

**BEHIND THE RETAIL METER
RESOURCE ADEQUACY AGREEMENT**

between

PACIFIC GAS AND ELECTRIC COMPANY
(as "Buyer")

and

(as "Seller")

**BEHIND THE RETAIL METER
RESOURCE ADEQUACY AGREEMENT**

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**BEHIND THE RETAIL METER
RESOURCE ADEQUACY AGREEMENT**

This Behind the Retail Meter Resource Adequacy Agreement is made by and between Pacific Gas and Electric Company, a California corporation ("PG&E", and as further defined herein, "Buyer") and _____ a _____ company ("Seller") as of the Execution Date. Seller and Buyer are referred to individually as "Party" or collectively as "Parties". Therefore, Buyer and Seller hereby agree to the following:

PURPOSE

The purpose of this Agreement is to facilitate Buyer's purchase of the Product. The Project associated with this Agreement shall be located behind the retail meter. The Agreement includes a monthly Energy Settlement, which is netted out of Buyer's monthly payment to Seller.

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, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, 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. All 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. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 16.1 through 16.6 (Indemnities) and any other indemnity rights survive the end of the Term for an additional twelve (12) months; (ii) all rights and obligations under Article Twenty (Confidentiality) survive the end of the Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The "Delivery Term" is the period commencing on the Initial Delivery Date and continuing for a period of _____ (__) Contract Years from the Initial Delivery Date unless earlier terminated in accordance with the terms and conditions of this Agreement.

(c) The "Expected Initial Delivery Date" is _____, 20__.

(d) The "Initial Delivery Date" is the first day of the first Showing Month for which Product is delivered. The Initial Delivery Date may not occur until satisfaction of the CPUC Approval Condition Precedent and the Conditions Precedent

1.2 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date, but only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

(i) Articles One, Two, Nine, and Twelve through Twenty-Two;

- (ii) Sections 3.2(b), 3.3, and 3.4;
- (iii) Sections 8.1(a)(i) – (iii) and (vi); 8.2 - 8.4; and
- (iv) Sections 11.3 – 11.5.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the date on which the Approvals Condition Precedent has been obtained or waived in writing by both Parties (“Effective Date”). Unless otherwise specified, all obligations of the Parties are binding throughout the Delivery Term.

1.3 CPUC Approval or Bankruptcy Court Approval Delayed. CPUC Approval and Bankruptcy Court Approval must be obtained on or before one hundred eighty (180) days from the later of (a) the date on which Buyer files this Agreement with the CPUC seeking CPUC Approval and (b) the date on which Buyer files the Agreement with the Bankruptcy Court seeking Bankruptcy Approval (“Approvals Condition Precedent”). If (a) CPUC Approval or Bankruptcy Court Approval has not been obtained by this date, or (b) if the CPUC rejects this Agreement through a final and non-appealable order, then either Party may terminate this Agreement effective upon Notice to the other Party, unless the need for such CPUC Approval or Bankruptcy Court Approval has been waived in writing by both Parties. Within ten (10) Business Days of such termination, Buyer shall return the Project Development Security to Seller. Following the return of the Project Development Security to Seller, neither Party shall have any obligation or liability to the other by reason of such termination.

ARTICLE TWO: CONDITIONS PRECEDENT TO INITIAL DELIVERY DATE

2.1 Conditions Precedent to the Initial Delivery Date. Seller shall provide Buyer with Notice of the expected occurrence of the Initial Delivery Date no later than ninety (90) days prior to the Initial Delivery Date. Seller shall take all actions and obtain all approvals necessary to meet the obligations of this Agreement and to deliver the Product to Buyer pursuant to the terms of this Agreement, which include those obligations set forth below in Sections 2.1(a) – (k) (collectively the “Conditions Precedent”), which must be satisfied at least seventy-five (75) days before the Initial Delivery Date or such deadline as set forth below. The Conditions Precedent are as follows:

(a) At Seller’s expense, Seller shall have (i) executed all agreements with Customers whose Units are to be a part of the Project as of the Initial Delivery Date and (ii) secured all CAISO and Governmental Approvals, each of (i) and (ii) as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver the Product to Buyer.

(b) At Seller’s expense, Seller or Contractor shall have constructed or caused to be constructed the Units that are to be a part of the Project as of the Initial Delivery Date to (i) enable Seller to satisfy the obligations of the Seller herein and (ii) enable the Project to provide Product.

(c) Seller shall have provided to Buyer a certification of Seller and a Licensed Professional Engineer, substantially in the form attached hereto as Appendix VI-A, demonstrating (A) that the Commercial Operation Date has occurred, (B) the satisfactory completion of the Unit(s) at the Sites that are comprising the Project as set forth in Seller’s Initial Portfolio List as of the Initial Delivery Date and (C) that the Unit(s) comprising the Project as set forth in Seller’s Initial Portfolio List can deliver, in aggregate, the Product.

(d) Seller shall have provided to Buyer all documentation reasonably acceptable to Buyer demonstrating that the Project successfully completed all applicable testing and registration procedures required by CAISO to Bid into the CAISO Markets.

(e) At Seller's expense, Seller shall have executed any necessary Interconnection Agreements and installed any necessary metering to deliver Product in accordance with the CAISO Tariff and any applicable tariffs of the Utility Distribution Company and the Participating Transmission Owner.

(f) Seller shall have posted collateral as required by Section 11.4(a)(ii).

(g) As of the Initial Delivery Date, no Seller's Event of Default shall have occurred and remain uncured.

(h) At least ninety (90) days prior to the Initial Delivery Date, Seller shall have submitted to Buyer a Project Safety Plan and Attestation in accordance with Section 12.2(a)(ii) and the Attestation shall be substantially in the forms attached hereto as Appendices VI-C and VI-D.

(i) At least ninety (90) days prior to the Initial Delivery Date, Seller shall have provided Buyer with (i) the Seller's Portfolio List in accordance with Section 4.1(e) that demonstrates Units and Customers under contract to Seller sufficient for Seller to deliver Product, as of the Initial Delivery Date ("Seller's Initial Portfolio List") and (ii) a description of the Project and Units set forth in Appendix II-B. If Seller provides to Buyer Seller's Initial Portfolio List pursuant to the first sentence of this Section 2.1(i), but prior to the occurrence of the Initial Delivery Date Seller changes Seller's Initial Portfolio List, then the Condition Precedent in this Section 2.1(i) shall not be satisfied and the date on which Seller provides to Buyer a changed Seller's Initial Portfolio List in accordance with this Section 2.1(i) and Section 4.1(e) shall constitute provision of Seller's Initial Portfolio List for purposes of this Section 2.1(i) and Section 2.4 may apply.

(j) Seller shall have obtained certification of Product in accordance with the CAISO Tariff and CPUC requirements applicable to Product, as all verifiable by Buyer.

(k) *[PG&E Drafting Note: only applicable to energy storage Projects]* Seller shall have provided to Buyer an attestation, in the form attached hereto as Appendix XII, that Seller is following all of the rules set forth in the MUA Decision.]

2.2 Confirmation of Initial Delivery Date. Once each of the Conditions Precedent to the Initial Delivery Date has been satisfied or waived, the Parties shall execute and exchange on the Initial Delivery Date the "Initial Delivery Date Confirmation Letter" attached as Appendix IV.

2.3 Deadline for the Initial Delivery Date.

(a) The Initial Delivery Date may not occur prior to the Expected Initial Delivery Date, and the Initial Delivery Date may not be later than sixty (60) days beyond the Expected Initial Delivery Date ("IDD Cure Period").

(b) The Parties agree that, in order for Seller to obtain an Initial Delivery Date, the Parties may have to perform certain of their Delivery Term obligations in advance of the Initial Delivery Date, including providing Supply Plans in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to utilize the Product beginning on the Initial Delivery Date and Seller agrees to cause the Project's SC to cooperate in order to achieve the same.

2.4 Expected Initial Delivery Date Cure Period and Delay Damages.

(a) Delay Damages. If Seller has not achieved the Initial Delivery Date as of the Expected Initial Delivery Date for reasons other than a Force Majeure extension, then for every day beginning with the day after the Expected Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller shall pay to Buyer liquidated damages in the amount of *[Insert dollar amount equal to the Project Development Security divided by 60]* dollars per MW per day (\$ /MW per day) multiplied by the Payment Quantity; all or any portion of such damages are "Delay Damages". If Delay Damages are due, then Buyer shall provide Notice to Seller of the amounts due and Buyer may draw such amounts due from the Project Development Security, provided that if the Project Development Security is not adequate to compensate Buyer for Delay Damages, Buyer shall invoice Seller for the amount still owed to Buyer on a monthly basis during the period of the delay. Each Party agrees that (i) the damages that Buyer would incur due to Seller's delay in achieving the Expected Initial Delivery Date would be difficult or impossible to predict with certainty and (ii) the Delay Damages are an appropriate approximation of such damages.

(b) Force Majeure Delay. If Seller has not achieved the Initial Delivery Date as of the Expected Initial Delivery Date because of a Force Majeure event, Seller is not responsible for paying Delay Damages for the period extending to the first day following a day-for-day extension of the same duration as the Force Majeure event.

ARTICLE THREE: TRANSACTION

3.1 Product. Seller shall provide Buyer all Capacity Attributes that may be calculated or derived from the Operational Characteristics, which must be exclusively from the Project ("Product"). Operational Characteristics shall not be modified during the Term. Product does not confer to Buyer any right to dispatch or receive Energy or Ancillary Services from the Project.

3.2 Purchase and Sale Obligation.

(a) During the Term, Seller grants, pledges, assigns and otherwise commits and shall deliver to Buyer Product for Buyer's exclusive use, pursuant to the terms and conditions contained herein. Buyer shall have the right to re-sell all or a portion of the Product purchased under this Agreement ("Resold Product").

(i) As of the Execution Date, the amount of Capacity Attributes comprising the Product that Seller commits to deliver to Buyer is listed below in subsection 3.2(a)(iv).

(ii) In the event any change by the CPUC, CAISO, other Governmental Authority or Person having jurisdiction over Capacity Attributes results in the increase or decrease of the amount of Capacity Attributes that may be calculated or derived from the Operational Characteristics prior to the effective date of such change, then either Party shall provide Notice to the other Party upon knowledge of such change specifying the altered amounts of Capacity Attributes of Product ("Change Notice"). Following a Change Notice, Buyer will confirm via Notice to Seller the amended amount of Capacity Attributes of Product based on such change and the date that Seller shall commence delivery of such amended amounts ("Confirmation Notice"). The amounts of Capacity Attributes of Product shall automatically adjust upon the date set forth in the Confirmation Notice ("Capacity Adjustment Date") without further need for the Parties to amend this Agreement. Until the Capacity Adjustment Date, Seller shall continue to deliver the amount of the Capacity Attributes of Product as stated prior to the Confirmation Notice.

(iii) Buyer shall pay Seller for Product based on the amount ("Payment Quantity") and fixed-price per unit listed below ("Contract Price"). All obligations of Seller under this Section 3.2(a), and all Product deliverable to Buyer and compensation due to Seller under this Agreement are subject to and made in accordance with Articles Six [Seller's Delivery], Seven [Compensation] and Ten [Payment and Netting].

(iv) Capacity Attributes of Product, Payment Quantity and Contract Price

Capacity Attributes of Product as of Execution Date:

RA Attributes: ___ MW

Flexible RA Attributes: ___MW

Other Capacity Attributes: ___MW

Payment Quantity: ___ MW

Contract Price: ___ [In \$/kw-mo for all months in the Delivery Term]

(b) During the Term, Seller shall take all actions, including executing all documents or instruments, complying with all applicable registration, certification and reporting requirements of all applicable Governmental Authorities and other Persons, as such requirements may be amended from time to time, that are necessary to ensure that Buyer can use Product, including enabling Buyer to apply Product towards Buyer's Compliance Obligations, or sell Resold Product, at all times during the Delivery Term.

(c) Seller may sell Capacity Attributes from the Project in excess of Product, if any, (i) to third parties, (ii) into the applicable market or (iii) to Buyer with Buyer's prior agreement.

(d) In the event a centralized capacity market develops within the WECC region, Buyer will have the exclusive right to, or cause Seller or Seller's SC to offer, bid, or otherwise submit the Product for re-sale in such market, and retain and receive any and all related revenues.

3.3 Project Modifications. During the Term, Seller may perform a Project Modification, provided that Seller shall Notify Buyer of any proposed Project Modification at least ten (10) Business Days prior to the start of Work for such Project Modification, and provided further that Seller shall not, and shall not permit any other Person to take any other action that would, or may reasonably be expected to alter the Project from the Project description set forth in Appendix II-A as of the Execution Date, without the prior written consent of Buyer, which consent shall be in Buyer's sole and absolute discretion. Upon completion of a Project Modification, Seller shall provide Buyer a Project Modification Certification in accordance with Section 12.2. A Project Modification will not alter nor relieve any of Seller's obligations under this Agreement.

3.4 Information Sharing and Shared Learning. Seller understands and acknowledges that Buyer is entering into this Agreement in part to gain operational and market information regarding the performance, efficiency, operations, maintenance, [PG&E Drafting Note: PG&E to update for Project technologies other than energy storage and multiple uses of energy storage and storage assets 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 energy storage on load forecasting as a load serving entity.] Throughout the Term, Seller agrees to share such information, including hourly charging and discharging data, with

Buyer on at least an aggregated basis but excluding cost or similar proprietary information, upon Buyer's reasonable request, with such information to be treated by Buyer as Confidential Information. Seller shall provide such applicable data to Buyer in a format and to a platform specified by Buyer that is reasonably acceptable to Seller. *[PG&E Drafting Note: only applicable to energy storage Projects* For information related to Seller's multiple uses of the Project, Seller shall promptly provide Notice to Buyer any time it provides any services or products from the Project to a third party.]

3.5 Certification of Product. During the Delivery Term, Seller shall, at no cost to Buyer, obtain and maintain CAISO and all applicable Governmental Authority certification(s) for all elements of the Product for which certification is or may become required in order to enable Buyer to receive and use such Product, including use of such Product to satisfy its Compliance Obligations. If Buyer is required under applicable Law to obtain such certification, Seller shall take all actions within its control to ensure that Buyer is able to secure such certification. Seller, at no cost to Buyer, shall take all other actions during the Delivery Term, including submission of all reports and other filings with CAISO and applicable Governmental Authorities, that are required to be taken by Seller to ensure that Buyer can receive the Product and shall take all actions within its control to assist Buyer in taking actions required to be taken by Buyer with regard to receipt of Product.

3.6 Delivery of Product: Buyer Compliance Showings.

(a) Seller shall submit, or cause to be submitted, a Supply Plan to CAISO to identify and confirm the Product to be delivered to Buyer or with regard to Resold Product Buyer's designee, for each Showing Month. For each of the Capacity Attributes from the Project that Seller submits in its Supply Plan in the applicable Showing Month, Seller shall not submit an amount greater than the amount of each of the respective Capacity Attributes of Product as provided in Section 3.2. The lowest daily quantity that Seller submits for each of the Capacity Attributes in a Supply Plan shall be deemed to be the amount of each of the Capacity Attributes of Product that Seller has delivered for such Showing Month ("Delivered Quantities").

(b) No later than fifteen (15) Business Days prior to the applicable Compliance Showing deadlines for each Showing Month, Seller shall submit, or cause its SC to submit, a Notice to Buyer which includes Seller's proposed Supply Plan for such Showing Month in a format and to a platform as Notified by Buyer to Seller prior to such deadline. No later than ten (10) Business Days before the applicable Compliance Showing deadlines for each Showing Month, Buyer may Notify Seller of any administrative or typographical corrections to the Supply Plan and Seller shall implement any such corrections in the Supply Plan that it submits, or causes to be submitted, to the CAISO. In the event that Buyer does not Notify Seller of any such corrections to the proposed Supply Plan, Seller shall submit the Supply Plan to CAISO as it was proposed by Notice to Buyer.

ARTICLE FOUR: CUSTOMERS

4.1 Seller's Portfolio.

(a) Seller Obligation to Obtain Customers. Seller shall obtain or cause to be obtained, the Customers necessary to enable the safe and reliable delivery of the Product to Buyer during the Delivery Term. Seller shall contract, or cause its Affiliate to contract, directly with Customers to develop, install, operate, and maintain the Project in order for Seller to deliver the Product during the Delivery Term. Seller shall identify, or cause its Affiliate to identify, all such Customers, complete all necessary registration forms regarding such Customers, submit any necessary documentation regarding such Customers and comply with all other requirements of the Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority.

(b) Customers Eligible for Inclusion in Project. Seller shall provide to Buyer the Product during the Delivery Term only from Units installed at Sites listed in Seller's Portfolio List in accordance with Section 4.1(e). Customers who are added to Seller's Portfolio List after the Initial Delivery Date and during the Delivery Term must meet the definition of a "Customer" during the Delivery Term in order to be included in Seller's Portfolio List. Seller shall be responsible, at its sole cost and expense, for maintaining the metering, interconnection and data collection systems necessary to perform its obligations and complying with all Utility Distribution Company, CAISO, CPUC or any other applicable Governmental Authority rules and regulations required to deliver Product during the Delivery Term.

(c) Seller's Relationship with Customer. The terms and conditions of the agreements governing the relationship between Seller or its Affiliate and a Customer with respect to such Customer's participation in Seller's Portfolio are independent of Buyer and Buyer shall have no responsibility with respect to such Customers or Seller's Affiliate for purposes of Seller's Portfolio. Seller agrees to independently resolve, or shall cause its Affiliate to resolve, any disputes arising between Seller or its Affiliate and any Customer.

(d) Seller's Portfolio. Seller's Portfolio will at all times solely contain the Customers associated with the Project. The Parties agree and acknowledge that Seller may add or remove a Customer from Seller's Portfolio at any time during the Delivery Term, subject to the requirements of this Section 4.1 and Article Twelve. Notwithstanding the prior sentence, changes to Seller's Portfolio shall not alter the Product Seller must deliver.

(e) Seller's Portfolio List. As of the date first submitted in accordance with Section 2.1(i) and throughout the Delivery Term, Seller shall maintain or cause its Affiliate to maintain, a list of Customers in the Seller's Portfolio in the form and containing the information set forth in Appendix II-C ("Seller's Portfolio List"). If any of the Customer information in Seller's Portfolio List changes during the Delivery Term, such change shall be deemed a Project Modification pursuant with Section 3.3 and upon completion of such Project Modification, Seller shall submit to Buyer an updated Seller's Portfolio List reflecting all changes since the previous Seller's Portfolio List, and Seller shall provide Buyer an Attestation only with respect to such changes from the previous Seller's Portfolio List in accordance with Section 12.2. In addition, Seller shall provide or cause its Affiliate to provide, any additional Customer information reasonably requested by Buyer in connection with this Agreement.

(f) Dual Participation. Seller may include in Seller's Portfolio those Customers that are registered in programs or resources administered by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority ("Other Programs"), provided that (i) participation of Customers in both Seller's Portfolio and Other Programs does not impact Seller's ability to perform its obligations under this Agreement, (ii) Seller complies with all rules and requirements of Other Programs set forth by Buyer, the CPUC, the CAISO, the Utility Distribution Company, or applicable Governmental Authority, and (iii) Seller's inclusion of Customers in Seller's Portfolio, where said Customers are also participants in Other Programs, complies with CPUC Decision 18-01-003, as more particularly described in Section 15.3(e) of this Agreement.

(g) SGIP Funds. At all times during the Delivery Term, the Project must include Units that were installed without using financial incentives under the Self-Generation Incentive Program ("SGIP") with an aggregate rated capacity of no less than the capacity associated with the Operational Characteristics. The Project may include Units that were installed using financial incentives under SGIP in excess of the capacity associated with the Operational Characteristics, provided that Seller complies with all rules and requirements under SGIP. Buyer makes no representations or warranties with respect to the availability of financial incentives under the SGIP.

(h) Seller shall be fully responsible for all acts and omissions of its Affiliates and for all cost, charges and liabilities incurred by its Affiliates to the same extent that Seller would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Seller directly.

ARTICLE FIVE: INTERCONNECTION & OPERATIONS

5.1 Interconnection Agreement. 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 the Product, 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, Seller shall fulfill all 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 the Product 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 (i) Participating TO or (ii) Utility Distribution Company for the Project.

5.2 Operations. Seller shall at all times retain operational control of the Project and be responsible for operation and maintenance of the Project. Buyer will not bear any costs or liability related to ownership, operation and maintenance of the Project.

5.3 Metering. At Seller's expense, Seller shall install, or shall cause the Customers in Seller's Portfolio to install all necessary metering and telemetry required by the CAISO to deliver the Product.

5.4 Scheduling.

(a) Seller shall be the SC or shall designate a qualified third party to fulfill such role for the Project in order to deliver Product to Buyer during the Delivery Term in accordance with the terms of this Agreement. Seller shall be solely responsible for all costs associated with the SC. Seller shall take, or cause its SC to take, all necessary steps to qualify itself and the Project (or Units, as applicable) in such other manner identified and approved by the CAISO and CPUC that permits Seller to provide Product to Buyer.

(b) Seller shall comply, and shall cause its SC, Customer, and each Unit owner and operator to comply with all applicable CAISO Tariff provisions, CPUC Decisions and all other applicable rules, requirements or Laws, including any Bidding of the Project to meet any Must Offer Obligations, in order to deliver the Product to Buyer and allow Buyer to use the Product to satisfy Buyer's Compliance Obligations.

(c) Buyer shall have no liability for the failure of Seller, SC, any Customer, or any Unit owner or operator to comply with CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller, SC, any Customer, or any Unit owner or operator for such noncompliance.

(d) Seller shall not accept, and shall cause the Project's SC to not accept, any proposed CPM or RMR designation by the CAISO unless and until Buyer has agreed to accept such designation. In addition, Seller shall promptly Notify, or cause the Project's SC to promptly Notify, Buyer within one (1) Business Day of the time Seller or the SC receives a proposal from CAISO to designate any portion of the Product as CPM Capacity or RMR Generation. During the Delivery Term, Buyer has exclusive right to enter into a RMR Contract with respect to the Product or any component

thereof, provided that the RMR Contract would not require the Project to operate beyond the Operational Characteristics or beyond the end of the Delivery Term.

5.5 Charging Energy Obligations. *[PG&E Drafting Note: only applicable to energy storage Projects During the Delivery Term, Seller shall be responsible for procuring and delivering all of the Charging Energy to the Project and paying all of the associated costs of such Charging Energy.]*

5.6 Supplier Diversity. Seller shall comply with Buyer's Supplier Diversity Program in accordance with Appendix V.

5.7 Standards of Care. Seller shall comply with all applicable requirements of Law, the Transmission Provider, Utility Distribution Company, Governmental Approvals, the 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 Product 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 SIX: SELLER'S DELIVERY

6.1 Confirmed Quantity. For all Capacity Attributes of the Product that Seller delivers, Buyer shall pay Seller for the ratio of (a) the sum of all Capacity Attributes of the Delivered Quantities to (b) the sum of all Capacity Attributes of the Product, all as multiplied by (c) the Payment Quantity ("Confirmed Quantity"), as shown in the equation below; and the Energy Settlement will be reduced to reflect the Confirmed Quantity.

$$\text{Confirmed Quantity} = (\text{sum of Capacity Attributes of Delivered Quantities} / \text{sum of all Capacity Attributes of Product}) \times \text{Payment Quantity}$$

6.2 Post-Showing Shortfall Prior to Showing Month. In the event that CAISO, CPUC, or other Governmental Authority determines in accordance with the CAISO Tariff that Buyer is required to provide outage replacement for any portion of the Delivered Quantity for any portion of a Showing Month which was shown by Buyer in its Compliance Showing ("Shortfall"), then Seller shall pay to Buyer liquidated damages in the amount of \$6.31/kw-month (this number shall rise at the rate of inflation set by the BLS Consumer Price Index beginning at the Execution Date) multiplied by the Shortfall, all or any portion of such damages are "Replacement Damages". In no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize a Shortfall. Buyer shall not have to enter into any replacement transaction to establish the Replacement Damages. If Replacement Damages are due, then Buyer shall provide Notice to Seller of the amounts due and Buyer may draw such amounts due from the Monthly Payment. Each Party agrees that (a) the damages that Buyer would incur due to a Shortfall would be difficult or impossible to predict with certainty and (b) the Replacement Damages are an appropriate approximation of such damages.

ARTICLE SEVEN: COMPENSATION

7.1 Monthly Payment. After the applicable Showing Month and in accordance with Article Eleven, Buyer shall make a Monthly Payment (or "MP") to Seller for Product as follows:

$$MP_m = KP_m - ES_m$$

where,

MP_m = Monthly Payment for month m;

KP_m = Capacity Payment for month m;

ES_m = Energy Settlement for month m.

7.2 Capacity Payment. The monthly capacity payment ("Capacity Payment" or "KP") shall be calculated as follows:

$$KP_m = CP_m \times FQ_m$$

where,

CP_m = Contract Price for month m;

FQ_m = Confirmed Quantity for month m.

7.3 Energy Settlement. The Energy Settlement will be calculated as follows:

$$ES_m = \sum ES_d \times FQ_m$$

where,

\sum = the sum from $i=1$ to n ;

n = the total number of days in a month;

FQ_m = Confirmed Quantity for month m;

$$ES_d = \sum \max [(0, (DAP_i - VOM))]$$

where,

ES_d = Energy Settlement for day d;

\sum = the sum from $i = 1$ to z , where z is *[insert the number of hours of duration of the Project]*;

DAP_i = the largest i values of DAP in a day for all Settlement Periods in a day;

VOM = Variable O&M (in \$/MWh), as set forth in the Agreement.

7.4 Allocation of CAISO Payments and Costs

(a) Except as provided in this Article Seven, Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to the Product or Project.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Product during the Delivery Term ("Buyer Revenues"), including any capacity or availability revenues from CPM, including through a competitive solicitation process, and Residual Unit Commitment (RUC) Availability Payments. Seller shall be entitled to receive and retain all revenues for CPM in excess of the Buyer Revenues.

(c) All such Buyer Revenues received by Seller SC, or any Unit's owner or operator shall be remitted to Buyer, and Seller shall be responsible for paying for such revenues to Buyer if a SC or Unit's owner or operator fails to remit those revenues to Buyer. In order to verify the accuracy of Buyer Revenues submitted by Seller or its SC, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior Notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Product.

(d) To the extent that the Project is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments of the CAISO Tariff, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

ARTICLE EIGHT: EVENTS OF DEFAULT; REMEDIES

8.1 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) days after its levy;

(ii) Seller fails to satisfy the creditworthiness and collateral requirements and Seller fails to provide alternate collateral acceptable to Buyer within ten (10) Business Days of Buyer's written demand therefor pursuant to Sections 11.3, 11.4, 11.5 and 11.6;

(iii) any material misrepresentation or omission in any metering (or submetering), Supply Plans, Seller's Portfolio List or any report or Notice with regard to delivery of the Product, 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 Product that is not produced by the Project;

(v) Seller fails to achieve the Initial Delivery Date by the end of the IDD Cure Period for reasons other than Force Majeure;

(vi) Seller fails to comply with obligations set forth in Section 3.2;

(vii) during the Delivery Term, the amount of Product delivered from the Project, as demonstrated by the Confirmed Quantity, averages less than eighty percent (80%) of the Payment Quantity over a rolling twelve (12) month period for any reason other than Force Majeure; or

(viii) during the Delivery Term, the amount of Product delivered from the Project, as demonstrated by the Confirmed Quantity, averages less than eighty-five percent (85%) of the Payment Quantity over a rolling twenty-four (24) month period for any reason other than Force Majeure.

(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, provided that, this Section 7.1(b)(i) shall not apply with respect to Buyer until the effective date of Buyer's exit from plan of reorganization in the Chapter 11 Cases has occurred.

(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) days, provided that, this Section 7.1(b)(ii) shall not apply with respect to Buyer until the effective date of Buyer's exit from plan of reorganization in the Chapter 11 Cases has occurred.

(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 Section 12.1(a) or Article Fifteen is false or misleading in any material respect when made, if not cured within thirty (30) days after delivery of Notice from the other Party that any material representation or warranty made in Section 12.1(a) or Article Fifteen 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, provided that, this Section 7.1(b)(v) shall not apply with respect to Buyer until the effective date of Buyer's exit from plan of reorganization in the Chapter 11 Cases has occurred; or

(vi) A Party fails to perform any of its material obligations or covenants under this Agreement not otherwise addressed in this Section 8.1, and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) days after Notice specifying the failure is received; provided, however, that such period shall be extended for an additional reasonable period not to exceed one hundred twenty (120) days if cure cannot be effected in thirty (30) days and if corrective action, reasonably calculated to cure the default within a reasonable period of time, is instituted by the Defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected.

(c) Notwithstanding anything to the contrary contained here, with respect to Buyer: Seller acknowledges and agrees that the existence or continuation of the Chapter 11 Cases shall not constitute an Event of Default with respect to Buyer under this Agreement and does not entitle Seller to terminate this Agreement solely because of such existence or continuation.

8.2 Early Termination.

(a) If and for as long as an Event of Default with respect to a Defaulting Party has occurred and is continuing, 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 22.1) and no later than twenty (20) days after such Notice is deemed to be received (as provided in Section 22.1), 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 10.4), (iii) end the Term effective as of the Early Termination Date, (iv) collect the Termination Payment, (v) withhold any payments due to the Defaulting Party under this Agreement, (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; provided that if the Event of Default occurs prior to the Initial Delivery Date and the Seller is the Defaulting Party, then the Termination Payment will be calculated using the Damage Payment Amount instead of the Settlement Amount. The Non-Defaulting Party shall not have to enter into any transactions to replace the Agreement in order to establish a Settlement Amount.

(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 calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be resolved in accordance with Article Nineteen.

8.3 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Nine are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement; provided that the Termination Payment will be the sole remedy for damage due to termination of this Agreement (but will not preclude recovery by a Party for other damages sustained as a result of an Event of Default that does not result in termination of this Agreement).

8.4 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 8.2 if the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) 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 8.2 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 8.2.

ARTICLE NINE: FORCE MAJEURE

9.1 Force Majeure.

(a) Effect of Force Majeure. A Party shall not be considered to be in default in the performance of its obligations 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 initiating the claim.

(b) Notice of Force Majeure. Within five (5) Business Days of the commencement 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) 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.

(c) Mitigation of Force Majeure. 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 Expected Initial Delivery Date as a result of a Force Majeure event declared by Seller in accordance with Article Two, then Seller shall work diligently to resolve the effect of the Force Majeure and provide evidence of its efforts promptly upon Buyer's written request.

(d) Force Majeure Failure. Subject to Section 9.1(a), Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of the following, each constituting a "Force Majeure Failure":

(i) if during the Delivery Term:

(A) the amount of Product delivered from the Project, as demonstrated by the Confirmed Quantity, averages less than seventy percent (70%) of the Payment Quantity over a rolling twenty-four (24) month period for any reason; or

(B) the Project is destroyed or rendered inoperable by an event of Force Majeure.

(ii) if Seller is unable, due solely to a Force Majeure event, to achieve the Initial Delivery Date by one hundred eighty (180) days after the Expected Initial Delivery Date.

(e) Effect of Termination for Force Majeure Failure. If Buyer exercises its termination right in connection with a Force Majeure Failure under Section 9.1(d), then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 1.1(a).

ARTICLE TEN: PAYMENT AND NETTING

10.1 Billing and Payment. On or before the fifteenth (15th) calendar day following each 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.

10.2 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.

10.3 Payment. Payment of all undisputed amounts owed shall be due by the later of the twenty-fifth (25th) 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 invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date to but excluding the date the delinquent amount is paid in full.

10.4 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with the provisions of Article Nineteen (Dispute Resolution). Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made 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 repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is Notified in accordance with this Section 10.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance 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 ELEVEN: CREDIT AND COLLATERAL REQUIREMENTS

11.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) 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) 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.

11.2 Seller Financial Information. If requested by Buyer, Seller (or its Guarantor) shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's or Seller's Guarantor'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) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Seller's (or its Guarantor'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.

11.3 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) 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.

11.4 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, which Performance Assurance Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Project Development Security. The Project Development Security will be in the form of cash or Letter of Credit; Seller shall post the Project Development Security as follows:

(A) Seller shall post Project Development Security in the amount of _____ dollars (\$_____) *[insert dollar amount equal to \$15/kW multiplied by the Payment Quantity]* within five (5) Business Days following the Execution Date; and

(B) Seller shall post additional Project Development Security in the amount of _____ dollars (\$_____) *[insert dollar amount equal to \$25/kW multiplied by the Payment Quantity]*. (for a total posted amount of _____ dollars (\$_____), representing sixty dollars (\$60.00) per kW multiplied by the Payment Quantity) within five (5) Business Days following Buyer's Notice to Seller that the Approvals Condition Precedent has been satisfied.

(ii) Delivery Term Security. Prior to the Initial Delivery Date, Seller shall post Delivery Term Security in the amount equal to _____ dollars (\$_____) *[insert dollar amount equal to the greater of \$40/kW multiplied by the Payment Quantity or 10% of the sum of the highest estimated Monthly Payments for any 36 month period during the Delivery Term]* and in the form of cash, Letter of Credit, or Guaranty provided that, with Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 11.4(a)(i) toward the Delivery Term Security posted pursuant to this Section 11.4(a)(ii).

(iii) Except with respect to the Damage Payment Amount, 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 Section 2.4(a) 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 8.2(b).

(c) Return of Project Development Security. If, after the Initial Delivery Date, no damages are due and owing to Buyer under this Agreement, then Seller will no longer be required to maintain the Project Development Security, and Buyer shall return to Seller the Project Development Security, less any amounts drawn in accordance with Section 2.4(a). 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 11.4(a)(i) toward the Delivery Term Security posted pursuant to Section 11.4(a)(ii).

(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 X (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 11.4(d) above, to Seller promptly after the following has occurred: (i) the Term has ended, or subject to Section 8.2, 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.

11.5 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit (see Appendix VII-A) 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 Eleven, 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 11.5(b)(A) or 11.5(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 11.5(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 Eleven.

(c) Notwithstanding the foregoing in Section 11.5(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"). 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) days from the date of Buyer's Notice to Cure pursuant to Section 11.5(b) and, if Seller fails to Cure, then the last paragraph in Section 11.5(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.

11.6 **Guaranty.** If at any time Seller's guarantor or Guaranty is no longer acceptable to Buyer in its sole discretion, Seller shall replace the Guaranty with Performance Assurance as provided herein. Within five (5) Business Days following Buyer's written request for replacement of the Guaranty, Seller shall deliver to Buyer replacement Performance Assurance in the form of a replacement Guaranty, Letter of Credit or cash in an amount equal to the applicable amount of the Guaranty issued pursuant to this Agreement. In the event Seller shall fail to provide replacement Performance Assurance to Buyer as required in the preceding sentence, then Buyer may declare an Event of Default pursuant to Section 8.1(a)(ii) by providing Notice thereof to Seller in accordance with Section 8.2(a).

ARTICLE TWELVE: SAFETY

12.1 Safety.

(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 Buyer in connection with the Protocol process and 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, 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 to, take all actions to comply with the Safety Requirements.

(d) During the Term, Seller shall maintain registration with PG&E's Third-Party Administrator and meet pre-qualification requirements pursuant to Buyer's Contractor Safety Program Requirements as if Seller were a contractor performing high or medium risk work for Buyer thereunder. If at any time Seller does not maintain pre-qualification status, Seller will Notify Buyer within five (5) business days of such change in status, and Buyer may declare a Remediation Event pursuant Section 11.4.

(e) Prior to Seller's execution of a Contractor's contract, Seller shall demonstrate to Buyer that the Contractor has the qualifications, experience, and safety record to develop, construct, operate and maintain the Project, as applicable. To ensure that the Contractor meets the pre-qualification requirements consistent with the Contractor Safety Program Requirements, Seller shall arrange for and

use the Third-Party Administrator to perform Contractor pre-qualification as if Seller were PG&E and Contractor were a contractor performing work thereunder. During the period that such Contractor is conducting Work, Seller shall cause the Contractor to meet and comply with the Safety Requirements of this Agreement and Buyer's Contractor Safety Program Requirements as provided herein. Seller's compliance with this Section 12.1 may include Seller's or its Contractors' responsibilities for fees or costs associated with Buyer's Contractor Safety Program Requirements and use of the Third-Party Administrator.

(f) Seller shall document a Project Safety Plan 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, subject to Section 3.3.

12.2 Project Safety Plan

(a) Prior to Delivery Term.

(i) No less than forty-five (45) days prior to the Project Review Milestone, Seller shall submit for Buyer's review a Project Safety Plan, in a format reasonably acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements as of and following the Project Review Milestone and (B) Seller's consideration of the Project Safety Plan items in Part Two (Project Design and Description) of Appendix XI. Seller shall submit an Attestation with the Project Safety Plan. In the event Buyer provides Notice to Seller that the Project Safety Plan or Attestation is not acceptable to Buyer, then Buyer will identify the inconsistencies with the Safety Requirements in such Notice and such Notice shall constitute the occurrence of a Remediation Event for purposes of Section 12.4.

(ii) At least ninety (90) days prior to the Initial Delivery Date, Seller shall submit for Buyer's review a Project Safety Plan, in a format reasonably acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements as of and following the Initial Delivery Date and (B) Seller's consideration of the Project Safety Plan items in Appendix XI. Seller shall submit an Attestation with the Project Safety Plan. In the event Buyer provides Notice to Seller that the Project Safety Plan or Attestation is not acceptable to Buyer, then Buyer will identify the inconsistencies with the Safety Requirements in such Notice and such Notice shall constitute the occurrence of a Remediation Event for purposes of Section 12.4.

(b) Delivery Term. Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or as necessitated by a Safety Remediation Plan. Seller shall provide such updated Project Safety Plan to Buyer within thirty (30) days of any such updates. 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) days of Buyer's Notice.

(c) Project Modification Certification. During the Term, in the event that Seller, an Affiliate or Contractor performs a Project Modification pursuant to Section 3.3 or 4.1(e), Seller shall certify, within sixty (60) days of completion of such Project Modification, that the Project is commercially operable by providing Buyer a signed Project Modification Certification, as found at Appendix VI-B, for Buyer's review. In the event Buyer provides Notice to Seller that the Project

Modification Certification for the Project Modification is not acceptable to Buyer, then Buyer will identify the inconsistencies in such Notice and such Notice shall constitute the occurrence of a Remediation Event for purposes of Section 12.4.

12.3 Reporting Serious Incidents. 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 or Customer(s) 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 and Customers 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.

12.4 Remediation.

(a) Seller shall resolve any Remediation Event within the Remediation Period. Within ten (10) 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) In the event the Seller determines that a Remediation Event could or may affect, implicate or impact other Sites, in addition to the Site where the Remediation Event occurred (as applicable), then Seller shall also identify such other effects, implications or impacts on the other Sites and include in the Safety Remediation Plan a plan to address or resolve the circumstances of the Remediation Event at such other Sites. Further, if the Remediation Event is an occurrence of an Exigent Circumstance with respect to a Site, then Seller shall not deliver and Buyer will not accept, Product from such Site(s) until such Remediation Event is resolved in accordance with this Section 12.4.

(ii) Following the occurrence of any Remediation Event, Seller shall also provide an 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 an 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 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) 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) 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) 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 Initial Delivery Date shall not occur during a Remediation Period.

ARTICLE THIRTEEN: GOVERNMENTAL CHARGES

13.1 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 to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

13.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product, 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 the Product after delivery by Seller, including any resales or transfers of the Product. If Buyer is required by Law to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article Seven 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 FOURTEEN: LIMITATIONS

14.1 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 16.1 THROUGH 16.6) 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 16.1 THROUGH 16.6 (INDEMNITIES), 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 FIFTEEN: REPRESENTATIONS; WARRANTIES; COVENANTS

15.1 Representations and Warranties.

- (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 receipt of 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 the Product 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 Buyer 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.

(xii) the Project is incremental to the CAISO Area Baseline List.

(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, except for CPUC Approval;

(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);

(viii) it has entered into this Agreement in connection with the conduct of its business; and

(vii) 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.

15.2 General Covenants. Each Party covenants throughout the Term of this Agreement as follows; provided that, any breach of any such covenant by Buyer that is caused by or the result of an order or directive of a court of competent jurisdiction relating to the Chapter 11 Cases shall not constitute an Event of Default with respect to Buyer under this Agreement and shall not entitle Seller to terminate this Agreement solely because of such breach by Buyer:

(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; and

(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.

15.3 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 the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person;

(b) it will take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Project in order to satisfy its Compliance Obligations;

(c) it shall operate the Project during the Delivery Term in accordance with Appendix II, and Safety Requirements;

(d) it shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to *[PG&E Drafting Note: PG&E to update for Project technologies other than energy storage to behind the retail meter energy storage facilities]*

(e) *[PG&E Drafting Note: only applicable to energy storage Projects]* it shall follow all the rules set forth in Appendix A of the MUA Decision; and

(f) *[PG&E Drafting Note: only applicable to energy storage Projects]* it shall provide Product that counts towards [REDACTED] MW of Buyer's energy storage target established by the Energy Storage Decision. To the extent a change in Law occurs after execution of this Agreement that causes Seller to fail to perform this covenant, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.]

(g) it shall provide Product that counts towards [REDACTED] MW of Buyer's system resource adequacy incremental procurement requirement established by the Electric System Reliability Procurement Decision. To the extent a change in Law occurs after execution of this Agreement that causes Seller to fail to perform this covenant, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.

ARTICLE SIXTEEN: INDEMNITIES AND INSURANCE

16.1 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 the Product to Buyer, (ii) Seller's or its Affiliates' ownership, development, construction, operation and/or maintenance of the Project, including the Unit(s) and 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, Unit(s), Seller's Portfolio, or Site(s); (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 and a Customer in Seller's Portfolio; 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, Customers 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.

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

16.3 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 Sixteen, the Party seeking indemnification hereunder (the "Indemnitee") will promptly Notify the Party against whom indemnification is sought (the "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 16.1 or 16.2. (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) 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) days from receipt of such Notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty (60) 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 17.3 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.

16.4 Defense of Third Party Claims. If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 16.3(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 16.3(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) 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 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.

16.5 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.

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

16.7 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 maintaining sufficient limits of the appropriate insurance coverage. For the avoidance of doubt, the obligations of the Seller in this Section 16.7 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 (OPC) policy.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees 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) Business Auto.

(i) Coverage will be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 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 (Category 2) 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 policy will endorse PG&E 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) 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 SEVENTEEN: RECORDS AND AUDIT RIGHTS

17.1 Operations Logs. Seller shall maintain a complete and accurate log of all material operations on a daily basis. [*PG&E Drafting Note: PG&E to update for Project technologies other than energy storage* Such log will include, but not be limited to, information on charging, discharging, availability, maintenance performed, outages, electrical characteristics of the 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) days of Buyer's written request. At the request of Buyer, the CPUC, 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.

17.2 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) 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 17.2 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 the Product 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.

17.3 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. *[PG&E Drafting Note: only applicable to energy storage Projects]* Buyer has the right to request from Seller an attestation, in the form attached hereto in Appendix XII, that Seller is following all rules of the MUA Decision.]

17.4 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 Product and/or this Agreement, subject to the requirements of Article Twenty.

17.5 Access Rights. Buyer, its authorized agents, employees and inspectors, have, while observing and abiding by safety and security procedures of the Parties, Seller's Affiliate, and Customers 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, Seller's Affiliate, and/or the Customer. Seller shall keep Buyer advised of current procedures for contacting the Project operator's, Seller's Affiliate, and/or Customer's safety and security departments.

ARTICLE EIGHTEEN: ASSIGNMENT

18.1 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.

18.2 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 Consent to Assignment attached as Appendix VIII provided that (a) Buyer will not be required to consent to any additional terms or conditions beyond those contained in Appendix VIII, 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.

18.3 Assignment in Connection with a Change in Control. Any direct change of control of Seller or Seller's Parent (whether voluntary or by operation of Law) is deemed an assignment and shall require the prior written consent of Buyer which consent shall not be unreasonably conditioned, delayed or withheld, provided that the requirements identified in Section 18.1(a) through (e) are met. Seller shall use commercially reasonable efforts to provide Buyer (a) Notice at least ten (10) days prior to the effectiveness of any indirect change in control, and shall in any event provide such Notice no later than ten (10) Business Days after the indirect change in control, and (b) such other information as Buyer may reasonably request in connection with such change in control.

18.4 Unauthorized Assignment. Any assignment or purported assignment in violation of this Article Eighteen is void.

ARTICLE NINETEEN: DISPUTE RESOLUTION

19.1 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 Nineteen. 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.

19.2 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 19.2(b), refuses or does not meet within the thirty (30) calendar day period specified in Subsection 19.2(b), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 19.3.

19.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 19.2 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) 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) 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) 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) days following the end of the mediation period.

19.4 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) 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 TWENTY: CONFIDENTIALITY

20.1 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 (the "Confidential Information") to a third party. Confidential Information also includes, but is not limited to, customer specific information or data, customer energy usage information or data, or information or data concerning California residents; "customer specific information or data" means customer-related information and data that is subject to the CPUC or other rules, regulations and orders regarding customer privacy pursuant to law, including, without limitation, California Public Utilities Code Section 8380 et seq.

20.2 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, or 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 20.4; (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; (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, as defined and specified in the Protocol.

(i) Procedure for Permitted Disclosures. In connection with requests made pursuant to Section 21.2(e) ("Disclosure Order") and disclosures pursuant to Sections 20.2(e) or 20.2(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.

20.3 Remedies. Except as provided in Section 20.2 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.

20.4 Exceptions.

(a) Notwithstanding Section 20.1 of this Agreement, any time on or after the date on which Buyer makes its filing seeking CPUC Approval 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.

(b) In addition to the disclosures of Confidential Information permitted under Section 20.2, Seller is permitted to disclose Buyer's Contractor Safety Program Standards to Contractors.

20.5 Other Confidential Information. The Parties agree that the confidentiality provisions under this Article Twenty 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 Twenty 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, including the Customer information provided to Buyer pursuant to Section 4.1 by Seller or its Affiliate.

(a) Seller shall comply with all applicable laws and regulations relating to the protection of customer-specific information and data, including California Public Utilities Code Section 8380, et seq. and the "Rules Regarding Privacy and Security Protections for Energy Usage Data" adopted by the California Public Utilities Commission.

ARTICLE TWENTY-ONE: GENERAL PROVISIONS

21.1 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; provided however, that amendments to the amounts of Capacity Attributes shall be governed by the terms of Section 3.2(a)(ii). 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 21.3. 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.

21.2 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.

21.3 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. 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.

21.4 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).

21.5 Interpretation. The following rules of interpretation apply:

(a) The term "including" means "including without limitation"; 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 savings 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 Product mean each and all components of the Product unless the context infers a particular component of Product.

21.6 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 Product, 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 Twenty. 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.

21.7 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") 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.

21.8 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.

21.9 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.

21.10 Separation of Functions. The Parties acknowledge that this Agreement is between Seller and Buyer acting solely in its merchant function. The Parties further acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as Participating TO or Utility Distribution Company. Buyer is not responsible for or liable in any way under this Agreement for any delay in the Initial Delivery Date owing to electric interconnection, transmission or distribution service or inability to obtain retail electric service for the Project, and Seller's non-performance of any provision of

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 Behind the Retail Meter Resource Adequacy Agreement, and, together with each and every appendix, attachment, amendment, schedule and written supplement hereto, to the extent those are executed by the Parties (and for certain amendments consistent with the terms of Section 3.2(a)(ii)), constitutes the entire agreement of the Parties as to the matters set forth herein.

“Approvals Condition Precedent” has the meaning set forth in Section 1.3.

“Ancillary Services” has the meaning set forth in the CAISO Tariff.

“Arbitration” has the meaning set forth in Section 19.3.

“Attestation” means collectively a Seller Attestation and an Engineer Attestation. “Authorized Representative” has the meaning set forth in Section 21.7.

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

“Availability Standards” has the meaning set forth in the CAISO Tariff.

“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) 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.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time, as applicable to the Chapter 11 Cases.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of California, having subject matter jurisdiction over Chapter 11 Cases.

“Bankruptcy Court Approval” means the Bankruptcy Court has entered an order (which order has become final and non-appealable), granting PG&E’s motion, and approving and authorizing this Agreement, subject to CPUC Approval.

“Bid” shall have the meaning in the CAISO Tariff.

“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 the Product and other merchant functions, as distinct from the function of PG&E as a Utility Distribution Company or Participating TO.

“Buyer Group” has the meaning set forth in Section 16.1.

“Buyer Remediation Review Period” means the number of days starting with the date of the next Business Day after the date Buyer receives the Attestation and is reviewing the Attestation, and ends with and includes the date Buyer provides Seller with Notice of Buyer’s acceptance or rejection of the Attestation.

“Buyer Revenues” has the meaning set forth in Section 7.7(b).

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

“CAISO Area Baseline List” means Attachment A of the CPUC Rulemaking No. 16-02-007.

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

“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.

“Capacity Adjustment Date” has the meaning set forth in Section 3.2(a)(ii).

“Capacity Attributes” means, any and all of the following attributes:

- (a) RA Attributes,
- (b) Flexible RA Attributes, and
- (c) Other Capacity Attributes

“Capacity Payment” has the meaning set forth in Section 7.2.

“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.

“Change Notice” has the meaning set forth in Section 3.2(a)(ii).

“Chapter 11 Cases” means Buyer’s Chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Northern District of California, Case Nos. 19-30088 (DM) and 19-30089 (DM).

[PG&E Drafting Note: only applicable to energy storage Projects “Charging Energy” means the amount of Energy withdrawn from the Utility Distribution Company’s electrical system, Participating Transmission Owner’s electrical system or the CAISO Grid to be stored by the Units of the Project.]

“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 VI-A, upon which the Project became Commercially Operable.

“Compliance Obligations” means the RAR, Local RAR, Flexible RAR, and any other resource adequacy or capacity procurement requirements imposed on Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, by the CAISO, by the WECC, or by any other Governmental Authority having jurisdiction.

“Compliance Showings” means the total combination of (a) through (d) below that a Load Serving Entity (as defined in the CAISO Tariff) is required to make to the CPUC pursuant to the CPUC Decisions, or to any Governmental Authority having jurisdiction. (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), (c) Flexible RAR compliance or advisory showings (or similar or successor showings), and (d) other Capacity Attributes compliance or advisory showings (or similar or successor showings)

“Conditions Precedent” has the meaning set forth in Section 2.1.

“Confirmation Notice” has the meaning set forth in Section 3.2(a)(ii).

“Confirmed Quantity” has the meaning set forth in Section 6.1.

“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.

“Contractor Safety Program Requirements” means all of the following:

(a) The standards in PG&E’s Contractor Safety Program Contract Requirements regarding pre-qualification requirements and safety requirements for work, which as of the Execution Date can be found at

https://www.pge.com/includes/docs/pdfs/b2b/purchasing/suppliers/contractorsafety/ContractorSafetyProgram_Requirements.pdf; and

(b) The standards in Section 2.2 of the Settlement Agreement and Corrective Action Plan of Pacific Gas and Electric Company before the CPUC dated February 10, 2015 (Investigation 14-08-022).

(c) Any additional, supplementary or successor safety standards, processes, or requirements implemented or deemed appropriate by PG&E during the Term and applicable to Seller, and its Affiliates and Contractors performing Work related to Projects delivering Capacity Attributes to Buyer.

“Contract Price” means the amount specified in Section 3.2(a)(iii).

“Contract Year” means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date. The final Contract Year may be a period of less than twelve (12) consecutive months.

“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.

“CPM” means “Capacity Procurement Mechanism” and has the meaning set forth in the CAISO Tariff and is inclusive of any successor mechanisms authorized by CAISO.

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

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

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of this Agreement; and

(b) *[PG&E Drafting Note: only applicable to energy storage Projects]* finds that procurement under this Agreement counts as proposed by Buyer toward the energy storage target established by the Energy Storage Decision.]

(c) finds that procurement under this Agreement counts as proposed by Buyer toward the system resource adequacy incremental procurement requirement established by the Electric System Reliability Procurement Decision.

CPUC Approval will be deemed to have occurred on the first day it can be legally determined that a final CPUC order containing such findings has become non-appealable.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.

“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 11.5(b).

"Customer" means a non-residential, bundled or unbundled, Person that is (i) electrically interconnected to one of the substations or feeders associated with one of the substations listed in Appendix XIII, and (ii) has an effective Service Agreement with Buyer.

"Damage Payment Amount" means the dollar amount equal to (a) the amount required to be posted as Project Development Security pursuant to Section 11.4(a)(i), less (b) amounts collected by Buyer as Delay Damages pursuant to Section 2.4(a).

"Day-Ahead Energy Price" or "DAP" means the price reported by CAISO at the Sub LAP(s) specific to the Project for each Settlement Period in a day in the Day-Ahead Market. To the extent there is more than one Sub-LAP associated with the Project, the DAP shall be the weighted average of the applicable Sub-LAP Day-Ahead Energy Prices based on installed Unit capacity in each Sub-LAP. The Sub-LAP(s) specific to the Project and the installed Unit capacity in each Sub-LAP shall be determined based on the Seller's Initial Portfolio List submitted to Buyer in accordance with Section 2.1(h) and shall not change during the Delivery Term, unless changed by the CAISO, irrespective of subsequent changes to Seller's Portfolio.

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

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

"Delay Damages" has the meaning set forth in Section 2.4(a).

"Delivered Quantities" has the meaning set forth in Section 3.6(a).

"Delivery Term" has the meaning set forth in Section 1.1(b).

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

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

"Disclosing Party" has the meaning set forth in Section 20.2.

"Disclosure Order" has the meaning set forth in Section 20.2.

"Dispatch Instruction" has the meaning set forth in the CAISO Tariff.

"Early Termination Date" has the meaning set forth in Section 9.2(a).

"Effective Date" has the meaning set forth in Section 1.2(b).

"Electric System Reliability Procurement Decision" means the CPUC Decision No. 19-11-016, or any subsequent related decision(s).

“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 Product 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 three-phase, 60-cycle alternating current electric energy, measured in MWhs.

“Energy Settlement” has the meaning set forth in Section 7.3.

[PG&E Drafting Note: only applicable to energy storage Projects “Energy Storage Decision” means the CPUC Decision No. 13-10-040, or any subsequent related decision(s).]

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

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s and Project’s compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product 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, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Project, 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.

“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 latest signature date found on the signature page of this Agreement.

“Executive” has the meaning set forth in Section 19.2(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(c).

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

“Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes, and Other Capacity Attributes.

“Flexible RAR” means the flexible resource adequacy requirements established for Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Authority having jurisdiction.

“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 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.

(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,

(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 the Product 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 Expected Initial Delivery Date, 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; and

(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;

(ix) Seller's inability to obtain or retain sufficient Customers; or

(x) any failure of a Customer to perform (whether or not due to Force Majeure affecting Customer).

"Force Majeure Failure" has the meaning set forth in Section 9.1(d).

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

“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 13.2.

“Guarantor” means an entity, acceptable to Buyer in Buyer’s sole discretion, that is the issuer of the Guaranty.

“Guaranty” means a guaranty issued by an entity acceptable to Buyer, in Buyer’s sole discretion, and in the form of Appendix VII-B if the guarantor is domiciled in the United States of America, or in the form of Appendix VII-C if the guarantor is domiciled outside of the United States of America in a country that is acceptable to Buyer in its sole discretion.

“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.

“IDD Cure Period” has the meaning set forth in Section 2.3(a).

“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” means the Buyer Group.

“Indemnitor” means the Seller Group.

“Ineligible LC Bank” has the meaning set forth in Section 11.5(c)(i)(A).

“Ineligible LC Bank Notice Period” has the meaning set forth in Section 11.5(c)(i).

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

“Initial Negotiation End Date” has the meaning set forth in Section 19.2(a).

“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 Units with the Utility Distribution Company's or CAISO's grid, including any description of the plan for interconnecting the Units 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 day of each month and ending on the last 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 11.5(c).

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix VII-A 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.

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

“Local RA Attributes” means any and all resource adequacy attributes or other locational attributes related to a Local Capacity Area, as may be identified at any time during the Delivery Term by the

CPUC, CAISO or other Governmental Authority having jurisdiction, associated with a physical location or point of electrical interconnection within the CAISO's Balancing Authority, that can be counted toward a Local RAR.

"Local RAR" means the local resource adequacy requirements established for Load Serving Entities (as defined in the CAISO Tariff) by the CPUC pursuant to CPUC Decisions, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product. If the Non-Defaulting Party is the Seller, then "Losses" shall exclude any loss of federal or state tax credits, grants, or benefits related to the Project or generation therefrom or any costs or fees related to the Site or Project.

"Manager" has the meaning set forth in Section 19.2(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.

"Monthly Payment" has the meaning set forth in Section 7.1.

"Monthly Payment Date" has the meaning set forth in Section 10.3.

"Moody's" means Moody's Investors Service, Inc., or its successor.

[PG&E Drafting Note: only applicable to energy storage Projects "MUA" means multiple-use applications as such term applies to energy storage facilities.]

[PG&E Drafting Note: only applicable to energy storage Projects "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.]

“Must Offer Obligations” means Seller’s obligation to Bid or cause Seller’s SC to Bid the Project into the CAISO Markets due to delivery of the Product to Buyer and in accordance with the CAISO Tariff.

“MW” means megawatts.

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

“Non-Availability Charges” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 8.2(a).

“Non-Exporting” means a Unit design such that the output from the Unit(s) is used for Customer load only and is prevented from transferring Energy from the Unit(s) to the Utility Distribution Company’s grid or the CAISO Grid.

“Non-Spinning Reserve” has the meaning set forth in the CAISO Tariff.

“Notice” unless otherwise specified in this Agreement, means a written communication which is delivered by hand delivery, United States Mail, overnight courier service or electronic messaging (e-mail), and in the manner required by Section 22.1, as applicable to a given communication.

“Notice of Claim” has the meaning set forth in Section 16.3(a).

“Notify” means to provide a Notice.

“Operational Characteristics” means the operational characteristics set forth in Appendix III.

“Other Capacity Attributes” means, exclusive of RA Attributes and Flexible RA Attributes, any (a) current or future capacity characteristics or attributes, including the ability to generate or charge at given capacity levels, the ability to provide Ancillary Services, the ability to ramp up or down at a given rate, flexibility or dispatchability attributes, and locational attributes, as may be identified at any time during the Delivery Term by any applicable Law, or voluntary or mandatory program of any Governmental Authority or other Person; (b) certificate, tag, or credit, intended to commoditize or otherwise attribute value resulting from or associated with the characteristics set forth in subsection (a) of this definition; and (c) any accounting construct so that the characteristics or values set forth in subsections (a) or (b) hereof may be counted toward any Compliance Obligations.

“Other Programs” has the meaning set forth in Section 4.1(f).

“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 8.1(b).

“Payment Quantity” has the meaning set forth in Section 3.2(a)(iii).

“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 for the Project Development Security: (a) cash via wire transfer in immediately available funds, or (b) a Letter of Credit. Buyer only accepts three forms of collateral to satisfy the Performance Assurance obligation for Delivery Term Security: (a) cash via wire transfer in immediately available funds, (b) a Letter of Credit, or (c) a Guaranty.

“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 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.

“Product” has the meaning set forth in Section 3.1.

“Project” means the *[PG&E Drafting Note: PG&E to update based on the specific Project technology energy storage]* facility described in Appendix II, as such may be revised from time to time in accordance with this Agreement.

“Project Development Security” is the Performance Assurance required of Seller, as specified and referred to in Section 11.4(a)(i).

“Project Review Milestone” means the date designated in Appendix IX, by which Seller would begin substantial development of the Project, including selecting Contractors, vendors or major equipment for the Project.

“Project Modification” means any construction or modification of the Project that alters, impairs, expands, or limits the Project’s ability to (a) produce Capacity Attributes, or (b) operate in a manner consistent with the Safety Requirements. Project Modification includes changes to the Seller’s Portfolio List, Appendix II-C but does not include any routine maintenance performed in the ordinary course of business.

“Project Safety Plan” means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements, as such Safeguards and Safety Requirements are generally outlined in Appendix XI.

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

“Protocol” means the PG&E 2020 System Reliability Request for Offers Phase 1 Solicitation Protocol dated *[PG&E to insert date]*.

“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 *[PG&E Drafting Note: PG&E to*

update for Project technologies other than energy storage energy storage] facilities 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 safely 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 and/or *[PG&E Drafting Note: PG&E to update for Project technologies other than energy storage* energy storage] facilities operating in the relevant region;

(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.

“RA Attributes” means, any and all resource adequacy attributes, including Local RA Attributes but exclusive of any Flexible RA Attributes or Other Capacity Attributes, as may be identified at any time during the Delivery Term by the CPUC, CAISO or other Governmental Authority having jurisdiction that can be counted toward RAR and Local RAR.

“Referral Date” has the meaning set forth in Section 20.2(a).

“Regulation Down” has the meaning set forth in the CAISO Tariff.

“Regulation Up” has the meaning set forth in the CAISO Tariff.

“Regulatory Disclosure” has the meaning set forth in Section 21.2(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 failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 12.2, in its sole discretion, that the Seller, the Project Safety Plan, Seller Attestation and/or Engineer Attestation, as applicable, is not consistent with the Safety Requirements; or (g) any actual condition related to the Project or a Site with the potential to 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) days unless extended pursuant to Section 12.4.

"Replacement Damages" have the meaning set forth in Section 6.2.

"Residual Unit Commitment" or "RUC" has the meaning set forth in the CAISO Tariff.

"Residual Unit Commitment (RUC) Availability Payments" has the meaning set forth in the CAISO Tariff.

"Resold Product" has the meaning set forth in Section 3.2(a).

"Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time, and all other capacity procurement obligations established by any other entity, including the CAISO.

"Resource Adequacy Plan" has the meaning set forth in the CAISO Tariff.

"Resource Adequacy Requirement" or "RAR" means the Resource Adequacy or successor program requirements established by the CPUC, CAISO or any other regional entity, including submission of a Supply Plan or Resource Adequacy Plan.

"RMR" means "Reliability Must-Run" and has the meaning set forth in, and as used in, the CAISO Tariff.

"RMR Contract" has the meaning set forth in the CAISO Tariff.

"RMR Generation" has the meaning set forth in the CAISO Tariff.

"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 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, Contractor Safety Program Requirements, 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., third-party).

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

“Self-Generation Incentive Program” or “SGIP” means the program approved by the CPUC and administered by Buyer, Southern California Edison, Southern California Gas Company and the Center for Sustainable Energy (on behalf of San Diego Gas & Electric) that provides financial incentives for the installation of new qualifying technologies.

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

“Seller Attestation” means a Seller Notice with a written attestation or certification from Seller substantially in the form attached hereto as Appendix VI-D.

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

“Seller’s Event of Default” has the meaning set forth in Section 8.1(a).

“Seller’s Initial Portfolio List” has the meaning set forth in Section 2.1(i).

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

“Seller’s Portfolio” means the Customers and the corresponding Sites assembled by Seller for purposes of delivering the Product to Buyer under this Agreement, as such Seller’s Portfolio may be amended in accordance with this Agreement from time to time.

“Seller’s Portfolio List” has the meaning set forth in Section 4.1(e).

“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, denoted by a unique service identification number, between Buyer, in its function as Utility Distribution Company, and a Person for tracking energy service deliveries for a specific load through one or more meters at a Customer premise or location.

“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.

“Settlement Amount” means the amount equal to the aggregate of the Losses and Costs of the Non-Defaulting Party, offset by its Gains, if any, calculated by the Non-Defaulting Party as of the Early Termination Date, which the Non-Defaulting Party incurs as a result of the termination of this Agreement. The Settlement Amount is expressed in U.S. dollars and will never be less than zero. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount will be zero.

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

“Shortfall” has the meaning set forth in Section 6.2.

“Showing Month” incorporates each day of each calendar month of the Delivery Term that is the subject of the Compliance Showings, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Execution Date, the monthly Compliance Showings made in June are for the Showing Month of August and the annual Compliance Showing made in October is for the twelve (12) Showing Months of the following year.

“Site(s)” means each individual real property of each Customer on which a Unit of the Project is located, as identified in Appendix II-C as further updated by Seller pursuant to Section 4.1(e).

“Spinning Reserve” has the meaning set forth in the CAISO Tariff.

“Sub-LAP” has the meaning set forth in the CAISO Tariff.

“Substitute Bank Period” has the meaning set forth in Section 11.5(c).

“Substitute Letter of Credit” has the meaning set forth in Section 11.5(c).

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

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

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

“Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount or Damage Payment Amount, as applicable, and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

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

“Third-Party Administrator” means the Third Party used to collect and verify safety pre-qualification pursuant to Buyer’s Contractor Safety Program Requirements. As of the Execution Date of this Agreement, PG&E’s Third-Party Administrator is ISNetwork.

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

“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.

“Unit” (or “Units,” if more than one), means the Non-Exporting, behind-the-retail-meter *[PG&E Drafting Note: PG&E to update for Project technologies other than energy storage]* energy storage facilities installed at the Sites as more particularly described in Appendices II and III, including all appurtenant facilities, communications and control systems, and equipment, from which Seller has agreed to provide the Product to Buyer pursuant to this Agreement.

“Variable O&M” or “VOM” means the amount specified in Section 7.3.

“Watch” has the meaning set forth in Section 11.5(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

DESCRIPTION OF PROJECT & UNITS

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

APPENDIX II-A. PROJECT DESCRIPTION

Project name: _____

[PG&E Drafting Note: PG&E to update for Project technologies other than energy storage Energy storage] technology of Units: _____

Physical Location and Point of Interconnection:

CAISO transmission access charge area (e.g. PG&E):

Point of interconnection:

APPENDIX II-B. PROJECT SIZE

Aggregate nameplate capacity: ____ MW

APPENDIX II-C. – SELLER’S PORTFOLIO LIST

as of *[insert relevant date for each submittal]*

Customer Service Account Number	Customer name	Physical address of Site	Total Unit capacity installed as part of the Project	Unit capacity installed to meet capacity associated with Operational Characteristics (no SGIP funds)	Unit capacity installed in excess of capacity associated with Operational Characteristics (Specify if SGIP is used)	Unit manufacturer(s) and model number(s) installed at Site with corresponding Unit capacity	CAISO Resource ID	Sub-LAP
---------------------------------	---------------	--------------------------	--	--	---	---	-------------------	---------

By submitting this Seller’s Portfolio List to Buyer, Seller attests as of the date signed below, that all of the information is accurate and that the Customers and Units comprising Seller’s Portfolio List are in compliance with the terms of the Agreement.

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX III

OPERATIONAL CHARACTERISTICS

[PG&E Drafting Note: PG&E to update for Project technologies other than energy storage]

The following describes the Operational Characteristics to determine the amount of Capacity Attributes of the Product.

Physical Location and Point of Interconnection

CAISO transmission access charge area (e.g. PG&E): Shall be as set forth in Appendix II-A

Sub-LAP(s): weightings to be set in accordance with Seller's Initial Portfolio List

Point of interconnection: Shall be as set forth in Appendix II-A

Discharging and Charging

Maximum continuous discharge power (Dmax): MW

Minimum continuous discharge power (Dmin): MW

Maximum discharge duration at constant Dmax : hours

Maximum continuous charge power (Cmax): MW

Minimum continuous charge power (Cmin): MW

Maximum charge duration at constant Cmax: hours

Amount of Energy released to fully discharge: MWh

Amount of Energy required to fully charge: MWh

Round-trip efficiency: _____ %

Ramp Rates

[Describe ramp rates. If ramp rates vary with loading level, please provide a ramp rate for each segment within the operational range in which it differs. If ramp rates vary based on the operating mode (e.g. regulation), please provide separately.]

Dmin to Dmax: MW/second

Cmin to Cmax: MW/second

Dmax to Dmin: MW/second

Cmax to Cmin: MW/second

System Response Time

[Timing should commence with system at a steady-state starting value and end when system has reached a steady-state ending value. Idle means that the system is neither charging nor discharging, but is online and available for immediate operation. Time should include time from notification.]

Idle to Dmax: seconds

Idle to Cmax: seconds

Dmax to Cmax: seconds

Cmax to Dmax: seconds

Dmin to Cmin: seconds

Cmin to Dmin: seconds

[For the purpose of filling out this Appendix, Discharge (Charge) Start-up Time is the amount of time needed to go from non-operation to Dmin (Cmin). (The state of non-operation includes but is not limited to being unsynchronized to the grid.) If applicable, provide start-up time for each Unit. Provide in seconds if appropriate.]

Discharge Start-up time (from notification to Dmin): seconds

Charge Start-up time (from notification to Cmin): seconds

Discharge Start-up Fuel: MMBtu

Starts and other Run Time Limitations

[Describe start limitations. Include any daily and/or annual start limitations. Insert constraints, if any, on run hours and a brief description of the reason for such constraint(s).]

Start limitations:

Run hour limitations:

[Describe minimum times.]

The minimum run time after a Discharge Start-up is seconds

The minimum run time after a Charge Start-up is [redacted] seconds

The minimum down time after a shutdown is [redacted] seconds

Ancillary Services (defined terms below have the meaning found in the CAISO Tariff as of the Execution Date)

At ISO conditions, normal efficiency mode:

Spinning Reserves: Range: [redacted] MW

Non-Spinning Reserves: Range: [redacted] MW

Regulation Up: Range: [redacted] MW

Regulation Down: Range: [redacted] MW

Black Start capability (if applicable):

Other:

Voltage Services

Generator voltage regulation range (+/-): ____ volts per unit

Maximum reactive power leading: ____ mega volt amps reactive (MVar)

Maximum reactive power lagging: ____ mega volt amps reactive (MVar)

APPENDIX IV

INITIAL DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Behind the Retail Meter Resource Adequacy Agreement dated [REDACTED] (“Agreement”) by and between [REDACTED] (“Buyer”) and [REDACTED] (“Seller”), and Section 2.2 of that Agreement, this letter (“Initial Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that the Conditions Precedent to the occurrence of the Initial Delivery Date 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:

[INSERT SELLER’S NAME HERE]

**PACIFIC GAS AND ELECTRIC
COMPANY**

Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

APPENDIX V
PG&E'S SUPPLY CHAIN RESPONSIBILITY POLICY

PG&E is committed to supply chain responsibility which includes supplier diversity, sustainability, and ethical 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 Initial Delivery Date is: *[insert date]* percent: *[insert percentage]* as measured relative to Seller's total expenditures on construction of the Project prior to the Expected Initial Delivery Date.
4. Seller's annual supplier diversity spending target for Work supporting the operation and maintenance of the Project after the Initial Delivery Date is: *[insert date]* percent: *[insert percentage]* as measured relative to the net payments made by Buyer to Seller in each Contract 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 VI
ATTESTATIONS & CERTIFICATIONS

APPENDIX VI-A
CERTIFICATION
FOR COMMERCIAL OPERATION

This certification of commercial operation (“Certification”) is delivered by [redacted] (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Behind the Retail Meter Resource Adequacy Agreement dated [redacted] (“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 [redacted].
- (2) The Project has been constructed in accordance with Appendix II and III.
- (3) The Project is capable of producing and delivering the Product, and a performance test was conducted to confirm this capability.
- (4) Seller has designed and built the Project to have a design life for the Delivery Term in accordance with Prudent Electrical Practices.
- (5) The design and construction of the Project was carried out by the original equipment manufacturer or other qualified organization.

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided to certify as to the statements in this Certification and Section 2.1(c) of the Agreement.

EXECUTED by SELLER this [redacted] day of [redacted], 20[redacted].

[Licensed Professional Engineer]

Signature: _____
Name: _____
Title: _____

Signature: _____
Name: _____
Title: _____
Date: _____
License
Number _____
LPE Stamp _____

APPENDIX VI-B

PROJECT MODIFICATION CERTIFICATION

This certification of commercial operation for a Project Modification (“Project Modification Certification”) is delivered by [redacted] (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Behind the Retail Meter Resource Adequacy Agreement dated [redacted] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Project Modification 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) All parts of the Project affected by the Project Modification became Commercially Operable on [redacted].
- (2) All parts of the Project affected by the Project Modification have been constructed in accordance with Appendix II.
- (3) The Project is capable of producing and delivering the Product.
- (4) Seller has designed and built the Project to have a design life for the Delivery Term in accordance with Prudent Electrical Practices.
- (5) The design and construction of the Project was carried out by the original equipment manufacturer or other qualified organization.
- (6) The Project as modified under the Project Modification is able to operate in a manner consistent with the Safety Requirements.

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

EXECUTED by Seller this [redacted] day of [redacted], 20[redacted].

[Licensed Professional Engineer]

Signature: _____
Name: _____
Title: _____

Signature: _____
Name: _____
Title: _____
Date: _____
License Number _____
LPE Stamp _____

APPENDIX VI-C

ENGINEER ATTESTATION

This Engineer Attestation is delivered by *[Licensed Professional Engineer]* (“LPE”) to Pacific Gas and Electric Company (“Buyer”) in connection with that certain Behind the Retail Meter Resource Adequacy Agreement dated [redacted] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Engineer Attestation but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

LPE hereby certifies and represents to Buyer the following:

- (1) The Project (including each of the Site(s)) is able to operate in a manner consistent with the Safety Requirements; and
- (2) If a Remediation Event has occurred, Seller has taken into account its Safety Remediation Plan for the Project and the applicable Site(s).

[Licensed Professional Engineer]

Signature: _____

Name: _____

Title: _____

Date: _____

License Number and LPE Stamp _____

APPENDIX VI-D

SELLER ATTESTATION

This Seller Attestation is delivered by [redacted] (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Behind the Retail Meter Resource Adequacy Agreement dated [redacted] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Seller 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 the following:

- (1) The Project (including each of the Site(s)) is able to operate in a manner consistent with the Safety Requirements; and
- (2) If a Remediation Event has occurred, Seller has taken into account its Safety Remediation Plan for the Project and applicable Site(s).

EXECUTED by SELLER this [redacted] day of [redacted], 20[redacted].

Signature: _____

Name: _____

Title: _____

APPENDIX VII
FORMS OF PERFORMANCE ASSURANCE

APPENDIX VII-A – FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: *[insert issue date]*

Beneficiary: Pacific Gas and Electric Company
77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

Applicant: [Insert name and address of Applicant]

Letter of Credit Amount: *[insert amount]*

Expiry Date: *[insert expiry date]*

Ladies and Gentlemen:

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

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

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. *[insert number]* and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:
 - A. “Pursuant to the terms of that certain *[insert name of Agreement]* (the “Agreement”), dated *[insert date of the Agreement]*, between Beneficiary and *[insert name of Seller under the Agreement]*, Beneficiary is entitled to draw under Letter of Credit No. *[insert number]* amounts owed by *[insert name of Seller under the Agreement]* under the Agreement; or
 - B. “Letter of Credit No. *[insert number]* will expire in thirty (30) days or less and *[insert 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 hereto for a period of one (1) year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

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

All demands for payment shall be made by presentation of original drawing documents and a copy of this Letter of Credit; or by facsimile transmission of documents to *[insert fax number]*, Attention: *[insert name of issuing bank's receiving department]*, with original drawing documents and a copy of this Letter of Credit to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at *[insert phone number]* to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a 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) days after the resumption of our business, and will effect payment accordingly.

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

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

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ *[print or type name]*

Title: _____ *[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

[No Bank's signature on Exhibit A]

APPENDIX VII-B – FORM OF GUARANTY FROM A U.S. ENTITY

GUARANTY AGREEMENT

_____, a corporation organized under the laws of _____ (referred to herein as “Seller”) and PACIFIC GAS AND ELECTRIC COMPANY (referred to herein as “PG&E”) are entering into a contract for [*PG&E Drafting Note: PG&E to update for Project technologies other than energy storage* energy storage] services. That contract, titled a [*insert name of the agreement*] and dated _____, is referred to herein as the “Contract.” Seller is a [*list relationship of Seller to Guarantor*] of _____ established in _____ (referred to herein as “Guarantor”). To induce PG&E to enter into the Contract with Seller, and for valuable consideration, the Guarantor is entering into this Guaranty Agreement (referred to herein also as the “Guaranty”) and hereby agrees as follows:

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

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

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

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

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

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

affecting the risks and liability assumed by the Guarantor hereunder, and PG&E shall have no duty to advise the Guarantor of information known to it regarding such risks.

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

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

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

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

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

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

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

If to Guarantor:

If to PG&E: Pacific Gas and Electric Company

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

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

[Name of Guarantor]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX VII-C – FORM OF GUARANTY FROM A NON-U.S. ENTITY

GUARANTY AGREEMENT

_____, a corporation organized under the laws of _____ (referred to herein as “Seller”) and PACIFIC GAS AND ELECTRIC COMPANY (referred to herein as “PG&E”) are entering into a contract for *[PG&E Drafting Note: PG&E to update for Project technologies other than energy storage energy storage]* services. That contract, titled a *[insert name of the agreement]* and dated _____, is referred to herein as the “Contract.” Seller is a *[list relationship of Seller to Guarantor]* of _____ established in _____ (referred to herein as “Guarantor”). To induce PG&E to enter into the Contract with Seller, and for valuable consideration, the Guarantor is entering into this Guaranty Agreement (referred to herein also as the “Guaranty”) and hereby agrees as follows:

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

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

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

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

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

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

affecting the risks and liability assumed by the Guarantor hereunder, and PG&E shall have no duty to advise the Guarantor of information known to it regarding such risks.

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

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

(i) **Arbitration.** Any controversy or claim arising out of or relating to this Guaranty Agreement, or any alleged breach thereof, shall be determined by arbitration administered by the American Arbitration Association in accordance with its International Arbitration Rules. The number of arbitrators shall be three, one appointed by PG&E; one appointed by Guarantor; and the third to be appointed by the first two. The party demanding arbitration shall appoint its arbitrator in its notice of arbitration ("Notice of Arbitration"). The responding party (the "Respondent") shall appoint its arbitrator within 30 days of its receipt of the Notice of Arbitration. In the event of the Respondent's failure to appoint its arbitrator within that 30-day period, the Respondent's arbitrator shall be appointed by the American Arbitration Association. The third arbitrator shall be appointed by the two arbitrators of the parties within 30 days of the appointment of the latter of the two. If the two arbitrators fail to appoint the third arbitrator within that 30-day period, then the American Arbitration Association shall appoint the third arbitrator. The place of arbitration shall be New York, New York. The arbitration shall be final, binding on the parties, not subject to any appeal, shall deal with the question of costs of arbitration and all matters related thereto, and shall award PG&E any reasonable attorneys' fees and all other costs and expenses incurred by PG&E in enforcing this Guaranty. The language of the arbitration shall be English, and the arbitration award shall be written in English. The arbitration panel shall decide in law and not as "amiables compositeurs" or ex aequo et bono. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be. Each of the parties hereto agrees that any legal suit, action or proceeding brought by any party to this Guaranty Agreement to enforce an award or an order of enforcement, or otherwise relating to any arbitration hereunder, may be instituted in any U.S. federal or state court in New York, New York, and waives any objection which it may now or hereafter have to the laying of venue of any such proceedings, and irrevocably submits to the nonexclusive jurisdiction of such courts in any suit, action or proceeding, waiving any objection or defense based on jurisdiction, venue or inconvenient forum.

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

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

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

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

If to Guarantor:

If to PG&E: Pacific Gas and Electric Company

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

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

[Name of Guarantor]

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX VIII – 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^{lll} (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 Behind the Retail Meter Resource Adequacy 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 Resource Adequacy 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 Documents of (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

^{lll} 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.

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 *[PG&E Drafting Note: PG&E to update for Project technologies other than energy storage energy storage]* 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 9.1 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 curable, 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 depository 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 duplicate counterparts, and when executed and delivered by all the Parties, shall constitute a single binding 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: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
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 IX
MILESTONES

Milestone	Due Date
Project Review Milestone	
Expected Initial Delivery Date	Please see Section 1.1(c)

APPENDIX X

NOTICES

Name: _____ (“Seller”)

All Notices:

Delivery Address:

Street:

City:

Mail Address:

Attn:

Phone:

Invoices and Payments:

Attn:

Phone:

Wire Transfer:

BNK:

ACCT Title:

ABA:

ACCT:

DUNS:

Federal Tax ID Number:

Credit and Collections:

Attn:

Phone:

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

Attn:

Phone:

Name: Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”)

All Notices:

Delivery Address:

77 Beale Street, Mail Code N12E

San Francisco, CA 94105-1702

Mail Address:

P.O. Box 770000, Mail Code N12E

San Francisco, CA 94177

Attn: Candice Chan (CWW9@pge.com)

Director, Energy Contract Mgmt & Settlements

Phone: (415) 973-7780

Invoices and Payments:

Attn: Azmat Mukhtar (ASM3@pge.com)

Manager, Bilateral Settlements

Phone: (415) 973-4277

Wire Transfer:

BNK:

ACC Title: PG&E

ABA:

ACCT:

DUNS:

Federal Tax ID Number:

Credit and Collections:

Attn: Credit Risk Management

PGERiskCredit@Exchange.pge.com

Phone: (415) 972-5188

Fax: (415) 973.7301

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

Attn: Mike Gonzales (MPG7@pge.com)

Manager, Contract Management

Phone: (415) 973-7603

APPENDIX XI PROJECT SAFETY PLAN AND DOCUMENTATION

Project Safety Plan Elements:

Part One: Safety Requirements and Safety Programs

Identify the applicable safety-related Codes, Standards, and regulations (CSR) 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 Seller's safety engineering approach to select equipment and design systems and the Project to reduce risks and mitigate the impacts of safety-related incidents, including cascading failures, excessive temperatures, thermal runaways, fires, explosions, disk fractures, hazardous chemical releases.

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 pre-qualification and 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 XII

MULTIPLE-USE ATTESTATION

[PG&E Drafting Note: only applicable to energy storage Projects]

This attestation is delivered by _____ (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Behind the Retail Meter Resource Adequacy Agreement dated _____ (“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 XIII

LIST OF SUBSTATIONS

[Seller to insert based on Offer]

END OF AGREEMENT