

<u>Provision</u>	<u>How It Differs From IOU Proposed Provision</u>	<u>Rationale</u>	<u>Supporting Reference</u>
§2.2. Commercial Operation §2.2.2 Start Date and Duration	The time period to attain Commercial Operation shall begin upon the date the parties' enter into the Interconnection Agreement.	This provision removes the dependency on the interconnection study process. The dependency causes undue risk	CREST Decision: "Clean Coalition suggested that the Effective Date be calculated from the date an interconnection agreement, not a PPA, is entered between the parties. We see benefits to this suggestion and urge Clean Coalition to raise this issue as the Commission implements § 399.20"
§2.2.4 Extension	Where delay occurs by fault of Seller, Commercial Operation Date shall be extended as needed on a day-to-day basis with Liquidated Damages; for Permitting and Transmission delays, and for Force Majeure, extension shall be granted for an unlimited basis.	Delays out of the Seller's control should not be limited in extensions. The Seller should not be penalized by termination for such issues.	
§2.3.3 Payment	Buyer to read meter at own expense	Because Buyer shall have the freedom to read the meter as frequently as it so chooses, it should be required to cover costs associated with this freedom.	German BWE EEG Wind Contract; Solartricity contract.
§2.4 Delivery Term	Duration for 10, 15, 20 or more years	Seller should be encouraged to enter into an Agreement for as long as possible.	
§2.5 Contract Price	Price shall be set at Execution Date, not Effective Date; amount recorded by the meter specified or Check Meter, as applicable, will be time-differentiated according to the time period and season in which Buyer receives the Product from Seller, and shall be adjusted by the appropriate Time of Delivery ("TOD")	Seller must receive the price they agreed to when they executed the Contract. Buyer must not be allowed to get a lower price in the contract by waiting to execute the contract for a scheduled price decrease in the program	Price set at Execution Date in CREST contract;

§2.6 Billing	Buyer shall have the right, but not the obligation, to read the Facility’s meter on a daily basis.		This language is provided in PG&E AB1969 and SMUD: §2.5 “Billing.”; supported by HAI and NLine.
§3.1 Costs	For providing Benefits associated with energy production to Buyer, Seller shall be compensated in the form of a Benefit Adder, which Seller shall provide to Buyer at the time Buyer checks the Facility meter or Check Meter in order to pay for Product associated with the conveyed benefits. Upon Buyer payment of Product Price and Benefit Adder, Seller shall deliver Benefits.	Buyer should not receive uncompensated benefits in the purchase of the energy. RA, Local Capacity, or other green attributes not captured in the REC value are all examples of benefits that the Seller should receive compensation for	
§3.3 WREGIS	Seller shall cause and allow Buyer to be the QRE (Qualified Reporting Entity) and Account Holder (as such terms are defined by WREGIS) for the Facility within thirty (30) days after the Commercial Operation Date.	WREGIS should be the responsibility of the Utility because it could be too burdensome for small Sellers. For SCE, “directly managing the WREGIS certificates minimizes the administrative work involved in truing up any discrepancies between Buyer and Seller. As the QRE and Account Holder of all of the renewable projects in its portfolio, SCE believes it is in a better position than the Seller to manage the issuance and tracking activities in WREGIS.” Furthermore, voluminous scheme proposed for PG&E and SDG&E in Joint IOU PPA is unduly burdensome and lacks justification as a superior method than SCE's.	CC suggests the SCE WREGIS Requirement in the 2nd Revised Joint IOU PPA is preferable as the extent of the WREGIS requirement contract provision. HAI, Edison and NLine support this position as well.
§3.3 WREGIS	Full registration in WREGIS is not possible prior to operation of facility.		Workshop on initial Joint IOU PPA.

§3.4 Resource Adequacy Benefits	Facility is not required to obtain RA. If Seller does obtain RA, Seller shall comply with appropriate state governing agency requirements and be compensated accordingly to the Costs provision above.	Generally held that a policy here should be determined pending decision on resource adequacy.	SEIA, CALSEIA and CPUC support waiting on RA decision.
Deliverability	Deliverability is not a pre-condition for interconnection or Commercial Operation under the Model PPA. Seller may opt to get deliverability to gain additional compensation, beyond the PPA price, by entering into a separate agreement with Buyer.	Joint IOUs have not provided sufficient justification for inclusion of deliverability as a requirement in the Joint IOU PPA.	
§3.5 ERR	Buyer shall have the right (but not obligation) to seek renegotiation of price from the appropriate state governing authority if Seller cannot maintain ERR. Seller may be paid less, but not less than value of energy produced. Neutral adjudicator shall determine what new price is.	Acknowledging that loss of ERR status changes the value of the Product, the price can be renegotiated instead of terminating the contract. Buyer should not be given sole authority to determine new price	
§3.6 EIRP	EIRP Requirement should only apply to project Facilities 1MW in size or larger.	HAI: "We do not believe ISO requirements should be forced on Sellers less than 1 MW in size, nor does the ISO force Seller's less than 1 MW to adhere to their systems."	HAI, NLine, CALSEIA, Sierra Club also support this size constraint.
§3.7 Compliance Cost Cap	Following the Execution Date, a Compliance Cost Cap shall apply for Seller's costs in complying with changes in law and Seller's costs in maintaining the requirements of Benefits. The Cap amount shall be \$3,000/MW annually, and shall be borne by Seller through the Delivery Term. Should costs associated with the specified obligations exceed the Cap, Buyer shall release Seller from the obligations in excess of the Cap, or Seller shall pay all expenses and be reimbursed by Buyer.	Compliance Cost Cap appropriately balances the risk the parties must handle and encourages commitment to the Agreement.	SEIA provided, in the 2nd Joint IOU PPA redline version, comments including an extensive definition (pg 268 of matrix) which CC supports.
§4. Representations and Warranties; Covenants			

<p>§4.3 By the Seller</p>	<p>Full language for Seller Reps and Warranties language taken from AB1969.</p>	<p>Full language for Seller Reps and Warranties language taken from AB1969. In Solartricity Contract, Seller is to design and install Facility to Point of Interconnection, as reflected in Interconnection Agreement. In SMUD Contract, §8 “Representations and Warranties; Covenants” contains the same language as in AB1969.</p>
<p>§5 General Conditions §5.1. Facility Care, Interconnection and Transmission Service</p>	<p>Seller shall execute Interconnection Agreement, pay for and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations including applicable interconnection and metering requirements. During the Delivery Term, Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement.</p>	<p>Language of AB1969.</p>

§5.2 Metering Requirements	Seller, at its own expense, shall comply with all applicable rules in installing and maintaining a meter. Where operator does not permit a revenue meter for the Facility, Buyer shall identify a revenue quality meter for the Facility. Where Facility is under 1 MW, the cost to Seller in complying with these rules shall not exceed \$X. Buyer shall reimburse Seller for any costs in excess of this compliance cost cap. Buyer may install a Check Meter at the Interconnection Point at its own expense. Buyer shall read and record the meter at its own expense, and shall have the right to read the meter on a daily basis. The meter may be read electronically by: (a) a telephone and dial-up modem; (b) an analog or digital phone connection; or (c) an internet portal address for Buyer's Energy Data Services ("EDS"). The calculation of Buyer's regular payment to Seller shall be based on the recorded meter data.		Found in German BWE EEG Wind Contract, and Solartricity contract; supported by HAI.
§5.3 Standard of Care	Seller shall reimburse Buyer for any losses, damages, penalties or liability Buyer incurs as a result of Seller's failure to obtain and maintain authorizations and permits required, except where failure to do so occurs beyond Seller's control.		This language is standard between 2nd Revised Joint IOU PPA and AB1969, except final stipulation preventing Seller liability in cases where failure is beyond Seller control, balances risks appropriately.
§5.4 Access Rights	Buyer shall have right to inspect Facility on reasonable advance notice during normal business hours for any purpose reasonably connected to Agreement or by law.		Language for access is standard between 2nd Revised Joint IOU PPA and AB1969.
Operations Logs	Joint IOU PPA requirement of daily Operations Log not included in Model PPA.	Overly burdensome	

<p>§5.6.1.1 and 5.6.1.2 Forced Curtailment</p>	<p>Seller shall curtail production as noticed by Buyer where Buyer is instructed ("forced") a) by a Government Authority, or b) in event of emergency. Where Buyer does not provided notice in reasonable time, Buyer shall be responsible for costs, charges and liabilities associated with continued Energy production. Buyer shall have no obligation to pay for Product that Seller would have been able to deliver during this time but for the fact of a Forced Curtailment. However, for all Product in excess of five percent (5%) of the Contract Quantity for the Contract Year ("the Uncompensated Curtailment Cap") that Seller would have been able to deliver but for the fact of a Forced Curtailment, excluding instances of Force Majeure, Buyer shall pay Seller the Contract Price.</p>	<p>For financeability, the financier should have a limit on the amount of potential lost revenue.</p>	
	<p>Buyer shall have the right, but not the obligation, to issue to Seller an Unforced Curtailment Order. In such circumstances, Buyer shall pay Seller the Contract Price for the Product Seller would have been able to deliver but for the fact that Buyer issued a Curtailment Order</p>		
<p>Tax Withholding Documentation</p>	<p>Provision not included in contract</p>	<p>IOUs have not provided sufficient justification for inclusion.</p>	
<p>Reporting and Record Retention</p>	<p>This provision of the Joint IOU PPA not included in Model PPA.</p>	<p>Overly burdensome on Seller. Provision inclusion remains insufficiently justified by Buyer.</p>	
<p>Modifications to Facility</p>	<p>This provision of the Joint IOU PPA not included in Model PPA.</p>	<p>Overly restrictive on Seller and immaterial to Buyer as long as all other requirements of Agreement continue to be satisfied. Provision inclusion remains insufficiently justified by Buyer.</p>	
<p>§6. Indemnity</p>			

§6.1	The indemnitor is not obligated to defend any suit asserting a claim covered by the indemnity or pay costs incurred by the other party in enforcing the indemnity.		Sierra Club and CC redlines.
§6.2 Subcontractor Liability	Each party should remain liable for the acts of their subcontractors and agree to hold harmless the other party for any and all loss or damages, as well as all costs, charges and expenses which the other party may suffer, incur, or bear as a result of any acts, omissions or default by or on behalf of any subcontractor or subsupplier.		Supported by HAI and NLine; SMUD:§11 “Indemnity” offers similar conciseness.
§7. Limitation of Damages			Full language standard for Joint IOU, PG&E PPA, SMUD, and in varied form within Solartricity.
§8. Notices			Full language taken from PG&E PPA. SMUD also usable. Overly verbose in Joint IOU.
§8 Notices (Oral Notice; Email and Faxes)	All oral curtailment notices should be followed by written notices. Since notices may be made by email or fax, all contacts should include email and fax information.		
§9. Insurance §9.1.1 and 9.1.2 Commercial General Liability and Workers' Compensation Dates and Extent of Coverage	Seller should, at its own expense, from Execution Date until end of the term, provide and maintain insurance policies for Commercial General Liability. For General Liability Insurance, Seller shall maintain no less than \$1M if Facility nameplate is over 100kW, \$500k if nameplate is more than 20 to 100kW, or \$100k if nameplate is 20kW or less.	HAI: “Requiring Insurance coverage as a condition of executing an agreement is unnecessary to protect Buyer, and is a significant financial burden of small renewable project developers, and is contrary to the policy objectives of SB32.”	Supported by HAI, NLine. Size specifications set out in AB1969.

Auto Insurance and Umbrella/Excess Liability Insurance	These provisions from Joint IOU PPA not included in Model.	"There is no reason for Buyer to require Seller to have automobile insurance, especially if the Seller does not own automobiles related to the business / Facility."	Support from SEIA: "§10.1.4 (umbrella insurance) should be eliminated."
Guaranteed Energy Production (Section and Appendix)	GEP scheme proposed in Joint IOU PPA not included in Model PPA	Joint IOUs have provided insufficient justification for inclusion of this provision in an Agreement; adds undue volume to contract and burden on Seller.	
Credit and Collateral Requirements	Credit and Collateral scheme proposed in Joint IOU PPA lasts only until Commercial Operation Date.	Joint IOUs have provided insufficient justification for extension of this provision beyond COD; adds undue burden on Seller.	
§10. Terms, Events of Default and Termination			
§10.2 Events of Default	Seller facility abandonment; Noncompliant equipment installation; Participation in any form of current diversion, theft of electricity or meter tampering; Failure to remedy any condition resulting in disconnection; Change in physical location or point of interconnection.		SMUD, Solartricity, AB1969.
§10.2.3 Force Majeure	Neither Party shall be in default when and to the extent failure of performance is caused by Force Majeure. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due, such Party should be excused from whatever performance is affected by the Force Majeure to the extent so affected. Claimant shall give timely notice – the period for which commences at the time the Claimant becomes aware of the Force Majeure, not the time when the Force Majeure occurs.		CREST Reform decision: ruled to use language from the 2010 SCE SPVP; SEIA: "should commence when discovered, not at time of initial incident."

§10.3 Change in Law	Failure to maintain ERR status because of a change in law shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Term. Seller shall be granted reasonable period of time to cure defect.		AB1969 language, is substantially similar to SMUD.
§10.3 Change in Law	If any representation or warranty made by Seller in the agreement becomes false or misleading in any material respect as the result of a change in law, such breach shall not be an Event of Default if Seller uses commercially reasonable efforts to make the representation or warranty no longer false or misleading. Breaching Party shall have thirty (30) days after Notice of Error.		
§10.4 Termination			AB1969 provides sufficient standard full language.
§10.5 Cure Period	If a breach is of the sort that cannot be remedied within 30 days, then the remedy period should be extended for up to an additional 60 days, provided that the breaching Party continues to diligently pursue the remedy.		Language of AB1969, same as SMUD.
Right of First Refusal	Right of First Refusal scheme proposed in Joint IOU PPA not included in Model PPA.	Joint IOUs have not provided sufficient justification for inclusion.	
Transmission Costs Termination Right	Transmission Costs Termination Right scheme proposed in Joint IOU PPA not included in Model PPA.	This termination right is a "deal-killer" poison pill for financeability. For true DG projects, serving local load only, transmission costs are moot	
§12. Scheduling §12.1 Scheduling Coordinator			Full language of AB1969 used.

§12.2 Forecasting	Buyer shall be responsible for all forecasting; Seller shall be responsible for producing raw data on a monthly basis, and for providing timely notification of any known, upcoming Facility take-down.	Buyer responsibility will dramatically improve efficiency and probably accuracy also. The fact that Buyer is the Scheduling Coordinator further supports this argument. Daily forecasting based on weather is way too much burden for small developer. Forecasting should be handled entirely by each IOU because this is far more efficient and effective than having each Seller do it, and have to comply with different requirements for each IOU.	HAI, SEIA, Sierra Club and CALSEIA support monthly updating.
§13. Confidentiality	Provision regarding Recording Conversations from Joint IOU PPA is not included in the Model PPA.	Insufficiently justified, over-reaching and perhaps illegal.	Not found in SOLARTRICITY, PG&E PPA, SMUD, or German Model PPAs; Absolutely Solar issued general grievance with this provision.
§14. Assignment	Seller may not assign this Agreement or its rights or obligations under this Agreement without Buyer's prior written consent, which consent will not be unreasonably withheld; provided, however, that Seller may, without Buyer's consent (and without relieving Seller from liability under this Agreement), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender in connection with any financing for Facility if (i) such Lender assumes the payment and performance obligations provided under this Agreement with respect to Seller, (ii) such Lender agrees in writing to be bound by the terms and conditions of this Agreement, and (iii) Seller delivers such tax and enforceability assurance as Buyer may reasonably request. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will not be deemed an assignment, such that Notice of Change in Control is not required.	The language in SCE SPVP Section 19 re Assignment has been vetted and approved in CREST Reform Decision. Traditional non-recourse financing requires assignment to lenders.	The language of SCE SPVP is used verbatim, modified at the end such that change of control is not considered assignment necessitating Notice of Change.

<p>§17. Miscellaneous §17.5 Modification</p>	<p>No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both parties. Unilateral contract modification upon a change in governing law should be impermissible. Unilateral filings with the state governing authority regarding changes in rates, charges, classifications, service, Tariffs or any agreement relating thereto should similarly be impermissible.</p>		<p>Language from CREST final decision; first sentence taken from standard “General” language.</p>
<p>Appendix: "Definitions"</p>	<p>Substantially shorter section than Joint IOU PPA</p>	<p>Fewer provisions in the Model PPA means fewer terms within the Agreement need to be defined.</p>	
<p>Definition of "Compliance Cost Cap"</p>	<p>“all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under sections pertaining to REC tracking, Obtaining and Maintaining Certification and Verification, Resource Adequacy, EIRP Requirements, Greenhouse Gas Emissions Reporting an including, but not limited to, registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller's internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date.”</p>		<p>SEIA definition, pg 268 of matrix comments to 2nd Revised Joint IOU PPA.</p>

Definition of "Delivery Point"	"The Delivery Point is at the point of interconnection with the State Grid Operator for those projects with Contract Capacity of 1 MW or greater or the point of interconnection for those projects with Contract Capacity less than 1 MW interconnecting at the distribution level."	NLine and HAI in their Comments to Initial Joint IOU PPA.
Appendix: Forecasting and Outage Notification Requirements	Not included in Model PPA.	Sufficient justification not provided by Joint IOUs for inclusion; contributes to burden of volume of contract.
Appendix: Telemetry Requirements	Not included in Model PPA.	Sufficient justification not provided by Joint IOUs for inclusion; contributes to burden of volume of contract.
Appendix: Seller's Milestone Schedule	Not included in Model PPA.	Sufficient justification not provided by Joint IOUs for inclusion; contributes to burden of volume of contract.
Appendix: Notices List	Not included in Model PPA.	Sufficient justification not provided by Joint IOUs for inclusion; contributes to burden of volume of contract.
Appendix: Form of General Consent to Assignment	Not included in Model PPA.	Sufficient justification not provided by Joint IOUs for inclusion; contributes to burden of volume of contract.
Appendix: Form of Financing Consent to Assignment	Not included in Model PPA.	Sufficient justification not provided by Joint IOUs for inclusion; contributes to burden of volume of contract.
Appendix: Procedure for Demonstration of Contract Capacity	Not included in Model PPA.	Sufficient justification not provided by Joint IOUs for inclusion; contributes to burden of volume of contract.

Appendix: QF Efficiency
Monitoring Program –
Cogeneration Data Reporting
Form

Not included in Model PPA.

Sufficient justification not provided by
Joint IOUs for inclusion; contributes to
burden of volume of contract.