

**AGREEMENT BETWEEN PACIFIC GAS AND ELECTRIC COMPANY AND MARIN ENERGY
AUTHORITY FOR ON BILL REPAYMENT FOR ENERGY EFFICIENCY PILOTS**

This Agreement (“**Agreement**”) is made on February __, 2014 (the “**Effective Date**”) between Pacific Gas and Electric Company (“**PG&E**”) and the Marin Clean Energy, a California joint powers authority organized pursuant to Government Code section 6500 *et seq.* (“**MCE**”).

WHEREAS:

- A. PG&E is one of the largest combination natural gas and electric utilities in the United States. Based in San Francisco, the company is a wholly owned subsidiary of PG&E Corporation. Its operations are regulated by the California Public Utilities Commission (“**CPUC**”) and other regulatory agencies.
- B. MCE is a community choice aggregator encompassing the County of Marin, all of the cities and towns in the County, and the City of Richmond, to provide electric power to customers in its jurisdiction. MCE and PG&E are parties to a Community Choice Aggregator Service Agreement (the “**CCA Agreement**”) which governs MCE’s aggregation of the electric load of utility end-use customers within its service area for the purposes of acquiring and providing their electric power needs.
- C. The CPUC has authorized MCE to administer an on-bill repayment pilot to finance energy efficiency projects for MCE’s customers during 2013-2014 with capital to be provided by a third-party Lender (the “**MCE Financing Pilots**”).
- D. MCE and PG&E (each a “**Party**” and collectively, the “**Parties**”) wish to set forth certain billing services to be provided by PG&E to MCE to support lending and billing activities in 2013 and 2014 for the MCE Financing Pilots.

This Agreement documents the terms and conditions on which PG&E will provide On Bill Repayment (“**OBR**”) services for the MCE Financing Pilots.

1. DEFINITIONS

In this Agreement:

- (a) “**Applicable Laws**” means any and all federal, state and local laws, regulations, orders and other directions issued by any governmental authority relating to the conduct of MCE’s business and the making of Eligible Loans, including laws, regulations, orders and directions relating to consumer protection and/or governing the origination, servicing and collection of loans that qualify as Eligible Loans, in each case as amended, supplemented and replaced from time to time.
- (b) “**Customer**” means a MCE CCA or PG&E customer who is a borrower pursuant to an Eligible Loan that is included in the On Bill Repayment Billing services provided under this Agreement.
- (c) “**Customer MCE OBR Agreement**” means an agreement between PG&E and a Customer in which the Customer acknowledges and agrees to the inclusion of a Loan Charge in the Customer’s monthly energy bills as contemplated by this Agreement.
- (d) “**Customer Premises**” means the premises in which energy efficiency improvements are to be installed using Eligible Loan funds.
- (e) “**Eligible Loan**” means a loan originated by Lender:
 - (i) That is made to a customer of record with respect to the Customer Premises.

- (ii) That is for an energy efficiency project for a customer participating in either an applicable PG&E energy efficiency program or an applicable MCE energy efficiency program during 2013 and 2014;
 - (iii) For which PG&E has received a Customer MCE OBR Agreement, duly signed by the Customer and in form and substance acceptable to PG&E;
 - (iv) That is not delinquent at the time when MCE requests MCE OBR services for that loan; and
 - (v) That complies in all respects with the MCE OBR Procedures as of the date of origination.
- (f) **“Marin Clean Energy (“MCE”) Charge”** means the energy charge from MCE to its customers which is currently collected and remitted to MCE by PG&E.
 - (g) **“MCE On-Bill Repayment”** or **“MCE OBR”** means the billing services described in Section 2.
 - (h) **“MCE OBR Procedures”** means the procedures for preparing PG&E energy bills set forth in Schedule A and consistent with Electric Rule 23 (“Rule 23”), where applicable.¹ PG&E may modify the MCE OBR Procedures from time to time in its sole discretion, but any modification will not be effective and binding on MCE until MCE is advised of it.
 - (i) **“Loan Charge”** means one or more charges, determined by MCE or a third-party authorized to act on its behalf, covering repayment of principal and interest on an Eligible Loan, and any charges for late or deficient payments.
 - (j) **“PG&E Energy Charge”** is the energy charge for PG&E energy services.
 - (k) **“Termination Date”** means the date on which this Agreement expires or the effective date of termination of this Agreement if a Party elects to terminate the Agreement before the end of its term.

2. ON BILL REPAYMENT BILLING SERVICES

2.1 General

- (a) The On Bill Repayment Services described in this Agreement are in addition to the billing arrangements described in the CCA Agreement. Nothing in this Agreement changes the arrangements between the Parties with respect to billing for electric power in accordance with the CCA Agreement.

2.2 Billing

- (a) PG&E shall, on MCE’s behalf, bill Customers for Loan Charges in accordance with the MCE OBR Procedures and consistent with Rule 23, where applicable. Loan Charges will be included as an additional line item on a Customer’s energy bill. Loan Charges will be payable to PG&E concurrently with the payment of the other charges on Customers’ monthly energy bill. The Parties agree that PG&E is not responsible for differentiating the MCE Charges from the MCE OBR charges or net-energy metering credits in remittances to MCE nor for any reconciliation of customer account balances or payments for the charges or credits. The Parties agree that for all purposes the MCE OBR service contemplated by this Agreement shall not constitute loan servicing by PG&E, and all servicing, collection, reconciliation and all enforcement obligations in respect of an Eligible Loan shall not be an obligation of PG&E and shall remain with MCE and MCE’s Lender.
- (b) PG&E may, in its sole discretion, cease MCE OBR with respect to an Eligible Loan if the Customer disputes any aspect of the Loan Charges and such a dispute is not resolved within ten

¹ Electric Rule 23, Community Choice Aggregation Service. http://www.pge.com/tariffs/tm2/pdf/ELEC_RULES_23.pdf

calendar days.

- (c) PG&E will cease billing MCE's customers for Eligible Loans if: (i) the Customer fails to pay any Loan Charges when due after two billing cycles, or (ii) PG&E or the Customer terminate the Customer's energy service at the Customer Premises; (iii) the Customer ceases to be a PG&E Customer; (iv) the CPUC directs PG&E to do so; (v) if required to comply with any law, order, or regulation. PG&E will notify MCE if any of these circumstances occurs. Any further collection and enforcement action with respect to that Eligible Loan will be the responsibility of MCE and its Lender.
- (d) PG&E and MCE shall mutually agree upon the presentation of the Loan Charge on PG&E's monthly energy bill.
- (e) MCE accepts sole responsibility for ensuring that no conflicts exist, and remediating conflicts that may exist in the future for MCE customers that participate in MCE's OBR program along with other billing programs including, but not limited to, Net Energy Metering Services for distributed solar generation.
- (f) PG&E shall offer pilots to enable third-party charges to be collected through PG&E's energy bill pursuant to Decision 13-09-044. This Agreement does not impact or address potential MCE involvement in the pilots authorized by D.13-09-044.

2.3 Receipt, Payment and Enforcement

- (a) PG&E's obligation in regard to the receipt of Loan Charges shall be limited to receiving payments with respect to those charges and transmitting funds received to MCE. PG&E is not required to segregate funds for MCE's provision of electric power from funds for MCE's Financing Pilots.
- (b) PG&E shall pay MCE all amounts actually received by PG&E from Customers in payment of Loan Charges. The method and timing of payments from PG&E shall be as set forth in the CCA Agreement and Electric Rule 23.
- (c) MCE shall be responsible for any follow-up inquiries with PG&E or the Customer if there are questions concerning the amounts bill for MCE's Financing Pilots. MCE and its Lender(s) are solely responsible for any and all collection actions, including settling disputes regarding Loan Charges and loans directly with Customers.
- (d) PG&E will not terminate the Customer's utility service for non-payment of MCE OBR Charges.

2.4 MCE's Obligations

- (a) MCE and its authorized agents shall be solely responsible for determining the Loan Charge for each Customer and providing the amount due from the Customer to PG&E for inclusion in, the bill. MCE is solely responsible for the accuracy of each Loan Charge and supporting information. PG&E will not verify Loan Charges or reconcile them against prior billings or payments.
- (b) The Loan Charges to be included in PG&E bills will be limited to charges covering repayment of principal and interest on an Eligible Loan and any charges for late or deficient payments. MCE shall not include any other fees, expenses or charges (such as the costs of enforcement or collection of the Eligible Loan) in the Loan Charge. MCE and its Lender(s) may impose other fees and charges in accordance with the Eligible Loan documentation and Applicable Laws, but they shall be solely responsible for billing and recovering them from the Customer.
- (c) MCE, its Lenders, and third-parties acting on its behalf shall at all times comply with all Applicable Laws, including obtaining and maintaining any necessary licenses or permits to operate its Financing Pilots. If MCE or its Lender(s) is charged with failing to comply with any Applicable Law in connection with the Financing Pilots, MCE will promptly so notify PG&E in writing.

- (d) MCE shall require its Lender(s) to identify and make any and all disclosures to Customers under Applicable Laws. Such disclosures shall not be included in PG&E's bill or otherwise provided to the Customer by PG&E. Without limiting the foregoing, MCE shall cause its Lender to provide a periodic loan statement to each Customer explaining the breakdown of Loan Charges for the period reported into principal, interest and other charges. The statement shall be provided no less frequently than every 12 months.
- (e) MCE is solely responsible for complying with, and causing its Lender(s) to comply with, applicable regulatory reporting requirements with respect to Eligible Loans under the MCE Financing Pilots.
- (f) Response to Customer inquiries: MCE shall respond promptly to all Customer inquiries regarding Loan Charges or an Eligible Loan. If PG&E receives a Customer inquiry, whether by telephone or in writing, PG&E will forward the inquiry to MCE for prompt resolution consistent with current practices. PG&E and MCE agree to mutually agree on revisions to the existing script for MCE customers to address questions about Loan Charges.

2.5 Service Fee

- (a) There are no incremental charges anticipated for the services described in this section for MCE customers. If changes to these service procedures are made, MCE shall pay to PG&E any incremental charge associated with including the Loan Charges in PG&E's bills as determined by PG&E pursuant to Electric Rule 23, Section B.14. Charges for non-MCE customers receiving MCE OBR services shall be addressed in Attachment B.

3. WARRANTIES

MCE represents and warrants that:

- (a) MCE has full power, right and authority to execute this Agreement and to perform its obligations hereunder, and the execution of this Agreement has been duly and validly approved through all requisite actions on its part;
- (b) MCE holds (and throughout the Term will hold) all necessary permits, approvals and licenses that are required for the MCE OBR Program in compliance with Applicable Laws; and
- (c) MCE is not in default under any statutory obligations that materially and adversely affect its business or financial condition or its performance of its obligations under this Agreement.

4. TERM AND TERMINATION

4.1 Term and Termination

The term of this Agreement ("**Term**") will commence on the Effective Date and will continue until December 31, 2015 unless extended on mutual written agreement of the Parties. PG&E may terminate this Agreement prior to December 31, 2015 as directed by the California Public Utilities Commission or if PG&E's provision of billing services for MCE pursuant to this Agreement violates a law, order, or regulation.

4.2 Consequences of Termination or Expiration

Following the expiration of the Term or the prior termination of this Agreement:

- (a) Unless the CPUC directs otherwise, PG&E will continue to include Loan Charges in its Customer bills for any billing cycle that has commenced before the Termination Date but otherwise shall cease to include Loan Charges in its Customer bills;
- (b) If PG&E receives any amounts from Customers in payment of Loan Charges after the Termination Date, PG&E shall pay such amounts to MCE; and
- (c) Each Party will continue to furnish to the other information and records relating to Eligible Loans and Customer payments after the termination of the Agreement as necessary to permit that Party to comply with law and to respond efficiently to Customer inquiries.

5. INDEMNITIES

5.1 Definitions

- (a) “**Claim**” means any claim, demand, action, proceeding or investigation made or commenced against a Party to this Agreement by an unaffiliated third party or governmental agency.
- (b) “**Indemnitee**” means a person who is indemnified pursuant to this Section.
- (c) “**Losses**” means any and all losses, liabilities and damages suffered or incurred by an Indemnitee as a result of or in connection with a Claim, including any amounts paid or incurred in settlement of the Claim, and including the costs of defending and/or settling the Claim and associated legal costs.

5.2 Indemnity By MCE

MCE shall indemnify, defend and hold harmless PG&E, its affiliates and their respective officers, directors, employees, agents and representatives (collectively, “**PG&E Indemnitees**”) from and against any and all Losses arising in connection with any Claim that arises out of or relates to an Eligible Loan including, without limitation, any Claim:

- (a) resulting from the negligent or unlawful acts or omissions, or willful or tortious conduct of MCE, including any failure of MCE or its agents to comply with Applicable Laws in connection with Eligible Loans;
- (b) resulting from any error or omission by MCE, MCE’s Lender, and/or MCE’s authorized representative in the calculation or presentation of Loan Charges, the receipt and processing of payments received from Customers, or any collection or enforcement action, excluding the negligence or intentional misconduct of PG&E;
- (c) alleging any misrepresentation with respect to the energy savings to be achieved in connection with an Eligible Loan, or any failure or deficiency in the products, materials or work supplied to a Customer in connection with an Eligible Loan.

5.3 Indemnification Procedures

PG&E agrees to give MCE prompt written notice of any Claim asserted or filed against PG&E for which indemnification is sought under this Section 5. Failure to give such notice shall not abrogate or diminish MCE's obligation under this Section 5 if MCE has or receives knowledge of the existence of such Claim by any other means or if such failure does not materially prejudice MCE's ability to defend the same. In any Claim for which indemnification is sought, MCE shall have the right to select legal counsel to represent PG&E (said counsel to be reasonably satisfactory to PG&E) and to otherwise control the defense of such Claim. If MCE elects to control the defense of such Claim, PG&E shall at all times have the right to fully participate in the defense at its own expense. If MCE, within a reasonable time after receipt of such notice, fails to defend PG&E, PG&E shall have the right, but not the obligation, to undertake the defense of and to

compromise or settle the Claim on behalf of, for the account of, and at the risk of MCE. If the Claim is one that cannot by its nature be defended solely by MCE, then PG&E shall make available information and assistance as MCE may reasonably request, at MCE's expense. MCE may not consent to the entry of any judgment or enter into any settlement that provides for injunctive or other non-monetary relief affecting any PG&E Indemnitee without the prior written consent of the PG&E. Nor may MCE consent to the entry of any judgment or enter into any settlement without the prior written consent of PG&E unless such judgment or settlement provides for the unconditional and full release of the PG&E Indemnitees in respect of such Claim.

6. LIMITATION OF LIABILITY AND FORCE MAJEURE

- (a) Except as provided in Section 6(c) below, each Party's total liability to the other Party under or in connection with this Agreement, whether in contract or in tort (including breach of warranty, negligence and strict liability in tort), will be limited to \$100,000.
- (b) Except as provided in Section 6(c) below, in no event will either Party be liable to the other for any lost profits, loss of business or other consequential, special or indirect damages, even if it has been advised of the possibility of such damages.
- (c) The limitations of liability set forth in Sections 6(a) and 6(b) will not apply with respect to any of the following: (i) damages attributable to the intentional torts or gross negligence of a Party; (ii) Claims that are the subject of indemnification pursuant to Section 5 (INDEMNITIES); (iii) damages attributable to a Party's breach of its obligations with respect to Confidential Information of the other Party.
- (d) **Force Majeure.** Neither Party shall be in default in the performance of its obligations under this Agreement to the extent that such performance is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of that Party, provided that Party notifies the other promptly of its inability to perform and the circumstances preventing or delaying performance, and uses commercially reasonable efforts to re-commence performance as soon as is reasonably practicable.
- (e) **MCE** is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to a Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. PG&E shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

7. MISCELLANEOUS

7.1 Governing Law and Jurisdiction

This Agreement and performance under it will be governed by and construed in accordance with the substantive Laws of the State of California and the United States of America without regard to choice of Law principles. The Parties consent to the exclusive jurisdiction of, and venue in, the Superior Court of the State of California, San Francisco County for all litigation which may be brought with respect to the terms of, and the transactions and relationships contemplated by, this Agreement.

7.2 Waiver

No waiver will be effective unless in writing signed by an authorized representative of the Party against which enforcement of the waiver is sought. Neither the failure of either Party to exercise any right of termination, nor the waiver of any default will constitute a waiver of the rights granted in this Agreement with respect to any subsequent or other default.

7.3 Notices

- (a) All formal notices, requests, demands, approvals and communications under this Agreement (other than routine operational communications) (collectively, “Notices”) will be in writing and may be served either (i) in person or (ii) by registered or certified mail or air freight services that provide proof of delivery, with postage or shipping fees prepaid, and addressed to the Party to be served as follows:

<p>In the case of PG&E:</p> <p>If hand delivered:</p> <p>Law Department Pacific Gas and Electric Company Attn: Energy Efficiency Attorney 77 Beale Street, B30A San Francisco, CA 94105</p> <p>If by U.S. Mail: P.O. Box 7442, B30A San Francisco, California 94120</p> <p>Attn: Energy Efficiency Attorney Fax: 415-973-5520</p>	<p>With a copy to:</p> <p>If hand delivered:</p> <p>Pacific Gas and Electric Company Attn: Al Gaspari, Principal Energy Efficiency Finance Program Manager 245 Market Street, N6G San Francisco, CA 94105</p> <p>If by U.S. Mail: 77 Beale Street, N6G San Francisco, California 94105</p> <p>Attn: [Redacted] Principal Energy Efficiency Finance Program Manager Email [Redacted]</p>
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<p>In the case of MCE:</p> <p>Marin Clean Energy 781 Lincoln Ave, Suite 320 San Rafael, CA 94109</p> <p>Attn: Energy Efficiency Coordinator Fax: (415) 459-8095</p>	<p>With a copy to:</p> <p>Richards, Watson & Gershon 44 Montgomery Street, Suite 3800 San Francisco, CA 94120</p> <p>Attn: Greg Stepanicich Fax: (415) 421-8486</p>
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- (b) Notices given as described above will be considered received on the day of actual delivery.
- (c) A Party may from time to time change its address or designee for notification purposes by giving the other Party prior written notice of the new address or designee in the manner provided above and the date on which it will become effective.
- (d) Changes to the OBR Procedures shall be approved and implemented in accordance with the change management process outlined in the OBR Procedures, and are not required to comply with the notice provisions of this Section 7.5.

7.4 Time for Performance

If any payment is due, or any other action is required to be performed, on a day on which banks are not open for business in San Francisco, California the due date for such performance shall be extended to the next day on which banks are open for business in that location.

7.5 Order of Precedence

In the event of a conflict or inconsistency between any of the terms contained in Sections 1 through 7 of this Agreement and the MCE OBR Procedures, then the terms contained in Sections 1 through 7 shall govern and control to the extent of the conflict or inconsistency.

7.6 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which will together constitute one and the same agreement.

7.7 Severability

If any provision of this Agreement is held invalid by a court with jurisdiction over the Parties to this Agreement, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and the remainder of this Agreement will remain in full force and effect.

7.8 Third Party Beneficiaries

This Agreement is entered into solely between PG&E and MCE and, except for the Parties' indemnification obligations under Section 5 (INDEMNITIES), will not be deemed to create any rights in any third parties or to create any obligations of either PG&E or MCE to any third parties.

7.9 Survival

Any provision of this Agreement that contemplates or governs performance or observance subsequent to termination or expiration of this Agreement will survive the expiration or termination of this Agreement for any reason.

7.10 Entire Agreement; Amendments

This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and merges, integrates and supersedes all prior and contemporaneous agreements and understandings between the Parties, whether written or oral, concerning its subject matter. No modification or amendment to this Agreement will be effective unless it is expressly set forth in writing and duly executed by the Parties.

Intending to be legally bound, each of the undersigned Parties has caused its duly authorized representative to execute this Agreement as of the Effective Date.

Pacific Gas and Electric Company	
By: _____	
Printed: <u>Suzy Miller</u> _____	
Title: <u>Director, Billing Operations</u> _____	
Date: _____	

Marin Clean Energy	
By: _____	
Printed: <u>Dawn Weisz</u> _____	
Title: <u>Executive Officer</u> _____	
Date: _____	

SCHEDULE A

MCE OBR Procedures

Capitalized terms are defined in the Agreement.

Preconditions for MCE OBR Service

In order for an Eligible Loan to qualify for MCE OBR service:

- The Customer name and address must be provided to PG&E and must match the customer of record on the PG&E utility service/MCE CCA Agreement.
- MCE must confirm that the loan is not in arrears at the time it is submitted for inclusion in the MCE OBR service.
- Prior to placing the charges on the PG&E bill the Customer must sign a Customer MCE OBR Agreement, also known as the 'Authorization to Add Loan Charges to Utility Bill', and all attached documentation referenced in that Agreement. MCE will be responsible for providing this documentation to PG&E prior to loan charges being added to the bill.

Billing and Payment Cycle

For MCE Customers:

The Loan Charges will be added as a line item with the details of charges for MCE. The 810 inbound transaction set currently used to provide PG&E with billing data in an electronic format will include the Loan Charges. The Loan Charges will be combined as a single line item for the customer under the MCE Charges on the front page of the PG&E bill. PG&E will test the inclusion of Loan Charges on its Customer Bills and will not be obligated to begin to bill Loan Charges for MCE until such testing is completed to PG&E's satisfaction. PG&E will not unreasonably withhold approval of the final presentation.

For all customers receiving MCE OBR Services:

Customer payments will follow the existing payment allocation methodology between MCE CCA charge and PG&E energy charges.

PG&E customer service representatives will be provided a script (in GenRef) for customers that call to ask about the loan that directs them to MCE.

No overpayments or prepayments will be allowed through the utility billing system. Any overpayments made on a monthly PG&E bill will be credited against future energy charges (including transmission and distribution charges and MCE OBR charges) per the guidance in Rule 23.

MCE will be responsible to maintain the details of the loan payment, principal, interest, fees, and past due amounts. MCE will be responsible for reconciling this data to the remittance data provided by PG&E. MCE will provide PG&E notice of any billing or payment error with respect to a Loan Charge within 45 days of the remittance to MCE. Any errors discovered by MCE, its Lender or other agent regarding amounts billed by PG&E must be communicated within this timeframe.

If the Customer disputes the charges MCE may remove the loan charge if the dispute is not resolved within 10 calendar days.

If the PG&E account is stopped, the loan repayments on the bill will be stopped including any past due payments prior to final bill for the account being processed and MCE and its Lender will be solely responsible to collect from the Customer the remaining payments due on the Eligible Loan. If an MCE Customer opts into PG&E, or vice versa, PG&E and MCE agree to transfer the charge from one SAID to the next.

Change Management

The primary point of contact at PG&E will be the Principal Product Manager, Financing. The primary point of contact at MCE will be the Energy Efficiency Coordinator. Changes to this Schedule A must be confirmed by these individuals.

[Add Schedule B – re: fees for non-MCE customers]