses must be certified by the Department of General Services;

d. Lesbian, Gay, Bisexual and Transgender-owned businesses must be certified by the National Gay and Lesbian Chamber of Commerce (NGLCC®).

3. Seller’s supplier diversity spending target for work supporting the construction of the Project prior to the expected IDD is zero percent (0%) as measured relative to Seller’s total expenditures on construction of the Project prior to the expected IDD.

4. Seller’s annual supplier diversity spending target for Work supporting the operation and maintenance of the Project after the Initial Energy Delivery Date is zero percent (0%) as measured relative to the net payments made by Buyer to Seller in each calendar year.

5. Seller will be expected to report payments made to small, diverse businesses to support the project upon request but no less than annually.

**APPENDIX XIV**

**SAFETY PROVISIONS**

Section 1

(a) As of the Execution Date, Seller represents and warrants to Buyer that information relating to Seller’s, its Affiliates’ and Contractors’ qualifications, experience, and safety record that Seller provided to prior to the Execution Date is materially accurate.

(b) Seller agrees and acknowledges that Buyer’s receipt, review, approval or acceptance of Seller’s Project Safety Plans, Safety Remediation Plans, Safety Attestation, or related documentation or information shall not relieve Seller of any of its obligations to comply with the Safety Requirements.

(c) Seller shall, and shall cause its Affiliates and Contractors to, design, construct, operate, and maintain the Project and conduct all Work or cause all Work to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and Contractors to, take all actions to comply with the Safety Requirements.

(d) Seller shall document a Project Safety Plan based on Appendix XII and incorporate the Project Safety Plan’s features into the design, development, construction, operation, and maintenance of the Project. Seller may deviate from any specific procedures identified in the Project Safety Plan while designing, developing, constructing, operating, or maintaining the Project, if in the Seller’s judgment, the deviation is necessary to design, develop, construct, operate, or maintain the Project safely or in accordance with the Safety Requirements. Seller must monitor and comply with changes to Safety Requirements, even if such compliance requires Seller to modify the Project.

Section 2

(a) Prior to Delivery Term. No less than thirty (30) calendar days prior to the IDD, Seller shall deliver to Buyer a Safety Attestation from a Licensed Professional Engineer in the form set forth in Appendix VII-B.

(b) Delivery Term. Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or Safety Remediation Plan. Seller shall provide to Buyer within thirty (30) calendar days of any such updates a Safety Attestation of a Licensed Professional Engineer with respect to the updated Project Safety Plan in the form set forth in Appendix VII-B. Throughout the Delivery Term, Buyer shall have the right to request Seller to provide its Project Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) calendar days of Buyer’s Notice. Failure by Seller to submit these Attestations shall constitute a Remediation Event for the purposes of Section 4 below. In the event Buyer provides Notice to Seller that the Attestations are not acceptable to Buyer, then Buyer will identify the inconsistencies with the Safety Requirements and such Notice shall constitute the occurrence of a Remediation Event for the purposes of Section 4 below.

Section 3

Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, the Contractor involved in the incident (as applicable), the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance, and cause each of its Contractors to cooperate and provide reasonable assistance, to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

Section 4

(a) Seller shall resolve any Remediation Event within the Remediation Period. Within ten (10) calendar days of the date of the first occurrence of any Remediation Event, Seller shall provide a Safety Remediation Plan to Buyer for Buyer’s review.

(i) Following the occurrence of any Remediation Event, Seller shall also provide a Safety Attestation to Buyer for Buyer’s review and acceptance. Seller shall cooperate, and cause each of its Contractors to cooperate, with Buyer in order for Seller to provide a Safety Attestation, in a form and level of detail that is reasonably acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as reasonably requested by Buyer.

(b) Seller’s failure to resolve a Remediation Event by obtaining Buyer’s written acceptance of the Safety Attestation within the Remediation Period is a material breach of this Agreement; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) calendar days. Buyer shall not unreasonably withhold approval of such extension. Seller may request an additional extension of the Remediation Period of up to ninety (90) calendar days, which Buyer may approve in its sole discretion. The Remediation Period will not, under any circumstance, continue for more than two-hundred and seventy (270) calendar days from the first occurrence of the Remediation Event. The number of days of the Buyer Remediation Review Period shall not be included in calculating the number of days of the Remediation Period. The IDD shall not occur during a Remediation Period.

**APPENDIX XV**

**CONFIDENTIALITY AND DATA SECURITY**

The Parties current scope of work does not require PG&E to provide Seller with any Personally Identifiable Customer Information. In the event the scope changes through execution of an amendment to this Agreement signed by the Parties to include providing such data, the following provisions shall apply.

1. In addition to the requirements set out in Article 19 (Confidentiality), Seller shall comply with the following additional terms of this Appendix XV(Confidentiality and Data Security) regarding the handling of Confidential Information and Confidential Customer Information and PG&E Data from PG&E or its Customers.
2. NON-DISCLOSURE AGREEMENTS: Seller shall either 1.) have all of its employees, Contractors, Contractors’ employees, subcontractors, and subcontractor employees, or any other Person who will perform Work or services under this Agreement, or will otherwise have access to Confidential information, Confidential Customer Information, or PG&E Data sign a non-disclosure agreement in the form attached hereto as Appendix XVI (Non-Disclosure and Use of Information Agreement [“NDA”]) , or 2.) must have existing NDAs that provide similar terms as the form attached hereto as Appendix XVI that provide at a minimum the same level of protection to Buyer’s Confidential Information. Prior to starting said Work or services, Seller shall promptly furnish the original signed NDAs to PG&E.
3. SECURITY MEASURES: Seller shall take “Security Measures” with the handling of Confidential Information and Confidential Customer Information to ensure that the Confidential Information and Confidential Customer Information will not be compromised and shall be kept secure. “Security Measures” shall mean industry standards and techniques, physical and logical, including but not limited to:
4. written policies regarding information security, disaster recovery, third-party assurance auditing, penetration testing,
5. password protected workstations at Seller’s premises, any premises where Work or services are being performed and any premises of any person who has access to such Confidential Information and Confidential Customer Information,
6. encryption of Confidential Information and Confidential Customer Information, and
7. measures to safeguard against the unauthorized access, destruction, use, alteration or disclosure of any such Confidential Information and Confidential Customer Information including, but not limited to, restriction of physical access to such data and information, implementation of logical access controls, sanitization or destruction of media, including hard drives, and establishment of an information security program that at all times is in alignment with the industry requirements of ISO 2700X or SOC2 Type 2.
8. COMPLIANCE AND MONITORING: Seller shall comply with security policies relating to the handling of Confidential Information and Confidential Customer Information.
9. Prior to PG&E’s first transfer of Confidential Information and Confidential Customer Information to Seller, Seller shall provide PG&E with documentation satisfactory to PG&E that it has undertaken Security Measures.
10. Seller and PG&E agree to meet periodically, if requested by PG&E, to evaluate Seller's Security Measures and to discuss, in good faith, means by which the Parties can enhance such protection, if necessary.
11. Seller shall update its Security Measures, including procedures, practices, policies and controls so as to keep current with industry standards, including but not limited to NIST and NERC/CIP, as applicable.
12. PG&E reserves the right to perform onsite security assessments to verify the implementation and ongoing operation and maintenance of security controls. At least annually, Seller shall assist PG&E in obtaining a copy of any report that documents Seller's Security Measures.
13. In the event, PG&E determines Seller has not complied with Security Measures, PG&E shall provide written notice to Seller describing the deficiencies. Seller shall then have sixty (60) calendar days to cure. If Seller has not cured the deficiencies within sixty (60) calendar days, PG&E may declare an Event of Default pursuant to Section 7.1 of this Agreement and pursue an Early Termination Date.
14. PG&E DATA: PG&E Data shall mean:
15. all data or information provided by or on behalf of PG&E, including, but not limited to, personally identifiable information relating to, of, or concerning, or provided by or on behalf of any Customers,
16. all data or information input, transferred, uploaded, migrated, or otherwise sent by or on behalf of PG&E to Seller as PG&E may approve of in advance and in writing (in each instance),
17. account numbers, forecasts, and other similar information disclosed to or otherwise made available to Seller by or on behalf of PG&E and Customers, and
18. all data provided by PG&E’s licensors, including any and all survey responses, feedback, and reports, as well as information entered by PG&E, Seller or subcontractor, and Customers.
19. SECURITY OF PG&E DATA: Seller agrees that Seller’s collection, management and use of PG&E Data during the Term shall comply with these security requirements and all applicable laws, regulations, directives, and ordinances.
20. Vendor Security Review: Before receiving any PG&E Data, Seller shall undergo PG&E's Vendor Security Review process. Seller may receive PG&E Data if the security review reveals no high-risk security control deficiencies. If Seller’s security review reveals high-risk security control deficiencies, Seller may not receive PG&E Data until such time Seller mitigates the risk(s).
21. USE OF PG&E DATA:
22. License: PG&E may provide PG&E Data to Seller to perform its obligations hereunder. Subject to the terms of the Agreement, PG&E grants Seller a personal, non-exclusive, non-assignable, non-transferable limited license to use the PG&E Data solely for the limited purpose of performing the Work or services during the Term, but not otherwise.
23. Limited Use of PG&E Data: Seller agrees that PG&E Data will not be (a) used by Seller for any purpose other than that of performing Seller’s obligations under this Agreement, (b) disclosed, sold, assigned, leased or otherwise disposed of or made available to third parties by Seller, (c) commercially exploited by or on behalf of Seller, nor (d) provided or made available to any other party without written authorization, subject to this Agreement and this Appendix XV (Confidentiality and Data Security), and Appendix XVI, Non-Disclosure and Use of Information Agreement.
24. Application Development: Seller agrees that it will not engage in any application development without or until it has demonstrated compliance with the Agreement provisions and this Appendix XVand Appendix XVI.
25. SECURITY BREACH: Seller shall immediately provide notice to PG&E of any unauthorized access or disclosure of Confidential Information, Confidential Customer Information and/or PG&E Data.
26. Seller shall take reasonable measures within its control to immediately stop the unauthorized access or disclosure of Confidential Information, Confidential Customer Information and/or PG&E Data to prevent recurrence and to return to PG&E any copies.
27. Seller shall provide PG&E (i) a brief summary of the issue, facts and status of Seller’s investigation; (ii) the potential number of individuals affected by the security breach; (iii) the Confidential Information,Confidential Customer Information and/or PG&E Data that may be implicated by the security breach; and (iv) any other information pertinent to PG&E’s understanding of the security breach and the exposure or potential exposure of Confidential Information and Confidential Customer Information and/or PG&E Data.
28. Seller shall investigate such breach or potential breach, and shall inform PG&E, in writing, of the results of such investigation, and assist PG&E (at Seller’s sole cost and expense) in maintaining the confidentiality of such Confidential Information, Confidential Customer Information and/or PG&E Data. Seller agrees to provide, at Seller’s sole cost and expense, appropriate data security monitoring services for all potentially affected persons for one (1) year following the breach or potential breach, subject to PG&E’s prior approval.
29. If requested in advance and in writing by PG&E, Seller will notify the potentially affected persons regarding such breach or potential breach within a reasonable time period determined by PG&E and in a form as specifically approved in writing by PG&E. In addition, in no event shall Seller issue or permit to be issues any public statements regarding the security breach involving Confidential Information, Confidential Customer Information and/or PG&E Data unless PG&E requests Seller to do so in writing.
30. RIGHT TO SEEK INJUNCTION: Seller agrees that any breach of this Appendix XV (Confidentiality and Data Security) would constitute irreparable harm and significant injury to PG&E. Accordingly, and in addition to PG&E’s right to seek damages and any other available remedies at law or in equity in accordance with this Agreement, Seller agrees that PG&E will have the right to obtain, from any competent civil court, immediate temporary or preliminary injunctive relief enjoining any breach or threatened breach of this Agreement, involving the alleged unauthorized access, disclosure or use of any Confidential Information, Confidential Customer Information and/or PG&E Data.  Seller hereby waives any and all objections to the right of such court to grant such relief, including, but not limited to, objections of improper jurisdiction or forum non convenient.
31. CPUC and IOU DISCLOSURE: Notwithstanding anything to the contrary contained herein, but without limiting the general applicability of the foregoing, Seller understands, agrees and acknowledges as follows.
32. PG&E hereby reserves the right in its sole and absolute discretion to disclose any and all terms of this Agreement and all exhibits, attachments, and any other documents related thereto to the CPUC, and that the CPUC may reproduce, copy, in whole or in part or otherwise disclose the Agreement to the public.
33. PG&E may be required or may deem it to be in the best interest of the Work being performed under this Agreement that Work related information be disclosed to other IOUs (excluding any pricing information).

SUBPOENAS: In the event that a court or other governmental authority of competent jurisdiction, including the CPUC, issues an order, subpoena or other lawful process requiring the disclosure by Seller of the Confidential Information, Confidential Customer Information and/or PG&E Data provided by PG&E, Seller shall notify PG&E immediately upon receipt thereof to facilitate PG&E’s efforts to prevent such disclosure, or otherwise preserve the proprietary or confidential nature of the Confidential Information, Confidential Customer Information and/or PG&E Data. If PG&E is unsuccessful at preventing the disclosure or otherwise preserving the proprietary or confidential nature of the Confidential Information, Confidential Customer Information and/or PG&E Data, or has notified Seller in writing that it will take no action to prevent disclosure or otherwise preserve the proprietary or confidential nature of such Confidential Information, Confidential Customer Information and/or PG&E Data, then Seller shall not be in violation of this Agreement if it complies with an order of such court or governmental authority to disclose such Confidential Information and/or PG&E Data.

**APPENDIX XVI**

**NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT (“NDA”)**

THIS NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT (NDA) is by and between (“Company”), , ("Undersigned") authorized employee of Company (together, Company and Undersigned are referred to as the “Recipient”), and PACIFIC GAS AND ELECTRIC COMPANY ("PG&E") and is effective on the latest signature date set forth below.

PG&E has entered into a Distribution Services Agreement with ***\_\_[fill in name of Seller under this Agreement]***\_ (the “Seller”) dated \_\_\_\_\_\_\_(the “Agreement”) . Under that Agreement, the Seller may retain Contractors and subcontractors to perform Work under the Agreement. Under the Agreement, Seller and its Contractors and subcontractors and their employees will be bound by the confidentiality requirements of the Agreement. Capitalized terms used herein shall have the meanings set forth in the Agreement

Undersigned and Company agree as follows:

1. The Recipient acknowledges that in the course of performing services or Work for PG&E, the Recipient will be given access to certain Confidential Information, which may include (a) PG&E residential or commercial Customer’s (Customer) account information and information relating to their facilities, equipment, processes, products, specifications, designs, records, data, software programs, Customer identities, marketing plans or manufacturing processes or products, (b) any technical, commercial, financial, or Customer information of PG&E obtained by Seller, Contractor or subcontractor in connection with the Agreement, either during the Agreement Term or prior to the Agreement Term but in contemplation that Seller, Contractor or subcontractor might be providing the Work or services, including, but not limited to a Customer’s energy usage and billing data, data, matters and practices concerning technology, ratemaking, personnel, business, marketing or manufacturing processes or products, which may be information owned by PG&E or by a third party and which may be in the custody of PG&E or third party and which constitutes valuable confidential and proprietary information and or trade secrets belonging to PG&E, and/or third parties, (c) any such confidential information of any third party disclosing such confidential information to PG&E or Seller, Contractor, or subcontractor in the course of such third party’s employment, engagement, business, or other relationship with PG&E or its parent, subsidiary, or affiliated companies and (d) PG&E Data as defined in Appendix XV, Confidentiality and Data Security (collectively, “Confidential Information”).
2. In consideration of being made privy to such Confidential Information, and of the contracting for the Recipient’s professional services by PG&E, the Recipient hereby shall hold the same in strict confidence, and not disclose it, or otherwise make it available, to any person or third party (including but not limited to any affiliate of PG&E that produces energy or energy-related products or services) without the prior written consent of PG&E. The Recipient agrees that all such Confidential Information:
3. Shall be used only for the purpose of providing Work or services for PG&E; and
4. Shall not be reproduced, copied, in whole or in part, in any form, except as specifically authorized and in conformance with PG&E's instructions when necessary for the purposes set forth in (a) above; and
5. Shall, together with any copies, reproductions or other records thereof, in any form, and all information and materials developed by Undersigned there from, be returned to PG&E when no longer needed for the performance of Undersigned's Work or services for PG&E.
6. The Recipient hereby agrees that any third parties owning any Confidential Information are express third party beneficiaries of this Agreement.
7. The Recipient hereby acknowledges and agrees that because (a) an award of money damages is inadequate for any breach of this NDA by the Recipient or any of its representatives and (b) any breach causes PG&E irreparable harm, that for any violation or threatened violation of any provision of this NDA, in addition to any remedy PG&E may have at law, PG&E is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages.
8. This NDA shall be governed by and interpreted in accordance with the laws of The State of California, without regard to its conflict of laws principles.

Undersigned Contractor

By: Company Name:

Name: Authorized Agent:

Title: Name:

Company: Title:

Date: Date:

**END OF AGREEMENT**

1. [1] This form assumes that a collateral agent will hold the security on behalf of a syndicate of lenders and therefore, the consent would be signed by the collateral agent in such capacity for the benefit of the Secured Parties. If that is not the case, please modify. [↑](#footnote-ref-2)