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EXECUTION VERSION

**FOURTH AMENDMENT TO THE SEPTEMBER 14, 2005 MASTER POWER PURCHASE AND SALE AGREEMENT BETWEEN GLOBAL AMPERSAND LLC, successor in interest to GLOBAL COMMON LLC, AND PACIFIC GAS AND ELECTRIC COMPANY WITH RESPECT TO THE CHOWCHILLA II FACILITY**

THIS FOURTH AMENDMENT ("Fourth Amendment") is entered into by and between PACIFIC GAS AND ELECTRIC COMPANY ("PG&E") and GLOBAL AMPERSAND LLC ("Global"), successor in interest to GLOBAL COMMON LLC. PG&E and Global may be referred to herein individually as "Party" and collectively as "Parties." All capitalized terms not defined herein shall have the meaning set forth in the PPA, as defined below.

**RECITALS**

Whereas, Global and PG&E are parties to the certain Master Power Purchase and Sale Agreement, dated September 14, 2005, as amended by the First Amendment to the September 14, 2005 Master Power Purchase and Sale Agreement between Global and PG&E with respect to the Chowchilla Biomass Facility, dated July 27, 2006 ("First Amendment"), Second Amendment, dated November 10, 2006 ("Second Amendment") and Third Amendment, dated March 30, 2007 ("Third Amendment") (the amended Master Power Purchase and Sale Agreement being the "PPA") and the Confirmation dated September 14, 2005 captioned "Master Power Purchase and Sale Agreement Confirmation between Global Common LLC and Pacific Gas and Electric Company with Respect to the Chowchilla Biomass Facility," as amended by the First, Second and Third Amendments (the "Confirmation"), which supplements and forms a part of the PPA;

Whereas, Global Common LLC assigned all of its rights and interests in the PPA, subject to the terms of the PPA, to Global by entering into that certain Assignment Agreement, by and between Global and Global Common LLC, dated January 4, 2007;

Whereas, PG&E consented to such assignment and released Global Common LLC of all obligations and liabilities under the Master Power Purchase and Sale Agreement, as amended by the First, Second, and Third Amendments, in accordance with the terms of the Consent to Assignment and Agreement, dated February 12, 2007, entered into by and among PG&E, Global Common LLC, Global Ampersand LLC, and D.E. Shaw Synoptic Portfolios 3, L.L.C;

Whereas, although the Unit has previously been referred to by the Parties as "Chowchilla Biomass", Seller has applied for and received CEC Certification and Verification, as defined below, for the Unit in the name of "Chowchilla II", and accordingly, the Parties now desire to hereafter refer to the Unit as "Chowchilla II";

Whereas, Global has stated that due to liquidity challenges that it is experiencing, it cannot post the Performance Assurance required under Section 8.4(a)(iii) of the PPA;

Whereas the Parties desire to amend the PPA and Confirmation in order to reflect a later Guaranteed Commercial Operation Date, modifications to the Performance Assurance to be posted by Global and other clarifications regarding the Parties' obligations under the PPA and Confirmation;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, PG&E and Global agree as follows.

**1. Amendment of the PPA**

(a) The Cover Sheet for the PPA shall be amended by deleting and replacing 8.4(a)(iii) Type of Performance Assurance with the following:

“Letter of Credit in accordance with the requirements set forth in Section 8.5 hereof, cash, or a combination of the above as provided in Section 8.4(a)(iii)(B)(2) hereof.”

(b) The definition of “Daily Delay Damages” in Article One of the PPA shall be deleted and replaced with the following:

““Daily Delay Damages” means the Project Development Security amount posted by Seller with Buyer as of the Fourth Amendment Execution Date.”

(c) The definition of “Gains” in Article One of the PPA shall be amended by deleting the term “Environmental Attributes” and replacing it with “Green Attributes”.

(d) The definition of “Guaranteed Commercial Operation Date” in Article One of the PPA shall be amended by deleting “December 31, 2007” and replacing it with “December 12, 2008”.

(e) The definition of “Losses” in Article One of the PPA shall be amended by deleting the term “Environmental Attributes” and replacing it with “Green Attributes”.

(f) Article One of the PPA shall be amended by deleting the definition of “Environmental Attributes” in its entirety.

(g) Article One of the PPA shall be amended by adding the following new provision:

“The definition of “Product” shall be deleted in its entirety and replaced with the following:

“Product” means the Energy and Green Attributes produced by or associated with the generation of energy by the Project and the Capacity Attributes associated with the Project.”

(h) The following new definitions shall be added to Article One of the PPA:

““California Renewables Portfolio Standard” means the renewable energy program and policies established by Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.”

““Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.”

“CEC Certification and Verification” means that the CEC has certified that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.”

“Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of Section 6 of the Confirmation and the definition of “Green Attributes” in this Article One, the word “energy” shall have the meaning set forth in this definition.”

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere<sup>1</sup>; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.”

“Project” means the Unit and the other assets, tangible and intangible, that compose the generation facility, including but not limited to the assets used to connect the Unit to the Interconnection Point, as more particularly described on Appendix A to the Confirmation. For purposes of the definition of “Green Attributes” in this Article One, the word “project” shall have the meaning set forth in this definition.”

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<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

““Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(g), and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.”

““Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.”

(i) Section 2.1 of the PPA, Transaction, shall be amended by deleting the term “Environmental Attributes” and replacing it with “Green Attributes”.

(j) The following new sentence shall be added after the first sentence of Section 3.1 of the PPA:

“For the avoidance of doubt, Seller shall sell and deliver all Product produced by the Project during the Interim Operating Period and the Delivery Term solely to Buyer, provided that Seller shall not be in breach of this Agreement for selling Imbalance Energy to the ISO so long as Seller has scheduled the energy from the Project to Buyer in accordance with the requirements of the ISO Tariff.”

(k) Section 3.2 of the PPA, Environmental Attributes, shall be deleted in its entirety and replaced with the following:

“Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.”

(l) Section 3.8(d) of the PPA shall be amended by deleting subsection (iv) in its entirety and replacing such subsection with the following:

“(iv) Seller shall cause the Unit to achieve Commercial Operation Date by the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date, as may be delayed on a day for day basis by Force Majeure up to thirty (30) days, Buyer shall be entitled to draw upon and retain the full lump sum amount of the Daily Delay Damages (\$360,000.00) from the Project Development Security as liquidated damages. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to delay in achieving the Guaranteed Commercial Operation Date, would be difficult or impossible to predict with certainty, (b) the Daily Delay Damages (\$360,000.00) are an appropriate approximation of such damages, and (c) Buyer’s right to draw upon and retain the Daily Delay Damages pursuant to this Section 3.8(d)(iv) is in addition to and in no way limits Buyer’s right to collect the Termination Payment from Seller in the event Buyer declares an Early Termination Date resulting from an Event of Default under Section 5.1(l) or otherwise. For purposes of Section 5.1(l), the “Project Cure Period” shall expire at the close of business on the Guaranteed Commercial Operation Date.”

(m) Section 8.4(a) of the PPA shall be deleted in its entirety and replaced with the following:

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

(i) Project Development Security in the amount and in the form set forth in the Cover Sheet with respect to this subpart (i) (\$90,000.00), from the Execution Date of this Agreement until Seller posts Project Development Security pursuant to subpart (ii) below, with Buyer;

(ii) Project Development Security in the amount and in the form set forth in the Cover Sheet with respect to this subpart (ii) (\$360,000.00), from a date not later than ten (10) Business Days following the date on which all of the conditions precedent set forth in Article Eleven are either satisfied or waived until Seller posts Performance Assurance pursuant to subpart (iii) below, with Buyer; and

(iii) Performance Assurance in the amount and in the form set forth in the Cover Sheet with respect to this subpart 8.4(a)(iii) (\$2,821,000.00) to be delivered and posted as follows:

(A) Commencing with the Commercial Operation Date, Buyer will withhold amounts from Seller’s first eight monthly invoices for Product delivered during the Delivery Term and accumulate these amounts towards Seller’s Performance Assurance as follows (collectively, the “Initial Performance Assurance”):

- (1) First monthly invoice – ten (10) percent of the total invoice amount,
- (2) Second monthly invoice – ten (10) percent of the total invoice amount,
- (3) Third monthly invoice – ten (10) percent of the total invoice amount,
- (4) Fourth monthly invoice – ten (10) percent of the total invoice amount,
- (5) Fifth monthly invoice – twenty five (25) percent of the total invoice amount,
- (6) Sixth monthly invoice – twenty five (25) percent of the total invoice amount,
- (7) Seventh monthly invoice – twenty five (25) percent of the total invoice amount, and
- (8) Eighth monthly invoice – twenty five (25) percent of the total invoice amount.

The Initial Performance Assurance shall accumulate in an account managed by Buyer and remain posted from the date such Initial Performance Assurance is withheld until (x) Seller posts the Full

Performance Assurance pursuant to subpart 8.4(a)(iii)(B)(1), or (y) the end of the Term in the event Seller elects to post the Remaining Performance Assurance pursuant to subpart 8.4(a)(iii)(B)(2).

- (B) From no later than July 31, 2009 until the end of the Term, Seller shall post Performance Assurance in the full amount set forth on the Cover Sheet with respect to this subpart 8.4(a)(iii) (\$2,821,000.00), to be delivered either (1) by Seller's posting a letter of credit in accordance with the requirements set forth in Section 8.5 hereof for \$2,821,000.00 (such posting to be referred to as the "Full Performance Assurance"), or (2) by Seller's posting cash equal to, or a letter of credit in accordance with the requirements set forth in Section 8.5 hereof for, the dollar amount representing the difference between \$2,821,000.00 and the accumulated Initial Performance Assurance after Buyer has paid Seller's last monthly invoice prior to July 31, 2009 (such difference, the "Remaining Performance Assurance"). Buyer shall provide Seller with notice of the amount of the Remaining Performance Assurance upon its payment of Seller's last monthly invoice prior to July 31, 2009.

Except as expressly provided otherwise in this Agreement, any such Project Development Security or Performance Assurance shall not be deemed a limitation of damages. For sake of certainty, (I) the Initial Performance Assurance, Full Performance Assurance, and Remaining Performance Assurance shall collectively be considered "Performance Assurance" and (II) Buyer shall not be entitled to draw on the Performance Assurance to satisfy Seller's obligation to pay Performance Penalties due to Buyer unless Buyer has declared an Early Termination Date and such Performance Penalties amount is included in the Termination Payment calculation.

- (n) Section 8.4(c) of the PPA shall be deleted in its entirety and replaced with the following:

"(c) Termination of Project Development Security. If after Seller posts the Full Performance Assurance or the Remaining Performance Assurance pursuant to Section 8.4(a)(iii)(B) no damages are owed to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security provided pursuant to Section 8.4(a)(ii), and such Project Development Security, or any portion not owed to Buyer shall be returned to Seller within two (2) Business Days of Seller's provision of the Full Performance Assurance or the Remaining Performance Assurance, as applicable, provided however, that with Buyer's advance written consent, Seller may elect to apply the Project Development Security towards the Full Performance Assurance or the Remaining Performance Assurance provided pursuant to Section 8.4(a)(iii)(B)."

- (o) Section 8.4(e) of the PPA shall be deleted in its entirety and replaced with the following:

"(e) Payment and Transfer of Interest. Interest shall accrue on cash held as Project Development Security or Performance Assurance, as applicable, at the Interest Rate, provided that such interest shall not be paid to Seller until Seller posts the Full Performance Assurance or the Remaining Performance Assurance pursuant to Section 8.4(a)(iii)(B). Upon Seller's posting of such Performance Assurance, all accrued interest on the Project Development Security shall be transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" on the Cover Sheet of this Agreement. In the event that Seller posts the Full Performance Assurance pursuant to Section 8.4(a)(iii)(B)(1), upon the posting of the Full Performance Assurance, all accrued interest on the Initial Performance Assurance shall be

transferred to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" on the Cover Sheet of this Agreement. After Seller posts the Full Performance Assurance or the Remaining Performance Assurance pursuant to Section 8.4(a)(iii)(B), Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount, if any, due to Seller for the posted Performance Assurance.

(p) The first sentence of Section 3 of Appendix I of the PPA shall be deleted in its entirety and replaced with the following:

"For the Baseload product, passage of the Test will require the Unit(s) to meet the Performance Requirements specified in the Confirmation for the TOD Periods applicable for the month(s) in which the Annual Capacity Test takes place for the duration of three hundred thirty-six (336) consecutive hours (approximately two (2) weeks) or a reduced period, as determined by Buyer in its sole discretion, as communicated in writing to the Seller prior to or at any time during the Test."

## **2. Amendment of the Confirmation**

(a) Section 1(b) of the Confirmation shall be modified by replacing the words "El Nido Biomass facility" with the words "Chowchilla II facility".

(b) Section 2(b) of the Confirmation shall be deleted in its entirety and replaced with the following:

"(b) Delivery Prior to Initial Energy Delivery Date. Seller shall sell and deliver all Product to Buyer during the period starting on the Fourth Amendment Execution Date until the Initial Energy Delivery Date after Seller has achieved all of the following preconditions: (i) all of the applicable Conditions Precedent in Article 11 of the Master Agreement have been satisfied or waived; (ii) Buyer shall have received from Seller Project Development Security in accordance with the relevant provisions of Article Eight of the Master Agreement, as applicable, (iii) Seller shall have provided to Buyer evidence of CEC Certification and Verification satisfactory to Buyer, and (iv) Buyer shall have received from Seller the certification referenced in Appendix I of the PPA which states "(t)he selected EPC Refurbishment Contractor or Operator will certify that the Unit is ready for performance testing and will provide technical and labor support for such test." The period between the first date on which Seller commences such deliveries, as provided in the preceding sentence, and the Initial Energy Delivery Date shall be the "Interim Operating Period." The following provisions in this Confirmation shall not apply to either party during the Interim Operating Period: Sections 5, 8.5, 8.6, 9.1(a) and 9.3. Commencing on the Fourth Amendment Execution Date, 2008, prior to Seller's achievement of the preconditions set forth in the first sentence of this Section 2(b), Seller may only sell and deliver Product to the ISO."

(c) Section 6 of the Confirmation shall be modified by replacing the words "Throughout the Delivery Term, Seller shall sell and schedule all energy produced by the Unit solely to Buyer" in the second sentence thereof with the words "Throughout the Delivery Term and Interim Operating Period, Seller shall sell and schedule all Product solely to Buyer".

(d) Section 7 of the Confirmation shall be modified by replacing the second sentence thereof with the following sentence:

“Throughout the Interim Operating Period and the Delivery Term, Seller shall designate an SC trade for the Delivered Energy scheduled solely to Buyer’s SC (“Scheduled Energy”).”

(e) Section 7.3 of the Confirmation shall be modified by replacing from the first sentence thereof the words “twelve (12) hours” with “fourteen (14) hours” and “36 hours” with “38 hours”.

(f) The first sentence of Section 8.5(a) of the Confirmation shall be deleted in its entirety and replaced with the following:

“8.5. Performance Requirements (a) To avoid incurring any Performance Penalties, as defined below herein, Seller shall cause the Unit(s) to deliver no less than the following Capacity Factors over all the hours comprising each of the TOD Periods (“Performance Requirements”); provided that Seller shall be exempt from Performance Penalties during the first three (3) consecutive calendar months immediately subsequent to the Commercial Operation Date.”

(g) Section 8.7(a) of the Confirmation shall be modified by replacing the term “Environmental Attributes” with “Green Attributes”.

(h) The following new Section 8.9, Additional Compensation, shall be added:

“8.9 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project after the start of the Interim Operating Period, including, but not limited to, compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer.”

(i) Appendix A to the Confirmation shall be modified by replacing each instance of the words “Chowchilla Biomass” therein with the words “Chowchilla II”.

### **3. Clarification**

For the avoidance of doubt, the Parties agree that all of the Daily Delay Damages accrued under the PPA prior to the effective date of this Fourth Amendment shall not be payable by Seller unless and until Seller fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, as such term has been amended by this Fourth Amendment.

### **4. Condition Precedent**

This Fourth Amendment shall become effective and retroactive to the Fourth Amendment Execution Date upon satisfaction of (i) execution of this Fourth Amendment by authorized representatives of each Party, and (ii) PG&E’s written acknowledgement and approval of written assurance received from D.E. Shaw Synoptic Acquisition VII, L.L.C. (“Synoptic”) that as of the date of this Fourth Amendment it has advanced funds in the amount of \$35,425,000 under the Convertible Senior Secured Note dated June 29, 2007, as amended (as amended, the “Note”), which is the full amount of the Note, for the completion of construction of the projects.

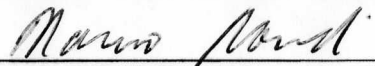
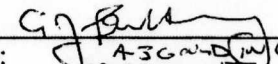
### **5. No Other Modifications**

No provision of the PPA or the Confirmation other than the terms addressed in this Fourth Amendment shall be deemed modified, amended, waived, or otherwise affected by this Fourth



Amendment. If there is a conflict between the terms of the PPA or the Confirmation, and those of the Fourth Amendment, this Fourth Amendment shall control.

IN WITNESS WHEREOF, each party has caused this Fourth Amendment to be executed by its authorized representative, effective as of this 8<sup>th</sup> day of December, 2008 (the "Fourth Amendment Execution Date"). By signing this Fourth Amendment, the representatives of the Parties warrant that they have requisite authority to bind their respective principals.

<b>PACIFIC GAS AND ELECTRIC COMPANY</b>  By: <u>MARINO MONARDI</u> Title: <u>DIR - Energy Supply</u> Date: <u>8 Dec 08</u>	<b>GLOBAL AMPERSAND LLC</b>  By: <u>J. ASCANDINO</u> Title: <u>PRESIDENT</u> Date: <u>12/4/08</u>
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