

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE



July 25, 2019

Advice Letter 5567-E

Erik Jacobson
Director, Regulatory Relations
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

SUBJECT: PG&E Updated Technology Neutral Pro-Forma Contract per Resolution E-5004

Dear Mr. Jacobson:

Advice Letter 5567-E is effective as of June 20, 2019.

Sincerely,

A handwritten signature in cursive script that reads "Edward Randolph".

Edward Randolph
Deputy Executive Director for Energy and Climate Policy/
Director, Energy Division



Erik Jacobson
Director
Regulatory Relations

Pacific Gas and Electric Company
77 Beale St., Mail Code B13U
P.O. Box 770000
San Francisco, CA 94177

Fax: 415-973-3582

June 20, 2019

Advice 5567-E

(Pacific Gas and Electric Company – U 39 E)

Public Utilities Commission of the State of California

Subject: PG&E Updated Technology Neutral Pro-Forma Contract per Resolution E-5004

Purpose

Pacific Gas and Electric Company (PG&E) submits this compliance advice letter to modify PG&E's Technology Neutral Pro-Forma (TNPf) Contract originally submitted in Advice 5434-E, which was approved on June 13, 2019. This advice letter is to comply with Resolution E-5004.

Background

Pursuant to D.16-12-036, Pacific Gas and Electric Company (PG&E) submitted Advice 5434-E on November 21, 2018 to request the California Public Utilities Commission's (CPUC or Commission) approval of PG&E's TNPf Contract that was developed through the Competitive Solicitations Framework Working Group process with interested parties in the Integration of Distributed Energy Resources OIR proceeding (R.14-10-003).

On June 13, 2019, the Commission approved PG&E's Advice 5434-E through Resolution E-5004, which ordered PG&E to clarify in their TNPf contract when a metered based or deemed savings approach is used in quantifying Energy Efficiency savings and required PG&E to submit a compliance supplemental advice letter with the modification within 7 days of approval of Resolution E-5004.

Protests

Anyone wishing to protest this submittal may do so by letter sent via U.S. mail, facsimile or E-mail, no later than July 10, 2019, which is 20 days after the date of this submittal. Protests must be submitted to:

CPUC Energy Division
ED Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, California 94102

Facsimile: (415) 703-2200
E-mail: EDTariffUnit@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

The protest shall also be sent to PG&E either via E-mail or U.S. mail (and by facsimile, if possible) at the address shown below on the same date it is mailed or delivered to the Commission:

Erik Jacobson
Director, Regulatory Relations
c/o Megan Lawson
Pacific Gas and Electric Company
77 Beale Street, Mail Code B13U
P.O. Box 770000
San Francisco, California 94177

Facsimile: (415) 973-3582
E-mail: PGETariffs@pge.com

Any person (including individuals, groups, or organizations) may protest or respond to an advice letter (General Order 96-B, Section 7.4). The protest shall contain the following information: specification of the advice letter protested; grounds for the protest; supporting factual information or legal argument; name, telephone number, postal address, and (where appropriate) e-mail address of the protestant; and statement that the protest was sent to the utility no later than the day on which the protest was submitted to the reviewing Industry Division (General Order 96-B, Section 3.11).

Effective Date

PG&E requests that this Tier 1 advice letter become effective upon date of submittal, which is June 20, 2019.

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list and the parties on the service list for R.14-10-003. Address changes to the General Order 96-B service list should be directed to PG&E at email address PGETariffs@pge.com. For changes to

any other service list, please contact the Commission's Process Office at (415) 703-2021 or at Process_Office@cpuc.ca.gov. Send all electronic approvals to PGETariffs@pge.com. Advice letter submittals can also be accessed electronically at: <http://www.pge.com/tariffs/>.

/S/

Erik Jacobson
Director, Regulatory Relations

Attachments

Attachment A – PG&E's Technology Neutral Pro-Forma (TNPF) Contract – Redline
Version

Attachment B – PG&E's Technology Neutral Pro-Forma (TNPF) Contract – Clean Version

cc: Service List R.14-10-003



ADVICE LETTER SUMMARY

ENERGY UTILITY



MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: Pacific Gas and Electric Company (ID U39E)

Utility type:

- ELC GAS WATER
 PLC HEAT

Contact Person: Yvonne Yang

Phone #: (415)973-2094

E-mail: PGETariffs@pge.com

E-mail Disposition Notice to: Yvonne.Yang@pge.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas WATER = Water
 PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 5567-E

Tier Designation: 1

Subject of AL: PG&E Updated Technology Neutral Pro-Forma Contract per Resolution E-5004

Keywords (choose from CPUC listing): Compliance

AL Type: Monthly Quarterly Annual One-Time Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #: Resolution E-5004

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL:

Confidential treatment requested? Yes No

If yes, specification of confidential information: N/A

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information: N/A

Resolution required? Yes No

Requested effective date: 6/20/19

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: N/A

¹Discuss in AL if more space is needed.

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Name: Erik Jacobson, c/o Megan Lawson
Title: Director, Regulatory Relations
Utility Name: Pacific Gas and Electric Company
Address: 77 Beale Street, Mail Code B13U
City: San Francisco, CA 94177
State: California Zip: 94177
Telephone (xxx) xxx-xxxx: (415)973-2093
Facsimile (xxx) xxx-xxxx: (415)973-3582
Email: PGETariffs@pge.com

Name:
Title:
Utility Name:
Address:
City:
State: District of Columbia Zip:
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

Advice 5567-E
June 20, 2019

Attachment A

**PG&E's Technology Neutral Pro-Forma
(TNPF) Contract -
Redline Version**

DISTRIBUTION SERVICES AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

DISTRIBUTION SERVICES AGREEMENT

TABLE OF CONTENTS

RECITALS 1

ARTICLE ONE: TERM 1

 1.1 Term..... 1

 1.2 Binding Nature..... 1

 1.3 CPUC Approval Delayed..... 2

ARTICLE TWO: DELIVERY CONDITIONS & DEVELOPMENT MILESTONES 2

 2.2 Delivery Conditions 2

 2.3 Failure to Meet Delivery Conditions 3

ARTICLE THREE: TRANSACTION..... 3

 3.1 Transaction..... 3

 3.2 Distribution Services..... 3

 3.3 Contract Capacity 3

 3.4 Delivery Point(s)..... 4

 3.5 Information Sharing and Shared Learning..... 4

ARTICLE FOUR: INTERCONNECTION & OPERATIONS 4

 4.1 Interconnection 4

 4.2 Interconnection Agreement..... 4

4.3	Operational Control	5
4.4	Failure to Comply with Restricted Periods	5
4.5	Project Site and Customers	5
4.6	<u>Intentionally Omitted</u>	6
4.7	Metering and Communications Systems	6
4.8	Scheduling	6
4.9	<u>Intentionally Omitted</u>	6
4.10	Supplier Diversity	6
4.11	Standards of Care	6
ARTICLE FIVE: TESTING AND VERIFICATION		7
5.1	Performance Testing	7
5.2	Measurement and Verification	7
ARTICLE SIX: COMPENSATION		7
6.1	Contract Price	7
6.2	Monthly Payment	7
ARTICLE SEVEN: EVENTS OF DEFAULT; REMEDIES		9
7.1	Events of Default	9
7.2	Early Termination	11
7.3	Rights And Remedies Are Cumulative	12
7.4	Waiver	12
ARTICLE EIGHT: FORCE MAJEURE		12
8.1	Force Majeure	12
ARTICLE NINE: PAYMENT AND NETTING		13
9.1	Billing and Payment	13
9.2	Netting	14
9.3	Payment	14
9.4	Restricted Periods Attestation	14
9.5	Disputes and Adjustments of Invoices	14
ARTICLE TEN: CREDIT AND COLLATERAL REQUIREMENTS		14
10.1	Buyer Financial Information	14
10.2	Seller Financial Information	15
10.3	Grant of Security Interest/Remedies	15
10.4	Performance Assurance	15
10.5	Letter of Credit	16
ARTICLE ELEVEN: SAFETY		17
11.1	Safety	17
ARTICLE TWELVE: GOVERNMENTAL CHARGES		17
12.1	Cooperation	17
12.2	Governmental Charges	18

ARTICLE THIRTEEN: LIMITATIONS	18
13.1 Limitation of Remedies, Liability and Damages	18
ARTICLE FOURTEEN: REPRESENTATIONS; WARRANTIES; COVENANTS	18
14.1 Representations and Warranties of Both Parties	18
14.2 General Covenants	20
14.3 Covenants of Seller	20
ARTICLE FIFTEEN: INDEMNITIES AND INSURANCE	20
15.1 Indemnity by Seller	20
15.2 No Indemnity by Buyer	21
15.3 Notice of Claim	21
15.4 Defense of Third Party Claims	21
15.5 Subrogation of Rights	22
15.6 Rights and Remedies are Cumulative	22
15.7 Insurance	22
ARTICLE SIXTEEN: RECORDS AND AUDIT RIGHTS	24
16.1 Operations Logs	24
16.2 Records and Audit	24
16.3 General Audit Right	25
16.4 Data Request Cooperation	25
16.5 Access Rights	25
ARTICLE SEVENTEEN: ASSIGNMENT	25
17.1 General Assignment	25
17.2 Assignment to Financing Providers	25
17.3 Assignment in Connection with a Change in Control	25
17.4 Unauthorized Assignment	26
ARTICLE EIGHTEEN: DISPUTE RESOLUTION	26
18.1 Intent of the Parties	26
18.2 Management Negotiations	26
18.3 Mediation	26
18.4 Arbitration	27
ARTICLE NINETEEN: CONFIDENTIALITY	28
19.1 Confidential Information	28
19.2 Permitted Disclosures	28
19.3 Remedies	28
19.4 Exceptions	28
19.5 Other Confidential Information	28
ARTICLE TWENTY: GENERAL PROVISIONS	29
20.1 General	29
20.2 Severability	29
20.3 Counterparts	29

20.4	Mobile Sierra	29
20.5	Interpretation.....	29
20.6	Recordings	30
20.7	Authorized Representatives	31
20.8	No Dedication.....	31
20.9	Governing Law	31
ARTICLE TWENTY-ONE: NOTICES		31
21.1	Notices	31
SIGNATURES.....		32

APPENDICES

The following appendices are incorporated into and made a part of this Agreement by reference.

Appendix I – General Definitions	I-1
Appendix II – Distribution Services Type(s) and Initial Contract Capacity	II-1
Appendix III – Description of Project & Units	III-1
Appendix IV – Operational Parameters	IV-1
Appendix V – Contract Price	V-1
Appendix VI – Intentionally Left Blank	VI-1
Appendix VII – Initial Delivery Date Confirmation Letter	VII-1
Appendix VIII – Delivery Conditions	VIII-1
Appendix VIII-A – Delivery Conditions for Distribution Hosting Capacity	VIII-A - 1
Appendix VIII-B – Critical Milestones	VIII-B - 1
Appendix IX – Attestations & Certifications	IX-I
Appendix IX-A – Certification for Commercial Operation	IX-A - 1
Appendix IX-B – Safety Attestation	IX-B - 1
Appendix IX-C – Restricted Periods Attestation	IX-C - 1
Appendix X – Form of Letter of Credit	X-1
Appendix XI – Form of Consent to Assignment	XI-1
Appendix XII – Scheduling Requirements	XII-1
Appendix XIII – Notices	XIII-1
Appendix XIV – Project Safety Plan and Documentation	XIV-1
Appendix XV – Measurement and Verification	XV-1
Appendix XVI – 50 / 200 Hours Marketing Option	XVI-1
Appendix XVII – Operational Log Requirements	XVII-1
Appendix XVIII – PG&E’s Supply Chain Responsibility Policy	XVIII-1
Appendix XIX – Safety Provisions	XIX-1

DISTRIBUTION SERVICES AGREEMENT

This Distribution Services 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”. [Note to Seller: Please complete]

RECITALS

I. Buyer seeks to purchase Distribution Services as defined herein from Distributed Resources in order to defer upgrades to its distribution system.

II. Seller desires to sell Distribution Services as defined herein to Buyer from the Project in accordance with the terms of this Agreement.

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

ARTICLE ONE: TERM

1.1 Term.

(a) The “Term” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including until any compensation for Distribution Services, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Assurance is released and/or returned as applicable. 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 15.1 through 15.7 (Indemnities and Insurance) and any other indemnity rights survive the end of the Term for an additional twelve (12) months after; (ii) all rights and obligations under Article Nineteen (Confidentiality) survive the end of the Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The “Delivery Term” is the period commencing on the Initial Delivery Date and continuing until _____ unless earlier terminated in accordance with the terms and conditions of this Agreement. The IDD may only be extended or delayed as follows:

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

(ii) if Seller has not achieved the Initial Delivery Date for reasons other than a Force Majeure in accordance with Article Eight, then for every day, but not more than for a total of thirty (30) days, beginning with the day after the 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 \$one thousand three hundred thirty three dollars per MW per day (\$1333/MW per day); 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 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 Initial Delivery Date would be difficult or impossible to predict with certainty and (ii) the Delay Damages are an appropriate approximation of such damages.

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: **[PG&E Drafting Note: Section references to be updated based on final agreement.]**

- (i) Articles One, Eight, and Eleven through Twenty-One;
- (ii) Sections 7.1(a)(i) – (iii); 7.2 - 7.4; and
- (iv) Sections 10.3 – 10.5.

(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 CPUC Approval 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 Delayed. CPUC Approval must be obtained on or before one hundred eighty (180) days from the date on which Buyer files this Agreement with the CPUC seeking CPUC Approval ("CPUC Approval Condition Precedent"). If CPUC Approval has not been obtained by this date, then either Party may terminate this Agreement effective upon Notice to the other Party, unless the need for such CPUC Approval has been waived in writing by both Parties. Following the termination of this Agreement pursuant to this Section 1.3, neither Party shall have any obligation or liability to the other by reason of such termination.

ARTICLE TWO: DELIVERY CONDITIONS & CRITICAL MILESTONES

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

2.2 Delivery Conditions.

- (a) The Delivery Conditions are as follows:
 - (i) At Seller's expense, Seller shall have secured all Governmental and grid operations approvals as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver Distribution Services at the Initial Contract Capacity to Buyer.
 - (ii) Seller shall have posted collateral as required by Section 10.4(a)(ii).

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

(iv) Seller shall have submitted for Buyer's review a Project Safety Plan, which must demonstrate Seller's ability to comply with the Safety Requirements on the IDD and for the Delivery Term.

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

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

(vii) At Seller's expense, Seller shall have installed any necessary metering to deliver the applicable Distribution Services in accordance with Section 4.1 and any applicable tariffs of the Utility Distribution Company.

(viii) Seller shall have met each Critical Milestone set forth in Appendix VIII-B.

(b) Seller shall satisfy (i) the Delivery Condition in Sections 2.2(a)(i), (iv), and (vii) no later than thirty (30) days before the earliest applicable IDD, (ii) the Delivery Condition in Section 2.2(a)(ii) no later than the deadline set forth in Section 10.4(a)(ii), (iii) the Delivery Condition in Section 2.2(a)(iii) no later than the deadline set forth in Appendix XIX Section 2(a), (iv) the Delivery Condition in Section 2.2(a)(v) and (vi) as of the IDD; and (v) the Delivery Conditions in Section 2.2(a)(viii) no later than the deadlines set forth in Appendix VIII-B (as such deadlines may be extended in accordance with Appendix VIII-B). Seller shall Notify Buyer of the satisfaction of each Delivery Condition, and of each Critical Milestone, in accordance with this Section 2.2(b). Seller's Notices hereunder must contain sufficient documentation to demonstrate completion of the Delivery Condition or Critical Milestone, as applicable. Once all of the Delivery Conditions to the applicable Initial Delivery Date have been satisfied or waived, the Parties shall execute and exchange on the applicable Initial Delivery Date the "Initial Delivery Date Confirmation Letter" attached as Appendix VII.

2.3 Failure to Meet Delivery Conditions. If Seller fails to satisfy all of the Delivery Conditions by the deadlines set forth in Section 2.2(b), then a Seller's Event of Default shall be deemed to occur in accordance with Section 7.1(a)(v), and Buyer shall have no obligation to purchase any Distribution Services from Seller hereunder; provided that if Seller (a) anticipates that due to a Force Majeure, it will be unable to satisfy the Delivery Conditions set forth in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) by the deadlines set forth in Section 2.2(b), then Seller may Notify Buyer of a Force Majeure Extension in accordance with Article Eight and such failure shall not be a Seller Event of Default; or (b) fails to satisfy up to two (2) Critical Milestones by the deadlines set forth in Appendix VIII-B (as extended), but otherwise satisfies all other Critical Milestones by the deadlines set forth in Appendix VIII-B, then such failure shall not be a Seller Event of Default.

ARTICLE THREE: TRANSACTION

3.1 Transaction. Subject to Section 2.3, on and after the IDD through the end of the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, Distribution Services exclusively from the Project at the Delivery Point(s) in the amount of the Contract Capacity. Seller shall deliver Distribution Services to Buyer hereunder in accordance with Buyer's instructions pursuant to

Section 4.8. Seller may sell other products, including Distribution Services in excess of the Contract Capacity, to third parties or into the applicable market (“Third Party Sales”). Seller shall receive and retain any revenues from such Third Party Sales. In no event will Buyer be obligated to purchase Distribution Services before the earliest applicable IDD.

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

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

3.4 Delivery Point(s). The Delivery Point will be (i) for each Distributed Resource composing the Project that is located behind a Customer’s retail meter, the load meter(s) for such Distributed Resource, and (ii) for each Distributed Resource composing the Project that is not located behind a Customer’s retail meter, the point of interconnection for such Distributed Resource to the CAISO Grid, and in each case (i) and (ii), as depicted in Appendix III. Seller shall be solely responsible for any costs or charges imposed on or associated with Distribution Services up to and at the Delivery Point(s). Buyer shall be responsible for any costs or charges imposed on or associated with Distribution Services after the Delivery Point(s).

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

ARTICLE FOUR: INTERCONNECTION & OPERATIONS

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

4.2 Interconnection Agreement. At Seller's expense, Seller shall (a) execute all necessary Interconnection Agreements, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of Distribution Services, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service (including any Governmental Approvals required for the foregoing). At no cost or liability to Buyer, 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, so as to be able to deliver Distribution Services to Buyer. Buyer will not bear any costs or liability under this Agreement related to interconnection, electric distribution or transmission service for the Project, regardless of whether PG&E is the Utility Distribution Company for the Project. To the extent Seller undertakes Third Party Sales, Seller is solely responsible for executing interconnection agreements with the Transmission Provider and Participating Transmission Owner and fulfilling all contractual, metering and applicable interconnection requirements necessary to make such Third Party Sales.

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

4.4 Failure to Comply with Restricted Periods.

(a) Seller shall operate the Project in a manner that does not cause an increase in net loading on the circuits specified in Appendix III during Restricted Periods. Whether an increase in net loading on the circuits specified in Appendix III has occurred during a particular Restricted Period will be determined by Buyer in accordance with the measurement and verification parameters set forth in Appendix XII.

(b) For each day in a Delivery Month that the Project delivers, for any Settlement Interval, in excess of three percent (3%) of the Contract Capacity commensurate with such Settlement Interval during a Restricted Period, Seller shall pay Buyer the product of (a) the absolute value of the maximum amount, across all Settlement Intervals for such day, of kW that the Project delivered during such Restricted Period, multiplied by (b) the ratio of (i) the then highest monthly Contract Price for the calendar year, divided by (ii) the number of days in the applicable Delivery Month.

4.5 Project Site and Customers.

[PG&E Note to Sellers: Include Section 4.5 if Project is behind the meter. If the Project is in front of the meter then remove this Section 4.5]

(a) Seller shall execute all necessary forms, documentation, and agreements in order to secure all Sites and/or Customers necessary to deliver Distribution Services to Buyer from the Project. The terms and conditions of the agreements Seller executes for each Site, and with each Customer, as applicable, are independent of Buyer, and Buyer shall not have any responsibility or incur any liability pursuant to such agreements.

(b) Prior to each applicable Initial Delivery Date, Seller shall provide Buyer a list identifying all Sites and Customers, if any, composing the Project in the form set forth in Appendix IX-B

("Site/Customer List"). For each Site and each Customer, as applicable, that compose the Project, Seller must demonstrate that such Site or Customer satisfies the criteria of Incrementality and meets the measurement and verification requirements applicable to such Site or Customer in accordance with Section 5.2, and therefore is eligible to deliver Distribution Services hereunder. Buyer will verify to Seller which Seller-selected Sites and/or Customers, as applicable, are eligible to deliver Distribution Services hereunder in accordance with this Section 4.5(b) prior to each applicable Initial Delivery Date.

(c) At any time during the Delivery Term, Seller may remove, replace, or add any Distributed Resources that compose the Project, provided that (i) any such change shall not modify the Distribution Services or the ability of the Project to provide Product at the Contract Capacity, (ii) any new Distributed Resources to be added to the Project are interconnected to distribution system at the locations identified in Appendix III and in accordance with the requirements of Article Four, and (iii) any such change shall be made in accordance with this Section 4.5(c) and Article Eleven of this Agreement. No less than 15 days prior to a Delivery Month, Seller will provide Buyer an updated Site/Customer List if any Sites or Customers comprising the Project will change during such Delivery Month. For each new Site or Customer on the updated Site/Customer List, Seller must demonstrate that such Site or Customer is eligible to deliver Distribution Services hereunder in accordance with Section 4.5(b). No less than 5 days prior to such Delivery Month, Buyer will verify to Seller whether the new Sites or Customers are eligible to deliver Distribution Services hereunder in accordance with Section 4.5(b).

(d) Seller may not provide Distribution Services from a source other than the Project. At Buyer's request, Seller shall provide to Buyer all information and data necessary to confirm that Seller delivered the Distribution Services from the Project during each time period in the Delivery Term specified in Buyer's request.

4.6 Intentionally Omitted.

4.7 Metering and Communications Systems. To the extent applicable as set forth in Appendix X, Seller shall install all metering, communications systems and equipment for the Project ("Communications Systems") at Seller's sole cost and expense that is necessary to, at all times during the Delivery Term, (i) enable Seller to meet Buyer's instructions in accordance with 4.8, (ii) enable Buyer to remotely monitor the status of the Project on an aggregate and individual resource basis, (iii) permit Buyer to have real time information access to the operations of the Project, including the ability to measure increases and decreases in real time load, and (iv) provide Distribution Services during the Delivery Term. All electric metering equipment and submeters, whether owned by Seller or by a third party, which are installed on Seller's side of the Delivery Point, as applicable, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Electrical Practices; provided that if the electric metering equipment test is conducted by the interconnecting utility or the Transmission Provider, testing shall be conducted in accordance with the procedures and the standards generally applied by such utility or the Transmission Provider, as applicable. In the event that, during the Delivery Term, Buyer develops its own system that allows Buyer to exercise greater monitoring or more efficient dispatch of the Project, upon Buyer's notice Seller shall promptly enable its Communications Systems to interface with Buyer's system such that Buyer may monitor and dispatch the Project through Buyer's system.

4.8 Scheduling. As applicable per Appendix XI, during the Delivery Term, Buyer may request the Project to deliver Distribution Services at any amount up to the Contract Capacity by providing an instruction to Seller by 8:00 am PPT the day before the requested delivery in a manner to be determined by Buyer in its sole discretion, which may include verbal or electronic notification. Buyer's delivery instruction will state for each Delivery Hour covered by the delivery instruction the quantity of the applicable Distribution Service to be delivered by Seller during such Delivery Hour.

4.9 Intentionally Omitted.

4.10 Supplier Diversity. Seller shall comply with Buyer's Supplier Diversity Program in accordance with Appendix XVII.

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

ARTICLE FIVE: TESTING AND VERIFICATION

5.1 Performance Testing.

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

(b) After the Initial Delivery Date and during the Delivery Term, Buyer will have the right to conduct a Performance Test ("Buyer Performance Test") no more than once a calendar year to demonstrate whether the Project is capable of delivering the Distribution Services at the Contract Capacity. Seller will have a right to retest the Project with a Performance Test once a calendar year after a Buyer Performance Test ("Seller Retest").

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

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

(iii) If a Buyer Performance Test or Seller Retest demonstrates the Project is not capable of delivering Distribution Services at 85% or more of the Initial Contract Capacity, an Event of Default shall occur in accordance with Section 7.1(a)(vii).

5.2 Measurement and Verification. The amount of Distribution Services the Project delivers will be measured for all purposes under this Agreement based on the Project's technology using the methodologies and parameters set forth in Appendix X.

ARTICLE SIX: COMPENSATION

6.1 Contract Price. The price for Distribution Services shall be as set forth in Appendix V.

6.2 Monthly Payment. Buyer shall calculate a monthly payment ("MP") for the Distribution Services provided by Seller in each Delivery Month in accordance with the formula set forth below. If the calculation results in positive number, Buyer shall pay Seller as set forth herein; if the calculation results in a negative number, Seller shall pay Buyer as set forth herein.

[PG&E Note: Formula would need to be modified for Energy Efficiency]

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

$$MP_m = FP_m + VP_m$$

where,

MP_m = Monthly Payment for Delivery Month m

FP_m = Fixed Payment for Delivery Month m

VP_m = Variable Payment for Delivery Month m

Fixed Payment

$$FP_m = CC_m \times CP_m \times DSF_m \times \text{Delivered Services Adjustment}_m$$

where,

CC_m = Contract Capacity for Delivery Month m

CP_m = Capacity Price for Delivery Month m

DSF_m = Distribution Services Factor for Delivery Month m, based on the ratio of $\sum DSP_i / \sum DSE_i$, where:

\sum = the sum from $i = 1$ to n, where n = number of times Buyer requires Distribution Services for a Delivery Month;

DSP_i = the amount of Distribution Services delivered by Seller in response to Buyer's dispatch or notification i;

DSE_i = the amount of Distribution Services Buyer requires for each dispatch or notification i ;

The DSF will be capped at 1.0 in all delivery months

DSF	Delivered Services Adjustment_m
≥0.90 and ≤ 1.00	1.0
≥0.80 and < 0.90	0.5
≥0.75 and < 0.80	0
< 0.75	DSF – 0.75 (Seller will pay Buyer)

Variable Payment

$$VP_m = \sum \min (DSP_i, DSE_i) \times VOM_m$$

where,

VOM_m = Variable Price for Delivery Month m

ARTICLE SEVEN: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default.

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

(i) any asset of Seller that is material to its performance under this Agreement is taken by or is subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within sixty (60) 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 10.3, 10.4, 10.4, and 10.5;

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

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

(v) Seller fails to achieve the Initial Delivery Date, unless Seller (A) Notifies Buyer of a Force Majeure Extension pursuant to Article Eight; or (B) pays Delay Damages to Buyer in accordance with Article One;

(vi) Seller fails to satisfy the Delivery Conditions by the applicable deadlines set forth in Section 2.2(b), unless Seller (A) Notifies Buyer of a Force Majeure Extension for the Delivery Conditions set forth in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) pursuant to Article Eight; or Seller's failure to satisfy the Delivery Conditions is due to two (2) or less missed Critical Milestones and Section 2.3(b) is applicable;

(vii) The monthly Distribution Services Factor for any calendar year during the Delivery Term averages less than seventy-five percent (75%) for any reason other than Force Majeure;

(viii) The results of a Performance Test show that the Project provides Distribution Services at less than eighty-five percent (85%) of the Contract Capacity set forth in Section 3.3 for any reason other than Force Majeure;

(ix) Seller fails to comply with Section 4.4(a) on more than three (3) days in a calendar year during the Delivery Term;

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

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

(ii) absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within ninety (90) days;

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

(iv) any representation or warranty made by a Party pursuant to Appendix XIX Section 1(a) or Article Fourteen 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 Appendix XIX Section 1(a) or Article Fourteen is false, misleading or erroneous in any material respect;

(v) a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving, or transferring entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an assumption agreement reasonably satisfactory to the other Party; or

(vi) a Party fails to perform any of its material obligations or covenants under this Agreement not otherwise addressed in this Section 7.1, and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) 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.

7.2 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 21.1) and no later than twenty (20) days after such Notice is deemed to be received (as provided in Section 21.1), as an early termination date of this Agreement (“Early Termination Date”), (ii) accelerate all amounts owing between the Parties, (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. The “Termination Payment” will be equal to (i) the Project Development Security, less any Delay Damages, if the Early Termination Date occurs prior to the Initial Delivery Date or (ii) equal to the Delivery Term Security if the Early Termination Date occurs after the Initial Delivery Date.

(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 Eighteen.

7.3 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Seven are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement; provided that the Termination Payment will be the Non-Defaulting Party’s sole remedy for damage in the event of the early termination of this Agreement and the Defaulting Party shall owe such amount without duplication to any other damages sustained by the Non-Defaulting Party. In no event shall the Defaulting Party owe the Non-Defaulting Party under different provisions of this Agreement for the same damages, claims, losses, liabilities or expenses.

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

payments or suspend performance under Section 7.2 for a period of more than twenty (20) Business Days unless an Early Termination Date has been declared, and Notice thereof given, in accordance with Section 7.2.

ARTICLE EIGHT: FORCE MAJEURE

8.1 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. In addition to the requirements of Section 8.1(d) below if applicable the suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Initial Delivery Date as a result of a Force Majeure or a Force Majeure Extension as Notified by Seller in the case of Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv) or 2.2(a)(v), in accordance with this Article Eight, then Sections 8.1(d) and (e) shall apply.

(d) Force Majeure Extension. Notwithstanding anything to the contrary in this Agreement, only the Initial Delivery Date and the respective due dates for the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) may be extended on a day for day basis in the event of Force Majeure ("Force Majeure Extension"); provided that Seller provides Notice to Buyer of such Force Majeure Extension, works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

(i) Seller's claims for a Force Majeure Extension cannot cumulatively exceed thirty (30) days; and

(ii) In order to request a Force Majeure Extension, Seller shall provide Buyer with Notice of the requested Force Majeure Extension no later than sixty (60) days prior to the Initial Delivery Date, which Notice must clearly identify the Force Majeure Extension and the length of the Force Majeure Extension subject to the limitations in this Section 8.1(d); provided that if sixty (60) days

prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(e) Failure to Achieve Initial Delivery Date after Force Majeure Extension. Either Party shall have the right, but not the obligation, to terminate this Agreement due to Seller's failure to achieve the Initial Delivery Date due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) following a Force Majeure Extension.

(f) Force Majeure Failure. Subject to Section 8.1(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" if during the Delivery Term:

(i) the monthly Distribution Services Factor for any calendar year during the Delivery Term averages less than sixty percent (60 %) for any reason; or

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

(f) Effect of Termination. If either Party exercises its termination right under Section 8.1(e) for Seller's failure to achieve the Initial Delivery Date due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) following a Force Majeure Extension or Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.1(f), then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in the Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 1.1(a).

ARTICLE NINE: PAYMENT AND NETTING

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

(a) the Monthly Payment, and

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

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

9.3 Payment. Payment of all undisputed amounts owed 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.

9.4 Restricted Periods Attestation. Within Seller's monthly invoice, Seller shall submit to Buyer an attestation in the form set forth in Appendix IX-C stating that the operation of the Project did not cause an increase in net loading on the circuits specified in Appendix III during the Restricted Periods specified in Appendix II for that Delivery Month in violation of Section 4.4.

9.5 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 Eighteen (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 9.4 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 TEN: CREDIT AND COLLATERAL REQUIREMENTS

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

10.2 Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited 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 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. [Seller shall be deemed to have satisfied such delivery requirements if the applicable reports are publicly available on Seller's website or 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 Buyer upon their completion and filing with the SEC.

10.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Performance Assurance hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash-equivalent collateral and any proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) 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 the Performance Assurance or other collateral posted by Seller or its Affiliates with Buyer under another agreement, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Performance Assurance, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10.4 Performance Assurance.

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

(i) Project Development Security. Within five (5) Business Days following the Execution Date, Seller shall post Project Development Security in the form of cash or letter of credit, equal to ***[Seller to insert dollar amount equal to \$40/kW of Contract Capacity]***.

(ii) Delivery Term Security. Prior to the Initial Delivery Date, Seller shall post Delivery Term Security in the form of cash or letter of credit, in an amount equal to ***[Seller to insert dollar amount equal to \$40/kW of Contract Capacity]***. With Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security.

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

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

(c) Return of Project Development Security. If, after the 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) unless Seller elects to apply the Project Development Security to the Delivery Term Security in accordance with Section 10.4(a)(ii). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Buyer's receipt and acceptance of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security posted pursuant to Section 10.4(a)(ii).

(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 XV (Notices).

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any Interest Amount due thereon pursuant to Section 10.4(d) above, to Seller promptly after the following has occurred: (i) the Term has ended, or subject to Section 7.2, 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.

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

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

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either subsection 10.5(b)(A) or 10.5(b)(B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either subsections (A) or (B) below is considered the "Cure"):

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

(B) posting cash.

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

(c) Notwithstanding the foregoing in Section 10.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then Buyer may make a demand to Seller by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). 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 10.5(b) and, if Seller fails to Cure, then the last paragraph in Section 10.5(b) shall apply to Seller.

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

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

ARTICLE ELEVEN: SAFETY

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

ARTICLE TWELVE: GOVERNMENTAL CHARGES

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

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

ARTICLE THIRTEEN: LIMITATIONS

13.1 Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE

ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION (OTHER THAN IN SECTIONS 15.1 THROUGH 15.6) OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTIONS 15.1 THROUGH 15.6 (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 FOURTEEN: REPRESENTATIONS; WARRANTIES; COVENANTS

14.1 Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that as of the Execution Date:

(a) 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;

(b) except for receipt of CPUC Approval, in the case of Buyer, and the Governmental Approvals necessary to install, operate and maintain the Project, in the case of Seller, it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) 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);

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

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

14.2 General Covenants. Each Party covenants that throughout the Term:

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

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

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

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

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

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

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

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

ARTICLE FIFTEEN: INDEMNITIES AND INSURANCE

15.1 Indemnity by Seller.

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

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

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

15.3 Notice of Claim.

(a) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article Fifteen, 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 15.1 or 15.2. (The Notice is referred to as a “Notice of Claim”). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the Indemnifiable Loss.

(b) Notice of Third Party Claim. If the Indemnitee receives Notice of the assertion or commencement of a Third Party Claim against it with respect to which the Indemnitor is obligated to

provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) 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 15.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.4 Defense of Third Party Claims. If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to the Indemnitor pursuant to Section 15.3(b), the Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 15.3(b), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) 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.

15.5 Subrogation of Rights. Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnatee 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 Indemnatee 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 Indemnatee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, the Indemnatee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

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

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

(a) Workers' Compensation and Employers' Liability.

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

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

(b) Commercial General Liability.

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

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

(iii) Coverage shall:

(A) by "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 SIXTEEN: RECORDS AND AUDIT RIGHTS

16.1 Operations Logs. Seller shall maintain a complete and accurate log of all material operations as set forth in Appendix XVII. 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 all applicable Laws.

16.2 Records and Audit.

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

- (i) Seller's unaudited financial statements and notes to financial statements;
- and
- (ii) financial schedules underlying the financial statements.

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

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

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

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

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

Seller's Affiliate. Seller shall keep Buyer advised of current procedures for contacting the Project operator's and/or Seller's Affiliate safety and security departments.

ARTICLE SEVENTEEN: ASSIGNMENT

17.1 General Assignment. Neither Party will 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 (a) the assignee assumes the transferring Party's payment and performance, credit and collateral obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, (d) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request, and (e) in the case of Seller as the transferring Party with a transfer to an assignee that will have operational control of the Project, Seller delivers to Buyer, upon Buyer's request, documentation to demonstrate the assignee is capable of satisfying and complying with the Safety Requirements.

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

17.3 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 17.1(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.

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

ARTICLE EIGHTEEN: DISPUTE RESOLUTION

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

18.2 Management Negotiations.

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

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

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

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

18.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 18.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by JAMS. As the first step the Parties agree to mediate any controversy before a mediator from the JAMS panel, pursuant to JAMS's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) 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.

18.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours

duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

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

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

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

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

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

ARTICLE NINETEEN: CONFIDENTIALITY

19.1 Confidential Information. Throughout the Term, neither Party shall disclose the non-public terms or conditions of this Agreement or the Parties’ bidding or negotiation process or any technical, commercial, or operating information marked as proprietary or confidential (the “Confidential Information”) to a third party.

19.2 Permitted Disclosures. A Party may disclose Confidential Information: (a) to the Party’s Affiliates and the Party’s and its Affiliate’s employees, counsel, accountants, advisors, lenders, 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 19.4; (e) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”),

other than to those entities set forth in subsection (f); (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC; or (g) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to a duly authorized Governmental Authority including the CPUC or any division thereof.

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

19.3 Remedies. Except as provided in Section 19.2 with respect to the Parties’ permitted disclosures, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

19.4 Exceptions.

(a) Notwithstanding Section 19.1 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 19.2, Seller is permitted to disclose Buyer’s Contractor Safety Program Standards to Contractors.

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

ARTICLE TWENTY: GENERAL PROVISIONS

20.1 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will provide the original signed Agreement; provided, however, that the execution and delivery of this Agreement and its counterparts is subject to Section 20.3. The Parties acknowledge and agree that this Agreement is a forward contract

(within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). This Agreement shall be binding on each Party's successors and permitted assigns.

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

20.3 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by e-mail will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by e-mail will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

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

20.5 Interpretation. The following rules of interpretation apply:

(a) The term "including" means "including without limitation"; the 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, unreasonably conditioned or unreasonably delayed.

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

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

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

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

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

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

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

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

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

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

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

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

20.9 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA,

APPENDIX I

GENERAL DEFINITIONS

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

“Agreement” means this Distribution Services Agreement, and, together with each and every appendix, attachment, amendment, schedule and written supplement hereto, to the extent those are executed by the Parties, constitutes the entire agreement of the Parties as to the matters set forth herein.

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

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

“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.

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

“Buyer” means PG&E in its capacity as a purchaser of Distribution Services 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 15.1.

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

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

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

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

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

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

“Communications Systems” has the meaning set forth in Section 4.7.

“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 Standards” means all of the following:

(a) The standards in PG&E’s Contractor Safety Standard, which as of the Execution Date can be found at http://www.pge.com/includes/docs/pdfs/b2b/purchasing/suppliers/contractorsafety/ContractorSafetyProgram_Requirements.pdf?WT.mc_id=Vanity_contractorsafety;

(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); and

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

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

“Contract Price” means the amount specified in Section 6.1.

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

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

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, pursuant to which the CPUC approves of this agreement in its entirety. 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 Approval Condition Precedent” has the meaning set forth in Section 1.3.

“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.

“Critical Milestone” is a milestone identified in Appendix VIII-B.

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

“Customer” means a Person that (i) is located in Buyer’s Service Territory, (ii) has load connected to one or more of the feeders set forth in Appendix III, and (iii) has an effective Service Agreement.

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

“Delivery Condition” has the meaning set forth in Section 2.2(a).

“Delivery Month” means a calendar month during the Delivery Term.

“Delivery Point(s)” means the revenue meters specified and selected in Appendix III.

“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 19.2.

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

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

“Distribution Hosting Capacity” has the meaning set forth in Appendix II.

“Distribution Load Capacity” has the meaning set forth in Appendix II.

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

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

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

“Electric Revenue Meter” means the measurement device(s) used by the interconnecting Transmission Provider to measure deliveries of Energy at the Delivery Point for purposes of billing.

“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.

“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 kw-hours.

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

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

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

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

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

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

“Execution Date” means the latest signature date found on the signature page of this Agreement.

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

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

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

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

(b) Force Majeure does not include: [PG&E NOTE: Definition may need to be updated to reflect Project specifics.]

(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 Distribution Services at a price greater than the price set forth in this Agreement;

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

(vi) Seller’s inability to complete interconnection by the applicable 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)(ii) 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)(ii) 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 any Site [or Customer] that is a part of the Project.

“Force Majeure Extension” has the meaning set forth in Section 8.1(d).

“Force Majeure Failure” has the meaning set forth in Section 8.1(e).

“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, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

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

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

Incrementality: [PG&E Note: This definition may not be necessary depending on the type of BTM project, technology, and how it has been defined. It may be necessary to ensure a customer is not being compensated under multiple programs for the same service. Further stakeholder feedback requested.]

“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 10.5(c)(i)(A).

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

“Initial Delivery Date” or “IDD” means February 1, 2020.

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

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

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

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

“Interest Period” means the monthly period beginning on the first 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 10.5(c).

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

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

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

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

“Mechanical Completion” means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; and (b) the Project is ready for testing and commissioning, as applicable.

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

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

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

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

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

“MW” means megawatts.

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

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

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

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

“Notify” means to provide a Notice.

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

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission

lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

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

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

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

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

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

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

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

“PG&E 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.

“Plan Extension” has the meaning set forth in Appendix XIX Section 2(a)(i).

“Project” means all Distributed Resources, together with all appurtenant facilities and equipment, including any control and Communication Systems, necessary to provide Distribution Services as depicted in Appendix III. Resources that compose the Project must be Distributed Resources, and may be in front of or behind a Customer’s retail meter, and may represent a single Site or an aggregation of multiple Sites.

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

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

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

“Protocol” has the meaning set forth in Section 19.2.

“Prudent Electrical Practices” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to resources composing the Project during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices,

reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

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

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

(b) equipment, material, and supplies are sufficient and accessible to operate the Project 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 operating in the relevant region; and

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

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

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

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

“Remediation Event” means the occurrence of any of the following with respect to the Project or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Project's operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Appendix XIX Section 2, in its sole discretion, that the Seller, the Project Safety Plan, Safety 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 Appendix XIX Section 4.

“Restricted Period” has the meaning set forth in Appendix II.

“Restricted Period Attestation” means a written attestation or certification to be delivered to Buyer with Seller's monthly invoice stating (1) whether, for the applicable Delivery Month, the operation of the

Project complied with Section 4.4, and (2) if the operation of the Project did not comply with Section 4.4 on every day of the applicable Delivery Month, the dates during which the operation of the Project did not comply with Section 4.4. The Restricted Period Attestation shall be substantially in the form attached hereto as Appendix IX-C.

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

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

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

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

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Standards, and all applicable requirements of Law, 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.

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

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

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

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

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

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

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

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

“Site(s)” means the real property or properties on which one or more Distributed Resources comprising the Project is located, as identified in Appendix III and as may be updated from time to time in accordance with Section 4.5.

“Site/Customer List” has the meaning set forth in Section 4.5(b).

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

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

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

“Termination Payment” has the meaning set forth in 7.3.

“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 Standards. 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.

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

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

“Transmission Provider” means the CAISO.

“Utility Distribution Company” means PG&E.

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

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

“Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations

APPENDIX II

DISTRIBUTION SERVICES TYPE(S) AND INITIAL CONTRACT CAPACITY

1. Distribution Services Type(s).

“Distribution Services” shall consist of the Project’s ability to provide, and the provision of, one or both of the following services that are checked as applicable:

Distribution Capacity Services, which is provided by decreasing net loading on distribution infrastructure through decreasing electrical consumption or increasing generation, in accordance with the Operating Parameters set forth below to reduce thermal overload conditions and improve local distribution reliability and resiliency;

Voltage Support Services: *not available at this time*

Reliability (Back-Tie) Services: *not available at this time*

Resiliency (Microgrid) Services: *not available at this time*

2. Initial Contract Capacity.

The Initial Contract Capacity is _____ MW.

3. Operation Parameters.

The Operating Parameters of the Project are:

Delivery Months:

Delivery Days:

Delivery Hours: ***[Example times provided]***

6:00 pm to 9:00 pm

9:00 pm to 12:00 am (midnight)

6:00 pm to 12:00 am (midnight)

Minimum duration the Project must be able to deliver:

3 hours

6 hours

4. Restricted Periods.

The operation of the Project must not cause an increase in net loading on the feeders specified in Appendix III during the following periods (“Restricted Periods”):

The operation of the Project shall not cause an increase in net loading:

Months:

Days:

Hours:

APPENDIX III

DESCRIPTION OF PROJECT & UNITS

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

- Energy Efficiency
- Demand Response
- Behind-the-Meter renewable generation
- In Front of the Meter renewable generation
- Behind-the-Meter Storage
- In Front of the Meter Storage
- Electric Vehicles

[EACH PROJECT DESCRIPTION TO BE DEVELOPED TO DEPICT RESOURCES, INTERCONNECTION POINTS, AND INITIAL SITE LIST AND/OR CUSTOMER LIST]

The Distributed Resources that compose the Project shall each be interconnected to circuits or loads or associated with load facilities that are electrically interconnected to one or more of the following:

[to be inserted.]

The Project's Communications Systems shall be designed and installed as follows:

[to be inserted.]

APPENDIX IV
INTENTIONALLY OMITTED

APPENDIX V
CONTRACT PRICE

The price for Distribution Services shall be as follows:

Capacity Price = the applicable amount for each Delivery Month set forth in the table below

<u>Month</u>	<u>Contract Price:</u> <u>Distribution</u> <u>Capacity</u> <u>(\$/kW-month)</u>
January	\$[]
February	\$[]
March	\$[]
April	\$[]
May	\$[]
June	\$[]
July	\$[]
August	\$[]
September	\$[]
October	\$[]
November	\$[]
December	\$[]

Variable Price = the applicable amount for each kW/h delivered when Buyer requests Distribution Services

<u>Month</u>	<u>Variable Price:</u> <u>(\$/kwh)</u>
January	\$[]
February	\$[]
March	\$[]
April	\$[]
May	\$[]
June	\$[]
July	\$[]
August	\$[]
September	\$[]
October	\$[]
November	\$[]
December	\$[]

APPENDIX VI
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APPENDIX VII

INITIAL DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Distribution Services Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), and Section 2.2 of that Agreement, this letter (“Initial Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that the Delivery Conditions to 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 VIII
DELIVERY CONDITIONS

APPENDIX VIII-B

CRITICAL MILESTONES

[PG&E Note to Seller: Seller shall select the Project type offered and designate the month, date, year for compliance with the Critical Milestone.]

Each Critical Milestone is subject to extension for delays as a result and to the extent of Force Majeure, as described in Section 8.1(d).

[PG&E has provided examples for different types of Projects.]

Energy Efficiency

- Customer Agreements:
- Baseline Measurements:
- Installation:
- Performance Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Initial Contract Capacity
- Commercial Operation

Demand Response

- Customer Agreements
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Initial Contract Capacity
- Commercial Operation

Behind-the-Meter renewable generation

- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Commercial Operation: Seller shall provide to Buyer a certification of Seller Licensed Professional Engineer, substantially in the form attached hereto as Appendix IX-A, demonstrating satisfactory completion of the Project and that the Commercial Operation Date has occurred.

In Front of the Meter renewable generation

- Site Control:
- Interconnection Agreements:
- Safety Plan:
- Construction Start:
- Performance Test:
- Commercial Operation:

[] Behind-the-Meter Storage

- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Commercial Operation

[] In Front of the Meter Storage

- Site Control
- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Commercial Operation

[] Electric Vehicles

- Customer Agreements
- Capacity Test
- Commercial Operation

APPENDIX IX
ATTESTATIONS & CERTIFICATIONS

APPENDIX IX-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 Distribution Services 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 III.
- (3) The Project is capable of producing and delivering the Distribution Services at the Contract Capacity.
- (4) Seller has designed the Project to perform for the Delivery Term.
- (5) The design, construction, or operations of the Project was carried out by a 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 _____ day of _____, 20__.

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

APPENDIX IX-B
SAFETY ATTESTATION

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

Licensed Professional Engineer _____ hereby certifies the following:

- (1) The Project is able to operate in a manner consistent with the Safety Requirements;
- (2) The Project Safety Plan demonstrates compliance with all applicable Safety Requirements and reasonably takes into account the items in Appendix XVI to the Agreement; and
- (3) 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 IX-C

RESTRICTED PERIODS ATTESTATION

This Restricted Periods Attestation is delivered by [redacted] (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Distribution Services Agreement dated [redacted] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Restricted Periods 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 one of the following [*Seller to designate*]:

- [] During the Delivery Month of *[date]*, the Seller’s operation of the Project did not increase net loading on the circuits specified in Appendix III during the Restricted Periods specified in Appendix II.

- [] During the Delivery Month of *[date]*, the Seller’s operation of the Project failed to comply with the Restricted Periods identified in Appendix II in violation of Section 4.4 on the following day(s):

EXECUTED by SELLER this _____ day of _____, 20__.

Signature: _____

Name: _____

Title: _____

APPENDIX X

METERING, MEASUREMENT, VERIFICATION AND PERFORMANCE TESTING

1. Metering:

Energy Efficiency: To be agreed upon by Buyer and Seller

[PG&E preference for meter-based savings calculation. Alternatives based on deemed savings values may be considered in specific cases, subject to discussion and agreement between Buyer and Seller]

Demand Response: CAISO Meter and telemetry

In Front of the Meter renewable generation: CAISO Meter and telemetry

[PG&E Example]:

Seller shall, at its sole expense, cause the installation, maintenance, operation and replacement (as needed) of a meter to be used as the Electric Revenue Meter and back-up meters, in accordance with the Transmission Provider's metering protocols, at the Delivery Point to measure the Distribution Services.

All Distribution Services must be measured by the Project's Electric Revenue Meter to be eligible for payment under this Agreement. Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters. Seller shall authorize Buyer to view the on-line meter data from the Electric Revenue Meter. Within Seller's Meter Service Agreement with the CAISO, Seller shall identify Buyer as an authorized user with "read only" privileges.

Seller consents to Buyer obtaining Electric Revenue Meter data from the Transmission Provider and all inspection, testing and calibration data and reports for the Electric Revenue Meters. Seller agrees to provide to Buyer all meter data, inspection, testing and calibration data and reports for the submeter(s) upon Buyer's request.]

Behind-the-Meter Storage: To be agreed upon by Buyer and Seller

In Front of the Meter Storage: CAISO Meter and telemetry

Electric Vehicles: To be agreed upon by Buyer and Seller

2. Testing **[PG&E Note: Parties to negotiate appropriate testing parameters based on technology time.]**

Energy Efficiency:

- Baseline Measurement
- Performance: Performance based metering assessment at ____ and ____ months, compared to Baseline Measurement.

Demand Response:

- Baseline Capacity assessment
- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

Behind-the-Meter renewable generation:

[PG&E Example

- Initial performance Test (process and measurement)

For the Initial Performance Test, Seller shall provide Buyer Notice at least ten (10) Business Days prior to the Initial Performance Test Critical Milestone date specified in Appendix VIII-B that the Project is ready for an Initial Performance Test. Upon receipt of such Notice, Buyer shall provide Seller a Notice of the Initial Performance Test by providing a dispatch instruction to Seller by 8:00 am PPT the day before the requested Initial Performance Test to provide Distribution Services at the Contract Capacity, provided that such date is no later than the Initial Performance Test Critical Milestone date specified in Appendix VIII-B. The Initial Performance Test will test Distribution Load Capacity and Distribution Hosting Capacity.

- Buyer Performance Test (process and measurement)

For a Buyer Performance Test, Buyer shall provide Seller Notice with Buyer's scheduling and dispatch instruction as described in Section 4.8(a) that the delivery of Distribution Services for such day also qualifies as a Performance Test.

- Seller Retest (process and measurement)

Seller may perform a Seller Retest by (i) Notifying Buyer prior to any Buyer scheduled delivery of Distribution Services that such delivery of Distribution Services constitutes a Seller Retest, or (ii) Notifying Buyer of a Seller Retest by 10:00 am PPT the day before such Seller Retest if Buyer has not scheduled delivery of any Distribution Services for such day.]

In Front of the Meter renewable generation:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

Behind-the-Meter Storage:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

In Front of the Meter Storage:

- Initial performance Test (process and measurement)

- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

[] Electric Vehicles:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

APPENDIX XI

SCHEDULING

During the Delivery Term, Seller shall comply with the requirements associated with scheduling in Section 4.8 if applicable based on the Distributed Resource type

Energy Efficiency: Not Applicable

Demand Response: Applicable

Behind-the-Meter renewable generation: Applicable

PG&E Example: Buyer may instruct Seller not more than *[insert]* times in a calendar month, and not more than *[insert]* times per calendar year to have the Project deliver Distribution Services.

In Front of the Meter renewable generation: Applicable

Behind-the-Meter Storage: Applicable

In Front of the Meter Storage: Applicable

Electric Vehicles: Applicable

APPENDIX XII
INTENTIONALLY OMITTED

APPENDIX XIII

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

the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to designate a Permitted Transferee, after completing the process of obtaining PG&E’s acceptance in accordance with Section 3.2(a), to assume all of the rights and benefits and be subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if the Permitted Transferee were an original party to the Assigned Agreement.

3.2 “Permitted Transferee”.

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

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

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

4. Cure Rights.

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

4.2 Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, but only if the default is 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: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ACKNOWLEDGEMENT

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

[SELLER, a (include place of formation and business type)]

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX XV

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 XVI

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 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 XVII
OPERATIONAL LOG REQUIREMENTS

[PG&E Note: Seller to complete, per Project type]

- Energy Efficiency: Not Applicable
- Demand Response: Applicable
- Behind-the-Meter renewable generation: Applicable
- In Front of the Meter renewable generation: Applicable
- Behind-the-Meter Storage: Applicable
- In Front of the Meter Storage: Applicable
- Electric Vehicles: Applicable

APPENDIX XVIII

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 Energy Delivery Date is: *[insert date]* percent: *[insert percentage]* as measured relative to the net payments made by Buyer to Seller in each calendar year.
5. Seller will be expected to report payments made to small, diverse businesses to support the project upon request but no less than annually.

APPENDIX XIX

SAFETY PROVISIONS

Section 1

- (a) As of the Execution Date, Seller represents and warrants to Buyer that information relating to Seller's, its Affiliates' and Contractors' qualifications, experience, and safety record that Seller provided to prior to the Execution Date is materially accurate.
- (b) Seller agrees and acknowledges that Buyer's receipt, review, approval or acceptance of Seller's Project Safety Plans, Safety Remediation Plans, Safety Attestation, or related documentation or information shall not relieve Seller of any of its obligations to comply with the Safety Requirements.
- (c) Seller shall, and shall cause its Affiliates and Contractors to, design, construct, operate, and maintain the Project and conduct all Work or cause all Work to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and Contractors to, take all actions to comply with the Safety Requirements.
- (d) No later than thirty (30) days following the Execution Date ("Registration Date"), Seller shall register with the Third-Party Administrator and meet pre-qualification requirements pursuant to Buyer's Contractor Safety Program Standards as if Seller were a contractor performing high or medium risk work for Buyer thereunder. From the Registration Date through the Delivery Term, 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 to Section 4 below.
- (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 Standards, 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 Standards as provided herein. Seller's compliance with this Section 1 may include Seller's or its Contractors' responsibilities for fees or costs associated with Buyer's Contractor Safety Program Standards 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.

Section 2

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

(b) Delivery Term. Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or Safety Remediation Plan. Seller shall provide to Buyer within thirty (30) days of any such updates a Safety Attestation of a Licensed Professional Engineer with respect to the updated Project Safety Plan in the form set forth in Appendix IX-B. Throughout the Delivery Term, Buyer shall have the right to request Seller to provide its Project Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

Section 3

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

Section 4

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

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

(b) Seller's failure to resolve a Remediation Event by obtaining Buyer's written acceptance of the Safety Attestation within the Remediation Period is a material breach of this Agreement; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) 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.

END OF AGREEMENT

Advice 5567-E
June 20, 2019

Attachment B

**PG&E's Technology Neutral Pro-Forma
(TNPF) Contract -
Clean Version**

DISTRIBUTION SERVICES AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

DISTRIBUTION SERVICES AGREEMENT

TABLE OF CONTENTS

RECITALS 1

ARTICLE ONE: TERM 1

 1.1 Term..... 1

 1.2 Binding Nature..... 1

 1.3 CPUC Approval Delayed..... 2

ARTICLE TWO: DELIVERY CONDITIONS & DEVELOPMENT MILESTONES..... 2

 2.2 Delivery Conditions 2

 2.3 Failure to Meet Delivery Conditions 3

ARTICLE THREE: TRANSACTION..... 3

 3.1 Transaction..... 3

 3.2 Distribution Services..... 3

 3.3 Contract Capacity 3

 3.4 Delivery Point(s)..... 4

 3.5 Information Sharing and Shared Learning..... 4

ARTICLE FOUR: INTERCONNECTION & OPERATIONS 4

 4.1 Interconnection 4

 4.2 Interconnection Agreement..... 4

4.3	Operational Control	5
4.4	Failure to Comply with Restricted Periods	5
4.5	Project Site and Customers	5
4.6	<u>Intentionally Omitted</u>	6
4.7	Metering and Communications Systems	6
4.8	Scheduling	6
4.9	<u>Intentionally Omitted</u>	6
4.10	Supplier Diversity	6
4.11	Standards of Care.....	6
ARTICLE FIVE: TESTING AND VERIFICATION.....		7
5.1	Performance Testing	7
5.2	Measurement and Verification.....	7
ARTICLE SIX: COMPENSATION.....		7
6.1	Contract Price	7
6.2	Monthly Payment.....	7
ARTICLE SEVEN: EVENTS OF DEFAULT; REMEDIES		9
7.1	Events of Default	9
7.2	Early Termination.....	11
7.3	Rights And Remedies Are Cumulative.....	12
7.4	Waiver.....	12
ARTICLE EIGHT: FORCE MAJEURE		12
8.1	Force Majeure.....	12
ARTICLE NINE: PAYMENT AND NETTING.....		13
9.1	Billing and Payment.....	13
9.2	Netting	14
9.3	Payment	14
9.4	Restricted Periods Attestation.....	14
9.5	Disputes and Adjustments of Invoices.....	14
ARTICLE TEN: CREDIT AND COLLATERAL REQUIREMENTS.....		14
10.1	Buyer Financial Information.....	14
10.2	Seller Financial Information	15
10.3	Grant of Security Interest/Remedies.....	15
10.4	Performance Assurance	15
10.5	Letter of Credit.....	16
ARTICLE ELEVEN: SAFETY		17
11.1	Safety	17
ARTICLE TWELVE: GOVERNMENTAL CHARGES		17
12.1	Cooperation.....	17
12.2	Governmental Charges	18

ARTICLE THIRTEEN: LIMITATIONS	18
13.1 Limitation of Remedies, Liability and Damages	18
ARTICLE FOURTEEN: REPRESENTATIONS; WARRANTIES; COVENANTS	18
14.1 Representations and Warranties of Both Parties.....	18
14.2 General Covenants.....	20
14.3 Covenants of Seller.....	20
ARTICLE FIFTEEN: INDEMNITIES AND INSURANCE	20
15.1 Indemnity by Seller.....	20
15.2 No Indemnity by Buyer	21
15.3 Notice of Claim.....	21
15.4 Defense of Third Party Claims	21
15.5 Subrogation of Rights	22
15.6 Rights and Remedies are Cumulative	22
15.7 Insurance.....	22
ARTICLE SIXTEEN: RECORDS AND AUDIT RIGHTS	24
16.1 Operations Logs.....	24
16.2 Records and Audit	24
16.3 General Audit Right.....	25
16.4 Data Request Cooperation	25
16.5 Access Rights.....	25
ARTICLE SEVENTEEN: ASSIGNMENT.....	25
17.1 General Assignment.....	25
17.2 Assignment to Financing Providers	25
17.3 Assignment in Connection with a Change in Control.....	25
17.4 Unauthorized Assignment.....	26
ARTICLE EIGHTEEN: DISPUTE RESOLUTION	26
18.1 Intent of the Parties	26
18.2 Management Negotiations	26
18.3 Mediation.....	26
18.4 Arbitration.....	27
ARTICLE NINETEEN: CONFIDENTIALITY	28
19.1 Confidential Information	28
19.2 Permitted Disclosures	28
19.3 Remedies.....	28
19.4 Exceptions.....	28
19.5 Other Confidential Information	28
ARTICLE TWENTY: GENERAL PROVISIONS.....	29
20.1 General.....	29
20.2 Severability	29
20.3 Counterparts.....	29

20.4	Mobile Sierra	29
20.5	Interpretation.....	29
20.6	Recordings	30
20.7	Authorized Representatives	31
20.8	No Dedication.....	31
20.9	Governing Law	31
ARTICLE TWENTY-ONE: NOTICES		31
21.1	Notices	31
SIGNATURES.....		32

APPENDICES

The following appendices are incorporated into and made a part of this Agreement by reference.

Appendix I – General Definitions.....	I-1
Appendix II – Distribution Services Type(s) and Initial Contract Capacity.....	II-1
Appendix III – Description of Project & Units	III-1
Appendix IV – Operational Parameters	IV-1
Appendix V – Contract Price.....	V-1
Appendix VI – Intentionally Left Blank	VI-1
Appendix VII – Initial Delivery Date Confirmation Letter	VII-1
Appendix VIII – Delivery Conditions	VIII-1
Appendix VIII-A – Delivery Conditions for Distribution Hosting Capacity	VIII-A - 1
Appendix VIII-B – Critical Milestones	VIII-B - 1
Appendix IX – Attestations & Certifications.....	IX-1
Appendix IX-A – Certification for Commercial Operation	IX-A - 1
Appendix IX-B – Safety Attestation	IX-B - 1
Appendix IX-C – Restricted Periods Attestation.....	IX-C - 1
Appendix X – Form of Letter of Credit	X-1
Appendix XI – Form of Consent to Assignment	XI-1
Appendix XII – Scheduling Requirements	XII-1
Appendix XIII – Notices.....	XIII-1
Appendix XIV – Project Safety Plan and Documentation.....	XIV-1
Appendix XV – Measurement and Verification	XV-1
Appendix XVI – 50 / 200 Hours Marketing Option	XVI-1
Appendix XVII – Operational Log Requirements	XVII-1
Appendix XVIII – PG&E’s Supply Chain Responsibility Policy	XVIII-1
Appendix XIX – Safety Provisions.....	XIX-1

DISTRIBUTION SERVICES AGREEMENT

This Distribution Services 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”. [Note to Seller: Please complete]

RECITALS

I. Buyer seeks to purchase Distribution Services as defined herein from Distributed Resources in order to defer upgrades to its distribution system.

II. Seller desires to sell Distribution Services as defined herein to Buyer from the Project in accordance with the terms of this Agreement.

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

ARTICLE ONE: TERM

1.1 Term.

(a) The “Term” of this Agreement shall commence upon the Execution Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including until any compensation for Distribution Services, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting) and the Performance Assurance is released and/or returned as applicable. 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 15.1 through 15.7 (Indemnities and Insurance) and any other indemnity rights survive the end of the Term for an additional twelve (12) months after; (ii) all rights and obligations under Article Nineteen (Confidentiality) survive the end of the Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The “Delivery Term” is the period commencing on the Initial Delivery Date and continuing until _____ unless earlier terminated in accordance with the terms and conditions of this Agreement. The IDD may only be extended or delayed as follows:

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

(ii) if Seller has not achieved the Initial Delivery Date for reasons other than a Force Majeure in accordance with Article Eight, then for every day, but not more than for a total of thirty (30) days, beginning with the day after the 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 \$one thousand three hundred thirty three dollars per MW per day (\$1333/MW per day); 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 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 Initial Delivery Date would be difficult or impossible to predict with certainty and (ii) the Delay Damages are an appropriate approximation of such damages.

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: **[PG&E Drafting Note: Section references to be updated based on final agreement.]**

- (i) Articles One, Eight, and Eleven through Twenty-One;
- (ii) Sections 7.1(a)(i) – (iii); 7.2 - 7.4; and
- (iv) Sections 10.3 – 10.5.

(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 CPUC Approval 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 Delayed. CPUC Approval must be obtained on or before one hundred eighty (180) days from the date on which Buyer files this Agreement with the CPUC seeking CPUC Approval ("CPUC Approval Condition Precedent"). If CPUC Approval has not been obtained by this date, then either Party may terminate this Agreement effective upon Notice to the other Party, unless the need for such CPUC Approval has been waived in writing by both Parties. Following the termination of this Agreement pursuant to this Section 1.3, neither Party shall have any obligation or liability to the other by reason of such termination.

ARTICLE TWO: DELIVERY CONDITIONS & CRITICAL MILESTONES

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

2.2 Delivery Conditions.

- (a) The Delivery Conditions are as follows:
 - (i) At Seller's expense, Seller shall have secured all Governmental and grid operations approvals as are necessary for the safe and lawful operation and maintenance of the Project and to enable Seller to deliver Distribution Services at the Initial Contract Capacity to Buyer.
 - (ii) Seller shall have posted collateral as required by Section 10.4(a)(ii).

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

(iv) Seller shall have submitted for Buyer's review a Project Safety Plan, which must demonstrate Seller's ability to comply with the Safety Requirements on the IDD and for the Delivery Term.

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

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

(vii) At Seller's expense, Seller shall have installed any necessary metering to deliver the applicable Distribution Services in accordance with Section 4.1 and any applicable tariffs of the Utility Distribution Company.

(viii) Seller shall have met each Critical Milestone set forth in Appendix VIII-B.

(b) Seller shall satisfy (i) the Delivery Condition in Sections 2.2(a)(i), (iv), and (vii) no later than thirty (30) days before the earliest applicable IDD, (ii) the Delivery Condition in Section 2.2(a)(ii) no later than the deadline set forth in Section 10.4(a)(ii), (iii) the Delivery Condition in Section 2.2(a)(iii) no later than the deadline set forth in Appendix XIX Section 2(a), (iv) the Delivery Condition in Section 2.2(a)(v) and (vi) as of the IDD; and (v) the Delivery Conditions in Section 2.2(a)(viii) no later than the deadlines set forth in Appendix VIII-B (as such deadlines may be extended in accordance with Appendix VIII-B). Seller shall Notify Buyer of the satisfaction of each Delivery Condition, and of each Critical Milestone, in accordance with this Section 2.2(b). Seller's Notices hereunder must contain sufficient documentation to demonstrate completion of the Delivery Condition or Critical Milestone, as applicable. Once all of the Delivery Conditions to the applicable Initial Delivery Date have been satisfied or waived, the Parties shall execute and exchange on the applicable Initial Delivery Date the "Initial Delivery Date Confirmation Letter" attached as Appendix VII.

2.3 Failure to Meet Delivery Conditions. If Seller fails to satisfy all of the Delivery Conditions by the deadlines set forth in Section 2.2(b), then a Seller's Event of Default shall be deemed to occur in accordance with Section 7.1(a)(v), and Buyer shall have no obligation to purchase any Distribution Services from Seller hereunder; provided that if Seller (a) anticipates that due to a Force Majeure, it will be unable to satisfy the Delivery Conditions set forth in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) by the deadlines set forth in Section 2.2(b), then Seller may Notify Buyer of a Force Majeure Extension in accordance with Article Eight and such failure shall not be a Seller Event of Default; or (b) fails to satisfy up to two (2) Critical Milestones by the deadlines set forth in Appendix VIII-B (as extended), but otherwise satisfies all other Critical Milestones by the deadlines set forth in Appendix VIII-B, then such failure shall not be a Seller Event of Default.

ARTICLE THREE: TRANSACTION

3.1 Transaction. Subject to Section 2.3, on and after the IDD through the end of the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, Distribution Services exclusively from the Project at the Delivery Point(s) in the amount of the Contract Capacity. Seller shall deliver Distribution Services to Buyer hereunder in accordance with Buyer's instructions pursuant to

Section 4.8. Seller may sell other products, including Distribution Services in excess of the Contract Capacity, to third parties or into the applicable market (“Third Party Sales”). Seller shall receive and retain any revenues from such Third Party Sales. In no event will Buyer be obligated to purchase Distribution Services before the earliest applicable IDD.

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

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

3.4 Delivery Point(s). The Delivery Point will be (i) for each Distributed Resource composing the Project that is located behind a Customer’s retail meter, the load meter(s) for such Distributed Resource, and (ii) for each Distributed Resource composing the Project that is not located behind a Customer’s retail meter, the point of interconnection for such Distributed Resource to the CAISO Grid, and in each case (i) and (ii), as depicted in Appendix III. Seller shall be solely responsible for any costs or charges imposed on or associated with Distribution Services up to and at the Delivery Point(s). Buyer shall be responsible for any costs or charges imposed on or associated with Distribution Services after the Delivery Point(s).

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

ARTICLE FOUR: INTERCONNECTION & OPERATIONS

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

4.2 Interconnection Agreement. At Seller's expense, Seller shall (a) execute all necessary Interconnection Agreements, (b) comply with all terms and conditions contained therein as necessary for the safe and reliable delivery of Distribution Services, and (c) arrange, schedule and be responsible for any and all electric distribution and transmission service (including any Governmental Approvals required for the foregoing). At no cost or liability to Buyer, 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, so as to be able to deliver Distribution Services to Buyer. Buyer will not bear any costs or liability under this Agreement related to interconnection, electric distribution or transmission service for the Project, regardless of whether PG&E is the Utility Distribution Company for the Project. To the extent Seller undertakes Third Party Sales, Seller is solely responsible for executing interconnection agreements with the Transmission Provider and Participating Transmission Owner and fulfilling all contractual, metering and applicable interconnection requirements necessary to make such Third Party Sales.

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

4.4 Failure to Comply with Restricted Periods.

(a) Seller shall operate the Project in a manner that does not cause an increase in net loading on the circuits specified in Appendix III during Restricted Periods. Whether an increase in net loading on the circuits specified in Appendix III has occurred during a particular Restricted Period will be determined by Buyer in accordance with the measurement and verification parameters set forth in Appendix XII.

(b) For each day in a Delivery Month that the Project delivers, for any Settlement Interval, in excess of three percent (3%) of the Contract Capacity commensurate with such Settlement Interval during a Restricted Period, Seller shall pay Buyer the product of (a) the absolute value of the maximum amount, across all Settlement Intervals for such day, of kW that the Project delivered during such Restricted Period, multiplied by (b) the ratio of (i) the then highest monthly Contract Price for the calendar year, divided by (ii) the number of days in the applicable Delivery Month.

4.5 Project Site and Customers.

[PG&E Note to Sellers: Include Section 4.5 if Project is behind the meter. If the Project is in front of the meter then remove this Section 4.5]

(a) Seller shall execute all necessary forms, documentation, and agreements in order to secure all Sites and/or Customers necessary to deliver Distribution Services to Buyer from the Project. The terms and conditions of the agreements Seller executes for each Site, and with each Customer, as applicable, are independent of Buyer, and Buyer shall not have any responsibility or incur any liability pursuant to such agreements.

(b) Prior to each applicable Initial Delivery Date, Seller shall provide Buyer a list identifying all Sites and Customers, if any, composing the Project in the form set forth in Appendix IX-B

("Site/Customer List"). For each Site and each Customer, as applicable, that compose the Project, Seller must demonstrate that such Site or Customer satisfies the criteria of Incrementality and meets the measurement and verification requirements applicable to such Site or Customer in accordance with Section 5.2, and therefore is eligible to deliver Distribution Services hereunder. Buyer will verify to Seller which Seller-selected Sites and/or Customers, as applicable, are eligible to deliver Distribution Services hereunder in accordance with this Section 4.5(b) prior to each applicable Initial Delivery Date.

(c) At any time during the Delivery Term, Seller may remove, replace, or add any Distributed Resources that compose the Project, provided that (i) any such change shall not modify the Distribution Services or the ability of the Project to provide Product at the Contract Capacity, (ii) any new Distributed Resources to be added to the Project are interconnected to distribution system at the locations identified in Appendix III and in accordance with the requirements of Article Four, and (iii) any such change shall be made in accordance with this Section 4.5(c) and Article Eleven of this Agreement. No less than 15 days prior to a Delivery Month, Seller will provide Buyer an updated Site/Customer List if any Sites or Customers comprising the Project will change during such Delivery Month. For each new Site or Customer on the updated Site/Customer List, Seller must demonstrate that such Site or Customer is eligible to deliver Distribution Services hereunder in accordance with Section 4.5(b). No less than 5 days prior to such Delivery Month, Buyer will verify to Seller whether the new Sites or Customers are eligible to deliver Distribution Services hereunder in accordance with Section 4.5(b).

(d) Seller may not provide Distribution Services from a source other than the Project. At Buyer's request, Seller shall provide to Buyer all information and data necessary to confirm that Seller delivered the Distribution Services from the Project during each time period in the Delivery Term specified in Buyer's request.

4.6 Intentionally Omitted.

4.7 Metering and Communications Systems. To the extent applicable as set forth in Appendix X, Seller shall install all metering, communications systems and equipment for the Project ("Communications Systems") at Seller's sole cost and expense that is necessary to, at all times during the Delivery Term, (i) enable Seller to meet Buyer's instructions in accordance with 4.8, (ii) enable Buyer to remotely monitor the status of the Project on an aggregate and individual resource basis, (iii) permit Buyer to have real time information access to the operations of the Project, including the ability to measure increases and decreases in real time load, and (iv) provide Distribution Services during the Delivery Term. All electric metering equipment and submeters, whether owned by Seller or by a third party, which are installed on Seller's side of the Delivery Point, as applicable, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Electrical Practices; provided that if the electric metering equipment test is conducted by the interconnecting utility or the Transmission Provider, testing shall be conducted in accordance with the procedures and the standards generally applied by such utility or the Transmission Provider, as applicable. In the event that, during the Delivery Term, Buyer develops its own system that allows Buyer to exercise greater monitoring or more efficient dispatch of the Project, upon Buyer's notice Seller shall promptly enable its Communications Systems to interface with Buyer's system such that Buyer may monitor and dispatch the Project through Buyer's system.

4.8 Scheduling. As applicable per Appendix XI, during the Delivery Term, Buyer may request the Project to deliver Distribution Services at any amount up to the Contract Capacity by providing an instruction to Seller by 8:00 am PPT the day before the requested delivery in a manner to be determined by Buyer in its sole discretion, which may include verbal or electronic notification. Buyer's delivery instruction will state for each Delivery Hour covered by the delivery instruction the quantity of the applicable Distribution Service to be delivered by Seller during such Delivery Hour.

4.9 Intentionally Omitted.

4.10 Supplier Diversity. Seller shall comply with Buyer's Supplier Diversity Program in accordance with Appendix XVII.

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

ARTICLE FIVE: TESTING AND VERIFICATION

5.1 Performance Testing.

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

(b) After the Initial Delivery Date and during the Delivery Term, Buyer will have the right to conduct a Performance Test ("Buyer Performance Test") no more than once a calendar year to demonstrate whether the Project is capable of delivering the Distribution Services at the Contract Capacity. Seller will have a right to retest the Project with a Performance Test once a calendar year after a Buyer Performance Test ("Seller Retest").

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

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

(iii) If a Buyer Performance Test or Seller Retest demonstrates the Project is not capable of delivering Distribution Services at 85% or more of the Initial Contract Capacity, an Event of Default shall occur in accordance with Section 7.1(a)(vii).

5.2 Measurement and Verification. The amount of Distribution Services the Project delivers will be measured for all purposes under this Agreement based on the Project's technology using the methodologies and parameters set forth in Appendix X.

ARTICLE SIX: COMPENSATION

6.1 Contract Price. The price for Distribution Services shall be as set forth in Appendix V.

6.2 Monthly Payment. Buyer shall calculate a monthly payment ("MP") for the Distribution Services provided by Seller in each Delivery Month in accordance with the formula set forth below. If the calculation results in positive number, Buyer shall pay Seller as set forth herein; if the calculation results in a negative number, Seller shall pay Buyer as set forth herein.

[PG&E Note: Formula would need to be modified for Energy Efficiency]

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

$$MP_m = FP_m + VP_m$$

where,

MP_m = Monthly Payment for Delivery Month m

FP_m = Fixed Payment for Delivery Month m

VP_m = Variable Payment for Delivery Month m

Fixed Payment

$$FP_m = CC_m \times CP_m \times DSF_m \times \text{Delivered Services Adjustment}_m$$

where,

CC_m = Contract Capacity for Delivery Month m

CP_m = Capacity Price for Delivery Month m

DSF_m = Distribution Services Factor for Delivery Month m, based on the ratio of $\sum DSP_i / \sum DSE_i$, where:

\sum = the sum from $i = 1$ to n , where n = number of times Buyer requires Distribution Services for a Delivery Month;

DSP_i = the amount of Distribution Services delivered by Seller in response to Buyer's dispatch or notification i ;

DSE_i = the amount of Distribution Services Buyer requires for each dispatch or notification i ;

The DSF will be capped at 1.0 in all delivery months

DSF	Delivered Services Adjustment_m
≥0.90 and ≤ 1.00	1.0
≥0.80 and < 0.90	0.5
≥0.75 and < 0.80	0
< 0.75	DSF – 0.75 (Seller will pay Buyer)

Variable Payment

$$VP_m = \sum \min (DSP_i, DSE_i) \times VOM_m$$

where,

VOM_m = Variable Price for Delivery Month m

ARTICLE SEVEN: EVENTS OF DEFAULT; REMEDIES

7.1 Events of Default.

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

(i) any asset of Seller that is material to its performance under this Agreement is taken by or is subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within sixty (60) 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 10.3, 10.4, 10.4, and 10.5;

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

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

(v) Seller fails to achieve the Initial Delivery Date, unless Seller (A) Notifies Buyer of a Force Majeure Extension pursuant to Article Eight; or (B) pays Delay Damages to Buyer in accordance with Article One;

(vi) Seller fails to satisfy the Delivery Conditions by the applicable deadlines set forth in Section 2.2(b), unless Seller (A) Notifies Buyer of a Force Majeure Extension for the Delivery Conditions set forth in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) pursuant to Article Eight; or Seller's failure to satisfy the Delivery Conditions is due to two (2) or less missed Critical Milestones and Section 2.3(b) is applicable;

(vii) The monthly Distribution Services Factor for any calendar year during the Delivery Term averages less than seventy-five percent (75%) for any reason other than Force Majeure;

(viii) The results of a Performance Test show that the Project provides Distribution Services at less than eighty-five percent (85%) of the Contract Capacity set forth in Section 3.3 for any reason other than Force Majeure;

(ix) Seller fails to comply with Section 4.4(a) on more than three (3) days in a calendar year during the Delivery Term;

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

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

(ii) absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Project), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within ninety (90) days;

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

(iv) any representation or warranty made by a Party pursuant to Appendix XIX Section 1(a) or Article Fourteen 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 Appendix XIX Section 1(a) or Article Fourteen is false, misleading or erroneous in any material respect;

(v) a Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to another entity and at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving, or transferring entity fails to assume all of the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an assumption agreement reasonably satisfactory to the other Party; or

(vi) a Party fails to perform any of its material obligations or covenants under this Agreement not otherwise addressed in this Section 7.1, and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) 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.

7.2 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 21.1) and no later than twenty (20) days after such Notice is deemed to be received (as provided in Section 21.1), as an early termination date of this Agreement (“Early Termination Date”), (ii) accelerate all amounts owing between the Parties, (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. The “Termination Payment” will be equal to (i) the Project Development Security, less any Delay Damages, if the Early Termination Date occurs prior to the Initial Delivery Date or (ii) equal to the Delivery Term Security if the Early Termination Date occurs after the Initial Delivery Date.

(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 Eighteen.

7.3 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Seven are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement; provided that the Termination Payment will be the Non-Defaulting Party’s sole remedy for damage in the event of the early termination of this Agreement and the Defaulting Party shall owe such amount without duplication to any other damages sustained by the Non-Defaulting Party. In no event shall the Defaulting Party owe the Non-Defaulting Party under different provisions of this Agreement for the same damages, claims, losses, liabilities or expenses.

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

payments or suspend performance under Section 7.2 for a period of more than twenty (20) Business Days unless an Early Termination Date has been declared, and Notice thereof given, in accordance with Section 7.2.

ARTICLE EIGHT: FORCE MAJEURE

8.1 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. In addition to the requirements of Section 8.1(d) below if applicable the suspension of a Party's performance under the Agreement due to a claim of Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure event. A Party suspending performance due to Force Majeure shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Agreement after the cessation of any Force Majeure event. If Seller cannot meet the Initial Delivery Date as a result of a Force Majeure or a Force Majeure Extension as Notified by Seller in the case of Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv) or 2.2(a)(v), in accordance with this Article Eight, then Sections 8.1(d) and (e) shall apply.

(d) Force Majeure Extension. Notwithstanding anything to the contrary in this Agreement, only the Initial Delivery Date and the respective due dates for the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) may be extended on a day for day basis in the event of Force Majeure ("Force Majeure Extension"); provided that Seller provides Notice to Buyer of such Force Majeure Extension, works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

(i) Seller's claims for a Force Majeure Extension cannot cumulatively exceed thirty (30) days; and

(ii) In order to request a Force Majeure Extension, Seller shall provide Buyer with Notice of the requested Force Majeure Extension no later than sixty (60) days prior to the Initial Delivery Date, which Notice must clearly identify the Force Majeure Extension and the length of the Force Majeure Extension subject to the limitations in this Section 8.1(d); provided that if sixty (60) days

prior Notice is impracticable or impossible, Seller shall provide Notice as soon as possible after the occurrence of the Force Majeure event.

(e) Failure to Achieve Initial Delivery Date after Force Majeure Extension. Either Party shall have the right, but not the obligation, to terminate this Agreement due to Seller's failure to achieve the Initial Delivery Date due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) following a Force Majeure Extension.

(f) Force Majeure Failure. Subject to Section 8.1(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" if during the Delivery Term:

(i) the monthly Distribution Services Factor for any calendar year during the Delivery Term averages less than sixty percent (60 %) for any reason; or

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

(f) Effect of Termination. If either Party exercises its termination right under Section 8.1(e) for Seller's failure to achieve the Initial Delivery Date due to a failure to achieve the Delivery Conditions in Sections 2.2(a)(i), 2.2(a)(iii), 2.2(a)(iv), or 2.2(a)(v) following a Force Majeure Extension or Buyer exercises its termination right in connection with a Force Majeure Failure under Section 8.1(f), then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in the Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Section 1.1(a).

ARTICLE NINE: PAYMENT AND NETTING

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

(a) the Monthly Payment, and

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

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

9.3 Payment. Payment of all undisputed amounts owed 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.

9.4 Restricted Periods Attestation. Within Seller's monthly invoice, Seller shall submit to Buyer an attestation in the form set forth in Appendix IX-C stating that the operation of the Project did not cause an increase in net loading on the circuits specified in Appendix III during the Restricted Periods specified in Appendix II for that Delivery Month in violation of Section 4.4.

9.5 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 Eighteen (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 9.4 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 TEN: CREDIT AND COLLATERAL REQUIREMENTS

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

10.2 Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each fiscal year, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year, if available, (or audited 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 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. [Seller shall be deemed to have satisfied such delivery requirements if the applicable reports are publicly available on Seller's website or 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 Buyer upon their completion and filing with the SEC.

10.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Performance Assurance hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash-equivalent collateral and any proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) 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 the Performance Assurance or other collateral posted by Seller or its Affiliates with Buyer under another agreement, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Performance Assurance, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10.4 Performance Assurance.

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

(i) Project Development Security. Within five (5) Business Days following the Execution Date, Seller shall post Project Development Security in the form of cash or letter of credit, equal to *[Seller to insert dollar amount equal to \$40/kW of Contract Capacity]*.

(ii) Delivery Term Security. Prior to the Initial Delivery Date, Seller shall post Delivery Term Security in the form of cash or letter of credit, in an amount equal to *[Seller to insert dollar amount equal to \$40/kW of Contract Capacity]*. With Buyer's consent, Seller may elect to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security.

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

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

(c) Return of Project Development Security. If, after the 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) unless Seller elects to apply the Project Development Security to the Delivery Term Security in accordance with Section 10.4(a)(ii). The Project Development Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Buyer's receipt and acceptance of the Delivery Term Security unless, with Buyer's consent, Seller elects to apply the Project Development Security posted pursuant to Section 10.4(a)(i) toward the Delivery Term Security posted pursuant to Section 10.4(a)(ii).

(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 XV (Notices).

(e) Return of Delivery Term Security. Buyer shall return the unused portion of Delivery Term Security, including the payment of any Interest Amount due thereon pursuant to Section 10.4(d) above, to Seller promptly after the following has occurred: (i) the Term has ended, or subject to Section 7.2, 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.

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

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

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either subsection 10.5(b)(A) or 10.5(b)(B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either subsections (A) or (B) below is considered the "Cure"):

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

(B) posting cash.

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

(c) Notwithstanding the foregoing in Section 10.5(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then Buyer may make a demand to Seller by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). 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 10.5(b) and, if Seller fails to Cure, then the last paragraph in Section 10.5(b) shall apply to Seller.

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

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

ARTICLE ELEVEN: SAFETY

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

ARTICLE TWELVE: GOVERNMENTAL CHARGES

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

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

ARTICLE THIRTEEN: LIMITATIONS

13.1 Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE

ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION (OTHER THAN IN SECTIONS 15.1 THROUGH 15.6) OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTIONS 15.1 THROUGH 15.6 (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 FOURTEEN: REPRESENTATIONS; WARRANTIES; COVENANTS

14.1 Representations and Warranties of Both Parties. Each Party represents and warrants to the other Party that as of the Execution Date:

(a) 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;

(b) except for receipt of CPUC Approval, in the case of Buyer, and the Governmental Approvals necessary to install, operate and maintain the Project, in the case of Seller, it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

(i) 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);

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

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

14.2 General Covenants. Each Party covenants that throughout the Term:

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

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

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

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

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

- (a) it will deliver Distribution Services to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person;
- (b) it shall operate the Project during the Delivery Term in accordance with the Operating Parameters in Appendix II and the Safety Requirements; and
- (c) it shall comply with all Utility Distribution Company, Participating Transmission Owner, and CAISO Tariff requirements applicable to the Project.

ARTICLE FIFTEEN: INDEMNITIES AND INSURANCE

15.1 Indemnity by Seller.

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

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

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

15.3 Notice of Claim.

(a) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article Fifteen, 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 15.1 or 15.2. (The Notice is referred to as a “Notice of Claim”). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the Indemnifiable Loss.

(b) Notice of Third Party Claim. If the Indemnitee receives Notice of the assertion or commencement of a Third Party Claim against it with respect to which the Indemnitor is obligated to

provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) 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 15.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

15.4 Defense of Third Party Claims. If, within ten (10) days after giving a Notice of Claim regarding a Third Party Claim to the Indemnitor pursuant to Section 15.3(b), the Indemnitee receives Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 15.3(b), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) 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.

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

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

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

(a) Workers' Compensation and Employers' Liability.

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

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

(b) Commercial General Liability.

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

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

(iii) Coverage shall:

(A) by "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 SIXTEEN: RECORDS AND AUDIT RIGHTS

16.1 Operations Logs. Seller shall maintain a complete and accurate log of all material operations as set forth in Appendix XVII. 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 all applicable Laws.

16.2 Records and Audit.

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

- (i) Seller's unaudited financial statements and notes to financial statements;
- and
- (ii) financial schedules underlying the financial statements.

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

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

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

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

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

Seller's Affiliate. Seller shall keep Buyer advised of current procedures for contacting the Project operator's and/or Seller's Affiliate safety and security departments.

ARTICLE SEVENTEEN: ASSIGNMENT

17.1 General Assignment. Neither Party will 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 (a) the assignee assumes the transferring Party's payment and performance, credit and collateral obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, (d) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request, and (e) in the case of Seller as the transferring Party with a transfer to an assignee that will have operational control of the Project, Seller delivers to Buyer, upon Buyer's request, documentation to demonstrate the assignee is capable of satisfying and complying with the Safety Requirements.

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

17.3 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 17.1(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.

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

ARTICLE EIGHTEEN: DISPUTE RESOLUTION

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

18.2 Management Negotiations.

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

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

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

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

18.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 18.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by JAMS. As the first step the Parties agree to mediate any controversy before a mediator from the JAMS panel, pursuant to JAMS's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) 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.

18.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours

duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

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

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

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

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

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

ARTICLE NINETEEN: CONFIDENTIALITY

19.1 Confidential Information. Throughout the Term, neither Party shall disclose the non-public terms or conditions of this Agreement or the Parties’ bidding or negotiation process or any technical, commercial, or operating information marked as proprietary or confidential (the “Confidential Information”) to a third party.

19.2 Permitted Disclosures. A Party may disclose Confidential Information: (a) to the Party’s Affiliates and the Party’s and its Affiliate’s employees, counsel, accountants, advisors, lenders, 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 19.4; (e) in order to comply with any applicable Law or any exchange, regulation, Balancing Authority, control area or Transmission Provider rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“Disclosing Party”),

other than to those entities set forth in subsection (f); (f) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC; or (g) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to a duly authorized Governmental Authority including the CPUC or any division thereof.

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

19.3 Remedies. Except as provided in Section 19.2 with respect to the Parties’ permitted disclosures, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

19.4 Exceptions.

(a) Notwithstanding Section 19.1 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 19.2, Seller is permitted to disclose Buyer’s Contractor Safety Program Standards to Contractors.

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

ARTICLE TWENTY: GENERAL PROVISIONS

20.1 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will provide the original signed Agreement; provided, however, that the execution and delivery of this Agreement and its counterparts is subject to Section 20.3. The Parties acknowledge and agree that this Agreement is a forward contract

(within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). This Agreement shall be binding on each Party's successors and permitted assigns.

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

20.3 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by e-mail will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by e-mail will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

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

20.5 Interpretation. The following rules of interpretation apply:

(a) The term "including" means "including without limitation"; the 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, unreasonably conditioned or unreasonably delayed.

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

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

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

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

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

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

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

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

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

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

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

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

20.9 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA,

WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

ARTICLE TWENTY-ONE: NOTICES

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

SIGNATURES

Agreement Execution

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

[Seller]

company

**PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I

GENERAL DEFINITIONS

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

“Agreement” means this Distribution Services Agreement, and, together with each and every appendix, attachment, amendment, schedule and written supplement hereto, to the extent those are executed by the Parties, constitutes the entire agreement of the Parties as to the matters set forth herein.

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

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

“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.

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

“Buyer” means PG&E in its capacity as a purchaser of Distribution Services 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 15.1.

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

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

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

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

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

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

“Communications Systems” has the meaning set forth in Section 4.7.

“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 Standards” means all of the following:

(a) The standards in PG&E’s Contractor Safety Standard, which as of the Execution Date can be found at http://www.pge.com/includes/docs/pdfs/b2b/purchasing/suppliers/contractorsafety/ContractorSafetyProgram_Requirements.pdf?WT.mc_id=Vanity_contractorsafety;

(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); and

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

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

“Contract Price” means the amount specified in Section 6.1.

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

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

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, pursuant to which the CPUC approves of this agreement in its entirety. 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 Approval Condition Precedent” has the meaning set forth in Section 1.3.

“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.

“Critical Milestone” is a milestone identified in Appendix VIII-B.

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

“Customer” means a Person that (i) is located in Buyer’s Service Territory, (ii) has load connected to one or more of the feeders set forth in Appendix III, and (iii) has an effective Service Agreement.

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

“Delivery Condition” has the meaning set forth in Section 2.2(a).

“Delivery Month” means a calendar month during the Delivery Term.

“Delivery Point(s)” means the revenue meters specified and selected in Appendix III.

“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 19.2.

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

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

“Distribution Hosting Capacity” has the meaning set forth in Appendix II.

“Distribution Load Capacity” has the meaning set forth in Appendix II.

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

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

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

“Electric Revenue Meter” means the measurement device(s) used by the interconnecting Transmission Provider to measure deliveries of Energy at the Delivery Point for purposes of billing.

“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.

“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 kw-hours.

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

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

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

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

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

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

“Execution Date” means the latest signature date found on the signature page of this Agreement.

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

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

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

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

(b) Force Majeure does not include: [PG&E NOTE: Definition may need to be updated to reflect Project specifics.]

(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 Distribution Services at a price greater than the price set forth in this Agreement;

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

(vi) Seller’s inability to complete interconnection by the applicable 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)(ii) 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)(ii) 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 any Site [or Customer] that is a part of the Project.

“Force Majeure Extension” has the meaning set forth in Section 8.1(d).

“Force Majeure Failure” has the meaning set forth in Section 8.1(e).

“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, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

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

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

Incrementality: [PG&E Note: This definition may not be necessary depending on the type of BTM project, technology, and how it has been defined. It may be necessary to ensure a customer is not being compensated under multiple programs for the same service. Further stakeholder feedback requested.]

“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 10.5(c)(i)(A).

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

“Initial Delivery Date” or “IDD” means February 1, 2020.

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

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

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

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

“Interest Period” means the monthly period beginning on the first 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 10.5(c).

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

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

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

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

“Mechanical Completion” means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested in a safe and prudent manner that does not void any equipment or system warranties or violate any permits, approvals or Laws; and (b) the Project is ready for testing and commissioning, as applicable.

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

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

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

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

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

“MW” means megawatts.

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

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

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

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

“Notify” means to provide a Notice.

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

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission

lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

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

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

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

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

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

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

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

“PG&E 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.

“Plan Extension” has the meaning set forth in Appendix XIX Section 2(a)(i).

“Project” means all Distributed Resources, together with all appurtenant facilities and equipment, including any control and Communication Systems, necessary to provide Distribution Services as depicted in Appendix III. Resources that compose the Project must be Distributed Resources, and may be in front of or behind a Customer’s retail meter, and may represent a single Site or an aggregation of multiple Sites.

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

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

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

“Protocol” has the meaning set forth in Section 19.2.

“Prudent Electrical Practices” means those practices, methods, codes and acts engaged in or approved by a significant portion of the electric power industry and applicable to resources composing the Project during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices,

reliability, safety and expedition. Prudent Electrical Practices are not intended to be limited to the optimum practices, methods, or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

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

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

(b) equipment, material, and supplies are sufficient and accessible to operate the Project 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 operating in the relevant region; and

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

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

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

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

“Remediation Event” means the occurrence of any of the following with respect to the Project or a Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer's guidelines that requires modification to equipment or the Project's operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Appendix XIX Section 2, in its sole discretion, that the Seller, the Project Safety Plan, Safety 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 Appendix XIX Section 4.

“Restricted Period” has the meaning set forth in Appendix II.

“Restricted Period Attestation” means a written attestation or certification to be delivered to Buyer with Seller's monthly invoice stating (1) whether, for the applicable Delivery Month, the operation of the

Project complied with Section 4.4, and (2) if the operation of the Project did not comply with Section 4.4 on every day of the applicable Delivery Month, the dates during which the operation of the Project did not comply with Section 4.4. The Restricted Period Attestation shall be substantially in the form attached hereto as Appendix IX-C.

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

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

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

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

“Safety Requirements” means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Standards, and all applicable requirements of Law, 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.

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

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

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

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

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

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

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

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

“Site(s)” means the real property or properties on which one or more Distributed Resources comprising the Project is located, as identified in Appendix III and as may be updated from time to time in accordance with Section 4.5.

“Site/Customer List” has the meaning set forth in Section 4.5(b).

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

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

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

“Termination Payment” has the meaning set forth in 7.3.

“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 Standards. As of the Execution Date of this Agreement, PG&E’s Third-Party Administrator is ISNetworld.

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

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

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

“Transmission Provider” means the CAISO.

“Utility Distribution Company” means PG&E.

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

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

“Work” means (a) work or operations performed by a Party or on a Party’s behalf; and (b) materials, parts or equipment furnished in connection with such work or operations

APPENDIX II

DISTRIBUTION SERVICES TYPE(S) AND INITIAL CONTRACT CAPACITY

1. Distribution Services Type(s).

“Distribution Services” shall consist of the Project’s ability to provide, and the provision of, one or both of the following services that are checked as applicable:

Distribution Capacity Services, which is provided by decreasing net loading on distribution infrastructure through decreasing electrical consumption or increasing generation, in accordance with the Operating Parameters set forth below to reduce thermal overload conditions and improve local distribution reliability and resiliency;

Voltage Support Services: *not available at this time*

Reliability (Back-Tie) Services: *not available at this time*

Resiliency (Microgrid) Services: *not available at this time*

2. Initial Contract Capacity.

The Initial Contract Capacity is _____ MW.

3. Operation Parameters.

The Operating Parameters of the Project are:

Delivery Months:

Delivery Days:

Delivery Hours: *[Example times provided]*

6:00 pm to 9:00 pm

9:00 pm to 12:00 am (midnight)

6:00 pm to 12:00 am (midnight)

Minimum duration the Project must be able to deliver:

3 hours

6 hours

4. Restricted Periods.

The operation of the Project must not cause an increase in net loading on the feeders specified in Appendix III during the following periods (“Restricted Periods”):

The operation of the Project shall not cause an increase in net loading:

Months:

Days:

Hours:

APPENDIX III

DESCRIPTION OF PROJECT & UNITS

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

- Energy Efficiency
- Demand Response
- Behind-the-Meter renewable generation
- In Front of the Meter renewable generation
- Behind-the-Meter Storage
- In Front of the Meter Storage
- Electric Vehicles

[EACH PROJECT DESCRIPTION TO BE DEVELOPED TO DEPICT RESOURCES, INTERCONNECTION POINTS, AND INITIAL SITE LIST AND/OR CUSTOMER LIST]

The Distributed Resources that compose the Project shall each be interconnected to circuits or loads or associated with load facilities that are electrically interconnected to one or more of the following:

[to be inserted.]

The Project's Communications Systems shall be designed and installed as follows:

[to be inserted.]

APPENDIX IV
INTENTIONALLY OMITTED

APPENDIX V
CONTRACT PRICE

The price for Distribution Services shall be as follows:

Capacity Price = the applicable amount for each Delivery Month set forth in the table below

<u>Month</u>	<u>Contract Price:</u> <u>Distribution</u> <u>Capacity</u> <u>(\$/kW-month)</u>
January	\$[]
February	\$[]
March	\$[]
April	\$[]
May	\$[]
June	\$[]
July	\$[]
August	\$[]
September	\$[]
October	\$[]
November	\$[]
December	\$[]

Variable Price = the applicable amount for each kW/h delivered when Buyer requests Distribution Services

<u>Month</u>	<u>Variable Price:</u> <u>(\$/kwh)</u>
January	\$[]
February	\$[]
March	\$[]
April	\$[]
May	\$[]
June	\$[]
July	\$[]
August	\$[]
September	\$[]
October	\$[]
November	\$[]
December	\$[]

APPENDIX VI
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APPENDIX VII

INITIAL DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Distribution Services Agreement dated _____ (“Agreement”) by and between _____ (“Buyer”) and _____ (“Seller”), and Section 2.2 of that Agreement, this letter (“Initial Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that the Delivery Conditions to 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 VIII
DELIVERY CONDITIONS

APPENDIX VIII-B

CRITICAL MILESTONES

[PG&E Note to Seller: Seller shall select the Project type offered and designate the month, date, year for compliance with the Critical Milestone.]

Each Critical Milestone is subject to extension for delays as a result and to the extent of Force Majeure, as described in Section 8.1(d).

[PG&E has provided examples for different types of Projects.]

Energy Efficiency

- Customer Agreements:
- Baseline Measurements:
- Installation:
- Performance Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Initial Contract Capacity
- Commercial Operation

Demand Response

- Customer Agreements
- Capacity Test: Seller shall demonstrate in the Initial Performance Test that the Project is capable of delivering Distribution Services at 100% of Initial Contract Capacity
- Commercial Operation

Behind-the-Meter renewable generation

- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Commercial Operation: Seller shall provide to Buyer a certification of Seller Licensed Professional Engineer, substantially in the form attached hereto as Appendix IX-A, demonstrating satisfactory completion of the Project and that the Commercial Operation Date has occurred.

In Front of the Meter renewable generation

- Site Control:
- Interconnection Agreements:
- Safety Plan:
- Construction Start:
- Performance Test:
- Commercial Operation:

[] Behind-the-Meter Storage

- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Commercial Operation

[] In Front of the Meter Storage

- Site Control
- Interconnection Agreements
- Safety Plan
- Construction Start
- Performance Test
- Commercial Operation

[] Electric Vehicles

- Customer Agreements
- Capacity Test
- Commercial Operation

APPENDIX IX
ATTESTATIONS & CERTIFICATIONS

APPENDIX IX-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 Distribution Services 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 III.
- (3) The Project is capable of producing and delivering the Distribution Services at the Contract Capacity.
- (4) Seller has designed the Project to perform for the Delivery Term.
- (5) The design, construction, or operations of the Project was carried out by a 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 _____ day of _____, 20__.

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

APPENDIX IX-B
SAFETY ATTESTATION

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

Licensed Professional Engineer _____ hereby certifies the following:

- (1) The Project is able to operate in a manner consistent with the Safety Requirements;
- (2) The Project Safety Plan demonstrates compliance with all applicable Safety Requirements and reasonably takes into account the items in Appendix XVI to the Agreement; and
- (3) 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 IX-C

RESTRICTED PERIODS ATTESTATION

This Restricted Periods Attestation is delivered by [redacted] (“Seller”) to Pacific Gas and Electric Company (“Buyer”) in accordance with the terms of that certain Distribution Services Agreement dated [redacted] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Restricted Periods 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 one of the following [*Seller to designate*]:

- [] During the Delivery Month of *[date]*, the Seller’s operation of the Project did not increase net loading on the circuits specified in Appendix III during the Restricted Periods specified in Appendix II.

- [] During the Delivery Month of *[date]*, the Seller’s operation of the Project failed to comply with the Restricted Periods identified in Appendix II in violation of Section 4.4 on the following day(s):

EXECUTED by SELLER this _____ day of _____, 20__.

Signature: _____

Name: _____

Title: _____

APPENDIX X

METERING, MEASUREMENT, VERIFICATION AND PERFORMANCE TESTING

1. Metering:

Energy Efficiency: To be agreed upon by Buyer and Seller

[PG&E preference for meter-based savings calculation. Alternatives based on deemed savings values may be considered in specific cases, subject to discussion and agreement between Buyer and Seller]

Demand Response: CAISO Meter and telemetry

In Front of the Meter renewable generation: CAISO Meter and telemetry

[PG&E Example]:

Seller shall, at its sole expense, cause the installation, maintenance, operation and replacement (as needed) of a meter to be used as the Electric Revenue Meter and back-up meters, in accordance with the Transmission Provider's metering protocols, at the Delivery Point to measure the Distribution Services.

All Distribution Services must be measured by the Project's Electric Revenue Meter to be eligible for payment under this Agreement. Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters. Seller shall authorize Buyer to view the on-line meter data from the Electric Revenue Meter. Within Seller's Meter Service Agreement with the CAISO, Seller shall identify Buyer as an authorized user with "read only" privileges.

Seller consents to Buyer obtaining Electric Revenue Meter data from the Transmission Provider and all inspection, testing and calibration data and reports for the Electric Revenue Meters. Seller agrees to provide to Buyer all meter data, inspection, testing and calibration data and reports for the submeter(s) upon Buyer's request.]

Behind-the-Meter Storage: To be agreed upon by Buyer and Seller

In Front of the Meter Storage: CAISO Meter and telemetry

Electric Vehicles: To be agreed upon by Buyer and Seller

2. Testing **[PG&E Note: Parties to negotiate appropriate testing parameters based on technology time.]**

Energy Efficiency:

- Baseline Measurement
- Performance: Performance based metering assessment at ____ and ____ months, compared to Baseline Measurement.

Demand Response:

- Baseline Capacity assessment
- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

Behind-the-Meter renewable generation:

[PG&E Example

- Initial performance Test (process and measurement)

For the Initial Performance Test, Seller shall provide Buyer Notice at least ten (10) Business Days prior to the Initial Performance Test Critical Milestone date specified in Appendix VIII-B that the Project is ready for an Initial Performance Test. Upon receipt of such Notice, Buyer shall provide Seller a Notice of the Initial Performance Test by providing a dispatch instruction to Seller by 8:00 am PPT the day before the requested Initial Performance Test to provide Distribution Services at the Contract Capacity, provided that such date is no later than the Initial Performance Test Critical Milestone date specified in Appendix VIII-B. The Initial Performance Test will test Distribution Load Capacity and Distribution Hosting Capacity.

- Buyer Performance Test (process and measurement)

For a Buyer Performance Test, Buyer shall provide Seller Notice with Buyer's scheduling and dispatch instruction as described in Section 4.8(a) that the delivery of Distribution Services for such day also qualifies as a Performance Test.

- Seller Retest (process and measurement)

Seller may perform a Seller Retest by (i) Notifying Buyer prior to any Buyer scheduled delivery of Distribution Services that such delivery of Distribution Services constitutes a Seller Retest, or (ii) Notifying Buyer of a Seller Retest by 10:00 am PPT the day before such Seller Retest if Buyer has not scheduled delivery of any Distribution Services for such day.]

In Front of the Meter renewable generation:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

Behind-the-Meter Storage:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

In Front of the Meter Storage:

- Initial performance Test (process and measurement)

- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

[] Electric Vehicles:

- Initial performance Test (process and measurement)
- Buyer Performance Test (process and measurement)
- Seller Retest (process and measurement)

APPENDIX XI

SCHEDULING

During the Delivery Term, Seller shall comply with the requirements associated with scheduling in Section 4.8 if applicable based on the Distributed Resource type

Energy Efficiency: Not Applicable

Demand Response: Applicable

Behind-the-Meter renewable generation: Applicable

PG&E Example: Buyer may instruct Seller not more than *[insert]* times in a calendar month, and not more than *[insert]* times per calendar year to have the Project deliver Distribution Services.

In Front of the Meter renewable generation: Applicable

Behind-the-Meter Storage: Applicable

In Front of the Meter Storage: Applicable

Electric Vehicles: Applicable

APPENDIX XII
INTENTIONALLY OMITTED

APPENDIX XIII

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

APPENDIX XIV – FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

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

Recitals

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

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

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

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. Consent. Subject to the terms and conditions below, PG&E consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Financing 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

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

the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to designate a Permitted Transferee, after completing the process of obtaining PG&E’s acceptance in accordance with Section 3.2(a), to assume all of the rights and benefits and be subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if the Permitted Transferee were an original party to the Assigned Agreement.

3.2 “Permitted Transferee”.

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

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

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

4. Cure Rights.

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

4.2 Cure Period Available to Financing Provider Prior to Any Termination by PG&E. Upon the occurrence of an Event of Default, but only if the default is 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: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ACKNOWLEDGEMENT

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

[SELLER, a (include place of formation and business type)]

Signature: _____

Name: _____

Title: _____

Date: _____

APPENDIX XV

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 XVI

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 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 XVII
OPERATIONAL LOG REQUIREMENTS

[PG&E Note: Seller to complete, per Project type]

- Energy Efficiency: Not Applicable
- Demand Response: Applicable
- Behind-the-Meter renewable generation: Applicable
- In Front of the Meter renewable generation: Applicable
- Behind-the-Meter Storage: Applicable
- In Front of the Meter Storage: Applicable
- Electric Vehicles: Applicable

APPENDIX XVIII

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 Energy Delivery Date is: *[insert date]* percent: *[insert percentage]* as measured relative to the net payments made by Buyer to Seller in each calendar year.
5. Seller will be expected to report payments made to small, diverse businesses to support the project upon request but no less than annually.

APPENDIX XIX

SAFETY PROVISIONS

Section 1

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

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

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

(d) No later than thirty (30) days following the Execution Date ("Registration Date"), Seller shall register with the Third-Party Administrator and meet pre-qualification requirements pursuant to Buyer's Contractor Safety Program Standards as if Seller were a contractor performing high or medium risk work for Buyer thereunder. From the Registration Date through the Delivery Term, 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 to Section 4 below.

(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 Standards, 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 Standards as provided herein. Seller's compliance with this Section 1 may include Seller's or its Contractors' responsibilities for fees or costs associated with Buyer's Contractor Safety Program Standards 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.

Section 2

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

(b) Delivery Term. Throughout the Delivery Term, Seller shall update the Safeguards and the Project Safety Plan as required by Safety Requirements or Safety Remediation Plan. Seller shall provide to Buyer within thirty (30) days of any such updates a Safety Attestation of a Licensed Professional Engineer with respect to the updated Project Safety Plan in the form set forth in Appendix IX-B. Throughout the Delivery Term, Buyer shall have the right to request Seller to provide its Project Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

Section 3

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

Section 4

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

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

(b) Seller's failure to resolve a Remediation Event by obtaining Buyer's written acceptance of the Safety Attestation within the Remediation Period is a material breach of this Agreement; provided, however, that Seller may request to extend the Remediation Period by up to ninety (90) 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.

END OF AGREEMENT

**PG&E Gas and Electric
Advice Submittal List
General Order 96-B, Section IV**

AT&T	Downey & Brand	Pioneer Community Energy
Albion Power Company	East Bay Community Energy	Praxair
Alcantar & Kahl LLP	Ellison Schneider & Harris LLP	Regulatory & Cogeneration Service, Inc.
	Energy Management Service	SCD Energy Solutions
Alta Power Group, LLC	Engineers and Scientists of California	
Anderson & Poole	Evaluation + Strategy for Social Innovation	SCE
	GenOn Energy, Inc.	SDG&E and SoCalGas
Atlas ReFuel	Goodin, MacBride, Squeri, Schlotz & Ritchie	
BART	Green Charge Networks	SPURR
	Green Power Institute	San Francisco Water Power and Sewer
Barkovich & Yap, Inc.	Hanna & Morton	Seattle City Light
P.C. CalCom Solar	ICF	Sempra Utilities
California Cotton Ginners & Growers Assn	International Power Technology	Southern California Edison Company
California Energy Commission	Intestate Gas Services, Inc.	Southern California Gas Company
California Public Utilities Commission	Kelly Group	Spark Energy
California State Association of Counties	Ken Bohn Consulting	Sun Light & Power
Calpine	Keyes & Fox LLP	Sunshine Design
	Leviton Manufacturing Co., Inc. Linde	Tecogen, Inc.
Cameron-Daniel, P.C.	Los Angeles County Integrated Waste Management Task Force	TerraVerde Renewable Partners
Casner, Steve	Los Angeles Dept of Water & Power	Tiger Natural Gas, Inc.
Cenergy Power	MRW & Associates	
Center for Biological Diversity	Manatt Phelps Phillips	TransCanada
City of Palo Alto	Marin Energy Authority	Troutman Sanders LLP
	McKenzie & Associates	Utility Cost Management
City of San Jose	Modesto Irrigation District	Utility Power Solutions
Clean Power Research	Morgan Stanley	Utility Specialists
Coast Economic Consulting	NLine Energy, Inc.	
Commercial Energy	NRG Solar	Verizon
County of Tehama - Department of Public Works		Water and Energy Consulting
Crossborder Energy		Wellhead Electric Company
Crown Road Energy, LLC		Western Manufactured Housing Communities Association (WMA)
Davis Wright Tremaine LLP		Yep Energy
Day Carter Murphy		
	Office of Ratepayer Advocates	
Dept of General Services	OnGrid Solar	
Don Pickett & Associates, Inc.	Pacific Gas and Electric Company	
Douglass & Liddell	Peninsula Clean Energy	