

**BEFORE THE  
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Integrate and  
Refine Procurement Policies and Consider  
Long-Term Procurement Plans

R.10-05-006

**NOTICE OF *EX PARTE* COMMUNICATION  
(PUBLIC VERSION)**

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PACIFIC GAS AND ELECTRIC COMPANY

Date: March 7, 2012

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OF THE STATE OF CALIFORNIA**

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Pursuant to Rule 8.4(a) of the Commission’s Rules of Practice and Procedure, Pacific Gas and Electric Company (“PG&E”) hereby gives notice of the following ex parte communications (“Notice”). The communication occurred on Friday, March 2, 2012, at approximately 2:00 p.m. at the offices of the California Public Utilities Commission. The communications were oral and handouts were provided. One of the handouts included confidential material so this handout has been redacted from the Public Version of this Notice, but is included in the Confidential Version of this Notice being filed concurrently under seal with the Commission. The confidential handout has been identified as Attachment 1 to this Notice. Copies of the handouts that do not contain confidential material are attached to this Public Version of the Notice as Attachments 2-3. [Rule 8.4(a)(c)]

Meredith Allen, Senior Director-Regulatory Relations, PG&E, initiated the communications with Scott Murtishaw, Advisor to Commission President Michael Peevey. Other attendees for PG&E were Marino Monardi, Director-Energy Procurement, and Xantha Brusio, Principal, Portfolio Management. [Rule 8.4(b)]

Mr. Monardi discussed PG&E’s PPAs in which there has been a dispute between the parties over the direct greenhouse gas (“GHG”) cost obligation. Mr. Monardi explained that these contracts were signed after Assembly Bill 32 was being discussed. Mr. Monardi also

stated that the GHG procurement limits in the Proposed Decision for Tracks I and III should be modified. [Rule 8.4(c)]

Respectfully submitted,

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By: /s/ Charles R. Middlekauff  
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March 7, 2012

**ATTACHMENT 1**

**CONFIDENTIAL**

**REDACTED FROM PUBLIC VERSION**

**ATTACHMENT 2**

**PUBLIC**



# **Greenhouse Gas Allowances and Offset Credits**

## **Request for Offers Protocol**

**February 1, 2012**

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## I. Introduction and Overview:

### A. Overview

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On September 27, 2006, Governor Schwarzenegger signed California Assembly Bill (“AB”) 32, the Global Warming Solutions Act of 2006, which seeks to reduce California’s emissions of greenhouse gases (“GHG”) to 1990 levels by the year 2020. Pacific Gas and Electric Company (“PG&E” or “Company”) is issuing this Greenhouse Gas Allowances and Offset Credits Request for Offers (the “GHG RFO” or “RFO”) to obtain comprehensive offers to sell Allowances and/or Offset Credits (as defined below and either or both referred to herein as “Compliance Instruments”) qualified to satisfy PG&E’s compliance obligations under Cap-and-Trade Regulations adopted by the California Air Resource Board (“CARB”) as part of CARB’s proceeding to implement AB 32.

PG&E requests that entities (“Participants”) that meet the criteria established in this document (the “RFO Protocol”) submit, in accordance with the directions herein, one or more offers to sell Allowances, as defined in the California Code of Regulations, Title 17, Section 95802(a)(8) (“Allowances”) and ARB Offset Credits as defined by Section 95802(a)(12) of Title 17 (“Offset Credits”). Participants must be registered with or pending registration with CARB through the process described in Section 95830 of Title 17.

A Participant should prepare each offer with the understanding that the offer is a binding offer in accordance with Section IV.A. “Binding and Exclusive Nature of Offer”. The result of a successful evaluation and negotiation with PG&E or acceptance of an offer without modification would mean that the Participant would enter into (1) a Master Allowance/Offset Credit Purchase and Sale Agreement, as provided in Appendix D, and (2) the confirmation agreement applicable for the offer, which would be the Allowance Confirmation, provided in Appendix E, or Offset Credit Confirmation, as provided in Appendix F (collectively, the “Agreement”).

### B. Expected Schedule

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The RFO schedule is subject to change at PG&E’s sole discretion at any time. PG&E will endeavor to notify Participants of any schedule change via notification on the Company’s RFO website. Participants must sign up at the RFO website to receive notice of these and other RFO changes by electronic mail. PG&E is not liable or responsible to any Participant for expenses or any damage to Participant resulting from changes in the schedule or for failing to provide notice of any change.

The expected schedule for this RFO (**all times are in Pacific Prevailing Time “PPT”**):

<b>Date/Time</b>	<b>Event</b>
February 1, 2012	PG&E issues GHG RFO
February 8, 2012, 5:00 P.M. PPT	Deadline to submit questions for the Participants’ Webinar to PG&E via email to <a href="mailto:GHGRFO@pge.com">GHGRFO@pge.com</a>
February 10, 2012, 5:00 P.M. PPT	Deadline to submit registration for Participants’

**2012 GHG RFO Protocol**

	Webinar
February 15, 2012	Participants' Webinar
March 8, 2012, 1:00 P.M. PPT	Deadline for Participants to submit completed Offer(s). Offers may be submitted any time after March 1, 2012, but will not be evaluated until after the Deadline.
May 15, 2012	PG&E notifies Shortlisted Participants and requests Shortlist Deposit
May 29, 2012, 5:00 P.M. PPT	Shortlisted Participants notify PG&E whether they accept shortlist position from PG&E and post Shortlist Deposit
June 15, 2012 and ongoing	Target timeframe for execution of Agreements

For an offer to be considered in the RFO, a Participant must submit and PG&E must receive a complete offer in accordance with the RFO no later than 1:00 P.M. PPT on March 8, 2012.

PG&E is currently seeking approval for its authority to purchase Compliance Instruments from the California Public Utilities Commission ("CPUC") under PG&E's GHG Procurement Plan pursuant to Track III of the Long-Term Procurement Plan proceeding (Rulemaking 10-05-006). As of the issuance of this RFO, PG&E has not yet received final approval of the GHG Procurement Plan. Additionally, PG&E intends to seek approval from the CPUC of any Agreement resulting from this RFO that includes purchase of any Compliance Instrument that will be issued by ARB with a vintage year more than four vintage years after the year in which PG&E enters into an agreement to purchase that Compliance Instrument.<sup>1</sup> PG&E additionally reserves the right to seek CPUC approval for any other contract resulting from the RFO. If PG&E seeks CPUC approval via an Advice Letter filing for any particular transaction resulting from the RFO, PG&E cannot be bound to the purchase of the Compliance Instrument until PG&E receives final CPUC approval, and if PG&E does not receive such approval then either PG&E or the Participant will have the right to terminate the applicable Agreement.

### **C. RFO Process**

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1. Offers Due. Participant's offer must be submitted to PG&E and the Independent Evaluator ("IE")<sup>2</sup> in the manner set forth in Section V.A. no later than 1:00 P.M. PPT on March 8, 2012 and must include all of the documents described in Section V.B and an Offer Deposit, described in Section IV.B. By participating in this RFO, the Participant agrees to be bound by all of the terms, conditions and other provisions of this RFO Protocol and any changes or

<sup>1</sup> This calculation excludes the year of execution. Thus, for a contract entered into in 2012, PG&E has proposed to file an Advice Letter seeking CPUC approval of the contract if it includes any Compliance Instrument with a vintage year of 2017 or later.

<sup>2</sup> Lewis Hashimoto of Arroyo Seco Consulting will provide IE services for this RFO. His e-mail address is lhashimoto@att.net.

supplements to it that may be issued by PG&E. In submitting offers, Participants should provide all of the requested information in the format requested.

2. PG&E Selects Shortlist. PG&E intends to select a shortlist of offers no later than May 15, 2012. PG&E reserves the right to adjust this date, request additional information from Participants with shortlisted offers, and subsequently to select additional offers for the shortlist. Each Participant selected for the shortlist will be required to post a Shortlist Deposit, in accordance with Section V, and to execute an RFO Confidentiality Agreement in the form attached hereto as Attachment C.

3. Negotiations and Execution. Subject to Section I.D. below, PG&E may enter into discussions with shortlisted Participants regarding the terms of the applicable offer. Selection for the shortlist does not guarantee that PG&E will execute an Agreement with a Participant. Shortlisted Participants will be allowed to continually improve the competitiveness of their offer during negotiations to increase the chances of execution; any offer that is modified by a Participant in a way that reduces its value may result in its disqualification from the RFO or removal from the shortlist at any time.

#### **D. Disclaimers for Rejecting Offers and/or Terminating this RFO**

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This RFO does not constitute an offer to buy and creates no obligation to execute any Agreement or to enter into a transaction under an Agreement as a consequence of the RFO. PG&E shall retain the right at any time, at its sole discretion, to reject any offer on the grounds that it does not conform to the terms and conditions of this RFO, and reserves the right to request information at any time during the solicitation process. PG&E also retains the discretion, in its sole judgment, to: (a) reject any offer on the basis that it does not provide sufficient customer benefit or that it would impose conditions that PG&E determines are impractical or inappropriate; (b) formulate and implement appropriate criteria for the evaluation and selection of offers; (c) negotiate with any Participant to maximize customer benefits; (d) modify this RFO including the forms of Agreement as it deems appropriate; and (e) terminate the RFO should the CPUC or other governmental authority not authorize PG&E to purchase Compliance Instruments in the manner proposed in this RFO. In addition, PG&E reserves the right to either suspend or terminate this RFO at any time for any reason whatsoever. PG&E will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Participant, whether submitting an offer or not.

## **II. RFO Goals:**

In the RFO, PG&E is requesting offers for the sale of Allowances or Offset Credits.

### **A. Eligibility Requirements**

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PG&E will only consider Compliance Instruments from Participants who are or will be registered with CARB and who have or will have a CARB-issued Holding Account for the Cap-and-Trade program.

CARB has published regulations containing information regarding registration requirements and protocols for Offset Credits. The Participant is responsible for becoming familiar with and complying with these regulations. Any Offset Credits offered must be issued by CARB, or the Participant must demonstrate that the Offset Credit will be issued by CARB. PG&E will consider

Offset Credits from either a single offset project or from an aggregated pool of offset projects. Acceptable offers include a fixed amount of Offset Credits from a single offset project, or a fixed amount of Offset Credits from a pool of specified offset projects. Participants offering Offset Credits from a pool of projects must identify each of the individual projects in the pool. Offers may include Offset Credits from an offset project that is: (1) operational, registered with the Climate Action Reserve or CARB, and has produced verified Offset Credits as of the date of this RFO (an “Existing Project”); or (2) not yet operational, not yet registered with the Climate Action Reserve or CARB, or has not yet produced verified Offset Credits as of the date of this RFO, but that will meet all of these criteria within twelve (12) calendar months after the effective date of the Agreement (“New Project”).

Minimum Offer Size: 25,000 metric tons of carbon dioxide equivalent (“mtCO<sub>2</sub>e”) Compliance Instruments in aggregate (may be delivered over multiple years).

Allowances: PG&E prefers offers for either or both of the vintage years 2013 and 2014, but will consider offers including later vintage years. Eligible Allowances may be those that have already been issued by CARB (“Existing Allowances”) or those that will be issued by CARB in the future (“Future Allowances”).

Offset Credits from Existing Projects: For Existing Projects, PG&E prefers offers for any or all of the previous vintage years that are eligible for compliance under CARB’s Cap-and-Trade regulations, and any or all of the vintage years 2012 through 2014, but will consider offers including later vintage years. Offset Credits may be those that have already been issued by CARB (“Existing Offset Credits”) or those that are expected to be issued by CARB in the future (“Future Offset Credits”).

Offset Credits from New Projects: Participant must demonstrate Commercial Operation of a New Project and creation of Offset Credits within twelve calendar months after the effective date of the Agreement, as such terms are defined in the form of Offset Credit Confirmation (Appendix F). PG&E prefers offers for any or all of the vintage years 2012 through 2014, but will consider offers including later vintage years.

## **B. Pricing**

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Pricing must be on a vintage basis or annual basis for multiple delivery years. Pricing must be expressed as a \$/metric ton of CO<sub>2</sub>e amount for each year.

After shortlisting, Participants may improve the competitiveness of their offer through reduced pricing at any time.

## **C. Eligibility of Compliance Instruments**

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In reviewing offers, PG&E will determine whether the Compliance Instruments satisfy PG&E’s compliance needs. In particular, the Participant will be required to demonstrate the following:

- The Compliance Instrument must, at the time of delivery to PG&E, be issued by CARB and associated with a unique serial number issued by CARB, and be usable by PG&E for compliance with the Cap-and-Trade Regulations.
- Prior to delivery to PG&E, each Compliance Instrument must be held in the Holding

Account of an entity registered with CARB.

- An Allowance cannot be held in a Limited Use Holding Account (see definition in the California Code of Regulations, Title 17, Section 95802(a)(151)).
- An Offset Credit must meet either the requirements set forth in Section 95973 (listing requirements for Offset Credits) or Section 95990 (listing requirements for Early Action Offset Credits) of Title 17 of the California Code of Regulations, as applicable.
- The Participant selling the Compliance Instrument must be authorized under all applicable jurisdictions and laws to transfer full title and ownership of the Compliance Instrument to PG&E.

#### **D. Form of Contract; Exclusivity**

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All offers must include a completed Agreement that reflects all of the terms to which the Participant would agree to be bound and must be consistent with the information included in Participant's Offer Form. PG&E has provided a Master Agreement (Appendix D) and two forms of Confirmation, one for Allowances and one for Offset Credits (Appendices E and F). Participant must complete the form of Agreement to reflect the Compliance Instrument or project-specific information requested (including whether it is an Existing or Future Allowance or Offset Credit, and for Offset Credits, whether it is an Existing or New Project). Participant may elect to modify the Agreement, but changes to the forms of Agreement should be limited to those necessary to reflect unique characteristics of the offer. Significant modification to the forms of Agreement may result in a failure to obtain an executed Agreement and/or to file an Agreement for CPUC approval when required, due to additional negotiation time, unacceptable terms, or otherwise. Failure of a Participant to provide a completed Agreement may result in disqualification of the Participant's offer. For purposes of evaluating a Participant's offer, in the event of any discrepancy between Participant's mark-up of the form of Agreement and the information provided in Participant's Offer Form (Appendix A), the latter will be deemed controlling.

To allow time for the RFO to be completed, each Participant will be required to agree to be bound by its offer(s) for a period of one hundred and twenty (120) days from the date of submission of a Shortlist Deposit following PG&E's notification of shortlisting (the "Exclusivity Period"). If Participant is selected for PG&E's shortlist, the Participant shall confirm its continued participation in the RFO by submitting a Shortlist Deposit as specified below in Section IV.B within ten (10) business days of the shortlist notification.

### **III. Evaluation of Offers:**

To evaluate offers, PG&E will primarily consider the following criteria:

- Market Valuation
- Credit
- Portfolio Fit
- Supplier Diversity
- Project Viability
- Modifications

Each of these primary criteria is discussed below.

**Market Valuation** means how an offer's cost compares to an offer's benefits, from a market perspective. An offer's cost is reflected in the offer's pricing. An offer's benefits are the market value of the Compliance Instruments offered. PG&E will assess the market value of offers using a forward curve of Compliance Instruments constructed from market prices.

**Credit** is a determination by PG&E of each Participant's willingness and ability to comply with the credit and collateral requirements as set forth in Section VII of this RFO Protocol. PG&E's overall credit concentration with each Participant, including its affiliates, will also be taken into consideration.

**Portfolio Fit** means how well the offer's features match PG&E's portfolio needs in its annual procurement targets within the context of Cap-and-Trade compliance.

**Supplier Diversity** means the Participant's status as a CPUC-certified Diverse Business Enterprise ("DBE") and/or commitment to subcontract with DBEs, where applicable.

**Project Viability** applies only to Offset Credits. PG&E will assess the likelihood of future invalidation by CARB of any Offset Credits. PG&E will also assess the likelihood that projects offering Future Offset Credits will deliver Offset Credits at full contract quantity and on schedule. This will include, but will not be limited to, the ability of the project to get or retain the necessary financing and permits.

**Modifications** means the extent, materiality, risk and cost impact of any of Participant's proposed modifications to the applicable Agreements. Please be sure to complete the Agreement and ensure that the information provided is consistent with the information included in the Offer Form.

To evaluate the offers in this RFO, PG&E may seek additional information from Participants in these areas or in other matters.

#### IV. Participation in the RFO Process:

##### **A. Binding and Exclusive Nature of Offer**

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By responding to this RFO, each Participant agrees to be bound by all terms, conditions and other provisions of this RFO and any changes or supplements to it that may be issued by PG&E. Each Participant will be required to have an authorized officer of Participant execute the "Offer Agreement" attached hereto as Appendix B, which requires that the Participant agrees to be bound by the terms of the RFO and to make specified representations and warranties to PG&E. A Participant submitting an offer(s) must agree to negotiate exclusively with PG&E regarding the subject of the offer(s) during the Exclusivity Period.

##### **B. Offer and Shortlist Deposits**

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###### 1. Offer Deposit

Each offer will require a separate Offer Deposit. When submitting each offer, the Participant will be required to provide an initial deposit of cash or a Letter of Credit, (the "Offer Deposit"), as defined below for each offer, in the amount of \$0.10 per mtCO<sub>2</sub>e, with a \$5,000

minimum, as set forth on Participant's completed Offer Form (Appendix A). Participant must submit a completed W-9 form (Appendix J) with its Offer Deposit.

The Offer Deposit is intended to secure the obligations of each Participant during the GHG RFO's evaluation period. It is also intended to ensure that each offer has been carefully considered. Any offer submitted without an accompanying Offer Deposit will be deemed to be a non-conforming offer. Offer Deposits will be returned as set forth below.

## 2. Shortlist Deposit

If shortlisted, Participant must provide a deposit ("Shortlist Deposit"), in the amount of \$0.50 per mtCO<sub>2</sub>e, with a \$25,000 minimum, for each shortlisted offer. The Shortlist Deposit must be posted with PG&E no later than ten (10) business days after receiving notice from PG&E that Participant qualifies for PG&E's shortlist, and maintained until the termination of negotiation with PG&E or as otherwise provided pursuant to the terms of the Agreement negotiated by PG&E and Participant.

The Shortlist Deposit is intended to secure the obligation of each Participant during the period required to negotiate, execute and obtain any necessary regulatory approval of the Agreement(s) and to ensure that each offer has been carefully considered and represents an exclusive negotiation with PG&E. If the Participant fails to submit the Shortlist Deposit within the required time period, the Participant's offer may be rejected and removed from the shortlist.

## 3. Form of Offer and Shortlist Deposits

The form of the Offer and Shortlist Deposits may be either: (a) cash deposits through wire transfers, or (b) a Letter of Credit (as defined below). Participants should notify PG&E via email at GHGRFO@pge.com prior to submitting their Offer Deposits to obtain details of delivery instructions, and routing and account number requirements.

### a. Cash Deposit

PG&E will pay interest on each cash deposit, calculated on a monthly basis and compounded at the end of each calendar month, from the date on which the cash is fully deposited to the date of returning the cash deposit to the Participant. The applicable interest rate will be the rate per annum equal to the Monthly Federal Funds Rate (as reset on a monthly basis, as of the first day of the month, 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 ("Interest Rate"). The Interest Rate shall be calculated based on a three hundred sixty (360) day year and shall be payable upon the return of the cash deposit.

### b. Letter of Credit

In lieu of a cash deposit, the Participant can provide, per the directions above, an Offer Deposit or a Shortlist Deposit using an irrevocable standby letter of credit, in the form attached hereto as Attachment I of Appendix D. Please do not make changes to the form Letter of Credit. Participants should note that the Letter of Credit acceptable for purposes of this RFO differs from the Letter of Credit that PG&E will accept as collateral under an Agreement. Please review the Credit Support Addendum under the Agreement carefully. The Letter of Credit must be an irrevocable, non-transferable standby letter of credit issued by (a) a U.S. commercial bank or (b) a U.S. branch of a foreign commercial bank, acceptable to Buyer, with either such bank having a Credit Rating of at least A from Standard & Poor's ("S&P") or A2 from Moody's, substantially in the form as contained in Attachment I of Appendix D. If the Letter of Credit is issued by a branch of a foreign bank, PG&E may require changes to the form Letter of Credit included as Attachment I of Appendix D. All costs of the Letter of Credit shall be borne by Participant. The

Letter of Credit should be sent by overnight delivery to:

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

4. Return of Offer and Shortlist Deposits

The Offer Deposit will be returned to Participant by PG&E under one or more of the following conditions:

- a. The offer is not shortlisted in the RFO process; or
- b. Upon shortlisting of the offer and Participant's submission of the Shortlist Deposit.

The Shortlist Deposit will be returned to Participant by PG&E under one or more of the following conditions:

- a. Upon PG&E's receipt of collateral from Participant as required under a fully-executed Agreement between PG&E and Participant;
- b. PG&E's rejection of the offer subsequent to shortlist selection; or
- c. In the course of negotiation, if PG&E and Participant cannot agree on the terms of the offer and Agreement; provided that Participant has not unilaterally withdrawn the offer as submitted through the Solicitation, or breached this Solicitation Protocol.

5. Forfeiture of Offer Deposit or Shortlist Deposit

The Participant will forfeit the Offer Deposit in its entirety due to (i) Participant's withdrawal of the offer other than as a result of the Participant no longer being bound as required by Section IV.A "Binding and Exclusive Nature of Offer" of this RFO or (ii) any material misrepresentation of pricing or other information knowingly submitted by Participant. The Participant will forfeit the Shortlist Deposit in its entirety due (i) to any material misrepresentation in information submitted in Participant's offer or (ii) breach of this Solicitation Protocol. In the event that Participant forfeits the Offer Deposit or Shortlist Deposit, PG&E will be entitled to draw upon the respective Offer Deposit or Shortlist Deposit in its entirety as payment for direct and indirect damages incurred in connection with the Participant's withdrawal of offer, misrepresentation, or breach of this Solicitation Protocol.

6. Shortlist Deposit as Security Under Agreement

If PG&E and Participant enter into an Agreement resulting from this RFO, the Participant will be expected to agree that PG&E shall be able to retain any cash deposit or draw on any Letter of Credit provided as a Shortlist Deposit as security under the Agreement in the event that Participant fails to provide additional security pursuant to the terms of the Agreement. Participant may elect to allow PG&E retain the Shortlist Deposit as collateral in accordance with the terms of the executed Agreement, if applicable.



## V. Participation Protocols:

### A. Overview

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All offers must be received by PG&E in electronic form no later than March 8, 2012 at 1:00 P.M. PPT via email to GHGRFO@pge.com and to the IE via email to lkishimoto@att.net. An acknowledgement of receipt of each offer will be sent by PG&E via return email.

**Electronic Documents:** The electronic documents must be in a Microsoft Word, Excel, and/or PDF file as specified below in Section V.B. The Participant should not provide documents in other electronic formats or versions.

**Telephonic, telegraphic, hardcopy, or facsimile transmission of an offer is not acceptable.**

### B. Required Information

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A Participant desiring to offer both Allowances and Offset Credits must submit a separate, discrete offer for Allowances and a separate, discrete offer for Offset Credits. Participant shall format each offer so that each file corresponds to an Appendix item noted below. Participants offering Allowances can exclude Appendix I. For Participants submitting large files, PG&E recommends submitting zip files or multiple emails with separate attachments corresponding to the Appendix item below to ensure that all files are received. PG&E reserves the right to request copies of documents listed in a Participant's offer(s) but not already included in electronic copies received. Participants may submit multiple offers.

In addition, an Offer Deposit for each Offer must be submitted in accordance with Section IV.B.

The following documents, which are located in the Appendices, must be included in any offer:

#### **Appendix A: Offer Form (Format: MS Excel):**

A completed Offer Form (Appendix A) providing key details of the Participant's offer. For Offset Credit offers, this will include project name, owner(s), and verification details. Offers for New Projects will need to provide a project milestone schedule.

#### **Appendix B: Offer Agreement (Format: MS Word and PDF):**

A signed Offer Agreement (Appendix B), attesting to Participant's agreement to be bound by the conditions of the RFO.

#### **Appendix C: RFO Confidentiality Agreement (Format: MS Word and PDF):**

A signed RFO Confidentiality Agreement (Appendix C) whereby Participant agrees to keep confidential the terms discussed during the course of this RFO and during any period of Agreement negotiation.

#### **Appendix D, E, F: Agreement (Format: MS Word):**

A completed Agreement (Appendix D and either Appendix E or Appendix F) including Participant's requested changes to a form of Agreement reflecting those changes necessary to

make the Agreement consistent with the Offer Form. Modifications should be made in underline/strikeout formatting to show additions and deletions. Requested modifications to one of the forms of Agreement will be considered part of the Participant's offer; that is, PG&E will assume that the Participant is willing to execute an Agreement based on the offered terms.

**Appendix G: Supplier Diversity Questionnaire (Format: MS Word):**

A completed Supplier Diversity Questionnaire (Appendix G).

**Appendix H: Credit and Finance Information (Format: MS Word):**

Comprehensive information for the assessment of the financial viability of Participant as requested in Credit and Finance Information (Appendix H). Financial information must be provided for the Participant and any entity providing credit enhancement to the Participant. As necessary, please specify whether the information provided is for the Participant, its parent or an entity providing on Participant's behalf, security, under any of the provisions of the Protocol.

**Appendix I: Offset Credit Project Information (Format: MS Word):**

*For all questions, provide any additional relevant information that might be helpful in the evaluation of the offer. If its offer is included in the shortlist, a Participant may be asked to provide PG&E with additional Compliance Instrument-specific information.*

A completed Offset Credit Project Information document (Appendix I) for offset credit offers only.

**Appendix J: Request for Taxpayer ID (Format: PDF):**

A completed Taxpayer ID (W-9) Form (Appendix J).

## **VI. Communications:**

PG&E has established a website at [www.pge.com/rfo](http://www.pge.com/rfo) where Participants may register and where all GHG RFO documents, information, announcements and Q&As are posted and available to Participants.

To promote accuracy and consistency of the information provided to all Participants, PG&E strongly prefers that all communications take the form of an e-mail directed to both [GHGRFO@pge.com](mailto:GHGRFO@pge.com) and the IE at [lhashimoto@att.net](mailto:lhashimoto@att.net). After reading the RFO Protocols, Participants are encouraged to submit questions to this email address by February 8, 2012, 5:00 P.M. PPT that they would like answered at the Participants' Webinar on February 15, 2012. For questions received after February 8, 2012 and with respect to matters of general interest raised by any Participant, PG&E may, without reference to the specific Participant raising such matter or initiating the inquiry, post responses on its website. PG&E may, in its sole discretion, decline to respond to any email or other inquiry without liability or responsibility.

PG&E may elect to respond to inquiries or comments by individual Participants concerning purely procedural or administrative matters, but may also decline to do so in its sole discretion

without liability or responsibility.

## **VII. Credit and Collateral:**

In its evaluation of an offer, PG&E will consider the Participant's willingness and ability to comply with the credit and collateral requirement as set forth in the Credit Support Addendum to the Master Agreement and as summarized below upon execution of a Confirmation for any Compliance Instrument, including Offset Credits for New or Existing Projects. PG&E's overall credit concentrations with each Participant, including its affiliates, will also be taken into consideration.

Participant should expect to post collateral consistent with the following:

1. Subject to Section VII.2. below, Participants will be required to post collateral equivalent with the mark-to-market value of the Compliance Instruments to be sold to PG&E under the Agreement until the Participant has delivered the Compliance Instruments to PG&E in accordance with the terms of the Agreement.
2. Until PG&E determines that the Offset Credit and Allowance market is robust enough to accurately capture the market value of the applicable Compliance Instrument, Participants will be required to post up to 20% of the contract value, which is the contract price multiplied by the contract volume for the delivery term applicable to the sale of Compliance Instruments. Participant must agree to post this collateral until it has delivered the Compliance Instruments to PG&E in accordance with the terms of the Agreement.
3. For Offset Credits only, following delivery of the Compliance Instruments to PG&E, Participant will be required to provide collateral equaling up to 20% of contract value, which in this case means the contract price multiplied by the contract volume multiplied by the applicable vintage years of the Offset Credits subject to invalidation. This amount will be held by PG&E throughout the invalidation period applicable to the Offset Credits in order to mitigate PG&E's risk of loss in the event that the Offset Credits are invalidated in whole or in part.
4. PG&E will accept Letters of Credit, meeting the requirement provided in the Credit Support Addendum, and cash in U.S. dollars from all Participants. Those Participants that qualify for unsecured credit with PG&E or to provide a parental guarantee based on the financial information provided in connection with their Offer, may utilize a portion of the extended credit or guarantee to satisfy and meet the above-stated collateral requirements, as determined by PG&E.

PG&E will not provide collateral.

## **VIII. Confidentiality:**

Except with PG&E's prior written consent, no Participant shall disclose its participation or its offer in this RFO (other than by attendance at any meeting held by PG&E with respect to the RFO, if any) or collaborate on, or discuss with any other Participant or potential Participant (1) offer strategies, (2) the substance of any offer(s), including without limitation the price or any other terms or conditions of any offer(s), or (3) the shortlist status of any offer(s).

All information and documents in Participant's offer that are clearly identified and marked by Participant as "Proprietary and Confidential" on each page on which confidential information appears shall be considered confidential information. PG&E shall not disclose such information and documents to any third parties except for PG&E's employees, agents, counsel, accountants, advisors, or contractors who have a need to know such information and have agreed to keep such information confidential, except as provided below in this Section VIII.

Notwithstanding the foregoing, it is expressly contemplated that the information and documents submitted by Participant in connection with this RFO may be provided to the CPUC, its staff, and the Procurement Review Group ("PRG"), established pursuant to Decision 02-08-071, or the IE assigned to this RFO, for their review. PG&E retains the right to disclose any information or documents provided by Participant to the CARB, CPUC, Cal EPA, PRG, the IE and to any other entity in order to comply with any applicable law, regulation, or any exchange, control area or California Independent System Operator Corporation rule, or order issued by a court or entity with competent jurisdiction over PG&E at any time even in the absence of a protective order, confidentiality agreement or nondisclosure agreement, as the case may be, without notification to Participant and without liability or any responsibility of PG&E to Participant. PG&E cannot, however, ensure that the CPUC will afford confidential treatment to Participant's confidential information, or that confidentiality agreements or orders will be obtained from and/or honored by the CARB, CPUC, Cal EPA, or PRG.

Participant must execute a RFO Confidentiality Agreement in the form attached as Appendix C and deliver such RFO Confidentiality Agreement to PG&E with its offer.

## **IX. Negotiation and Execution of Definitive Agreement**

By submitting an offer, Participant agrees, if its offer is selected, to negotiate and execute a definitive Agreement consistent with the form of Agreement submitted with the Participant's offer and containing such other terms and conditions as may be mutually acceptable to PG&E and the Participant.

## **X. Regulatory Approval**

Depending on the Agreement, its effectiveness may be expressly conditioned on PG&E's receipt of CPUC approval of, among other things, PG&E's payment obligations under such Agreement.

## **XI. Participant's Waiver of Claims and Limitations of Remedies**

Except as expressly set forth in this RFO, by submitting an offer, the Participant knowingly and voluntarily waives any rights under statute, regulation, state or federal constitution, or common law to assert any claim or complaint or other challenge in any regulatory, judicial or other forum, except as expressly provided below, concerning or related in any way to the RFO and/or any Appendices to the RFO ("Waived Claims"). Except as provided below, the assertion of any Waived Claims by Participant in any regulatory, judicial, or other forum shall, to the extent that Participant's offer has not already been disqualified, provide PG&E the right, and may result in PG&E electing to reject such offer or terminate the RFO.

By submitting an offer, the Participant further agrees that the sole forum in which Participant may assert any challenge with respect to the conduct or results of the RFO is the CPUC. The

Participant further agrees that the sole means of challenging the conduct or results of the RFO is a protest to PG&E's filing before the CPUC seeking approval of one or more Agreements entered into as a result of the RFO, or, if no such filing is required, by a complaint before the CPUC. The Participant further agrees that the sole basis for any such protest or complaint shall be a challenge to the conduct or results of the RFO on the ground that PG&E failed in a material respect to conduct the RFO in accordance with the RFO rules and procedures outlined in this document, and the exclusive remedy available to the Participant in the case of such a protest shall be an order of the CPUC that PG&E again conduct any portion of the RFO that the CPUC determines was not previously conducted in accordance with the RFO rules and procedures outlined in this document. The Participant expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs, and/or attorneys' fees. Unless PG&E elects to do otherwise in its sole discretion, during the pendency of such a protest or complaint the RFO and any related regulatory proceedings related to the RFO will continue as if the protest or complaint had not been filed, unless the CPUC has issued an order suspending the RFO or PG&E has elected to terminate the RFO.

The Participant agrees to indemnify and hold PG&E harmless from any and all claims by any other Participant asserted in response to the assertion of a Waived Claim by the Participant or as a result of the Participant's protest to or complaint regarding the RFO. Except as expressly provided in the RFO, nothing herein, including Participant's waiver of the Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of PG&E.

## **XII. Termination of the RFO and Related Matters**

PG&E reserves the right at any time, in its sole discretion, to terminate the RFO for any reason whatsoever without prior notification to Participants and without liability of any kind to PG&E or anyone acting on PG&E's behalf. Without limitation, grounds for termination of the RFO may include the assertion of any Waived Claims by a Participant or a determination by PG&E that, following evaluation of the offers, there are no offers that provide adequate customer benefit.

PG&E reserves the right to change the offer evaluation criteria for any reason, to terminate further participation in this process by any Participant, to accept any offer or to enter into any definitive Agreement, to evaluate the qualifications of any Participant, and to reject any or all offers, all without notice and without assigning any reasons and without liability to PG&E or anyone acting on PG&E's behalf.

In the event of termination of the RFO for any reason, PG&E will not reimburse the Participant for any expenses incurred in connection with the RFO regardless of whether such Participant's offer is selected, not selected, rejected or disqualified.

Unless earlier concluded, the RFO will terminate automatically upon the execution of one or more Agreements by selected Participants as described herein. In the event that no Agreements are executed, then the RFO will terminate automatically on December 31, 2012.

## **XIII. Participant's Representations and Warranties**

Each Participant submitting an offer shall execute and provide an Offer Agreement attached as Appendix B, under which Participant must, among other things, agree to be bound by the conditions of the RFO in submitting its offer and making the representations and warranties set forth therein. Please review this agreement carefully.

BREACH BY ANY PARTICIPANT OF THE REPRESENTATIONS AND WARRANTIES IN APPENDIX B OF THE RFO APPENDICES IS, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO PG&E UNDER APPLICABLE LAW, GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH PARTICIPANT FROM PARTICIPATION IN THE RFO AND, DEPENDING ON THE NATURE OR SEVERITY OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE RFO IN ITS ENTIRETY.

# Greenhouse Gas Allowances and Offset Credits Request for Offers (GHG RFO)

2012 Solicitation



Participants' Webinar

February 15, 2012



# Objective

- **Provide an overview of the RFO's requirements**
- **Assist Participants who may submit Offers**
- **Answer questions submitted for the Webinar**
  
- **To the extent that there are any inconsistencies between the information provided in this presentation and the requirements in the RFO materials, the RFO materials shall govern**





# Agenda

## Topics

- Solicitation Overview
- Eligibility Requirements
- Offer Submittal Process
- Evaluation Methodology
- Overview of Agreements
- Overview of Credit Requirements
- Break to Review Questions
- Q & A

## Presenter

Xantha Brusio

Xantha Brusio

Xantha Brusio

Millene Hahm

Millene Hahm

Justice Awuku

GHG RFO Team



# Q&A Instructions

**Submit questions via email to the GHG RFO mailbox at [GHGRFO@pge.com](mailto:GHGRFO@pge.com)**

**Questions will be answered at the end of the Webinar**

**After the Webinar, PG&E will update the “General Program Questions” document on PG&E’s website at: [www.pge.com/rfo](http://www.pge.com/rfo)**

**A recording of the Webinar will also be on PG&E’s website**



# Solicitation Overview



# GHG RFO – Expected Schedule

<b>Date/Time (2012)</b>	<b>Event</b>
<b>February 15</b>	<b>Participants' Webinar</b>
<b>March 8, 1:00 P.M. PPT</b>	<b>Deadline for Participants to submit completed Offer(s). Offers may be submitted as early as March 1, but will not be evaluated until after the Deadline.</b>
<b>May 15</b>	<b>PG&amp;E notifies Shortlisted Participants and requests Shortlist Deposit</b>
<b>May 29, 5:00 P.M. PPT</b>	<b>Shortlisted Participants notify PG&amp;E whether they accept shortlist position from PG&amp;E and post Shortlist Deposit</b>
<b>June 15 and ongoing</b>	<b>Target timeframe for execution of Agreements</b>



# Independent Evaluator (IE)

## **2012 GHG RFO IE is Lewis Hashimoto, Arroyo Seco Consulting**

- Provides third-party oversight of the procurement process
- May review all data and communications with Participants

**CC the IE at [lkhashimoto@att.net](mailto:lkhashimoto@att.net)  
on all emails to [GHGRFO@pge.com](mailto:GHGRFO@pge.com)**



# Eligibility Requirements



# Eligibility Requirements

## **Compliance Instruments must be, at time of delivery:**

- Allowances or Offset Credits issued by CARB

## **Participants must, at time of delivery:**

- Be registered with CARB
- Have a CARB-issued Holding Account

## **Allowances cannot be held in a Limited Use Holding Account**

## **Offset Credits must meet ARB's requirements for Offset Credits or Early Action Offset Credits**

## **Participant selling Compliance Instruments must be authorized to transfer full title and ownership of Compliance Instruments to PG&E**



# Offer Requirements

## Offer Size:

- 25,000 mtCO<sub>2</sub>e minimum Offer size, in aggregate
  - May be delivered over multiple years

## Offer Pricing:

- For a fixed amount of Compliance Instruments
- On a vintage year basis or annual basis for multiple delivery years
- On a fixed price basis in terms of \$USD/mtCO<sub>2</sub>e

## Offset Credit Offers acceptable from:

- Single project or aggregated pool of projects
  - If pooled, must identify each project in pool
- Existing or New Projects





# Compliance Instrument Eligibility

X = Eligible vintage for 2012 GHG RFO

X = Preferred vintage for 2012 GHG RFO

Vintage Years	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Allowances									X	X	X	X	X	X	X	X
Offset Credits (Early Action)	X	X	X	X	X	X	X	X	X	X						
Offset Credits (Existing)			X	X	X	X	X	X	X	X	X	X	X	X	X	X
Offset Credits (New)			X	X	X	X	X	X	X	X	X	X	X	X	X	X

All New Offset Credit Projects must be commercially operable and have verified Offset Credits within 12 months of signing an Offset Credit Confirmation Agreement



# Offer Submittal Process



# Keys to a Successful Offer

- **Submit a complete Offer and the Offer Deposit**
- **Submit a competitively priced Offer**
- **Limit your modifications to the Agreement**
- **Make your Offer Form is consistent with the Agreement**
- **For Offset Credit Offers:**
  - **Conform with the relevant Project Protocol**
  - **Be verifiable**
  - **Have a realistic timeline and achievable milestones**
  - **Have the rights to sell to PG&E**
  - **Prepare all required documents and permits**



# Offer Submittal Process

- **Offers must be received by PG&E in electronic form by Thursday, March 8, 2012, 1:00 P.M. (PPT)**
  - **Hardcopy or facsimile Offers not acceptable**
- **Email Offers to [GHGRFO@pge.com](mailto:GHGRFO@pge.com) and to [lkhashimoto@att.net](mailto:lkhashimoto@att.net)**
- **Electronic documents must be in format specified in Protocol**
  - **In emails no larger than 10 MB per email**
  - **In subject line, note “Email 1 of 6,” “Email 2 of 6,” etc.**
  - **“Zip” files w/separately named folders (e.g. Appendix A, B, C...)**
  - **Use filename convention “ParticipantName\_OfferID\_AppendixX.xxx”**



# Offer Submittal Process

- **PG&E will only consider submitted Offers that, as of the submittal deadline, are complete and conforming Offers**
  - **PG&E will notify Participants of error (e.g. incomplete or incorrect documents), and will allow 2 business days to correct**
- **By submitting an Offer, Participants are required to abide by the confidentiality obligations specified in the Agreement**



# Offer Submission Requirements

	Allowance Offer	Offset Credit Offer
Offer Deposit	X	X
Appendix A: Offer Form (MS Excel) (updated on 2/7)	X	X
Appendix B: Offer Agreement (MS Word and PDF)	X	X
Appendix C: RFO Confidentiality Agreement (MS Word & PDF)	X	X
Appendix D: Master Allowance / Offset Credit Purchase Agreement (MS Word)	X	X
Appendix E: Allowance Confirmation (MS Word)	X	
Appendix F: Offset Credit Confirmation (MS Word)		X
Appendix G: Supplier Diversity Questionnaire (MS Word)	X	X
Appendix H: Credit and Finance Information (MS Word)	X	X
Appendix I: Offset Credit Project Information (MS Word)		X
Appendix J: Taxpayer ID (W-9) (PDF)	X	X



# Offer Form (Appendix A) Instructions

- One Offer Form per Offer
- Fill out separate Offer Forms for Allowance and for Offset Credits
- Enable macros when opening the Offer Form
- Instructions tab contains a list of directions and useful references/definitions
- Orange cells contain drop-down menu selection to be completed
- Green cells are free-form text field
- Help captions are available when you position your mouse over a field
- Gray cells are auto-calculated cells
- Fill out orange and green cells in each tab of the Offer Form to reduce need for forms to be returned for completion. Once completed, cells will turn white



General Offer Information	
Compliance Instrument (Product Type) <input type="checkbox"/>	
Do, or will, the compliance instruments reside in a limited use holding account? <input type="checkbox"/>	
Offer Number	
Total Number of Offers	
Is this a mutually exclusive offer? <input type="checkbox"/>	
If Offer is not mutually exclusive, please describe	
Offer ID (assigned automatically)	0 of 0_2012GHG_0
Components of Offer ID: missing fields in red text below (if any)	
	Compliance Instrument (Product Type) <input type="checkbox"/>
	Full Legal Company Name
	Offer Number
	Total Number of Offers
	Is this a mutually exclusive offer? <input type="checkbox"/>

Participant Information	
Full Legal Company Name	
Address	
City	
State (or Providence)	
Zip Code	
Country	
Do you have full legal authority to offer the compliance instruments? <input type="checkbox"/>	
Are you acting as a broker to sell the compliance instruments? <input type="checkbox"/>	
Authorized Contact First Name	
Authorized Contact Last Name	
Title of Authorized Contact	
Phone Number of Authorized Contact	
Alternative Phone Number of Authorized Contact	
Email of Authorized Contact	
Authorized Contact No. 2 First Name	
Authorized Contact No. 2 Last Name	
Title of Authorized Contact No. 2	





# Communications

- All GHG RFO documents are on PG&E's website at [www.pge.com/rfo](http://www.pge.com/rfo)
- Announcements, updates and Q&As will be posted on the website
- Communications should be directed to [GHGRFO@pge.com](mailto:GHGRFO@pge.com)
  - Remember to CC the IE at [lkhashimoto@att.net](mailto:lkhashimoto@att.net)



# Evaluation Methodology



# Evaluation Methodology

## Primary evaluation criteria for conforming Offers:

- **Market Valuation**
- **Credit**
- **Portfolio Fit**
- **Project Viability**
- **Supplier Diversity**
- **Modifications to the Agreement**



# Market Valuation

**How competitive an Offer's price is compared to the Market Price**



# Credit

**Creditworthiness is one of the criteria for the evaluation of Offers. The following are some of the credit considerations:**

- Participant's willingness to provide performance assurance
- Financial strength and ability to meet future margin requirements
- Adherence to the credit requirements of the Master Agreement



# Portfolio Fit

**How well the Offer's features match PG&E's portfolio needs**

- Annual procurement targets
- Cap-and-Trade compliance obligation



# Project Viability

## Offset Credit Project Information

- Evaluation only applies to Offset Credit Offers, not Allowances
- Likelihood of future invalidation by CARB of any Offset Credit
- Likelihood that a New Project will become operational
- Likelihood that projects will deliver Future Offset Credits
  - Full contract quantity
  - On schedule
- Ability of a New Project to obtain or retain the necessary financing and permits



# Supplier Diversity

## **Participant's status as and/or commitment to diverse businesses**

- Status as a CPUC-certified Diverse Business Enterprise (DBE)
- Commitment to subcontract with DBEs, where applicable





# Modifications to Agreements

## **Assessment of changes to the Master Agreement and Confirmation(s)**

- The extent, materiality, risk and cost impact of any of proposed modifications to the applicable Agreements
- Ensure that the information provided in Agreements is consistent with the information included in Offer Form



# Overview of Agreements



# Overview of Agreements

## **“Agreement” includes:**

- Master Allowance/Offset Credit Purchase Agreement
  - Credit Support Addendum
- Allowance Confirmation (or) Offset Credit Confirmation

## **Agreement must reflect the Offer Form**

**Participant should provide an Agreement that reflects the final terms and conditions to which the Participant will agree and execute**



# Overview of Master Agreement

- Adverse Legal Determination
- Tracking System Failure
- Market Price
- Fixed Differential (for Offset Credits)



# Adverse Legal Determination

- See definition in Master Agreement and Section 3.04 of Master Agreement, “Delivery Obligations upon Adverse Legal Determination”
- Upon an Adverse Legal Determination, PG&E and Participant will have 90 days from the start of the Adverse Legal Determination to see if it is resolved
  - Prior to the 90<sup>th</sup> day, PG&E will have the right but not the obligation to continue to purchase the Compliance Instruments from the Participant
  - If not resolved, then either Party has a no-fault termination right



# Tracking System Failure

## **Disruption in Delivery solely caused by the Tracking System**

- See Section 3.05 of the Master Agreement
- Not specific to either Party's Holding Account
- Not subject to Section 3.04 (Delivery Obligations upon Adverse Legal Determination)
- Not within the control of, or the result of the negligence of, such Party and which could not have been avoided by the exercise of due diligence
- If Tracking System Failure is not resolved within 90 days, then either Party has a no-fault termination right



# Market Price

**See definitions in Master Agreement**

## **For Allowances**

- **The Market Price is determined by using the average closing market price for Allowances as such prices are published by an Index for thirty (30) days preceding the applicable date; or,**
- **Broker Quotes to determine Market Price**
  - **If closing market prices not available on an Index at least seven (7) days during such 30 day period**
  - **If Index no longer publishing Allowance Prices; or,**
- **Calculated in commercially reasonable manner**
  - **If Broker Quotes not available**

## **For Offset Credits**

- **Market Price applicable to Offset Credits using the Market Price for Allowances less the Fixed Differential, included in each Offset Credit Confirmation**



# Fixed Differential

**For Offset Credits only**

**Established prior to execution of the Agreement**

- Represents the difference in value between the Offset Credit Offer Price and the Market Price for Allowances





# Overview of Confirmations

## Key Features for Allowances and Offset Credit Confirmations:

- Vintage Year(s)
- Quantity (mtCO<sub>2</sub>e)
- Price (\$/mtCO<sub>2</sub>e)
- Delivery Date(s)
- Initial Posting Amount
  - Up to 20% of contract value net of unsecured credit granted



# Offset Credit Confirmation

## Key Features:

- **Fixed Differential (\$ /mtCO<sub>2</sub>e)**
- **Invalidation Security Amount**
  - Up to 20% of contract value net of unsecured credit granted
- **Invalidation Period**
  - 3 years or 8 years
- **Invalidation Termination Payment**
  - Participant is required to reimburse PG&E for any invalidated Offset Credits and to pay the damages to replace the invalidated Credits
- **Milestones**
  - Sellers Obligations and Covenants
  - Project-specific



# Overview of Credit Requirements



# Credit and Collateral

- PG&E may grant some Participants unsecured credit
  - The determination for the unsecured credit is at the sole discretion of PG&E
- The credit granted can be used to satisfy part or all of the performance assurance requirements for Allowances or Offset Credits
- Initially, the performance assurance requirement is a fixed amount
- PG&E determines when mark-to-market and daily margining process are feasible to implement



# Credit and Collateral

- Contracts for Allowances and Offset Credits will require up to 20% of contract value as initial performance assurance
- For Offset Credits only, the performance assurance will be retained beyond the delivery date of the Offset Credits
  - Up to 20% of the delivered vintage year contract value may be required as performance assurance for the invalidation security amount
  - This amount will continue to be retained during the entire invalidation period
- Acceptable forms of performance assurance are letters of credit and cash



# Q & A

PG&E reserves the right to modify the answers provided at any time for any reason. The answers provided herein should not replace your independent review and analysis of the material provided in the Solicitation Protocol, Cap and Trade Regulations, or the form Agreements.

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PG&E reserves the right to modify the answers provided at any time for any reason. The answers provided herein should not replace your independent review and analysis of the material provided in the Solicitation Protocol, Cap and Trade Regulations, or the form Agreements.

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**GENERAL QUESTIONS**

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1. What is this RFO?
  - PG&E is issuing a Greenhouse Gas Allowances and Offset Credits Request For Offers (GHG RFO) to obtain Allowances and/or Offset Credits that are eligible for compliance under the Cap-and-Trade Regulations adopted by CARB as part of CARB's proceeding to implement AB 32. This is PG&E's first solicitation for Allowances and Offset Credits. PG&E WILL NOT BE PURCHASING OTHER PRODUCTS, SUCH AS ELECTRICITY, RENEWABLE ENERGY CREDITS, NATURAL GAS, OR BIOGAS THROUGH THE GHG RFO.
2. What is an Allowance?

As defined in the Cap-and-Trade Regulations, Section 95802(a)(8), an Allowance is a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.
3. What is an Offset Credit?

As defined in the Cap-and-Trade Regulations, Section 95802(a)(12), an Offset Credit is a tradable compliance instrument issued by CARB that represents a GHG reduction or GHG removal enhancement of one metric ton of CO<sub>2</sub>e. The GHG reduction or GHG removal enhancement must be real, additional, quantifiable, permanent, verifiable, and enforceable.
4. How will Cap-and-Trade work?
  - Under California's Cap-and-Trade Regulations, companies can buy and sell Allowances to emit GHGs. The CARB will issue a limited (and shrinking) number of Allowances for entities in sectors regulated under the cap. Entities have an incentive to reduce emissions so they do not need to purchase as many Allowances in the market. Entities that need to emit GHGs can (1) find cost-effective ways to reduce GHGs; (2) buy more Allowances if they need to; and/or (3) buy Offset Credits for a portion of their compliance obligation. Please see CARB's Cap-and-Trade Program website for more details.
5. Why is PG&E issuing the GHG RFO?
  - PG&E is issuing this GHG RFO to obtain comprehensive Offers for Allowances and Offset Credits to comply with AB 32 in a cost-effective way.
6. Does PG&E have approval from the CPUC to purchase Allowances and/or Offset Credits?
  - PG&E is currently seeking approval from the CPUC for its authority to purchase Allowances and Offset Credits under PG&E's GHG Procurement Plan, which was filed in July 2011 pursuant to Track III of the Long-Term Procurement Plan proceeding (Rulemaking 10-05-006). As of the Participants' Webinar, PG&E has not yet received final approval of the GHG Procurement Plan. PG&E hopes to receive a proposed decision on its GHG Procurement Plan by March 31, 2012, and a final decision approximately four weeks later.
7. Does PG&E require CPUC approval to execute an Agreement? (NEW 2-17)
  - Yes, either via an approved GHG Procurement Plan or CPUC pre-approval of individual transactions. Even with an approved GHG Procurement Plan, PG&E may still choose to seek CPUC pre-approval via an Advice Letter filing for any particular transaction resulting from the RFO.
8. Will PG&E participate in CARB's auctions?
  - Yes, PG&E intends to participate in CARB's auctions, the first of which is scheduled for August 15, 2012.

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9. Why doesn't PG&E buy all the Allowances it needs through CARB's auctions, or through exchanges like ICE and GreenX?
  - PG&E's GHG Procurement Plan proposes that PG&E use CARB's auction, competitive solicitations such as the GHG RFO, bilateral contracting, and transparent exchanges to cost-effectively procure GHG Compliance Instruments.
10. What is the volume of Compliance Instruments that PG&E seeks to procure via the GHG RFO?
  - There is no stated maximum volume that PG&E is looking to procure in this or future GHG RFOs.
11. Will PG&E accept Compliance Instruments from Quebec's Cap-and-Trade program if California's Cap-and-Trade program links to it?
  - As linkage between programs is still pending, PG&E will not be accepting potential Compliance Instruments from Quebec for this RFO.
12. What's the process/timeline for the GHG RFO?
  - PG&E will hold a Participants' Webinar on February 15, 2012. The registration deadline for the Participants' Webinar was February 10, 2012. Offers in response to the GHG RFO are due March 8, 2012. The full schedule for the RFO is available on PG&E's website at <http://www.pge.com/rfo>.
13. Who can submit Offers to the GHG RFO?
  - To submit an Offer, Participants need to be Registered or in the process of becoming Registered with CARB and have or will have a CARB-issued Holding Account for the Cap-and-Trade program. Please see the [RFO Protocol](#) for all of the eligibility requirements.
14. Where can I find information about registering with the CARB?
  - Please consult the CARB's [Cap-and-Trade Regulations](#).
15. Where can I find information about registering with the Climate Action Reserve?
  - Please consult the Climate Action Reserve's [Projects website](#).
16. What type of Offers is PG&E seeking?
  - The minimum Offer size for the RFO is 25,000 metric tons of carbon dioxide equivalent (mtCO<sub>2</sub>e) of Allowances or Offset Credits, which can span multiple years.
    - i. PG&E prefers Offers of Allowances for either or both of the vintage years 2013 and 2014, but will consider Offers including later vintage years.
    - ii. For Offset Credits from Existing Projects, PG&E prefers Offers for any or all of the previous vintage years that are eligible for compliance under CARB's Cap-and-Trade Regulations, and any or all of the vintage years 2012 through 2014, but will consider Offers including later vintage years.
    - iii. For Offset Credits from New Projects, PG&E prefers Offers for any or all of the vintage years 2012 through 2014, but will consider Offers including later vintage years.
    - iv. For Early Action Offset Credits from New Projects, PG&E prefers Offers for any or all of the past vintage years that are eligible for compliance under CARB's Cap-and-Trade Regulations (2005-2011), but will consider Offers including future vintage years (2012-2014).

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17. Does PG&E prefer Offers for Allowances, Offset Credits, or Early Action Offset Credits?
- PG&E will review all Offers for eligible Compliance Instruments, and has no stated preference for the type of Compliance Instruments that it is soliciting in this GHG RFO. That said, PG&E is subject to the 8% usage limitation on Offset Credits to meet its compliance obligation per compliance period in accordance with the Cap-and-Trade Regulations, and will be assessing, through the Portfolio Fit evaluation, how well each Offer's features match PG&E's portfolio needs in its annual procurement targets within the context of Cap-and-Trade compliance.
18. Will PG&E accept Offers with pricing in terms other than fixed pricing?
- No. Offers must be in fixed dollar amounts per Compliance Instrument as specified in the Offer Form and as noted in Section II.B of the RFO Protocol.
19. Will PG&E accept Offers with delivery dates that are not firm?
- No. Offers for Compliance Instruments must have firm delivery dates as specified in the Offer Form.

#### OFFSET CREDIT OFFERS

20. If my project is operational but Offset Credits from it have not yet been verified, is my project an Existing or a New Project?
- Your project would be considered a New Project. A New Project is one that within twelve (12) calendar months after the effective date of an Agreement is i) commercially operable, ii) registered with the CAR or CARB, and iii) has produced verified Offset Credits.
21. Will PG&E consider Offers for Offset Credits from Early Action projects from vintages prior to 2012 that have not yet been verified?
- Yes. PG&E would accept Early Action Offset Credits from a New Project with vintages between 2005 and 2012 if the project within twelve (12) calendar months after the effective date of an Agreement is i) commercially operable, ii) registered with the CAR or CARB, and iii) has produced verified Offset Credits.
22. I would like to Offer Offset Credits that are contingent on securing land rights (or feedstock, or permits) for the project. Would PG&E consider my Offer?
- Yes, if the project within twelve (12) calendar months after the effective date of an Agreement is i) commercially operable, ii) registered with the CAR or CARB, and iii) has produced verified Offset Credits.
23. What Offset Credit project types (including Early Action) are compliant with California's Cap-and-Trade program?
- The ARB has thus far identified four types of projects that will initially qualify to produce Offset Credits, including i) Livestock, ii) Ozone Depleting Substance Destruction, iii) Forestry, and iv) Urban Forestry.
24. Does PG&E prefer certain versions of the protocol under which an Offset Credit could be generated?
- No. An Offset Credit may be developed under any protocol that meets the requirements of California's Cap-and-Trade Regulations.

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25. If PG&E buys Offset Credits from my livestock project, can it also buy the electricity or biogas generated by the project?
- Yes; however, PG&E will not be buying those products through the GHG RFO. PG&E has separate procurement processes for electricity and biogas that are not linked to the procurement of Offset Credits by PG&E. To inquire about selling biogas to PG&E, please review the 2010 [Biogas RFI](#), and email [Biogas@pge.com](mailto:Biogas@pge.com). To inquire about selling electricity generated from biogas to PG&E, please visit PG&E's [Distributed Generation](#), [Feed-In Tariffs](#), or [Wholesale Electric Power Procurement](#) websites.
26. Will PG&E consider Offset Credits from protocols that are being considered for adoption by CARB for use in the California Cap-and-Trade program?
- No. If additional protocols are adopted by CARB in the future, PG&E will consider them for eligibility in future GHG RFOs.
27. Will PG&E consider Offset Credits from potential Offset Project Registries or Early Action Offset Programs other than the Climate Action Reserve (CAR)? (UPDATED 2-17)
- No, not for the 2012 GHG RFO. As Offset Project Registries and Early Action Offset Programs are approved by CARB, PG&E will consider adding such registries and programs to future GHG RFOs.
28. Does PG&E prefer Offset Credits from projects in specific geographic locations?
- No. Offset Credits may come from projects located anywhere within the geographic boundaries defined in the CARB-approved compliance protocols. Currently, this encompasses the United States of America.
29. Will PG&E accept Offers that do not specifically list the name of the Offset Credit project?
- No. Offset Credit Offers must identify the specific project from which the Offset Credits originated as required in the [Offer Form](#).
30. If I submit five separate Offers for Offset Credits that are from the same existing project but for five different volumes and prices, do I have to post an Offer Deposit for each one, or just one for the largest version of the proposal?
- You must submit an Offer Deposit for each Offer.
31. Is there any limit on how many Offers I can submit to this RFO?
- No, there is no stated limit on the number of Offers you can submit.
32. What happens if the Offset Credits I sold to PG&E are invalidated?
- As provided in Special Provision 5(b)(ii) of the [Offset Credit Confirmation](#), which addresses an "Invalidation Event," if an Offset Credit is invalidated, then the seller of such Credit will need to reimburse PG&E for the amount paid for the Credit and pay PG&E for the replacement value of the invalidated Credit as well as any penalties or other charges that PG&E may incur in connection with the invalidated Credit.
33. How does PG&E account for the benefits of having a portfolio of Offset Credits from different project types versus having all of its Offset Credits coming from one project type? (NEW 2-17)
- PG&E will review all Offers for eligible Offset Credits, and has no stated preference for Offset Credits based on project type. PG&E's Portfolio Fit evaluation will review how well

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each Offer's features match PG&E's portfolio needs with regard to its procurement targets within the context of Cap-and-Trade compliance.

- 34.** Since no California compliance Offset Credits have yet been issued by CARB, must all Offset Credits go through the issuance process that has yet to be finalized by CARB? If so, will the RFO allow for flexibility if there are delays caused by CARB? (NEW 2-17)
- All Offset Credits must be issued by CARB at the Time of Delivery to be eligible for this RFO. Time of Delivery means the point at which you would transfer the Offset Credits from your Holding Account into PG&E's Holding Account in accordance with the Cap and Trade Regulations. Therefore, the delivery date in your Offer should take into account the amount of time you think it might take for CARB to issue Offset Credits.
  - The RFO allows for flexibility in delivery only in the event of an Adverse Legal Determination or a Tracking System Failure. Please see Sections 3.04 and 3.05 of the Master Agreement for details.

#### OFFER SUBMITTAL AND EVALUATION

- 35.** What is an Independent Evaluator (IE)? Why does the GHG RFO have one?
- The IE provides third-party oversight of the procurement process, and is a CPUC requirement. Lewis Hashimoto of Arroyo Seco Consulting will provide IE services for the GHG RFO.
- 36.** What is the Procurement Review Group (PRG)?
- Each utility in California is required by the CPUC to establish a Procurement Review Group (PRG) whose members are non-market participants who are subject to an appropriate non-disclosure agreement, and who have the right to consult with the utility and review the details of the utility's:
    - i. Overall procurement strategy
    - ii. Proposed procurement processes including, but not limited to, RFOs
    - iii. Proposed procurement contracts, before those contracts are submitted to the CPUC for review.
- 37.** How should I submit my Offer to PG&E?
- All Offers must be sent to PG&E in electronic form no later than March 8, 2012 at 1:00P.M. PPT via email to [GHGRFO@pge.com](mailto:GHGRFO@pge.com) and to the IE via email to [lkhashimoto@att.net](mailto:lkhashimoto@att.net).
  - The electronic documents must be in the format specified in Section V.B of the RFO Protocol.
  - For large documents, PG&E recommends submitting zip files or multiple emails (no larger than 10 MB each) with separate attachments corresponding to the Appendix item.
  - If sending multiple emails, please note in the subject line of your email that the email is email "1 of 6," "2 of 6" etc.
  - The filename convention should be "ParticipantName\_OfferID\_AppendixX.doc (or .xls or .pdf, depending on document type). The OfferID is generated automatically by the Offer Form.
- 38.** Who will review the Offers? Who will select the Offers and negotiate Agreements?

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- Offers will be reviewed by PG&E staff, the Independent Evaluator (IE), and PG&E's Procurement Review Group (PRG). PG&E staff will evaluate and shortlist the Offers, and negotiate any resulting Agreements. CPUC approval of Agreements may be required.
- 39.** How does Supplier Diversity factor into an Offer's evaluation?
- A Participant's status as a CPUC-certified Diverse Business Enterprise (DBE), and/or its commitment to subcontract with DBEs, where applicable, will quantitatively impact an Offer's score in PG&E's evaluation process.
- 40.** Will PG&E make public the names of the entities whose Offers are Shortlisted, or the details of the final Agreements (e.g. volume, price) resulting from the GHG RFO?
- PG&E does not intend to make that information public. However, PG&E may be required to disclose certain information in order to comply with existing or future disclosure requirements issued by the CPUC or other governmental authorities.
- 41.** Do Agreements resulting from the GHG RFO require CPUC approval? Why?
- In its GHG Procurement Plan, PG&E proposed that it would file an Advice Letter seeking CPUC approval of any Agreement that includes Compliance Instruments that are more than four vintage years into the future (e.g. for an Agreement entered into in 2012, PG&E would seek CPUC approval if it included Compliance Instruments of vintage 2017 or later). PG&E may, at its discretion, seek CPUC approval for any or all other transactions as well.
- 42.** What sort of edits to the Agreement would PG&E consider to be "significant modifications" that would disqualify my Offer?
- Both the extent and materiality of modifications will be taken into consideration, as will the extent and materiality of one Offer's modifications compared to other Offers' modifications. Any modifications that change the balance of risks and benefits to PG&E may be considered "significant." PG&E strongly recommends that Participants minimize any changes to the Agreement.
- 43.** Does a Participant have to be registered with CARB at the time of the Offer (March 8, 2012) or just at the time of delivery of Offset Credits? If the former, is CARB already officially accepting registrations? (NEW 2-17)
- The Participant does not need to be registered with CARB at the time of Offer submission. A Participant must be registered with CARB prior to the Delivery Date, as noted in Section 3.02 of the Master Agreement. CARB has begun the registration process. Please refer to their website for details.
- 44.** To what extent will PG&E allow a Participant to comment on the Master Agreement after being shortlisted, instead of at the time of Offer Submission? (NEW 2-17)
- Modifications to the Agreement must be made at the time of Offer submission, as noted in Section V.B. of the RFO Protocol, in order for PG&E to evaluate Offers.

#### FINANCING AND CREDIT

- 45.** Would PG&E provide up-front financing or pre-payment for Offset Credits?
- No.

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- 46.** When would I get paid for the Allowances or Offset Credits I sell to PG&E via the GHG RFO?
- Payment shall occur after delivery of the Compliance Instruments into PG&E's Holding Account. Please see Section 4.01 of the [Master Agreement](#) for details.
- 47.** What are PG&E's collateral requirements for Offset Credits?
- As noted in the [RFO Protocol](#), Section VII, Participants will be required to post collateral equivalent with the mark-to-market value of the Offset Credits to be sold to PG&E under the Agreement until the Participant has delivered them to PG&E in accordance with the terms of the Agreement. Until PG&E determines that the Offset Credit and Allowance market is robust enough to accurately capture the market value of the applicable Compliance Instrument, Participants will be required to post up to 20% of the contract value. Participants must agree to post this collateral until they have delivered the Offset Credits to PG&E in accordance with the terms of the Agreement. For Offset Credits specifically, following delivery to PG&E, Participants will be required to provide collateral equaling up to 20% of contract value, to be held by PG&E throughout the invalidation period applicable to the Offset Credits.
- 48.** Is the Performance Assurance required for all Offers? Is this something Participants propose, or does PG&E require it after an Offer is accepted? (NEW 2-17)
- PG&E expects Participants to propose the Performance Assurance amount consistent with Section VII of the [RFO Protocol](#) in conjunction with the Offer's pricing. The Offer's pricing should be provided using the assumption that Participants must post 20% Performance Assurance.
  - Once PG&E has completed its Credit evaluation, PG&E will determine whether the amount of Performance Assurance is i) adequate, ii) can be reduced, or iii) needs to be increased based on the Participant's creditworthiness and other evaluation criteria such as pricing and portfolio fit as discussed in Section III of the [RFO Protocol](#).
  - Participants should be prepared to meet the performance assurance on the basis of mark-to-market when a mark-to-market process and daily margining are implemented. The performance assurance under a mark-to-market process can increase or decrease over time.
  - After Shortlisting, Participants may improve the competitiveness of their offer during negotiations to increase the chances of execution.
- 49.** How will PG&E determine when "the Offset Credit and Allowance market is robust enough to accurately capture the market value of the applicable Compliance Instrument"? (UPDATED 2-17)
- PG&E will use its judgment to determine whether the market is robust enough to allow for daily margining. In the Credit Support Addendum to the [Master Agreement](#), PG&E defines the "Liquid Market Trigger Date" as the date that is thirty (30) days following the date on which PG&E gives Notice that it will begin to calculate Agreement Exposure in accordance with subpart (2) of the "Agreement Exposure" definition in the Credit Support Addendum Paragraph 4(a).
  - Accordingly, at any time after the Participant and PG&E have entered into an Agreement, PG&E may elect to use a mark-to-market and daily margining process to request collateral to the extent that the mark-to-market value of the transaction exceeds a Participant's unsecured credit line, defined as Threshold in the Agreement, if applicable.
- 50.** What happens if the required collateral amount increases/decreases?
- PG&E will request that a Participant post more collateral when collateral requirements increase, and will return collateral to a Participant when collateral requirements decrease.



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This may occur when 1) mark-to-market and daily margining has been implemented leading to changes to collateral requirements, 2) Products have been delivered, and for Offset Credits, when the invalidation period has expired, and 3) when there are changes to the unsecured credit granted to the Participant in the form of Thresholds as defined in the Agreement. Please see Section 4 of the Credit Support Addendum to the Master Agreement for details.

- 51. How do I know if I qualify for unsecured credit?**
- During the Agreement negotiation phase and before the Agreement is executed, PG&E will disclose to a Participant if it has been extended unsecured credit, based on the financial information provided in the Offer and other sources.
- 52. If I can post all the necessary collateral but score poorly on Credit overall, or if I score well on Credit but cannot post all the necessary collateral, would my Offer be rejected?**
- PG&E will review all Offers and evaluate each Offer's merits relative to the other Offers.
- 53. Would PG&E be willing to waive the up to 20 percent collateral requirement for Participants who submit forestry Offset Credits (or other eligible Offset Credits)?**
- PG&E is not willing to waive the up to 20 percent collateral requirement for Offset Credit Offers, regardless of project type. All Participants selling Offset Credits are subject to the collateral requirements based on their creditworthiness, not on the type of Offset Credit to be sold.
- 54. For forestry projects that do not have buyer liability, will a Performance Assurance be applied? (NEW 2-17)**
- Yes. All Participants selling Offset Credits are subject to the collateral requirements based on their creditworthiness, not on the type of Offset Credit to be sold.
- 55. If a Forest Owner posts up to 20 percent collateral to cover invalidation risk, is PG&E willing to be responsible for replacing invalidated forestry Offset Credits? What about for other project types?**
- No. The Offset Credit seller will be liable for the replacement cost of its invalidated Offset Credit, regardless of project type. Please review Section 5(b)(ii) of the Offset Credit Confirmation. Also see Section 2(b) of the Offset Credit Confirmation regarding verification for Urban Forest and U.S. Forest Projects.
- 56. For Offset Credits, does every Participant have to provide a letter of credit or cash collateral irrespective of their creditworthiness? (NEW 2-17)**
- Yes, for the purposes of submitting an Offer, the Participant must provide a letter of credit or cash as collateral. Please see Section VII of the RFO Protocol.
- 57. For Offset Credits, what is the collateral amount due (a) upon execution of an Agreement, (b) prior to delivery and (c) after delivery and during the invalidation period? (NEW 2-17)**
- (a) Initial Posting Amount, which is up to 20% of the contract value of all of the Offset Credits to be sold to PG&E; (b) same as (a) if a mark-to-market and daily margin process has not been implemented; (c) if all of the Offset Credits are provided at once, then PG&E will retain the Initial Posting Amount, but will now consider it to be the Invalidation Security Amount, and PG&E will retain this amount for the remaining Invalidation Period, which will be provided in the Confirmation. Please see the Credit Support Addendum to the Master Agreement and the Offset Credit Confirmation for more details.

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58. If a Participant submits an Offer and subsequently experiences a delivery shortfall, will the Participant lose the posted collateral?
- Depending on whether this is the first delivery shortfall and whether the Participant is able to pay PG&E for the replacement value of the shortfall, along with other considerations, including potentially posting additional collateral, PG&E may or may not consider the Participant to be in default under the contract. If the Participant is in default, then PG&E will have the right to draw upon the collateral posted. Please see Section 3.06(a) of the Master Agreement. For collateral implications, see the Credit Support Addendum to the Master Agreement.
59. Would a Participant be able to remedy a delivery shortfall with delivery of additional future vintages? (NEW 2-17)
- No. In the event of a shortfall, seller would pay damages. Please see Section 3.06 (a) of the Master Agreement for details.
60. Would a delivery shortfall result in cancellation of future purchase commitments by PG&E? (NEW 2-17)
- Not necessarily. Please see Section 3.06 (a) of the Master Agreement.
61. If my Offer is shortlisted and I post a Shortlist Deposit, but then I don't get the permit or financing to build my new project, will PG&E refund my Shortlist Deposit?
- Failure to obtaining a permit or financing needed to build a new project constitutes failure to perform under the Agreement. Please see Section IV.B.4 of the RFO Protocol for the conditions under which PG&E would return a Shortlist Deposit.
62. Would my Offer Deposit be returned if I do not accept a position on the Shortlist? (NEW 2-17)
- PG&E must have confidence that it will be evaluating and shortlisting serious offers from committed Participants. Therefore, PG&E retains the right to hold a Participant's Offer Deposit if the Participant is shortlisted and decides not to accept a position on the Shortlist
  - Please see Section IV.B. 4 of the RFO Protocol for the conditions under which Offer Deposits would be refunded.
63. Would my Offer Deposit or Shortlist Deposit be returned after 120 days if I remained bound for the 120 day Exclusivity Period? (NEW 2-17)
- Section II.D of the RFO Protocol notes that the Exclusivity Period begins only after submission of a Shortlist Deposit, therefore, it does not apply to an Offer Deposit. A Shortlist Deposit would be returned to a Participant by PG&E under one or more of the conditions in Section IV.B.4 of the RFO Protocol.
64. Is the Shortlist Deposit additional to the Offer Deposit, or can the Offer Deposit get rolled into the Shortlist Deposit?
- The Offer Deposit can be rolled into the Shortlist Deposit.
65. Would PG&E accept audited financial statements from parental guarantor?
- Yes. All guarantors must submit financial statements in order to be evaluated.
66. Could you explain the term "fixed differential"? (NEW 2-17)
- The "Fixed Differential" represents the difference in value between the Offset Credit Offer Price and the Market Price for Allowances. For example, if the Offset Credit Offer Price is

PG&E reserves the right to modify the answers provided at any time for any reason. The answers provided herein should not replace your independent review and analysis of the material provided in the Solicitation Protocol, Cap and Trade Regulations, or the form Agreements.

\$5/mtCO<sub>2</sub>e and the Market Price for Allowances established prior to execution of the Agreement is \$10/mtCO<sub>2</sub>e, then the Fixed Differential is \$5/mtCO<sub>2</sub>e. The Fixed Differential is only used to determine the replacement value of an Offset Credit, and will be determined by PG&E and agreed upon by the Participant prior to execution of an Offset Credit Confirmation.

67. On what data will the Fixed Differential be based? (NEW 2-17)
- The Fixed Differential will be based on the Offset Credit Offer price and Market Price for Allowances, which will be established prior to execution of the Agreement.
68. Section VII of the RFO Protocol states in subsection 1 that “Subject to Section VII.2. below, Participants will be required to post collateral equivalent with the mark-to-market value of the Compliance Instruments to be sold to PG&E under the Agreement until the Participant has delivered the Compliance Instruments to PG&E in accordance with the terms of the Agreement.” Does this mean that the collateral has to be equal to the market value of the Offset Credits to be delivered? (NEW 2-17)
- Before the implementation of a mark-to-market and daily margining process, collateral required will be up to 20% of the contract value (less any unsecured credit granted to the Participant) of Offset Credits to be sold to PG&E. After the implementation of a mark-to-market process and daily margining, collateral will be equal to the mark-to-market value (the difference between the market value and the contract value) of the Offset Credits to be delivered less any unsecured credit granted to Participant.
69. Given the amount of time between Participants’ submission of pricing and when a potential Agreement may be negotiated and executed, if the market changes and pricing cannot be held firm (i.e. it goes up), is this grounds for PG&E disqualifying a Participant’s Offer and retaining the Shortlist Deposit? (NEW 2-17)
- A Participant may not change the pricing in its Offer between Offer submission and posting of the Shortlist Deposit, as that is the period during which Offers are evaluated and shortlisted. As noted in Section I. C.3 of the RFO Protocol, Shortlisted Participants may “continually improve the competitiveness of their offer during negotiations to increase the chances of execution; any offer that is modified by a Participant in a way that reduces its value may result in its disqualification from the RFO or removal from the shortlist at any time.”
  - If PG&E (and not the Participant) terminated the Offer subsequent to Shortlist selection, PG&E would return the Shortlist Deposit. Please see Section IV.B.4 of the RFO Protocol for the conditions under which a Shortlist Deposit would be returned to a Participant.
70. You mention that a Letter of Credit is an acceptable form of performance assurance. Would a Standby Letter of Credit be acceptable? (NEW 2-17)
- An irrevocable standby letter of credit is acceptable – please see Section IV.B.3.b of the RFO Protocol for more details.

#### OTHER QUESTIONS

71. What’s the relationship between the GHG RFO and the ClimateSmart™ RFP?
- The GHG RFO is soliciting Allowances and Offset Credits qualified to satisfy PG&E’s compliance obligations under the Cap-and-Trade Regulations adopted by the CARB as part

PG&E reserves the right to modify the answers provided at any time for any reason. The answers provided herein should not replace your independent review and analysis of the material provided in the Solicitation Protocol, Cap and Trade Regulations, or the form Agreements.

of CARB's proceeding to implement AB 32. The ClimateSmart RFP was a solicitation for voluntary GHG emission reductions for the ClimateSmart program. PG&E cannot use the GHG emission reductions it procured for the ClimateSmart program to comply with the Cap-and-Trade program.

72. Can PG&E use the ClimateSmart™ program to comply with the Cap-and-Trade program?
- No. PG&E cannot use the GHG emission reductions it procured for the ClimateSmart program to comply with the Cap-and-Trade program.
73. The Protocol forbids Participants from discussing the RFO with other Participants. If I am selling my own Offset Credits as well as acting as an agent for my client's Offset Credits, would I be in breach of contract?
- No. In this case, you and your client would be considered Affiliates. As noted in Section VIII of the RFO Protocol, a Party may disclose non-public terms or conditions to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed in writing to keep such terms confidential.
74. Can I meet with PG&E staff in-person to present my proposal before the Offer deadline?
- No. PG&E staff will not be conducting in-person meetings on Offers before the Offer deadline.
75. How will PG&E assess the risk of future invalidation of Offset Credits by CARB?
- PG&E will use information about projects provided via Appendix I - Offset Credit Project Information to assess the risks that Offset Credits from a project might be invalidated.
76. Will the other California Investor-Owned Utilities be conducting GHG solicitations this year as well, and if so, when?
- PG&E is not aware if or when the other California IOUs might conduct their own GHG solicitations.
77. Why doesn't PG&E use its CARB-allocated free Allowances for compliance with the Cap-and-Trade program?
- Because PG&E, as an Investor-Owned Utility, must consign all the free Allowances allocated to it for sale in CARB's auctions, PG&E cannot use them directly for compliance. Instead, PG&E must procure Compliance Instruments to cover its compliance obligation.
78. Does PG&E expect a shortfall in the free Allowances it will be granted by CARB?
- PG&E does not expect that the quantity of Allowances allocated to the company will change. Electric sector Allowance allocation is defined in the Cap-and-Trade Regulations, Subarticle 8, § 95870. Each utility's allocation is a function of the sector allocation, the cap adjustment factor and a unique percentage factor for each utility. Since PG&E does not expect any of these elements of the Regulations to change, we do not expect that the quantity of Allowances allocated to the company to change.
79. Will the Participants' Webinar be recorded and available on PG&E's website?
- Yes, it will be available on the GHG RFO website.

PG&E reserves the right to modify the answers provided at any time for any reason. The answers provided herein should not replace your independent review and analysis of the material provided in the Solicitation Protocol, Cap and Trade Regulations, or the form Agreements.

- 80.** If the California Cap-and-Trade program gets delayed, postponed, cancelled, or materially altered in a way that would affect the value of Compliance Instruments, what provisions are there in the Agreement to deal with these circumstances? (NEW 2-17)
- Please see slide 31 of the [Webinar presentation](#). Section 3.04 of the [Master Agreement](#) establishes how PG&E and the counterparty will address an “Adverse Legal Determination,” which is defined in the Master Agreement. The “Adverse Legal Determination” provision and definition should address most of the circumstances noted in your question.
- 81.** Does Delivery Date allow for transfer at any time during the particular date specified? Is a particular time specified? (NEW 2-17)
- The Delivery Date will refer to a specific date (in terms of mm/dd/yyyy) as indicated in the [Offer Form](#) and Agreement on which the applicable Compliance Instrument must be transferred into PG&E’s CARB Holding Account. Delivery on that date must take place in time for the transfer to be recorded in PG&E’s account and be available for usage on the Delivery Date.
- 82.** We are a Canadian company and do not collect the information required by Appendix G: Supplier Diversity Questionnaire. Would PG&E accept an Offer without the Supplier Diversity Questionnaire? (NEW 2-17)
- Participants are expected to provide responses for all elements of their Offer, so please complete the Questionnaire to the best of your abilities. If the question does not apply to you, please note that it is Not Applicable (N/A).



Version 1.2

Please ensure that you allow macros to operate when you open the spreadsheet.

Separate spreadsheets must be completed for an allowance offer and for an offset offer. Each spreadsheet represents one offer that could have multi-year vintages.

**General Conventions for data entry**

Cells with this color generally have a drop-down selection that should be completed
Cells with labels with this character generally have drop-down selections
Cells with this color have regular text input and should be completed
Cells with this color are auto populated

Every cell with a **light green or orange background** is an indicator that it should be filled out. As you populate these cells, the background color will disappear. Most input cells have a pop-up message to assist you if you place your cursor over the cell.

The workbook is organized by worksheet tabs as follows. Please follow this general order when inputting your offer information

Please note that relevant tabs will be visible based on certain input selections. See table below:

Worksheet Tab	Sections in Tab	Tab visible under what conditions?	Applicable to Allowance Offers	Applicable to Offset Offers
<b>Summary</b>	Automatically populated	All	Yes	Yes
<b>Instructions</b>		All	Yes	Yes
<b>Offer Information</b>	General Offer Information Participant Information Compliance Instruments Ownership Information Security Requirement Attestation Additional Information	All	Yes	Yes
<b>Allowance Pricing Information</b>	Allowance Pricing and Delivery Schedule	Compliance Instrument (Product Type): Allowance	Yes	No
<b>Offset Information</b>	Offset Project Information Offset Project Registration Offset Project Owners Additional Information	Compliance Instrument (Product Type): Offset	No	Yes
<b>Offset Pricing Information</b>	Offset Pricing and Delivery Schedule	Product Type: Offset	No	Yes

**OFFER AGREEMENT**

February [ ], 2011

Pacific Gas and Electric Company  
Attention:  
Portfolio Management Department  
77 Beale, Mail Code  
San Francisco, California 94105

Re: Pacific Gas and Electric Company (“PG&E”) 2012 Greenhouse Gas Allowances and Offset Credits Request for Offer (“GHG RFO”) Offer Agreement

By execution of this letter agreement (“Offer Agreement”) [INSERT FULL CORPORATE NAME OF PARTICIPANT] (“Participant”) hereby acknowledge receipt of PG&E’s GHG RFO Protocol dated February 1 , 2012 (“Protocol”) and acknowledges that it has read, understands, and agrees to be fully bound by, all of the terms, conditions and other provisions set forth in the Protocol and this Offer Agreement. All capitalized terms not defined herein shall have the meaning provided in the Protocol.

Additionally, each Participant hereby makes the following representations and warranties:

- A. Participant has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the terms and conditions of the Protocol;
- B. Participant has obtained all necessary authorizations, approvals and waivers that will enable Participant to agree to the terms and conditions of the Protocol and this Offer Agreement;
- C. Participant is not an affiliate of PG&E, PG&E Corporation, or any of their affiliates;
- D. The offer provided by Participant pertains solely to Compliance Instruments that meet or will meet the requirements for Allowances or Offset Credits under the Cap and Trade Regulations;
- E. Participant is submitting its offer(s) subject to all applicable laws;
- F. Except with respect to any other offer that Participant may have submitted jointly with another entity in connection with the Protocol, Participant has not engaged and will not engage in oral, written, or any other form of communication with any other entity submitting an offer to PG&E in response to PG&E’s GHG RFO in respect to the terms of Participant’s offer or the price or terms of such other entities’ offer(s) in the GHG RFO;
- G. If Participant is selected for PG&E’s shortlist and elects to continue to participate in the GHG RFO, then Participant represents that it shall not offer or commit the Compliance Instruments that are the subject of Participant’s shortlisted offer to any other party during the exclusivity period set forth in Section IV.A of the Protocol; provided that such representation shall be binding only if and after Participant has submitted its Shortlist Deposit with PG&E; and
- H. Participant will promptly notify PG&E of any material change in circumstances that may affect the Participant’s ability to fulfill the terms of its offer, at any time from offer submission to

**2012 GHG RFO Appendix B**

PG&E’s acceptance of the offer, as evidenced by PG&E’s execution of an applicable agreement, or Participant’s withdrawal of the offer.

Participant understands and agrees that any breach by Participant of the above representations and warranties is grounds for immediate disqualification of Participant from the GHG RFO and if Participant has provided an Offer Deposit or a Shortlist Deposit, such breach will be grounds for forfeiture of the Offer Deposit or Shortlist Deposit, as applicable. If Participant delivers the Offer Deposit or the Shortlist Deposit to PG&E in the form of cash, then Participant hereby grants to PG&E, as the secured party, a present and continuing first priority security interest in such cash, whether now or hereafter held by PG&E.

Participant further agrees that it shall execute and return to PG&E the Confidentiality Agreement (Attachment C) and post the Shortlist Deposit with PG&E within ten (10) business days of receipt of written notice of its selection for PG&E’s Shortlist. The Confidentiality Agreement shall be sent by email via signed pdf file to [GHGRFO@pge.com](mailto:GHGRFO@pge.com). Failure to return the executed Confidentiality Agreement and post the Shortlist Deposit by such deadline may result in Participant’s disqualification from the RFO.

IN WITNESS WHEREOF, Participant has caused this Offer Agreement to be duly executed and delivered by its proper and duly authorized officer as of the date set forth below.

**[INSERT PARTICIPANT’S FULL CORPORATE NAME]**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Agreed and acknowledged:

PACIFIC GAS AND ELECTRIC COMPANY

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## **RFO CONFIDENTIALITY AGREEMENT**

This confidentiality agreement (“Confidentiality Agreement”) dated as of latest date of signature found at the signature block (“Execution Date”) is entered into by and between Pacific Gas and Electric Company, a California corporation, (“PG&E”) and *[insert full corporate name and entity type]* (“Participant”), each of which may be referred to herein separately as a “Party” or together as the “Parties”.

Whereas, the Parties have furnished and are furnishing certain Confidential Information, as defined below, to each other in the interest of developing a mutually agreeable purchase agreement (“Agreement”) in connection with PG&E’s 2012 Greenhouse Gas Allowances and Offset Credits Request for Offers issued February 1, 2012 (“GHG RFO”). *[Note to Participants: Please modify if you have provided a joint development Offer for Offset Credits.]*

Whereas, it is to the mutual benefit of each Party hereto to enter into this Confidentiality Agreement and provide for the procedure to exchange and protect Confidential Information, as defined below, pursuant to this Confidentiality Agreement;

NOW, THEREFORE, in consideration of Provider’s disclosure to Recipient of Confidential Information and other valuable consideration, the Parties agree as follows:

### **1. Definition of Confidential Information**

The term “Confidential Information” shall mean all information that either Party (“Provider”) has furnished or is furnishing to the other Party (“Recipient”), which with respect to Participant as Provider must in addition be clearly marked “Confidential” (or promptly identified in writing as such when furnished to PG&E in intangible form), in connection with or pertaining to the GHG RFO, an offer in the GHG RFO or any Agreement thereunder, whether furnished before or after the Execution Date of this Confidentiality Agreement, whether intangible or tangible, and in whatever form or medium provided, and regardless of whether owned by Provider, as well as all information generated by Recipient or its Representatives, as defined below, that contains, reflects, or is derived from such furnished information. “Confidential Information” shall also include information regarding the Parties’ bidding and negotiation process, including the status of and participation in such process, and potential commercial relationship concerning the GHG RFO, an offer or any Agreement thereunder.

### **2. Disclosure to Representatives**

Recipient agrees that it will maintain the Confidential Information in strict confidence and that the Confidential Information shall not, without Provider’s prior written consent, be disclosed by Recipient or by its affiliates, or their respective officers, directors, partners, employees, agents, or representatives (collectively, “Representatives”) in any manner whatsoever, in whole or in part, and shall not be used by Recipient or by its Representatives other than in connection with the GHG RFO and the evaluation or negotiation of the offer or Agreement, as applicable. Moreover, Recipient agrees to transmit the Confidential Information only to such of its Representatives who need to know the Confidential Information for the sole purpose of assisting Recipient with such permitted uses, as applicable; provided that, Recipient shall inform Representatives of this Confidentiality Agreement and secure their agreement to abide in all material respects by its terms. In any event, Recipient shall be fully liable for any breach of this Confidentiality Agreement by its Representatives as though committed by Recipient itself.

**3. Nondisclosure**

Recipient further agrees that it:

- (a) shall not disclose any Confidential Information provided to it by Provider to any third party for any purpose, except as provided in Section 5 below (or Section 2 above if a Representative is a third party);
- (b) shall not distribute all or any portion of Confidential Information to any Representative for any purpose other than as permitted by Section 2 above; and
- (c) shall destroy or return all such Confidential Information upon Provider's request; provided that, each Party shall have the right to retain one copy of Confidential Information for regulatory compliance or legal purposes, and neither Party shall be obligated to purge extra copies of Confidential Information from electronic media used solely for disaster recovery backup purposes.

**4. Exclusions to Confidential Information**

For purposes of this Confidentiality Agreement, Confidential Information does not include information that:

- (a) is in the public domain at the time of the disclosure by Provider or is subsequently made available to the general public through no violation of this Confidentiality Agreement by Recipient;
- (b) Recipient can demonstrate was at the time of disclosure by Provider already in Recipient's possession and was not acquired, directly or indirectly, from Provider on a confidential basis;
- (c) is independently developed by Recipient without use of or reference to the Confidential Information; or
- (d) is disclosed with the prior written consent of Provider.

**5. Required and Permitted Disclosure**

Recipient agrees not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as Recipient may be required to disclose to duly authorized governmental or regulatory agencies ("Required Disclosure"). In the event that Recipient or any of its Representatives becomes subject to a Required Disclosure, Recipient agrees:

- (a) to use commercially reasonable efforts to notify Provider promptly of the existence, terms, and circumstances surrounding such request;
- (b) to consult with Provider on the advisability of taking legally available steps to resist or narrow such request; and
- (c) if disclosure of such Confidential Information is required to prevent Recipient from being held in contempt or subject to other legal detriment, to furnish only such portion of the

Confidential Information as it is legally compelled to disclose and to exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information.

In addition to the Required Disclosure, the Parties shall be permitted to disclose Confidential Information as follows: (i) to PG&E's Procurement Review Group, as defined in California Public Utilities Commission ("CPUC") Decision (D) 02-08-071, subject to a confidentiality agreement, (ii) to the CPUC (including CPUC staff) under seal for purposes of review (if such seal is applicable to the nature of the Confidential Information), and (iii) to the Independent Evaluator, as defined and specified in the GHG RFO. PG&E shall also be permitted to disclose Participant's Confidential Information in order to comply with (A) any applicable law, regulation, or any exchange, or (B) any applicable regulation, rule, or order of the CPUC, the California Air Resources Board, or the Federal Environmental Protection Agency, including any discovery or data request issued by any of the foregoing entities.

#### **6. No License Rights**

This Confidentiality Agreement and any Confidential Information used or disclosed hereunder shall not be construed as granting, expressly or by implication, Recipient any rights by license or otherwise to such Confidential Information or to any invention, patent or patent application, or other intellectual property right, now or hereafter owned or controlled by Provider.

#### **7. Publicity**

Subject to Sections 4 and 5, neither Party will disclose any information or make any news release, advertisement, public communication, response to media inquiry or other public statement regarding this Confidentiality Agreement and the Confidential Information disclosed hereunder (including without limitation the potential commercial relationship between the Parties, the inclusion of an offer on PG&E's shortlist of offers, or the status of negotiations or participation in the GHG RFO) or the performance hereunder or with respect to an offer, without the prior written consent of the other Party.

#### **8. No Future Contracts**

Entry into this Confidentiality Agreement and the disclosure of Confidential Information hereunder shall not constitute an offer or acceptance or promise of any future contract or amendment of any existing contract. Each Party shall retain such rights with respect to its own Confidential Information as it had prior to entering into this Confidentiality Agreement. Unless and until a definitive Agreement has been executed and delivered between the Parties, neither Party shall have any legal obligation with respect to any contemplated transaction because of this Confidentiality Agreement or any other written or oral expression with respect to any transaction except, in the case of this Confidentiality Agreement, for the matters specifically agreed to herein.

#### **9. No Representation or Warranties**

Any Confidential Information exchanged under this Confidentiality Agreement shall carry no warranties or representations of any kind, either expressed or implied, unless specifically expressed per the terms of the GHG RFO. Recipient shall not rely on the Confidential Information for any purpose other than to make its own evaluation thereof or as provided in the GHG RFO.

**10. Injunctive Relief**

Recipient acknowledges and agrees that, in the event of any breach of this Confidentiality Agreement, Provider may be irreparably and immediately harmed and monetary damages may not be adequate to make Provider whole. Accordingly, it is agreed that, in addition to any other remedy to which it may be entitled in law or equity and, with respect to PG&E as Provider, any remedy under the GHG RFO, Provider shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to cease breaches or prevent threatened breaches of this Confidentiality Agreement and/or to compel specific performance of this Confidentiality Agreement, and that neither Recipient nor its Representatives will oppose the granting of such equitable relief if a court finds a breach or threatened breach. Each Party expressly agrees that it shall bear all costs and expenses, including attorneys' fees and costs that it may incur as Provider in enforcing the provisions of this Confidentiality Agreement.

**11. Term and Provisions Surviving Termination**

This term of this Confidentiality Agreement shall be two (2) years from the Execution Date; provided however, that either Party may earlier terminate this Confidentiality Agreement by giving the other Party thirty (30) days prior written notice of its intention to terminate this Confidentiality Agreement. Any such expiration or termination shall not abrogate either Party's obligations hereunder with respect to Confidential Information received prior to such expiration or termination nor those terms herein relating to the interpretation or enforcement of this Confidentiality Agreement relating to said obligations. Such obligations and terms shall survive for a period of three (3) years from said expiration or termination.

**12. No Waiver**

Any waiver of any provision of this Confidentiality Agreement, or a waiver of a breach hereof, must be in writing and signed by both Parties to be effective. Any waiver of a breach of this Confidentiality Agreement, whether express or implied, shall not constitute a waiver of a subsequent breach hereof.

**13. Binding Nature and Amendment**

This Confidentiality Agreement contains the entire understanding between the Parties with respect to Confidential Information received hereunder. No change or modification shall be made effective unless in writing and signed by an authorized representative of each Party. Any conflict between the language on any specified legend or stamp on any Confidential Information received hereunder, or any provision of the GHG RFO or Agreement relating to Confidential Information provided during the term of this Confidentiality Agreement, on the one hand, and this Confidentiality Agreement, on the other hand, shall be resolved in favor of the language of this Confidentiality Agreement. This Confidentiality Agreement may not be amended or modified except by a written agreement executed by both Parties.

**14. Governing Law and Jurisdiction**

THIS CONFIDENTIALITY AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. THE PARTIES AGREE THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED IN ANY WAY TO THIS CONFIDENTIALITY AGREEMENT SHALL BE BROUGHT SOLELY IN A COURT OF

COMPETENT JURISDICTION SITTING IN THE CITY AND COUNTY OF SAN FRANCISCO. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENT TO THE JURISDICTION OF ANY SUCH COURT AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING IN ANY SUCH COURT, ANY OBJECTION TO VENUE WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF THE PLACE OF RESIDENCE OR DOMICILE OF ANY PARTY THERETO. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATED TO THIS CONFIDENTIALITY AGREEMENT.

**15. Severability**

If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such unenforceability or invalidity shall not affect the enforceability or validity of any other provision of this Confidentiality Agreement.

**16. Counterparts**

This Confidentiality Agreement may be signed in counterparts, each of which shall be deemed an original. This Confidentiality Agreement may be executed and delivered by facsimile and the Parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile signatures as evidence of the execution and delivery of this Confidentiality Agreement by the Parties to the same extent that an original signature could be used.

**17. Notice**

Any notice given hereunder by either Party shall be made in writing and shall be effective once received by PG&E in electronic form to GHGRFO@pge.com.

Either Party may periodically change any address to which notice is to be given it by providing written notice of such change to the other Party.

IN WITNESS WHEREOF, each Party has caused this Confidentiality Agreement to be duly executed and delivered by its proper and duly authorized agent as of the date set forth below.

**PACIFIC GAS AND ELECTRIC COMPANY**

**[PARTICIPANT NAME]**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**MASTER ALLOWANCE/OFFSET CREDIT PURCHASE AGREEMENT**

(California)

This Master Allowance/Offset Credit Purchase Agreement (“Master Agreement”; collectively with all written attachments, addenda and supplements, and Confirmations the “Agreement”) is entered into as of the Execution Date by and between Pacific Gas and Electric Company, a California corporation (“PG&E” or “Party A”) and [\_\_\_\_\_], a \_\_\_\_\_ (“Party B”); collectively with Party A the “Parties” and individually a “Party”, with reference to the following:

WHEREAS, the Parties desire to enter into one or more Transactions for the purchase or sale of Allowances or Offset Credits in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

**ARTICLE 1**

**DEFINITIONS, INTERPRETATION AND TERM**

1.01 Definitions. Capitalized terms not defined in this Master Agreement or in the Cap and Trade Regulations are defined in the applicable Confirmation.

“AAA” means the American Arbitration Association, a judicial arbitration and mediation service.

“AB 32” means the California Global Warming Solutions Act of 2006.

“Adverse Legal Determination” means (i) an action by a Governmental Authority that renders the Tracking System or the Cap and Trade Regulations illegal, unconstitutional or unenforceable, including the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal effectiveness and implementation of the Tracking System or Cap and Trade Regulations such that either Party is unable to fulfill its obligations to purchase, sell or transfer Product pursuant hereto, (ii) the issuance of an order, decision or other legally binding action that enjoins, stays or otherwise restrains the legal ability of CARB to implement the Cap and Trade Regulations or that as a result of such restraint on CARB makes it impossible for either Party to fulfill its obligations to purchase, sell, or transfer Products hereunder, other than a sanction or penalty imposed for the failure to comply with AB 32, or (iii) the California state legislature or U.S. Congress promulgates or enacts a law that repeals or otherwise amends AB 32 such that PG&E is no longer obligated to comply with the Cap and Trade Regulations or CARB is unable to implement or enforce the Cap and Trade Regulations.

“Affected Transaction” means a Transaction (i) subject to an Adverse Legal Determination in accordance with Section 3.04, (ii) subject to a Tracking System Failure in accordance with Section 3.05, or (iii) otherwise provided as such in accordance with a

Confirmation.

“Allowance” means a California Greenhouse Gas Emissions Allowance or CA GHG Allowance as defined in the Cap and Trade Regulations, that qualifies as an Allowance as defined under the Cap and Trade Regulations, and excludes Offset Credits and Sector-Based Offset Credits.

“Arbitration” means a binding arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA’s Commercial Arbitration Rules.

“Bankrupt” means with respect to any entity, such entity (i) 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, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) 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 (iv) is generally unable to pay its debts as they fall due.

“Broker Quotes” means the price determined using the average of quotations for Allowances for each Terminated Transaction from three (3) bona fide unaffiliated brokers selected in good faith by the Non-Defaulting Party (or PG&E if calculating Exposure pursuant to the Credit Support Addendum), which brokers regularly publish and widely distribute price assessments for Allowances and who actively participate in the market for Allowances. For sake of certainty, the Broker Quotes shall be for Allowances regardless of whether the Product under the Terminated Transaction was an Allowance or an Offset Credit.

“Business Day” means any day except a Saturday, Sunday, or a federally insured bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party by whom the Notice or payment or Delivery is to be received.

“Buyer” means the Party to a Transaction that is designated as such in the Confirmation and that is obligated to purchase and receive the Product.

“Cal EPA” means the California Environmental Protection Agency.

“Cap and Trade Regulations” means Title 17, Article 5, Sections 95800, *et seq.* of the California Code of Regulations, as amended or modified from time to time.

“CARB” means the California Air Resources Board.

“CEC” means the California Energy Commission.

“Commodity Exchange Act” means the federal Laws codified under 7 U.S.C. 1, *et seq.*, as amended.

“Confirmation” means the documentation of a Transaction between the Parties executed pursuant to Section 2.01 in the form of Exhibit A with respect to Allowances or Exhibit B with respect to Offset Credits, or in such other form as mutually agreed by the Parties.

“Contract Price” means the Contract Price of Product under each specific Transaction.

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

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means, if applicable for a Transaction, a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to either Party, which to PG&E’s satisfaction:

(i) approves the Transaction in its entirety, including payments to be made by PG&E, subject to CPUC review of PG&E’s administration of the Transaction; and

(ii) finds that PG&E’s entry into the Transaction is reasonable and that payments to be made by PG&E thereunder are recoverable in rates.

“Credit Rating” means (i) with respect to a Party or its Credit Support Provider, as applicable, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its issuer rating by the specified rating agency, and (ii) with respect to a financial institution, the lower of its long-term senior unsecured debt rating (not supported by third party credit enhancement) or its deposit rating by the specified rating agency.

“Credit Support Addendum” means the Credit Support Addendum attached hereto.

“Credit Support Provider” is defined in the Credit Support Addendum.

“Delivered” or “Delivery” means the transfer from Seller to Buyer of the Quantity of the Product from Seller’s Holding Account into Buyer’s Holding Account in accordance with the Cap and Trade Regulations.

“Delivery Date” means the date specified in each Transaction for Delivery of the Product from Seller to Buyer.

“Delivery Term” means the period specified in a Transaction commencing with the first Delivery Date and ending with the last Delivery Date.

“Early Termination Date” is defined in Section 9.03.

“Event of Default,” as applicable to either Party is defined in Section 9.01, and as applicable to Seller is also defined in Section 9.02.



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

“Executive Officer” is defined in the Cap and Trade Regulations.

“Gains” means the present value of the economic benefit, if any (exclusive of Costs), to a Party resulting under then-prevailing circumstances from the termination of its obligations with respect to the Terminated Transactions, determined in a commercially reasonable manner and in accordance with Section 9.04.

“GHG” or “Greenhouse Gas” is defined in the Cap and Trade Regulations.

“Governmental Authority” means any federal, state, local or municipal government department, commission, bureau, agency or instrumentality, or any judicial, regulatory, or administrative body, having jurisdiction as to the matter in question, and includes the Cal EPA, CARB, CEC and CPUC.

“Governmental Charges” is defined in Section 5.01.

“Holding Account” means the holding account issued pursuant to the Cap and Trade Regulations to an entity upon registration with CARB or the appropriate Governmental Authority.

“Index” means any of (i) IntercontinentalExchange, (ii) Green Exchange, LLC, or (iii) any other index to which both Parties agree and such index is regulated pursuant to the Commodity Exchange Act and routinely publishes market prices for Allowances.

“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.

“Invalidation Term” is defined in the Confirmation for each Offset Credit Transaction.

“Law” means any applicable federal, provincial, state, local or municipal statute, law, treaty, rule, by-law, 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 AB32 and any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective during the Term (provided that all warranties and representations of the Parties are with respect to the Law as of the Execution Date, unless specifically provided otherwise); and any binding interpretation of the foregoing.

“Longstop Date” means a date not to exceed ninety (90) days following the date of the Adverse Legal Determination, or such other date as the Parties may mutually agree in writing.

“Losses” means the present value of the economic loss, if any (exclusive of Costs), to a Party resulting under then-prevailing circumstances from the termination of its obligations with

respect to the Terminated Transactions, determined in a commercially reasonable manner and in accordance with Section 9.04.

“Market Price” means:

(a) for Allowances, the price determined by using the average closing market price for the Allowances as such prices are published by an Index for the thirty (30) days preceding the Early Termination Date or date on which the applicable Party failed to Deliver or receive Product under Section 3.06(a) or (b), as applicable; provided however, if closing market prices are not available for at least seven (7) days during such thirty (30) day period or if the Index is no longer publishing prices for Allowances, then the calculating Party shall use Broker Quotes to determine the Market Price. If Broker Quotes are not available, then the price shall be calculated in a commercially reasonable manner; and

(b) for Offset Credits, the price applicable to Allowances as determined using the Market Price for Allowances less the Fixed Differential as defined and set forth in the Confirmation for the Offset Credits.

“Non-Defaulting Party” is the Party that is not the Defaulting Party.

“Notice” is defined in Article 14.

“Offset Credit” means ARB Offset Credit as defined in the Cap and Trade Regulations.

“Payment System Uncontrollable Forces” means an event or circumstance which prevents one Party from performing its payment obligations hereunder, which event or circumstance (i) was not anticipated, (ii) is not within the reasonable control of, or the result of the negligence of, the Party claiming the Payment System Uncontrollable Forces, and (iii) which such Party is unable to overcome or avoid by the exercise of due diligence.

“Performance Assurance” means all collateral security that is provided by Party B to PG&E, whether in the form of cash, Letters of Credit, or other security acceptable to PG&E.

“Product” means either Allowance or Offset Credit, as specified under each Transaction, issued in accordance with the Cap and Trade Regulations.

“Quantity” means the aggregate quantity of Product to be Delivered by Seller to Buyer under a Transaction.

“Replacement Price” means the price for each Product under a Transaction at which Buyer, acting in a commercially reasonable manner, purchases Allowances to substitute or replace Product not Delivered by Seller, plus costs reasonably incurred by Buyer in purchasing such substitute or replacement Products; or, at Buyer’s option, the Market Price for the Product not Delivered.

“Sales Price” means the price for each Product under a Transaction at which Seller, acting in a commercially reasonable manner, resells any Product not accepted by Buyer as required hereunder, deducting from such proceeds any costs reasonably incurred by Seller in

reselling such unaccepted Product, or at Seller's option, the Market Price for each Product not accepted by Buyer, as determined by Seller in a commercially reasonable manner.

“Sector-Based Offset Credit” is defined in the Cap and Trade Regulations.

“Seller” means the Party to a Transaction that is designated as such in the Confirmation and that is obligated to sell and Deliver the Product.

“Seller Failure” is defined in Section 3.06(a).

“Settlement Amount” means the sum of Losses, Gains, and Costs incurred by the Non-Defaulting Party as a result of termination of the Terminated Transactions calculated in accordance with Section 9.04. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Settlement Amount shall be zero.

“Term” is defined in Section 1.03.

“Terminated Transactions” is defined in Section 9.03.

“Termination Payment” means the sum of (a) the Settlement Amount and (b) the sum of all amounts due and owing by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

“Tracking System” means the mechanism or third party resource required by CARB and any other Governmental Authority acting pursuant to AB 32 for accounts recording ownership of the Product and enabling transfer of the Product.

“Tracking System Failure” means a disruption in Delivery caused solely by the Tracking System that (i) is not specific to either Party's Holding Account, (ii) is not subject to Section 3.04, and (iii) is not within the control of, or the result of the negligence of, such Party and which could not have been avoided by the exercise of due diligence.

“Trade Date” means the date a Transaction is entered into by the Parties.

“Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of the Product pursuant to this Master Agreement, as documented by a Confirmation subject to Section 2.01 of this Master Agreement.

“Transaction Termination Date” means the date an Affected Transaction is terminated.

“Vintage Year” is defined in the Cap and Trade Regulations.

#### 1.02 Rules of Interpretation.

(a) Headings are included for convenience only and are not to be considered in interpretation.

(b) References in the singular include references to the plural and vice versa,

pronouns having masculine or feminine gender include the other, and words denoting natural persons include partnerships, firms, companies, corporations, 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.

(c) “Include” or “including” means “including without limitation”.

(d) “Quarter” means, unless otherwise indicated, a three month calendar period beginning on the first day of January, April, July, or October of a given year; “month” means a calendar month unless otherwise indicated, and a “day” is a 24-hour period beginning at 12:00:01 AM 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.

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

(f) Unless otherwise specified herein, all references herein to any agreement or other document of any description include all amendments, supplements, modifications and any superseding agreement or documents, including any website, as existing at the applicable time.

(g) A reference to a particular article, section, exhibit, addendum or attachment is, unless specified otherwise, a reference to that article, section, exhibit, addendum or attachment to this Master Agreement. A reference to a particular paragraph is, unless otherwise specified, a reference to a paragraph of the Credit Support Addendum. A reference to a particular Special Provision is, unless otherwise specified, a reference to a Special Provision of a Confirmation.

(h) References to any natural person, Governmental Authority, publication, website, market price index, regulatory proceeding, corporation, partnership or other legal entity include successors and lawful assigns.

(i) All references to money or dollars are to U.S. dollars.

(j) An “order”, “determination”, “decision” or “interpretation” of the Cal EPA, CPUC, CARB or CEC includes a resolution, advice letter or other action embodying a final decision by it.

(k) “Or” is not necessarily exclusive.

(l) Examples are for purposes of illustration of the applicable concept only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text will govern.

(m) All references to hours are Pacific Standard Time or Pacific Daylight Time, as prevailing on the day in question.

(n) “Herein”, “hereunder” and similar terms refer to this Master Agreement in its entirety unless the context requires otherwise.

(o) Each term hereof is to be construed simply according to its fair meaning and not strictly for or against either Party. No term hereof is to be construed against a Party on the ground that the Party is the author or drafter of that provision. Each Party expressly agrees to not utilize in any dispute hereunder any rule of construction that resolves the interpretation of any provision against the drafting Party.

1.03 Term. This Master Agreement shall be effective as of the Execution Date and remain in effect until terminated by either Party upon thirty (30) days prior Notice; provided, however, that this Master Agreement shall remain in effect with respect to Transactions entered into prior to the effective date of termination until both Parties have fulfilled all of their obligations with respect thereto (the “Term”), and any termination shall not affect or excuse the performance of either Party under any provision hereof that by its terms survives termination.

## **ARTICLE 2**

### **TRANSACTION TERMS**

2.01 Execution of Transactions. A Transaction shall be entered into upon mutual agreement of the Parties. Transactions will be on written Confirmations as executed by both Parties until such time as PG&E gives Notice that oral Transactions will be permitted under this Master Agreement, pursuant to procedures for oral Transactions then designated by PG&E, after which Notice neither Party may contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any Law requiring agreements to be in writing or to be signed by the Parties.

2.02 Governing Terms. Each Transaction between the Parties shall be governed by the Agreement. This Master Agreement, written attachments, addenda and supplements, and Confirmations form a single integrated agreement between the Parties. In the event of a conflict between a provision in this Master Agreement and Credit Support Addendum and a provision of an applicable Confirmation, the provisions of the Master Agreement and Credit Support Addendum control except when the Confirmation (a) sets forth more specific commercial provisions regarding time, place and manner of performance, including price, quantity and procedural terms, or (b) amends specifically referenced Sections of the Master Agreement, in which case the terms of a Confirmation control with respect to that Confirmation.

## **ARTICLE 3**

### **DELIVERY OBLIGATIONS**

3.01 Parties’ Obligations. With respect to each Transaction, Seller shall sell and Deliver, and Buyer shall purchase and receive, the Quantity of the Product, and Buyer shall pay Seller the Contract Price with respect to the Product Delivered, all in accordance with the terms hereof. Seller shall, at its sole expense, take all actions and execute all documents and instruments necessary to ensure that all Product under each Transaction is properly registered, verified, Delivered, capable of being Delivered, tracked, and otherwise qualified in all respects under the Cap and Trade Regulations as an Allowance or Offset Credit, as applicable.

### 3.02 Holding Account.

(a) Prior to the Delivery Date, Seller shall (i) register with the Executive Officer in accordance with the Cap and Trade Regulations, (ii) obtain Executive Officer approval of such registration, and (iii) obtain a Holding Account (“Seller’s Holding Account”) from and into which the Product may be transferred, which account Seller shall maintain until the end of the Delivery Term for all Transactions.

(b) Seller shall transfer the Product to the Holding Account designated by Buyer herein or by Notice (“Buyer’s Holding Account”). Each Party shall be responsible for its own expenses associated with establishing and maintaining its Holding Account. Seller shall be solely responsible for paying expenses associated with the issuance and transfer fees for the Product, and transferring the Product from Seller’s Holding Account to Buyer’s Holding Account. Promptly upon receiving confirmation that each Holding Account has been established, and at least five (5) Business Days prior to the Delivery Date, each Party shall provide the other with all details of such Holding Account.

3.03 Transfer of Product. Seller shall ensure that all Product is transferred to Buyer in accordance with the terms of the Transaction, for Buyer’s sole benefit. Delivery shall occur when the transfer of the Product into Buyer’s Holding Account is complete, at which time title to the Product will transfer from Seller to Buyer. Without limiting Seller’s obligations under Section 3.01, each Party will provide to the other any reasonably requested information or documentation required to implement Delivery, cooperate to cause Delivery to occur, and comply with any and all applicable procedures and requirements of Law relating to the recording and transfer of the Product.

### 3.04 Delivery Obligations upon Adverse Legal Determination

(a) If, as of the Delivery Date, Seller is unable to Deliver Product due solely to an Adverse Legal Determination, then Seller’s Delivery obligations, and Buyer’s obligations to purchase and receive, with respect to each Affected Transaction shall be postponed until the Longstop Date; provided that Buyer, at its sole option, has the right, but not the obligation, to purchase and receive such Product prior to the Longstop Date.

(b) If Buyer elects to purchase and receive Product under an Affected Transaction prior to the Longstop Date, then Buyer shall designate a new Delivery Date prior to the Longstop Date and Seller shall Deliver the Product in accordance with the terms of such Affected Transaction.

(c) Either Party may elect to terminate the Affected Transaction following the Longstop Date by providing Notice to the other Party to terminate only the Affected Transaction. Following a Transaction Termination Date, Seller shall not Deliver and Buyer shall not receive or pay for Product remaining to be Delivered under the Affected Transaction. Termination of an Affected Transaction pursuant to this Section 3.04 does not forgive amounts payable or paid under Section 4.01 for Product Delivered or pursuant to Section 3.06 for Product not Delivered or received, but no damages or payment shall be due with respect to Product that would have been, but will no longer be, Delivered or received under the Affected Transactions.

### 3.05 Tracking System Failure.

(a) If a Party is unable to Deliver or receive Product due to a Tracking System Failure, the affected Party shall within two (2) Business Days provide the other Party with Notice and full details identifying the cause of the Tracking System Failure and the Affected Transactions. Seller shall use its best efforts to cause Delivery of the Product under the Affected Transactions and give effect to the original intention of the Parties.

(b) Seller's Delivery obligations and Buyer's obligations to receive Product under the Affected Transactions shall be postponed until the earlier to occur of the ninetieth (90<sup>th</sup>) day following the day the Tracking System Failure began or the next Business Day following the day on which the Tracking System Failure is remedied as evidenced by notice from the administrator of the Tracking System or successful use of the Tracking System by another Tracking System user (the "Delivery Deadline Date"); provided that until the Delivery Deadline Date, the Parties shall use good faith efforts each Business Day to affect the Delivery or receipt of Product. Following the Delivery Deadline Date, either Party may provide Notice to the other Party to terminate only the Affected Transactions.

(c) Neither Party's failure to Deliver or receive Product due solely to a Tracking System Failure constitutes an Event of Default hereunder. If, as of the Delivery Deadline Date, the Parties have not agreed upon an alternate Delivery Date for the Product affected by the Tracking System Failure, then Seller shall be relieved from its obligation to Deliver the Product that would have been Delivered but for the Tracking System Failure, and Buyer shall not be obligated to pay for or later receive such Product. In no event shall Buyer be obligated to pay for Product that it does not receive. Termination of an Affected Transaction pursuant to this Section 3.05 does not forgive amounts payable or paid under Section 4.01 for Product Delivered or pursuant to Section 3.06 for Product not Delivered or received, but no damages or payment shall be due with respect to Product that would have been, but will no longer be, Delivered or received under the Affected Transactions.

### 3.06. Failure to Deliver or Receive Product.

(a) Seller Failure. If Seller fails to Deliver all or part of the Product pursuant to a Transaction, and such failure is not excused by Buyer's failure to perform, Section 3.04, or Section 3.05 (any or all of which are considered a "Seller Failure"), then Seller shall pay Buyer, within five (5) Business Days of receiving the invoice, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for the Quantity not Delivered. The invoice shall include a written statement explaining Buyer's calculation in reasonable detail. If there are further Delivery Dates under the Transaction, or any other Transactions, then Seller shall provide Buyer with adequate assurances of Seller's ability to perform its obligations under the remaining Transaction or Transactions by (i) posting additional Performance Assurance pursuant to the Credit Support Addendum and (ii) providing additional documentation as reasonably requested by Buyer.

(b) Buyer Failure. If Buyer fails to receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, Section 3.04 or Section 3.05, then Buyer shall pay Seller, within five (5)

Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price for the Quantity not Delivered. The invoice shall include a written statement explaining the calculation in reasonable detail.

#### **ARTICLE 4**

#### **BILLING AND PAYMENT**

4.01 Billing. If the Parties agree to modified payment terms pursuant to the Credit Support Addendum, including any right of PG&E to apply payments otherwise due to Seller to secure Seller's collateral requirements as required from Seller as Party B, such terms shall take precedence over this Article Four. On or about the tenth (10<sup>th</sup>) day of each month following the month in which Seller Delivered Product to Buyer, Seller shall provide to Buyer an invoice, in the format specified by Buyer, for an amount equal to the (i) Contract Price multiplied by (ii) the Quantity of Product Delivered. Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25<sup>th</sup>) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or 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, as further specified in Section 4.05. Any amounts not paid when due, unless not paid to Seller due to Payment System Uncontrollable Forces, are delinquent and will accrue interest at the Interest Rate, calculated from and including the due date up to but excluding the date the delinquent amount is paid in full. In the event Payment System Uncontrollable Forces prevents payment to Seller, Buyer shall pay on the first Business Day following the resolution of the Payment System Uncontrollable Forces.

4.02 Disputes and Adjustments of Invoices. If an invoice or portion thereof or any other claim or adjustment arising hereunder is disputed in good faith, payment of the undisputed portion of the invoice must be made when due, with Notice of the objection given to the other Party stating the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved; provided, however, that if the disputing Party has a Credit Rating lower than BBB- from S&P and Baa3 from Moody's, it must transfer Performance Assurance to the other Party in an amount equal to the amount in dispute. The Parties shall use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date up to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment up to but excluding the date repaid or deducted by the Party receiving such overpayment. If an invoice is not rendered by Seller within twelve (12) months after the close of the applicable Delivery Date the right to payment for such performance is waived.

4.03 Netting. To the maximum extent permitted by Law, if an Event of Default has not occurred and is not continuing, and if the Parties are required to pay an amount on the same day each to the other hereunder, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed.



4.04 Set-off. In addition to any rights of set-off a Party may have under Law or otherwise, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but not the obligation) without prior Notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party arising hereunder (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of the Non-Defaulting Party owing to the Defaulting Party (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation). If any such obligation is unascertained, the Non-Defaulting Party may in good faith, and exercising commercially reasonable judgment, estimate that obligation and set-off in respect of the estimate, subject to the relevant Party accounting to the other Party when the obligation is ascertained. Except as provided in the Credit Support Addendum, nothing herein will have the effect of creating a charge, pledge, lien or other security interest.

4.05 Payments. All funds paid hereunder shall be rendered in the form of immediately available dollars. Payment, as applicable, shall be made by Automated Clearing House (ACH) or in other form reasonably requested, to the following accounts:

Party A:  
 Bank: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 For Credit to: \_\_\_\_\_  
 ABA No.: \_\_\_\_\_  
 Account No.: \_\_\_\_\_

Party B:  
 Bank: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 For Credit to: \_\_\_\_\_  
 ABA No.: \_\_\_\_\_  
 Account No.: \_\_\_\_\_

4.06 Clearing Transactions. The Parties may by mutual consent in their sole discretion elect to clear or allow a designated third party to clear on its own behalf any Transactions with a third party exchange, broker or other mechanism in lieu of direct transfer from Seller to Buyer's Holding Account as contemplated herein.

## **ARTICLE 5**

### **TAXES AND ACCESS TO FINANCIAL INFORMATION**

5.01 Taxes. Seller shall pay all taxes imposed by any Governmental Authority (“Governmental Charges”) with respect to Products transferred in a Transaction that arise before Buyer receives such Products in Buyer's Holding Account. Buyer shall pay all Governmental Charges with respect to Products transferred in a Transaction from and after Buyer receives such Products in Buyer's Holding Account. Taxes in the form of ad valorem taxes, franchise taxes and income taxes (and any similar taxes imposed on the Parties based upon participation in the

Tracking System or income derived from trading Products) shall be borne by each Party with regard to its respective income obligations.

5.02 Access to Financial Information. United States generally accepted accounting principles, as established by the Financial Accounting Standards Board and the Securities and Exchange Commission require or may require PG&E to evaluate if PG&E must consolidate Seller's financial information into PG&E's financial statements. PG&E may require access to Seller's financial records and personnel to determine if consolidated financial reporting is required. If PG&E determines that consolidated financial reporting is required, Seller must agree to provide the following for every calendar quarter for the Term:

- (a) complete financial statements and notes to the financial statements; and
- (b) financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to PG&E pursuant to this section shall be considered confidential in accordance with the terms of this Master Agreement and shall only be disclosed on an aggregate basis with other similar entities for which PG&E has Allowance or Offset Credit purchase or sale agreements. The information shall only be used for financial reporting purposes and shall not be otherwise shared with internal or external parties.

## **ARTICLE 6**

### **CREDIT**

6.01 Credit Support Addendum. The Credit Support Addendum governs this Master Agreement and all Transactions.

## **ARTICLE 7**

### **REPRESENTATIONS AND WARRANTIES**

7.01 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party as of the Execution Date, and with respect to each Transaction as of the Trade Date and Delivery Date, that:

- (a) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization or incorporation;
- (b) it has the corporate, governmental, regulatory, and other legal capacity, and power to execute and deliver this Agreement, and to perform its obligations hereunder;
- (c) the execution, delivery, and performance of this Agreement has been authorized by all necessary action on its part, including obtaining all authorizations or approvals from Governmental Authorities pursuant to all Laws, and will not result in any breach of or default under any term or provision of any other agreement, instrument, judgment, decree, order, statute, rule or governmental regulation to which it is otherwise a party or by which it may be bound;

(d) there is not pending, or to its knowledge threatened, against it, any action, suit or proceeding at law or in equity before any court, governmental body, agency, or any arbitrator that is likely to materially adversely affect its ability to perform its obligations hereunder;

(e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by bankruptcy or any law affecting the enforcement of creditors' rights generally and subject to equitable principles of general application;

(f) it is an "Eligible Contract Participant" as defined in Section 1a(18) of the Commodity Exchange Act;

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement and each Transaction and as to whether or not this Agreement and each Transaction 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, is capable of assessing the merits of this Agreement and each Transaction, and understands and accepts the terms, conditions, and risks of this Agreement and each Transaction; and

(h) no Event of Default with respect to itself has occurred or is continuing.

7.02 Seller. Seller represents and warrants to Buyer as of the Execution Date and upon each Delivery Date for Product for each Transaction that the following are true and correct:

(a) Seller has the right to sell and has and shall convey good and marketable title to the Product to Buyer free and clear of any liens, taxes, claims, security interests or other encumbrances or title defects;

(b) Seller is the sole legal and beneficial owner of the Product to be Delivered;

(c) the Product Delivered is of the Vintage Year claimed by Seller;

(d) Seller has not sold the Product or any part or attribute thereof to any other person or entity other than Buyer;

(e) Buyer has the exclusive rights to make all claims, of ownership, use, or control, respecting the Product upon its Delivery by Seller; and

(f) the Product, and Delivery and transfer of the Product comply with all Cap and Trade Regulations.

7.03 Survival. The Parties' liabilities to one another for the breach of the representations in this Article 7 shall survive any termination or expiration hereof.

**ARTICLE 8**  
**SELLER COVENANTS**

8.01 Ongoing Compliance. Seller shall comply with all Protocols and Laws to ensure that the Product and the transfer of Product hereunder comply therewith and with all Cap and Trade Regulations.

8.02 Cooperation and Maintenance of Records.

(a) Seller shall cooperate fully with Buyer to enable Buyer to meet Buyer's obligations to CARB and any other Governmental Authority, which obligations are dependent in whole or in part upon Buyer's receipt of assurances or documents from Seller and any third party with which Seller has contracted to produce or procure Product;

(b) Upon Buyer's request, Seller shall provide copies of its documentation and records including all documents that Buyer is required to maintain or may be required to provide to CARB in accordance with the Cap and Trade Regulations. Seller shall maintain adequate records to assist Buyer or CARB in meeting any present or future reporting, verification, transfer, registration, or retirement requirements associated with the Product;

(c) Seller shall provide Buyer any application, report or other document it files with the CARB or any Governmental Authority relating to the Product, as soon as practicable after filing such documents and in the format and manner reasonably requested by Buyer; and

(d) For Transactions under which Seller is providing Offset Credits as the Product, Seller shall maintain all records for such Offset Credits, for the longer of the Invalidation Term or as required to settle or resolve any pending dispute.

**ARTICLE 9**  
**EVENTS OF DEFAULT AND EARLY TERMINATION**

9.01 Event of Default. Each of the following is an "Event of Default" with respect to a Party (such Party is the "Defaulting Party"):

(a) a Party fails to make when due any payment required hereunder, if such failure is not remedied within ten (10) Business Days after Notice of such failure given by the other Party;

(b) any representation, warranty, or covenant made herein by a Party is not true and complete in any material respect, if such failure is not remedied within five (5) Business Days after Notice of such failure is given by the other Party;

(c) 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 transferee entity fails to assume all the obligations of such Party hereunder by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(d) a Party or its Credit Support Provider becomes Bankrupt; or

(e) a Party fails to perform any significant or material covenant in this Agreement not set forth in Section 9.01 above or Section 9.02, if such failure is not remedied within thirty (30) days after Notice of such failure is given by the other Party.

9.02 Seller Event of Default. Each of the following is also an “Event of Default” with respect to Seller, with Seller being the “Defaulting Party”:

(a) a Credit Event occurs with respect to Seller or Seller’s Credit Support Provider as defined in the Credit Support Addendum; or

(b) more than one Seller Failure.

9.03 Early Termination. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party has the right, in its sole discretion, to do any one or more of the following: (a) designate a day, no earlier than the day such Notice is given and no later than twenty (20) days after such Notice is given, as an early termination date (the “Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all Transactions (the “Terminated Transactions”); (b) withhold any payments due to the Defaulting Party hereunder; (c) apply any Performance Assurance to the obligations of the Defaulting Party, which shall not waive any deficiency claim or further rights and remedies; and (d) otherwise suspend its performance hereunder.

9.04 Calculation of Settlement Amount. If the Non-Defaulting Party designates an Early Termination Date, then the Non-Defaulting Party shall calculate the Termination Payment and the Settlement Amount, in a commercially reasonable manner, as soon as reasonably practicable in the reasonable opinion of the Defaulting Party. Gains and Losses for each Terminated Transaction shall be based upon the difference between the Contract Price of the remainder of the quantity of Product for the remainder of the Delivery Term, and the Market Price for the quantity of such Product; provided that for each Terminated Transaction for which Market Price cannot be determined or would not, in the reasonable belief of the Non-Defaulting Party, produce a commercially reasonable result, the Settlement Amount shall be an amount the Non-Defaulting Party reasonably determines in good faith to be its total Gains and Losses, including any loss of a bargain, with reference to such sources of information as reasonably determined appropriate by the Non-Defaulting Party, including firm or indicative quotations for replacement transactions from one or more third parties; relevant prevailing commercial term and credit support conditions; market data; and internal sources used in the regular course of business. In all cases the Gains and Losses shall be based upon replacement transactions (a) for the remaining quantity of Product not yet Delivered (b) for Allowances with the same Vintage Year, and (c) for the remainder of the applicable Delivery Term. The Non-Defaulting Party shall not be required to enter into a replacement transaction or arrangement in order to determine Gains or Losses.

## **ARTICLE 10**

### **LIMITATION OF LIABILITY, INDEMNIFICATION AND AUDIT RIGHTS**

10.01 Limitation of Liability. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED FOR HEREIN ARE REASONABLE AND SATISFY THE

ESSENTIAL PURPOSE HEREOF, AND EACH PARTY SHALL USE COMMERCIALY REASONABLE EFFORTS TO MITIGATE ANY DAMAGES INCURRED. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS MEASURE OF DAMAGES IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT, OR CONTRACT, EXCEPT TO THE EXTENT THAT ANY PAYMENTS REQUIRED TO BE MADE PURSUANT HERETO ARE DEEMED TO BE SUCH DAMAGES. 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 LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10.02 Indemnification. Party B agrees to fully indemnify, defend and hold harmless PG&E and its parent company, and the directors, officers, agents, employees, successors and assigns of each of them ("Indemnitees") from and against any and all losses, costs, damages, injuries, liabilities, claims, demands, penalties, interest and causes of action, suits, and expenses (including attorneys' fees and court costs) directly or indirectly arising out of, resulting from or related to claims for, or in any way connected with: (a) any personal injury, including death, property damage, or theft caused to any Indemnitees or any third party by Seller's action or inaction, whether by negligence or intentional misconduct, arising out of the performance of this Agreement, (b) Seller's breach of any representations, warranties or covenants contained herein (c) Seller's violation of or non-compliance under any Law; (d) the Product Delivered to Buyer hereunder; and (e) with respect to Transactions for Offset Credits, Seller's construction, operation or maintenance of an Offset Project, as defined in the applicable Confirmations. The obligations under this Section shall survive expiration or termination of each Transaction for a period of two (2) years.

10.03 Audit. In addition to Seller's obligations under Section 8.02, Buyer has the right, at its sole expense and during normal working hours, to examine Seller's records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant hereto. If requested, Seller shall provide to Buyer documentation evidencing the quantity of Product Delivered under each Transaction or such other documentation to ensure that Seller has complied with the terms of the Transaction.

## **ARTICLE 11**

### **CONFIDENTIALITY**

11.01 Confidential Information. Neither Party may disclose the non-public terms or conditions hereof to a third party other than (a) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed in writing to keep such terms confidential, (b)

Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement, (c) to the Cal EPA, CARB, CEC, or CPUC under seal for purposes of review or advice, (d) in order to comply with any Law or any rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party") or applicable regulation, rule, or order of the CARB, CPUC, CEC, or FERC ("Disclosure Order"). In connection with requests made pursuant to clause (d) of this Section, each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (x) prohibited from complying with a Disclosure Order or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, 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. The obligations under this Section shall survive termination or expiration of each Transaction for a period of three (3) years.

## **ARTICLE 12**

### **GOVERNING LAW / WAIVER OF IMMUNITIES**

12.01 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.

12.02 Waiver of Immunities. Each Party irrevocably waives, to the fullest extent permitted by Law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by Law, that it will not claim any such immunity in any proceedings before any court or Governmental Authority.

## **ARTICLE 13**

### **DISPUTE RESOLUTION**

13.01 Waiver of Right to Jury Trial. TO THE FULLEST EXTENT ENFORCEABLE, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER, IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

13.02 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating hereto or any related agreement is the dispute resolution procedure set forth in this Article. 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.

13.03 Management Negotiations. The Parties must attempt in good faith to resolve any dispute, controversy or claim arising out of or relating hereto or any related agreements by prompt negotiations between each Party's designated representative, or such other person designated in writing as a representative of such Party (each a "Manager"). Each 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 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 (each an "Executive"), 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 the other Notice confirming the referral and identifying the name and title of the Executive designated to represent the Party. 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) 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. 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. If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request refuses or does not meet within the ten (10) Business Day period specified, either Party may initiate mediation of the controversy or claim according to the terms of Section 13.04.

13.04 Mediation; Arbitration. If the dispute cannot be so resolved by negotiation as set forth above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the AAA. As the first step, the Parties shall mediate any controversy before a mediator from the AAA panel, pursuant to AAA'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, mediation does not result in resolution of the dispute, then the controversy shall be settled by Arbitration, which either Party may initiate by filing with the AAA a Notice of intent to arbitrate. 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 mediators and arbitrators 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.

13.05 Settlement Discussions. No statements of position or offers of settlement made in



the course of the dispute process described in this Article may be offered into evidence for any purpose in any litigation between the Parties, nor will any such statements or offers of settlement constitute an admission or waiver of rights by either Party in connection with any such litigation. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

**ARTICLE 14**  
**NOTICES**

14.01 Process. 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 herein. Notices may be provided by courier, nationally-recognized overnight mail, facsimile or e-mail; provided that notice of Default or Early Termination Date shall be provided by courier or overnight mail. Notices shall be deemed given when received during normal business hours during a Business Day; otherwise the notice or communication is deemed given when received at the beginning of the next Business Day. The address of a Party to which Notice shall be given may be changed from time to time by Notice. This Section shall survive any termination or expiration hereof.

If to **Party A**:

**With a copy of any Notice of an Event of Default to:**

Attn:  
Fax:

Attn:  
Fax:

**Other Contacts:**  
**Credit and Collections Contact:**

**Invoices Contact:**

Attn: Credit Department  
Phone:  
Fax:

Attn:  
Phone:  
Facsimile:

If to **Party B:**

**With a copy of any Notice of any Event of Default to:**

Attn:  
Fax:

Attn:  
Fax:

**Credit and Collections Contact::**

**Invoices Contact:**

Attn:  
Phone:  
Fax:

Attn:  
Phone:  
Fax:

**ARTICLE 15**  
**MISCELLANEOUS**

15.01 Recordings. Each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between individuals purporting to represent the Parties and that any such Recordings may be submitted in evidence in any proceeding or action relating hereto. Each Party waives any further notice of such monitoring or recording. Upon full execution of a Confirmation (or deemed acceptance if a procedure so permitting is established by PG&E pursuant to Section 2.01), such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

15.02 Safe Harbor. The Parties acknowledge, agree, and intend for purposes of “safe harbor” under the United States Bankruptcy Code (the “Bankruptcy Code”) that, without limitation, as applicable: (a) all Transactions constitute “forward contracts” or “forward agreements” within the meaning of Bankruptcy Code Sections 101(25) or 101(53B)(A)(I) respectively; (b) all payments made or to be made by one Party to the other Party hereunder with respect to forward contracts constitute “settlement payments,” “margin payments,” or “transfers” within the meaning of the Bankruptcy Code; (c) all transfers of performance assurance by one Party to the other Party hereunder constitute “margin payments” within the meaning of the Bankruptcy Code; (d) without limitation, each Party’s rights hereunder constitute a contractual right “to liquidate, terminate, or accelerate” within the meaning of the Bankruptcy Code; (e) this Agreement constitutes a “master netting agreement” and each Party is a “master netting agreement participant” within the meaning of the Bankruptcy Code; and (f) each Party is a “forward contract merchant” within the meaning of the Bankruptcy Code.

15.03 Further Assurances and Cooperation. In addition to Seller’s covenants set forth in Section 8.02, each Party agrees to execute and deliver to the other Party such other instruments, documents, and statements, and to take all other commercially reasonable actions to carry out the purposes hereof.

15.04 Counterparts. The Parties may execute this Agreement in one or more counterparts, including by facsimile transmission or electronic exchange of .pdf signature pages, each of which shall be an original, but all of which shall together constitute one instrument.

15.05 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion.

15.06 Amendment. This Master Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by the Parties, including, with respect to a particular Transaction, a Confirmation that states it is amending this Master Agreement as provided in Section 2.02.

15.07 Independent Parties; No Third Party Beneficiaries. Nothing herein creates an agency, partnership, employer-employee relationship or Corporate Association between the Parties. There are no third party beneficiaries hereto and this Agreement does not confer any rights or remedies upon any person or entity not a Party hereto.

15.08 Severability and Waiver of Provisions. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder hereof. No waiver of any term, provision, or conditions hereof, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

15.09 Miscellaneous. Each Party represents that it has completely read, fully understands, and voluntarily accepts every provision hereof and has had the opportunity to engage counsel to assist in such review.

IN WITNESS WHEREOF, the Parties have each caused this Master Agreement to be executed by their duly authorized representatives.

**PARTY A**

**PARTY B**

Pacific Gas and Electric Company

[\_\_\_\_\_]

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

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

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

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

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

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

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

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

**Credit Support Addendum**

1. Credit Terms. Capitalized terms used in this Credit Support Addendum and not defined in the Master Agreement are defined in Paragraph 10 below. Party B's Credit Support Provider is \_\_\_\_\_ [insert name of entity and place of formation/incorporation].

2. Thresholds.

(a) Threshold for Party B. "Threshold" means with respect to Party B, on any date of determination, the lowest of (i) the amount of any limit contained in a guaranty provided by Party B's Credit Support Provider, if applicable; (ii) zero if a Material Adverse Change or an Event of Default has occurred and is continuing with respect to either Party B or its Credit Support Provider; or [(iii) \_\_\_\_\_ dollars (\$ \_\_\_\_\_)]. *[Fill in and delete (iii) below, or delete and fill in (iii) below.]*

***[OR]***

[(iii) the amount set forth in the following table based on the lowest applicable Credit Rating for Party B or its Credit Support Provider, as applicable.]

<b>Party B's or its Credit Support Provider's Credit Rating</b>		<b>Threshold</b>
<b>Moody's</b>	<b>S&amp;P</b>	
Baa1 or above	BBB+ or above	\$ _____
Baa2	BBB	\$ _____
Baa3	BBB-	\$ _____
Baa3(Credit Watch)	BBB- (Credit Watch)	\$0
Below Baa3	Below BBB-	\$0

***[if unrated Party B or unrated Credit Support Provider use the following MAC]***

[(b) Material Adverse Change. "Material Adverse Change" means (i) PG&E in its reasonable opinion has determined that (x) a material adverse change has occurred in the business, financial condition or operations of Party B or its Credit Support Provider, as applicable; or (y) the ability of Party B or its Credit Support Provider, as applicable, to meet its obligations under the Master Agreement or a guaranty provided hereunder has become materially impaired; or (ii) a default has occurred with respect to indebtedness for borrowed money of Party B or its Credit Support Provider, as applicable, that has resulted in an acceleration of such indebtedness in an aggregate amount in excess of its Cross Default Threshold. "Cross-Default Threshold" means, with respect to Party B or its Credit Support Provider, as applicable, \_\_\_\_\_ dollars (\$ \_\_\_\_\_ .00).]

***[OR]***

***[if rated Party B or rated Credit Support Provider use the MAC below in lieu of above MAC]***

[(b) Material Adverse Change. “Material Adverse Change” means (i) the Credit Rating of Party B or its Credit Support Provider, as applicable, (A) falls below BBB- by S&P or Baa3 by Moody’s, (B) falls to BBB- with Credit Watch by S&P or Baa3 with a Credit Watch by Moody’s, or (C) either S&P or Moody’s ceases to provide a Credit Rating for Party B or its Credit Support Provider, as applicable, or (ii) a default has occurred with respect to indebtedness for borrowed money of Party B or its Credit Support Provider, as applicable, that has resulted in an acceleration of such indebtedness in an aggregate amount in excess of its Cross Default Threshold. “Cross-Default Threshold” means, with respect to Party B or its Credit Support Provider, as applicable, \_\_\_\_\_ dollars (\$\_\_\_\_\_.00).]

3. Form of Performance Assurance and Requirements.

(a) Guaranties.

(i) PG&E Guaranty. Not Applicable.

(ii) Party B Guaranty. To secure all payment obligations of Party B and to support its Threshold hereunder, Party B shall cause its Credit Support Provider to execute and deliver to PG&E a guaranty with liability limited to not less than Party B’s Threshold, in form and substance reasonably satisfactory to PG&E, upon Party B’s execution of the Master Agreement.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(i) Each Letter of Credit must be an irrevocable, non-transferable standby letter of credit, substantially in the form of Appendix I to this Credit Support Addendum; provided, that (A) if the issuer is a U.S. branch of a foreign commercial bank, PG&E may require changes to such form; (B) the issuer must be an Eligible LC Bank; and (C) the Letter of Credit amount may not exceed the lesser of (i) sixty percent (60%) of the total Performance Assurance posted by Party B in the form of Letters of Credit including the Letter of Credit to be issued and (ii) twenty-five million dollars (\$25,000,000.00) if the total amount of Performance Assurance posted by Party B in the form of Letters of Credit exceeds ten million dollars (\$10,000,000.00) on the date of the delivery to PG&E of the Letter of Credit.

(ii) To maintain Performance Assurance as required by this Agreement, Party B shall renew or cause to be renewed each outstanding Letter of Credit that it has provided pursuant to this Credit Support Addendum at least thirty (30) days prior to the termination or expiration of the Letter of Credit. If Party B does not renew the Letter of Credit by the above-stated deadline, then the Letter of Credit value shall be \$0 for purposes of calculating Agreement Exposure and Party B shall have failed to maintain Performance Assurance as required pursuant to this Credit Support Addendum.

(iii) In the event the issuer of such Letter of Credit (A) fails to maintain the requirements of an Eligible LC Bank or Paragraphs 3(b)(i) and (ii), (B) indicates its intent not to renew such Letter of Credit, or (C) fails to honor PG&E’s properly documented request to draw on an outstanding Letter of Credit by such issuer, Party B shall cure such default by

complying with either (I) or (II) 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 PG&E's Notice to Party B of an occurrence listed in this subsection (Party B's compliance with either (I) or (II) below is considered the "Cure"):

(I) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank failing to honor the outstanding Letter of Credit, or

(II) posting cash.

If Party B fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by PG&E, 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 if Party B does not renew the Letter of Credit by the above-stated deadline, then the Letter of Credit value shall be \$0 for purposes of calculating Agreement Exposure and Party B shall have failed to maintain Performance Assurance as required pursuant to this Credit Support Addendum.

(iv) Notwithstanding the foregoing in Paragraph 3(b)(ii) and (iii), if, at any time, the issuer of such Letter of Credit has a Credit Rating on Credit Watch, then PG&E may make a demand to Party B by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on Credit 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").

(A) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then PG&E shall provide Party B with Notice within five (5) Business Days following the expiration of the Substitute Bank Period ("Ineligible LC Bank Notice Period") that either:

(I) PG&E 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 PG&E will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(II) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Party B shall then have thirty (30) days from the date of PG&E's Notice to Cure pursuant to Paragraph 3(b)(iii) and, if Party B fails to Cure, then the last paragraph in Paragraph 3(b)(iii) shall apply to Party B.

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

(v) 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 Party B.

#### 4. Credit Requirements.

(a) Timing and Amount. (i) If at any time, and from time to time, and for any reason (including the exercise by PG&E of any right or remedy with respect to Performance Assurance, including the drawing of a Letter of Credit), the Agreement Exposure for Party B exceeds Party B's Threshold, then PG&E may request of Party B, and Party B shall provide, Performance Assurance in an amount equal to the amount by which the Agreement Exposure exceeds Party B's Threshold. "Agreement Exposure" means: (1) prior to and on the Liquid Market Trigger Date, the Independent Amount posted by Party B, or (2) as of and following the first Business Day following the Liquid Market Trigger Date, the amount resulting from (A) the Settlement Amount that would be payable from Party B to PG&E, if an Early Termination Date were declared pursuant to Article 9 of the Master Agreement, whether or not an Event of Default has occurred, had all Transactions been terminated; plus (B) the net amount of all other payments owed but not yet paid between the Parties, whether or not such amounts are then due, for performance already provided under the Agreement; less (C) the amount of any Performance Assurance then held by PG&E excluding (I) the Independent Amount posted or required to be posted by Party B, and (II) any guaranty provided by a Credit Support Provider.

(ii) On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that the amount of Performance Assurance be reduced based upon a decrease in the Agreement Exposure as calculated on such Business Day. Any Performance Assurance being provided or returned shall be delivered within two (2) Business Days of the date of receipt of such request if such request is received before the Notification Time, and within three (3) Business Days of the date of receipt of such request if such request was received after the Notification Time; provided, however, that if any Performance Assurance is being required on account of an exercise by PG&E of any right or remedy with respect to Performance Assurance, including the drawing of a Letter of Credit, Party B must provide replacement Performance Assurance within one (1) Business Day of Party B learning of PG&E's exercise of such right or remedy. The amount of Performance Assurance being provided by Party B shall be rounded upwards to the next multiple of fifty thousand dollars (\$50,000.00), and the amount of Performance Assurance being returned by PG&E shall be rounded down to the next multiple of fifty thousand dollars (\$50,000.00).

(b) Independent Amount. If an Independent Amount is applicable to Party B, the upon execution of each Confirmation, Party B must transfer additional Performance Assurance equal to the Initial Posting Amount for the applicable Transaction. The Independent Amount shall not be reduced for so long as there are any outstanding obligations between the Parties under the Master Agreement, except with respect to the Invalidation Security as provided in Paragraph 4(d) below. The Initial Posting Amount and Invalidation Security Amount may be increased up to twenty percent (20%) of the Notional Value for each Transaction upon a Material Adverse Change for Party B or its Credit Support Provider if the Independent Amount is not already fixed at such amount for each Transaction. If Party B is required to increase the Independent Amount upon a Material Adverse Change, Party B shall do so upon receipt of a request in accordance with Paragraph 4(a) above. The Independent Amount shall be held and maintained in accordance with this Credit Support Addendum as Performance Assurance.

(c) Offset Credit Post Delivery Credit Requirements. Party B must maintain Invalidation Security as Performance Assurance for the duration of the Invalidation Term for each Offset Credit Transaction. Upon Delivery of each Offset Credit, PG&E shall apply the Initial Posting Amount with respect to such Delivered Offset Credits to the Invalidation Security, if there is an excess of Initial Posting Amount for Offset Credits remaining to be Delivered on account of such Delivery. If the Invalidation Security Amount is greater than the Initial Posting Amount, then Party B shall post such additional Performance Assurance for Invalidation Security no later than the next Business Day following the Delivery of the Offset Credit, and if Party B fails to do so, then PG&E may withhold such amount from current or future payment owed to Party B for the Delivered Offset Credits as cash posted for the Invalidation Security.

(d) Interest. Interest on Performance Assurance in the form of cash shall accrue to Party B at the Collateral Interest Rate and shall be calculated for the actual number of days elapsed and on the basis of a year of 360 days. After receipt of an invoice from Party B on or after the first Business Day of the month following the month in which the interest has accrued, interest shall be paid for a month on the later of (i) the fifth Business Day of the next month, or (ii) the third Business Day after receipt of invoice.

(e) Setoff. Notwithstanding anything to the contrary in the Agreement, PG&E may apply any and all amounts otherwise due from it to Party B to any shortfall in Performance Assurance due to it from Party B.

5. Grant of Security Interest; Remedies. In order to secure its present and future obligations under the Agreement to PG&E, Party B hereby grants to PG&E a security interest in, lien on, and right of setoff against, all present and future Performance Assurance and any and all proceeds and products thereof. Party B shall take such further action as PG&E may reasonably require in order for PG&E to perfect, maintain, and protect PG&E's security interest in Performance Assurance. Upon the occurrence and continuance of an Event of Default with respect to Party B, PG&E may (a) exercise any of the rights and remedies of a secured party under Law with respect to all Performance Assurance; (b) exercise its right of setoff against any and all Performance Assurance; (c) draw on any Letter of Credit issued for its benefit, and (d) liquidate all Performance Assurance then held by PG&E free from any claim or right of any nature whatsoever of Party B. PG&E may (A) apply Performance Assurance and proceeds realized upon exercise of such rights or remedies to reduce Party B's obligations under the Agreement, in such order as PG&E elects, and Party B shall remain liable for any amounts owing to PG&E after such application (subject to PG&E's obligation to return any surplus proceeds remaining after such obligations are satisfied in full) and (B) hold Performance Assurance and proceeds for Party B's obligations under the Agreement.

6. Use of Cash. To the maximum extent permitted under Law, if no Event of Default has occurred and is continuing with respect to PG&E, then PG&E shall have the right to use, commingle or otherwise use in its business any cash that it holds as Performance Assurance, free from any claim or right of any nature whatsoever of Party B, including any equity or right of redemption by Party B.

7. Credit Events Of Default. The following events ("Credit Events") shall be additional Events of Default of Party B under the Master Agreement:



- (a) Party B's Credit Support Provider repudiates any obligation to PG&E or any guaranty;
- (b) Party B fails to establish, maintain, extend or increase Performance Assurance when and as required pursuant to this Credit Support Addendum;
- (c) Party B's Credit Support Provider, if any, fails to perform any covenant set forth in any guaranty delivered pursuant to this Credit Support Addendum;
- (d) the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of Party B or Party B's Credit Support Provider under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the Cross Default Threshold, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by Party B or Party B's Credit Support Provider in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the Cross Default Threshold.
- (e) Party B or its Credit Support Provider fails to timely provide financial information required in this Credit Support Addendum, and such failure is not remedied within thirty (30) days after Notice of such failure is given to Party B.
- (f) Party B otherwise fails to comply with this Credit Support Addendum.

8. Financial Information. Upon request by PG&E, Party B or its Credit Support Provider, as applicable, shall deliver to PG&E (a) within one hundred twenty (120) Days following the end of its fiscal year, a copy of the audited consolidated financial statements for such fiscal year certified by independent certified public accountants and (b) within ninety (90) days after the end of each of the first three fiscal quarters of its fiscal year, a copy of the quarterly unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, international financial reporting standards or such other principles then in effect.

9. Successors. In the event of an assignment of Agreement by Party B, the assignee will be required to meet all credit requirements of PG&E, including amendment of this Credit Support Addendum to PG&E's satisfaction. Nothing in this Paragraph permits an assignment or delegation not in accordance with Section 15.05 of the Master Agreement.

10. Definitions. The following definitions apply to this Credit Support Addendum:

"Agreement Exposure" is defined in Paragraph 4(a).

"Collateral Interest Rate" means the rate for any day opposite the caption "Federal Funds (Effective)" for such day as published for such day in Federal Reserve Publication H.15 (519) or any successor publication as published by the Board of Governors of the Federal Reserve System.

“Credit Support Provider” means a third party providing a guaranty or Performance Assurance for a Party pursuant to this Credit Support Addendum.

“Credit Watch” means S&P or Moody’s ratings outlook “Watch Negative”, “Possible Downgrade” “Review for Downgrade”, “Review for Possible Downgrade” or other similar terminology.

“Eligible LC Bank” means either (a) a U.S. commercial bank, or (b) a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. bank or foreign bank must be acceptable to PG&E in its sole discretion and such bank must have a Credit Rating of at least “A” from S&P or “A2” from Moody’s and assets of at least ten billion dollars (\$10,000,000,000.00).

“Independent Amount” means (a) with respect to PG&E, zero dollars (\$0) and (b) with respect to Party B, the aggregate total of the Initial Posting Amount set forth each Confirmation plus the aggregate total of the Invalidation Security Amount set forth in each Confirmation.

“Ineligible LC Bank” is defined in Paragraph 3(b)(iv).

“Ineligible LC Bank Notice Period” is defined in Paragraph 3(b)(iv).

“Initial Posting Amount” means with respect to PG&E zero dollars (\$0) and with respect to Party B, the amount set forth in each applicable Confirmation.

“Invalidation Security” means Performance Assurance that is to be in the amount of the Invalidation Security Amount provided in each Offset Credit Transaction.

“Invalidation Security Amount” means with respect to PG&E zero dollars (\$0) and with respect to Party B, the amount set forth in each applicable Confirmation.

“LC Notice” is defined in Paragraph 3(b)(iv).

“Letter of Credit” means a letter of credit issued in connection herewith.

“Liquid Market Trigger Date” means the date that is thirty (30) days following the date on which PG&E gives Notice that it will begin to calculate Agreement Exposure in accordance with subpart (2) of the “Agreement Exposure” definition in Paragraph 4(a).

“Moody's” means Moody's Investors Service, Inc.

“Notification Time” means 11:00 a.m. Pacific time/1:00 p.m. Eastern time on a Business Day.

“Notional Value” of a Transaction means the aggregate sum of Contract Price times Quantity, as of the Trade Date.

“Performance Assurance” has the meaning set forth in Section 1.01, Definitions, of the Master Agreement.

“S&P” means Standard & Poor's Financial Services, LLC (a subsidiary of the McGraw-Hill Companies, Inc.).

“Substitute Bank Period” is defined in Paragraph 3(b)(iv).

“Substitute Letter of Credit” is defined in Paragraph 3(b)(iv).

**ATTACHMENT I**

FORM OF LETTER OF CREDIT

**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:**

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 Master Allowance and Offset Credit Purchase and Sale Agreement, dated \_\_\_\_\_, between Beneficiary and **[insert name of Party B]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Party B]** under the Agreement; or
- B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Party B]** 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; and
3. This Letter of Credit is not transferable.

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 as provided below), at our offices at **[insert issuing bank’s address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents, or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank’s receiving department]**, with originals or copies of documents 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 within thirty (30) days after the resumption of our business and effect payment accordingly.

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

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

Very truly yours,

**[insert name of issuing bank]**

By: \_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_ **[print or type name]**

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

**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

**EXHIBIT A**

Form of Allowance Confirmation

**[PROVIDED SEPARATELY]**



**EXHIBIT B**

Form of Offset Credit Confirmation

[PROVIDED SEPARATELY]



FORM OF ALLOWANCE CONFIRMATION

This Confirmation confirms a Transaction under the Master Agreement by and between Pacific Gas and Electric Company (“PG&E” or “Party A”) and [\_\_\_\_\_] (“Party B”), dated \_\_\_\_\_ (the “Master Agreement”) pursuant to which Buyer shall purchase and Seller shall sell Product to Buyer on the Delivery Dates on the terms set forth in the Master Agreement, Credit Support Addendum and this Confirmation (collectively the “Transaction Documents”). All capitalized terms are defined in the Master Agreement or the Credit Support Addendum, and if not therein, in the Cap and Trade Regulations, unless otherwise defined in this Confirmation.

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

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Quantity: \_\_\_\_\_

Allowance Vintage Years: \_\_\_\_\_

Contract Price (dollars per Allowance): \_\_\_\_\_

Total Price: \_\_\_\_\_

Initial Posting Amount: \$\_\_\_\_\_, subject to the Credit Support Addendum.

Delivery Dates: \_\_\_\_\_

**Special Provisions**

- 1. Condition Precedent for this Transaction.

*[Seller to check box if earliest Vintage Year for Product is less than four years from the Trade Date]*

This Confirmation shall be effective as of the date of last signature by the authorized representative of each Party.

*[Seller to check box if earliest Vintage Year for Product is more than four years from the Trade Date]*

The effectiveness of this Confirmation is conditioned upon satisfaction of both of the following conditions precedent:

- (a) This Confirmation has been duly executed by the authorized representatives of each of Buyer and Seller; and
- (b) Buyer receives CPUC Approval of the Transaction.

If the conditions precedent set forth in subpart (b) are not satisfied or waived in writing by both Parties on or before 240 days from the date on which Buyer files this Transaction with the CPUC for CPUC Approval, then either Party may terminate this Transaction effective upon Notice to the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, upon of such termination.

2. Representations and Warranties. The representations set forth in Article 7 of the Master Agreement are true and correct as of the date hereof. Seller further represents and warrants that Seller has complied with all Laws to ensure that the Product qualifies as an Allowance pursuant to the Cap and Trade Regulations.

IN WITNESS WHEREOF, each of Buyer and Seller has duly executed and delivered this Confirmation by its duly authorized representative as of the date of last signature below.

**BUYER**

**SELLER**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

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

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

FORM OF OFFSET CREDIT CONFIRMATION

This Confirmation confirms a Transaction under the Master Agreement by and between Pacific Gas and Electric Company (“PG&E” or “Party A”) and [ \_\_\_\_\_ ] (“Party B”), dated \_\_\_\_\_ (the “Master Agreement”) pursuant to which Buyer shall purchase and Seller shall sell Product to Buyer on the Delivery Dates on the terms set forth in the Master Agreement, Credit Support Addendum and this Confirmation (collectively the “Transaction Documents”). All capitalized terms are defined in the Master Agreement or the Credit Support Addendum, and if not therein, in the Cap and Trade Regulations, unless otherwise defined in this Confirmation.

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

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Quantity: \_\_\_\_\_

Offset Credit Vintage Years: \_\_\_\_\_

Contract Price (dollars per Offset Credit): \$ \_\_\_\_\_ /Offset Credit \_\_\_\_\_

Delivery Dates: \_\_\_\_\_

Initial Posting Amount: \$ \_\_\_\_\_, subject to the Credit Support Addendum.

Fixed Differential (dollars per Offset Credit): For purposes of this Confirmation, the Fixed Differential shall be \$[ \_\_\_\_\_ ]/Offset Credit.

Invalidation Security Amount: For purposes of this Confirmation, the Invalidation Security Amount shall be [\$ \_\_\_\_\_ .00].

**SPECIAL PROVISIONS**

1. Confirmation Effective Date. [This Confirmation Effective Date shall occur on the Trade Date.][This Confirmation Effective Date shall not occur until CPUC Approval or its waiver by both Parties. If CPUC Approval is not satisfied or waived in writing by both Parties, on or before two hundred forty (240) days after PG&E’s filing of the Transaction Documents for CPUC Approval, then either Party may terminate this Transaction by delivering Notice to the other Party, which termination shall be effective upon giving Notice thereof to the other Party. Neither Party shall have any obligation or liability to the other including for a Termination Payment, upon such termination.] ***[Seller shall use second set of bracketed text if selling four Vintage Years or more of Offset Credits.]***

2. Offset Credits. Seller shall sell and Deliver, and Buyer shall purchase and receive, or cause to be received the Offset Credits as set forth in this Confirmation. Seller shall cause all such Offset Credits to:

(a) result from the use of the following: ***[Seller to indicate Offset Credit and Project type]***

Compliance Offset Protocol using one of the following pursuant to the Cap and Trade Regulations:

- Livestock Project
- Ozone Depleting Substances Project
- Urban Forest Project
- U.S. Forest Project

**OR**

Early Action Offset Program using one of the following: *[Seller to indicate Protocol version]*

- Climate Action Reserve U.S. Livestock Project Protocol version
- Climate Action Reserve Urban Forest Project Protocol version
- Climate Action Reserve Ozone Depleting Substances Project version
- Climate Action Reserve Forest Project Protocol version

(b) [not] have a decreased timeframe for invalidation by CARB pursuant to the Cap and Trade Regulations[.], as Seller shall *[If Seller has decreased the Invalidation Period then remove “not” and use second set of bracketed text along with checking one of the below boxes]:*

have a subsequent Offset Project Data Report verified by a different offset verification body which issues a Positive Offset or Qualified Positive Offset Verification Statement (as these terms are used in the Cap and Trade Regulations) within three (3) years of issuance of the Offset Credit pursuant to the Cap and Trade Regulations and such report and statement are accepted by CARB; and *[For Livestock, Urban Forest and U.S. Forest Projects only]*

**OR**

re-verify the Offset Project Data Report by a different offset verification body within three (3) years of issuance of the Offset Credit pursuant to the Cap and Trade Regulations and such report and statement are accepted by CARB; and] *[For Ozone Depleting Substances Projects only.]*

- (c) be generated from an Offset Project that is, as of the Trade Date:
  - an Existing Project; or
  - a New Project.

3. Representations and Warranties. The representations set forth in Article 7 of the Master Agreement are true and correct.

(a) Further Seller Representations and Warranties. Without limiting any other representation or warranty made by Seller, Seller further represents and warrants to Buyer that:

(i) [The Offset Credits will result from an Existing Project.][The New Project will meet the definition of an Existing Project within twelve (12) calendar months from the Confirmation Effective Date.] ***[Seller to include representation depending on New or Existing Project type.]***

(ii) Seller has not sold the Offset Credits or GHG Emission Reductions relating to the Offset Credits or any part thereof (by natural gas agreement or otherwise) to any other person or entity, including any Governmental Authority.

(iii) The Offset Credits have not been issued in another program with the same Offset Project boundary for the same Reporting Period in which the Offset Credits were issued for GHG Emission Reductions.

(iv) The Offset Project Data Report for the Offset Credits does not contain errors that overstate the amount of GHG Reductions by more than five percent.

(v) The Offset Project activity and implementation of the Offset Project was in accordance with Law during the Reporting Period for which the Offset Credits were issued.

(vi) Seller has obtained sufficient written evidence from each Project Participant establishing Seller's right, title and ownership to the GHG Emissions Reductions from the Offset Project and the Offset Credits. Neither Seller, nor any of its Affiliates or its customers, have claimed any Offset Credits from the Offset Project or any part thereof, including the GHG Emission Reductions, as part of its own carbon inventory, footprint, or other carbon statement or declaration.

(vii) [Seller is not the Forest Owner and Seller has obtained sufficient written evidence from the Forest Owner that if the Offset Project is terminated for any reason except an Unintentional Reversal, the Forest Owner must replace any Offset Credits that have previously been issued and retired based on the Cap and Trade Regulations and the Compliance Offset Protocol.] ***[Seller to delete representation if Offset Project is not a U.S. Forest Offset Project or if it is a U.S. Forest Project but Seller is the Forest Owner.]***

(viii) [The ODS which is the basis for the Offset Project has been sourced exclusively within the United States and Seller has sufficient written evidence to substantiate the origination of the ODS for the Offset Project.] ***[Seller to delete representation if Offset Project is not an ODS Offset Project]***

(ix) Seller has complied with all Laws and the Compliance Offset Protocols (and the Early Action Offset Program if applicable) to ensure that the Product qualifies as an Offset Credit pursuant to the Cap and Trade Regulations and the Product and the transfer of Product hereunder complies with all Cap and Trade Regulations.

(b) Continuing Nature of Representations and Warranties. Seller makes the representations and warranties set forth in this Section 3 as of the Confirmation Effective Date and on each Delivery Date. In addition, Seller makes the representations and warranties in Special Provisions 3(a)(iii) through (v) ("Invalidation Representations") continuously throughout the Invalidation Term.

4. Seller Obligations and Covenants.

(a) New Projects.

(i) During the Confirmation Term, Seller shall at no cost to Buyer and according to Law:

(A) design and construct the New Project;

(B) perform all studies, pay all fees, obtain all necessary approvals and execute and perform all necessary agreements for the Offset Project to produce, and Seller to Deliver, the Offset Credits;

(C) acquire all permits and other approvals necessary for the construction, operation, and maintenance of the New Project; and

(D) within [ ] days after the close of each month from the first month following the Confirmation Effective Date until the New Project qualifies as an Existing Project, provide to Buyer a Progress Report. The Progress Report shall indicate Seller's progress and achievement of the Milestones.

(ii) Time is of the essence in regards to this Agreement. Seller agrees to achieve certain Milestones in a timely fashion and understands that Buyer will suffer damages if Seller does not do so. Seller shall provide Buyer with any requested documentation to support the achievement of Milestones within ten (10) Business days of receipt of such request by Buyer.

(iii) Seller shall achieve the Milestones according to the schedule and demonstrate to Buyer achievement of the Milestones, as set forth in Appendix I. Seller shall demonstrate that the New Project has become an Existing Project within twelve (12) calendar months from the Confirmation Effective Date by providing Buyer with a copy of the Offset Verification Statement submitted to CARB.

(b) Listing. Seller shall maintain the Listing of the Offset Project throughout the Invalidation Term. [If the Offset Credit is initially from an Early Action Offset Program, then Seller shall remove or cancel the Registry Offset Credit from the Offset Project Registry according to the Cap and Trade Regulations.] *[Seller to delete bracketed provision if the Offset Credit is not a Registry Offset Credit.]*

(c) Operation of the Offset Project. During the Invalidation Term, in order for the Offset Project to produce, and Seller to Deliver and maintain the validity of, the Offset Credits, Seller shall operate and maintain the Offset Project in a competent and prudent manner and in compliance with Law, and obtain and maintain in full force and effect all Project Documents. On the first Delivery Date, Seller shall provide Buyer with Notice of the Offset Project's Verifier or Verification Body and thereafter shall provide Buyer with prompt Notice of change of the Offset Project's Verifier or Verification Body.

(d) Costs and Expenses. During the Invalidation Term, Seller shall bear all costs and expenses of the Offset Project maintenance and operation, including all CARB and Verifier fees and expenses, royalties, license fees or other charges for licenses and intellectual property for designs, processes, equipment, technology, published or unpublished data, information or materials in connection with the Offset Project or the Delivery or sale of the Offset Credits.

(e) Double Selling. During the Invalidation Term, Seller shall not attempt to sell the Offset Credits or GHG Emission Reductions relating to the Offset Credits or any part thereof (by natural gas agreement or otherwise) to any other person or entity, including any Governmental Authority.



5. Seller Events of Default and Early Transaction Termination.

(a) In addition to the events constituting an Event of Default in the Master Agreement, the occurrence of any of the following shall constitute an Event of Default by Seller:

(i) if at any time Seller Delivers or attempts to Deliver to Buyer for sale under this Agreement Offset Credits that were not generated by the Offset Project;

(ii) [Seller fails to (A) achieve the status of an Existing Project or (B) demonstrate that the New Project has become an Existing Project, within twelve (12) calendar months from the Confirmation Effective Date;] *[Seller to delete if not a New Project.]*

(iii) [Seller fails to meet a Milestone by the date indicated for such Milestone on Appendix I;] *[Seller to delete if Existing Project.]* or

(iv) any Invalidation Representation is or becomes untrue, incorrect or incomplete in all respects, if not remedied within five (5) Business Day after Notice (“Invalidation Event”).

(b) Early Transaction Termination.

(i) If an Event of Default has occurred pursuant to Special Provision 5(a)(ii), (iii) or (iv) (each a “Confirmation Termination Event”), the terms and conditions of Section 9.03 and 9.04 of the Master Agreement shall apply to such Confirmation Termination Event and Buyer may terminate this Transaction only and calculate a Settlement Amount for this Transaction only; provided that, neither Party shall have the right to accelerate any amounts owing between the Parties nor liquidate or terminate any other Transactions under Section 9.03 of the Master Agreement due to a Confirmation Termination Event, unless there is an Event of Default other than a Confirmation Termination Event.

(ii) If the Event of Default is an Invalidation Event, then in addition to the Settlement Amount for this Transaction pursuant to Special Provision 5(b)(i), Buyer as the Non-Defaulting Party shall calculate the amount resulting from the termination of this Transaction due to an Invalidation Event (“Invalidation Termination Payment”) based on the (A) quantity of Offset Credits subject to the Invalidation Event multiplied by the Contract Price for such Offsets Credit plus (B) the sum of the Gains, Losses, and Costs for the quantity of Offset Credits subject to the Invalidation Event, each calculated in accordance with Section 9.04 of the Master Agreement.

6. Force Majeure. If Seller is rendered unable, wholly or in part, by Force Majeure to carry out its material obligations with respect hereto, which prevents or delays performance, then upon Seller’s giving oral or informal notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, but in no event more than five (5) Business Days after such cause has commenced, such notice to be confirmed by Notice to Buyer, then the obligations of Seller will, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Seller will not be liable to Buyer for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. Buyer has until the end of the twentieth (20th) Business Day following such receipt, to provide Notice to Seller that it objects to or disputes the existence of an event of Force Majeure.

(a) “Force Majeure” means any event or circumstance that wholly or partly prevents or delays the performance of any material obligation arising hereunder, but only if and to the extent (1) such event is not within the reasonable control, directly or indirectly, of Seller, (2) Seller has taken all

reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on Seller's ability to perform its obligations hereunder and which by the exercise of due diligence Seller could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the negligence or the failure of, or caused by, Seller. Subject to the foregoing, events that could qualify as Force Majeure include earthquake, explosion, or other catastrophic event not related to or enhanced by climate change; or war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockage, insurrection, revolution, expropriation or confiscation; provided, however, that Force Majeure may not be based on:

- (i) Seller's ability to sell the Offset Credits for more than the Contract Price;
- (ii) Seller's inability to obtain Project Documents or approvals of any type for the construction, operation or maintenance of the Offset Project;
- (iii) forest fire, insect infestation or disease affecting trees, plants or livestock, no matter how pervasive or destructive;
- (iv) Seller's inability to obtain sufficient fuel, power or materials to operate the Offset 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 above;
- (v) Seller's failure to obtain additional funds or financing, including funds authorized by a Governmental Authority, to supplement the Offset Project or the Contract Price for the Offset Credits;
- (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, or any contractor or subcontractor thereof or any other third party employed by Seller to work on the Offset Project;
- (vii) any equipment failure unless such equipment failure is caused solely by an event of Force Majeure of the specific type described above; or
- (viii) a general increase in prevailing regional wages.

(b) Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

(c) Termination for Force Majeure. Buyer may terminate this Agreement by Notice to Seller without further liability of either Party to the other Party in the event of a Force Majeure which prevents Seller from (i) meeting a Milestone; or (ii) Delivering the Offset Credits for ninety (90) days from the original Delivery Date provided in this Confirmation.

7. Dispute Resolution. Without limiting Article 13 of the Master Agreement, any disputes relating to the compliance with the Protocols must be arbitrated with a report delivered by an individual selected from CARB Verifiers or Verification Bodies, with such individual to be selected by the arbitrator selected pursuant to the AAA's Commercial Arbitration Rules.

8. Access to Premises. During the Confirmation Term, Buyer and its respective authorized agents or employees shall have the right to enter upon the Premises on reasonable advance Notice during

normal business hours and for any purposes connected herewith. In no event shall Buyer exercise this right to cause any person to go onto any portion of the Premises when entry upon such Premises is unsafe, and Seller shall determine and advise Buyer in advance if any proposed entry is potentially unsafe.

9. Definitions.

“Compliance Offset Protocol” is defined in the Cap and Trade Regulations and which is applicable to the Offset Project.

“Confirmation Effective Date” is defined in Special Provision 1.

“Existing Project” means an Offset Project that has completed at least one Offset Verification Statement as of the Trade Date.

“Confirmation Term” means the time period from the Confirmation Effective Date and ending with the last Delivery Date.

“Force Majeure” is defined in Special Provision 6(a).

“GHG Emission Reductions” is defined in the Cap and Trade Regulations and includes GHG reductions and GHG Removal Enhancement, as those terms are used in the Cap and Trade Regulations, and Direct GHG Removal Enhancements.

“Invalidation Period” means either three (3) years from the issuance of the Offset Credit which has been Delivered by Seller to Buyer pursuant to this Transaction if Seller has indicated a decreased timeframe for invalidation in Special Provision 3(b) or eight (8) years from the issuance of the Offset Credit which has been Delivered by Seller to Buyer pursuant to this Transaction if Seller has not indicated a decreased timeframe for invalidation in Special Provision 3(b).

“Invalidation Term” means the period from the Trade Date through the later of (a) the last day of the Invalidation Period and (b) the last day of the Delivery Term.

“Key Permits” means all of the permits, licenses, approvals, certificates, entitlements and other authorizations issued by, and notices and registrations submitted to, Governmental Authorities required with respect to the Project as set forth on Appendix I, and all general conditions and addenda thereto.

“Listing” means that the Offset Project is listed according to the Cap and Trade Regulations.

“Livestock Project” means an Offset Project meeting the requirements of Compliance Offset Protocol Livestock Projects, incorporated by reference in the Cap and Trade Regulations.

“Milestones” means the key development activities required for the construction, installation, and operation of the Offset Project as set forth in this Confirmation.

“New Project” means an Offset Project that has completed at least one Offset Verification Statement within twelve (12) calendar months from the Confirmation Effective Date.

“Offset Project” is defined in the Cap and Trade Regulations and is more particularly described in Appendix II for purposes of this Transaction.

“Offset Project Data Report” is defined in the Cap and Trade Regulations.

“Offset Verification Statement” is defined in the Cap and Trade Regulations.

“Ozone Depleting Substances Project” means an Offset Project meeting the requirements of Compliance Offset Protocol Ozone Depleting Substances Projects, incorporated by reference in the Cap and Trade Regulations.

“Progress Report” means a report to Buyer in the form of Appendix III.

“Project Documents” means those documents and information set forth in the Offset Project Listing requirements of the Compliance Offset Protocol must be submitted, along with any additional information specified in the Cap and Trade Regulations, including the Key Permits set forth in Appendix I to this Confirmation.

“Project Participant” means an owner of any interest in the real or personal property involved in the Offset Project.

“Urban Forest Project” means an Offset Project meeting the requirements of Compliance Offset Protocol Urban Forest Projects, incorporated by reference in the Cap and Trade Regulations.

“U.S. Forest Project” means an Offset Project meeting the requirements of Compliance Offset Protocol U.S. Forest Projects, incorporated by reference in the Cap and Trade Regulations.

“Verification Bodies” is defined in the Cap and Trade Regulations.

“Verification” is defined in the Cap and Trade Regulations.

“Verifiers” is defined in the Cap and Trade Regulations.

**Buyer**

**Seller**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

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

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

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

**ATTACHMENT I**

**MILESTONES**

*[Seller to delete those Protocols and corresponding Milestones that do not apply.]*

**Ozone Depleting Substances Protocol**

1. Seller shall obtain the Key Permits listed below by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of such Key Permits issued or approved by the appropriate Governmental Authority.
2. Seller shall have shipped **[insert amount]** of the ODS to destruction facility by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of **[insert]**.
3. Seller shall have the ODS destroyed by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of **[insert]**.
4. Seller shall have submitted the Verification of the Offset Project Data Report to CARB by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of **[insert]**

**Livestock Protocol**

1. The construction start date for Biogas control system shall occur no later than **[insert date]** and Seller shall demonstrate achievement by delivering to Buyer copies of **[insert]**
2. Seller shall obtain the Key Permits listed below by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of such Key Permits issued or approved by the appropriate Governmental Authority.
3. The commercial operation date for the Biogas control system shall occur no later than **[insert date]** and Seller shall demonstrate achievement by delivering to Buyer copies of **[insert]**.
4. Seller shall have submitted the Verification of the Offset Project Data Report to CARB by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of **[insert]**.

**U.S. Forest Protocol**

1. Seller shall obtain the Key Permits listed below by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of such Key Permits issued or approved by the appropriate Governmental Authority.
2. Seller shall complete its models and estimates of GHG emission sources, GHG sinks, and GHG reservoirs to determine baseline onsite carbon stocks and shall demonstrate achievement by delivering to Buyer copies of **[insert]**.
3. Seller shall complete its measurement of GHG emission sources, GHG sinks, and GHG reservoirs to determine offset credits and shall demonstrate achievement by delivering to Buyer copies of **[insert]**.
4. Seller shall have submitted the Verification of the Offset Project Data Report to CARB by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of **[insert]**.

**Urban Forest Protocol**

1. Offset Project commencement date shall occur no later than **[insert date]** and Seller shall demonstrate achievement by delivering to Buyer copies of **[insert]**.

2. Seller shall complete its measurement of GHG emission sources, GHG sinks, and GHG reservoirs to determine offset credits and shall demonstrate achievement by delivering to Buyer copies of **[insert]**.
3. Seller shall have submitted the Verification of the Offset Project Data Report to CARB by **[insert date]** and shall demonstrate achievement by delivering to Buyer copies of **[insert]**.

**Key Permits**

*[Seller to list]*

**ATTACHMENT II**  
**OFFSET PROJECT DESCRIPTION**

*[Seller to insert description]*

**ATTACHMENT III**

**FORM OF PROGRESS REPORT**

This Progress Report is presented pursuant to that certain Offset Credit Confirmation dated \_\_\_ entered into pursuant to that certain Master Allowance/Offset Credit Purchase Agreement by and between Pacific Gas and Electric Company, a California corporation (“PG&E” or “Party A”) and [\_\_\_\_], a \_\_\_\_\_ (“Party B”; collectively with Party A the “Parties” and individually a “Party”). Seller attests that the information contained herein is true and correct.

*[Seller to suggest appropriate form for PG&E review]*

The Progress Report shall identify the Milestones and indicate whether Seller has met or is currently scheduled to meet such Milestones.



**Supplier Diversity Questionnaire**

- **Goals**  
 What percentage of your organization’s total contracting and procurement spend for the prior two years was with women, minority and service disabled veteran-owned businesses? Provide percentage by category and overall.

<b>Category</b>	<b>2010 Dollars</b>	<b>2010 Percentage</b>	<b>2011 Dollars</b>	<b>2011 Percentage</b>
Women				
Minority				
Service Disabled Veteran				

- **Corporate Commitment of its Leadership**  
 Describe the level of supplier diversity commitment demonstrated by your organization’s leadership. How does your leadership hold employees accountable for supplier diversity performance? Are supplier diversity goals included in performance appraisals? If so, at what levels do goals apply (i.e., officers, buyers, all employees, etc.)? How are employees recognized for achieving goals and objectives?
- **Action Plans to Work towards Goals**  
 Describe your organization’s specific plan to achieve supplier diversity including clear objectives and a stated time table, a credible means to work towards the stated goal, specific action steps and measurements to evaluate success and demonstration of senior leadership support.
- **Tracking and Reporting Process**  
 Describe how your organization will track and report supplier diversity results. If your organization is the selected bidder, how will you ensure data integrity? For instance, what process does your organization have in place to establish the diversity status of your supply base? Does your organization have a designated person to report diverse subcontracting? How will your organization obtain and verify supplier diversity data?
- **Continuous Improvement System**  
 Describe your organization’s plan to monitor and improve its effectiveness. How will you assess the effectiveness of your program? Do you have initiatives to support supplier diversity achievement? How will your organization ensure a pipeline of diverse suppliers to meet your organization’s needs and the needs of your constituents?

**Diversity Status and Subcontracting Program**

- Is your organization certified by the California Public Utilities Commission (CPUC) Supplier Clearinghouse as a woman or minority-owned business? If your organization is service disabled veteran-owned, is your organization certified by the Department of General Services? Please provide certification number and expiration date.
- If your organization is woman, minority or service disabled veteran-owned but not certified by the CPUC or Department of General Services, does your organization hold a Women's Business Enterprise National Council (WBENC), National Minority Supplier Develop Supplier Development Council or SBA 8(a) certification? Please provide certification number and expiration date.
- Indicate the percentage your organization will subcontract with CPUC-certified women, minority and service disabled veteran-owned businesses should your organization be the successful bidder. Complete Exhibit 1-A indicating the suppliers your organization plans to use and the estimated subcontracting amount. If your organization does not plan to subcontract, please explain why not.



**List of Subcontractors and Disbursement Record**

**EXHIBIT 1-A**

<b>Prime Contractor/Supplier:</b>			<b>Name of Preparer:</b>		
<b>PG&amp;E Contract Number (if any):</b>			<b>Telephone: (       )</b>		
<b>PG&amp;E Project/Product:</b>			<b>E-Mail:</b>		
<b>Contract Duration (Year):</b> From:                      To:			<b>Total Bid Value:</b>		

Name of Subcontractor  (1)	WMDVBE Status Code*  (2)	V**  (3)	NV***  (4)	Address  (5)	Description of Work  (6)	Estimated Amount to be Paid to Subcontractors  (7)

\* Refer to Instructions/Codes/Definitions on back.  
 \*\* V = Subcontractor is a verified WMDVBE.  
 \*\*\* NV = Subcontractor is not a verified a verified WMDVBE.

(8)	Estimated Total Amount to be Paid to All Verified WMDVBE Subcontractor(s):	
(9)	Total Bid Value:	
(10)	Estimated Percentage to be Paid to All Verified WMDVBE Subcontractor(s) (a÷b):	

Signature: \_\_\_\_\_ / Date \_\_\_\_\_

**I hereby verify that the listed information is true and accurate to the best of my knowledge.**

The successful bidder(s) will be expected to register and report all monthly subcontracting spending with verified WMDVBE subcontractors at [www.pgesupplierdiversity.com](http://www.pgesupplierdiversity.com) for the duration of the contract.

**STEP-BY-STEP INSTRUCTIONS**

Complete column numbers 1-10 and return this form with your bid proposal (**Please attach copies of diverse Subcontractors certifications with your bid proposal**).

- (1) Include the complete name of the subcontractor.
- (2) Indicate the supplier's minority code (see definitions and codes below).
- (3) Place a "V" in the box if the subcontractor is a **verified** WBE or MBE supplier by the CPUC Clearinghouse or a **verified** DVBE certified by the Department of General Services.
- (4) Place a "NV" in the box if the subcontractor is **not verified**.
- (5) Include the address, city, state and zip of the subcontractor.
- (6) Describe the work that the subcontractor will be performing.
- (7) Indicated the estimated amount to be paid to each subcontractor for the duration of the contract.
- (8) Indicate the estimated total amount to be paid to all **verified** subcontractors for the duration of the contract.
- (9) Indicate the proposed bid value.
- (10) Indicate the percentage of the bid value to be paid to all verified subcontractors. Divide the estimated dollars to be paid to all **verified** WMDVBE subcontractors by the total bid value.

**DEFINITIONS AND CODES**

**WBE** Women Business Enterprise: A business enterprise that is at least 51 percent owned by a woman or women, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more of those individuals

**MBE** Minority Business Enterprise: A business enterprise that is at least 51 percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority-group individuals, and whose management and daily business operations are controlled by one or more of those individuals.

<b>Minority Status:</b>	<b>001</b>	African American Male	<b>008</b>	Hispanic American Female
	<b>002</b>	African American Female	<b>009</b>	Caucasian Male
	<b>003</b>	Asian Pacific American Male	<b>010</b>	Caucasian Female
	<b>004</b>	Asian Pacific American Female	<b>011</b>	Multi- Status
	<b>005</b>	Native American Male	<b>012</b>	Other Groups
	<b>006</b>	Native American Female	<b>013</b>	Small Business Enterprise
	<b>007</b>	Hispanic American Male	<b>014</b>	Service Disabled Veteran Business Enterprise

**African Americans** Persons having origins in any black racial groups of Africa.

**Asian Pacific Americans** Persons having origins in Asia or the Indian Subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.

**Native Americans** Persons having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

**Hispanic Americans** All persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, or other Spanish culture or origin.

**Caucasian** Includes all people of European and North African descent.

**Multi-Status** An enterprise that is wholly owned and controlled by a combination of minorities or women but whose majority ownership (at least 51%) is not vested with any one of these individuals.

**Other Groups** Groups whose members are found to be socially and economically disadvantaged by the Small Business Administration pursuant to Section 8 (d) of the Small Business Act as amended (15 U.S.C. 637 (d)), or by the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.

**Small Business Enterprise (SBE)** A business defined pursuant to Section 3 of the Small Business Act (SBA) and relevant regulations pursuant thereto. If unsure, please contact your local Small Business Administration office for clarification.

**Service Disabled Veterans Business Enterprise (DVBE)** Has the same meaning as defined in subdivision (g) of the Military and Veterans Code and must meet the "Control" and "Operate" criteria. An enterprise which is 51 percent owned, or the stock is 51 percent owned, by one or more disabled veterans.

**CREDIT AND FINANCE INFORMATION**

Provide the following information for assessment of the financial viability of Participant. Include additional materials as necessary. Financial information must be provided for the Participant and any entity providing credit enhancement to the Participant. As necessary, please specify whether the information provided is for the Participant, its parent or an entity providing on Participant's behalf security, under any of the provisions of the Protocol.

**A. Participant Identification and Credit Information:**

1. Full legal name of Participant, including place of formation or incorporation.
2. Describe in detail Participant's ultimate corporate parent if Participant is a direct or indirect subsidiary or affiliate of any other corporation; and/or each of Participant's general partners if Participant is a partnership; and/or each of Participant's joint ventures if Participant is a joint venture (identifying the controlling entity of the joint venture); and/or each of Participant's members if Participant is a limited liability company (identifying all manager(s) and officers); and/or each member of a consortium or other association, organization or group of persons acting in concert if Participant is a group or a member of a group acting in concert for purposes of this Protocol (identifying the controlling group member(s)). In each case, provide full legal names. In the case of partnerships, joint ventures, consortia, or other associations or groups, the Participant must provide information sufficient for PG&E to identify the ultimate corporate parent if the general partner, joint venture, controlling member or other relevant actor or agent is a direct or indirect subsidiary or affiliate of another corporation.
3. Provide copies of or URLs to Participant's most recent Annual Report to shareholders or Annual Report on Form 10-K as filed with the Securities and Exchange Commission ("SEC") for the past two years containing audited financial statements of Participant and Participant's most recent quarterly report on Form 10-Q as filed with the SEC, and, if applicable, for each entity identified in paragraph 2 above that is required to file reports under the Securities Exchange Act of 1934, the most recent Annual Report to shareholders or Annual Report on Form 10-K as filed with the SEC containing audited financial reports and the most recent quarterly report on Form 10-Q as filed with the SEC for each such entity. If none of the foregoing applies, Participant shall supply either (a) copies of the most recent audited financial statements, including a certified independent accountant's report thereon, of the Participant, or, if applicable, for each person or entity identified in the paragraph 2 above for at least the three prior full fiscal years or, if shorter, the life of the relevant entity; or (b) a description of the business of each such person or entity and of the material matters relating to such business, including all matters that would be required to be disclosed if such entity were subject to the disclosure requirements of Items 3 and 7 of Form 10-K.
4. For Offset Credits, list the legal name of all owners of each project and their relative percentage ownership.
5. If Participant is not providing its own collateral, then list the full legal names of entities providing security on Participant's behalf, including each entity's place of formation or incorporation. Describe all anticipated credit support arrangements and appropriate parental, subsidiary, and partnership relationships pertinent to the offer.

6. Address for each entity referred to in Item 5 above.
7. Current S&P and Moody's debt ratings of the Participant, if any ,or if a parental guaranty is to be provided consistent with the Credit Support Addendum to the Master Agreement, the parent's current S&P and Moody's debt ratings, if any.
8. Bank Contact: Name, Title, Address, Phone number.
9. Pending legal disputes involving the Participant, or Participant's affiliates or any entity that has a material ownership interest in Participant.

**B. Financing Plan for Proposed Offer (New Offset Projects only)**

Describe the New Offset Project's financing plan for the development and construction phases. The plan should include:

1. Amount, source and timing of equity financing.
2. Amount of debt financing.
3. Balance sheet versus limited recourse financing.
4. Willingness and ability to equity and/or balance sheet finance construction until financing is secured in order to ensure project schedule.
5. Outline of anticipated major terms and conditions of debt service:
  - i. Term of Loan (years)
  - ii. Interest Rate(s) (%/year)
  - iii. Other key terms and conditions
  - iv. Amortization Schedule

**C. Financial Commitment (Offset Credits only)**

1. Any commitment letters or letters of undertaking from project participants (including financial institutions) indicating that the project is able to obtain the construction (New Projects) and permanent financing it will require. Describe any caveats and conditions to financing commitments such parties may require.
2. The qualifications of such parties to provide, arrange, or assist in obtaining necessary financing and credit support arrangements.
3. The significant conditions on which the financing depends.
4. The milestones that need to be achieved to secure both construction and term financing.

**D. Prior Project Financing by Participant (\$000) (Offset Credits only)**

1. List the project name; date placed; who financed the project; the amount of debt, equity and total capital; and the major financial terms.

## OFFSET CREDIT PROJECT INFORMATION

*For all questions, provide any additional relevant information that might be helpful in the evaluation of the offer. If its offer is included in the shortlist, a Participant may be asked to provide PG&E with additional Compliance Instrument-specific information.*

### **A. Project Details (All Offset Projects)**

1. In what state is the project located?
2. Provide details on location and site control of the project. Please provide a description of the Project's site sufficient to confirm its location. Include:
  - a. A Google kml/kmz file, ESRI shape file, or other GIS data file that clearly defines the geographical boundaries of the Project site. Instructions for using Google Earth to generate a Google kmz file are provided in Attachment X. Specify projection information for GIS files. [Note: If an electronic data file of the types listed cannot be generated, a map in electronic format (pdf, jpg, tif etc.) that clearly defines the geographical boundaries of the Project and includes latitude and longitude references may be substituted.]
  - b. Geographic coordinates (latitude and longitude).
  - c. Township/range/section numbers of the project area.
  - d. County assessor's parcel number(s).
3. What is the permit plan for the project?
  - a. List all environmental permits and discretionary approvals required from local, state, federal, and/or tribal authorities, status of approvals, schedule to complete permits and include copies of final or draft permits that have been issued by regulatory agencies (e.g., land use and entitlement, air, water, hazardous materials/waste, biological resources, cultural resources, etc.).
  - b. Will any of the project/facility's environmental permits expire during the delivery period? The invalidation period (both 3 and 8 year timeframes)? If so, please identify the permit, expiration date and describe the renewal plan.
4. Describe your project's environmental management program.
  - a. Does the project/facility have an Environmental Management System? Is the project/facility ISO 14001 certified?
  - b. Has the project/facility established procedures to identify and manage the environmental aspects and impacts of its operations and activities? If so, please describe.
  - c. Has the project/facility established procedures for assessing the potential for accidents and emergencies, preventing incidents and their associated environmental impacts, and responding to and mitigating impacts associated with any incidents that do occur? If so, please describe.

- d. Has the facility established procedures (ex., audits, assessments, etc.) for evaluating compliance with environmental regulations? If so, please describe.
    - e. Does the project/facility have clearly defined roles and responsibilities for implementing compliance management activities and procedures? If so, please describe the structure.
5. Indicate any regulatory agency citations (e.g., notices of violation, etc.) and inspections associated with the project that have occurred at the facility within the past 5 years.
  - a. Describe the citations, violations or inspections associated with the project and the results (including mitigation, if applied).
  - b. Provide details on any fines that may have been assessed.
6. Describe the project's community engagement plan and status.
  - a. Describe the project's community engagement plan.
  - b. Describe the project's relationship with the local community. Please identify any community partners the project may have.
  - c. What are the demographics of the community where the project is/will be located? (Include race/ethnicity, median household income, level of education, population density)
7. Provide details on the data collection and monitoring procedures relevant to the project.
8. Provide details on the record retention plan for the project. Include details such as who is/will be designated to manage and monitor record retention, how long the records will be retained, where records will be maintained, and funding for this activity.
9. Describe the maintenance and operations plan for the project. Include details such as parties responsible, their relevant experience (years, project type, etc.), and maintenance schedule, if applicable.
10. Describe the experience of the party responsible for developing and submitting data reports to verifying bodies. Include details such as years of experience and history of submission of successful reports.
11. Provide details on the verifier(s) for the project. Include name, experience evaluating projects (years and project type(s)), and date of accreditation as a CARB verifier.
12. Will the project change verifiers or re-verify its offsets with a different verifier within 3 years to reduce the invalidation risk period from 8 years to 3 years? If yes, provide details on the re-verification timeline and/or second verifier to be employed.
13. Have offset credits within the project boundary ever been registered or listed with any other voluntary or mandatory offset crediting program? If yes, provide details. If no, describe the safeguards in place to ensure the offsets are not registered with another system or program in the future.
14. Are there any legal actions (current or reasonably anticipated) enjoining or that may result in an injunction impacting the project? If yes, provide dates, type of legal action and forum, parties to the action, current status, brief summary of the action, and any other relevant details.



15. Is there a written specific safety and health plan (or IIPP (Injury and Illness Prevention Plan) as required in California) for the project? If so, provide a copy of the plan for review.
- a. What safety and health policies, procedures, rules or guidelines are applicable for this project?
  - b. List any hazardous materials on site.
  - c. Are Material Safety Data Sheets on site for these materials?
  - d. How is safety and health information provided and communicated to those who support the project?
16. Describe any safety and health violations, citations, or inspections related to the project(s) that were issued or conducted by a regulatory agency within the past 2 years.
- a. What is the current U.S. Occupational Safety and Health Administration recordable rate for the project site?
  - b. What is the reporting process for incidents at the project site?
  - c. How is Near Miss<sup>1</sup> reporting or hazardous conditions reporting handled at the project site?
  - d. How many Serious Incidents<sup>2</sup> or fatalities have occurred in the past 3 years? Please provide a small narrative of each event that has occurred over the past 3 years.
  - e. What follow-up is provided for corrective actions related to incidents at the project(s)?
  - f. How are the corrective actions related to the project(s) communicated?
  - g. How are new regulations or compliance issues applied at the project site?
  - h. What is the Company Experience Modification Rate<sup>3</sup>?
  - i. Provide the names (titles or company names) of all contractors and sub-contractors used on this project.

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<sup>1</sup> Near Miss (or near hit): An unplanned occurrence or condition that may have, but did not result in harm to employees, equipment, or the public.

<sup>2</sup> Serious Incident: "Serious injury or illness" means any injury or illness occurring in a place of employment or in connection with any employment which requires inpatient hospitalization for a period in excess of 24 hours for other than medical observation or in which an employee suffers a loss of any member of the body or suffers any serious degree of permanent disfigurement, but does not include any injury or illness or death caused by the commission of a Penal Code violation, except the violation of Section 385 of the Penal Code, or an accident on a public street or highway. (Title 8 CCR 330(h)).

<sup>3</sup> Company Experience Modification Rate: The EMR is a relatively straightforward computation that compares your workers' compensation claims experience to other employers of similar size operating in the same type of business. If you have less claims than other companies of the same size and industry you will receive a higher Experience Mod ratio. This ratio is used against your annual premium and results as a discount, and is often used by clients in evaluating a company's safety record. A "good" EMR is at least 1. Typically, a company's insurance agent will send their EMR with their price quote for the coming year. (Title 10 CCR 2353.1)

17. List and provide details on all monitoring processes (i.e. assessments, audits, inspections, observations) that are performed to validate compliance with health and safety regulations. Include frequency, scope, monitoring party, recipient of results, methodologies, and validation processes.

**B. Details for Ozone Depleting Substances (ODS) Projects only:**

1. List all hazardous materials and waste regulations that apply to the project (all stages, including transport).
2. If ODS to be destroyed is not a hazardous waste, indicate any other permits in place under which ODS will be destroyed, including expiration dates.
3. Is the destruction facility subject to Resource Conservation and Recovery Act (RCRA) requirements? If no, does the facility meet the Montreal Protocol Technology & Economic Assessment Panel (TEAP) standards? Please list the party providing certification.
4. Indicate whether there will be any waste water discharges associated with the ODS project.
5. Are there emitting or discharging facilities within 1 mile of the destruction facility? If so, identify them.

**C. Details for Livestock Projects only:**

1. Describe the biogas destruction method and efficiency (if applicable).
2. Describe project wastewater practices and associated permits.
3. Describe project methane capture practices and associated air permits.
4. Are there emitting or discharging facilities within 1 mile of the facility? If so, identify them.

**D. Details for U.S. Forest Projects only:**

1. For new projects, list and describe all environmental studies undertaken and summarize results (including, but not limited to, biological studies, cultural resource studies, etc.).
2. Provide copy of the Timber Harvest Plan, Non-Industrial Timber Management Plan, or equivalent.
3. Describe water quality protection practices associated with the project.

**E. Details for Urban Forest Projects only:**

1. Will the project impact community water resources? If so, describe how.
2. Will the project affect development planning for the area? If so, describe how.

**F. Details for ongoing and New Projects (all Projects that will produce and offer Future Offset Credits):**

1. Describe the demographics of the community where the project will be located. Include race/ethnicity, median household income, level of education, population density.
2. Describe the ongoing activities (i.e. monitoring, maintenance and verification) and level of financing secured to ensure continued operation of the project. Indicate if project operation finance has been fully secured. If not, include details such as project operation milestones, percentage of financing secured, and the project plan for securing the remaining financial needs.

3. Describe the project operator's experience and qualifications. Include project details and years of experience.
4. (Only ODS and Livestock Projects) Describe contracts in place to ensure continued supply of feedstock. For ODS, provide details on the feedstock supply volume that has been secured to ensure delivery of future offset credits. For livestock projects, provide details on livestock numbers to ensure waste supply and delivery of future offset credits.
5. (Only ODS Projects) Has a contract with the destruction facility been signed? If yes, when will the destruction take place? Please provide details on the destruction facility contracts, key dates, etc.
6. (Only ODS Projects) Describe the waste profile of the destruction facility. Provide details of the halogen emissions limit of the facility and the project developer's plan if the facility has surpassed the halogen emissions limit.

**G. Details for New Offset Projects only:**

1. Describe the project development experience of the team. Provide details on the number of projects previously developed by the project developer, standard/registry, protocol, location and size of any other projects.
2. Provide a project milestone schedule (start date, verification schedule, and offset credit issuance).
  - a. Include details by project development activity (i.e. supply acquisition, construction, permitting) of status, timeframe for completion, and level of financing secured to date for the development activity (% value).
    - i. If financing has not been fully secured, please provide details on the plan to secure remaining financing.
    - ii. (Only U.S. Forest Projects) Indicate how far along the project is in developing a detailed forest inventory, the baseline/growth model, and how far along the project is with verification.
3. Provide a description of the Participant's legal control of the Project site, feedstock, and offset credits, and possession of any necessary contracts.
  - a. Provide proof of claims of direct ownership, leases, or options to own or lease the site, and of any easements obtained.
  - b. Indicate which contracts have been secured and which are pending.
  - c. (Only Urban Forest projects) Please indicate if the trees are being planted in a municipality, on an educational campus, or by a utility.

**ATTACHMENT 3**

**PUBLIC**

\*unverified

<b>PG&amp;E facility name</b>	<b>Facility address</b>	<b>2008 emissions (tons CO2e)</b>	<b>2009 emissions (tons CO2e)</b>	<b>2010 emissions (tons CO2e)</b>	<b>2011* emissions (tons CO2e)</b>
Gateway Generating Station	Antioch, CA 94509	-	1,012,100	1,211,098	1,054,514

<b>GenOn facility name</b>	<b>Facility address</b>	<b>2008 emissions (tons CO2e)</b>	<b>2009 emissions (tons CO2e)</b>	<b>2010 emissions (tons CO2e)</b>	<b>2011* emissions (tons CO2e)</b>
Mirant Delta, Contra Costa Power Plant	Antioch, CA 94509	103,040	121,572	24,914	57,225
Mirant Delta, Pittsburg Power Plant	West Pittsburg, CA 94565	127,206	149,680	36,909	25,446

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