

COMMUNITY CHOICE AGGREGATOR (CCA) SERVICE AGREEMENT

This Community Choice Aggregator (CCA) Service Agreement (“Agreement”) is made and entered into as of this 27th day of May, 2010, by and between the City and County of San Francisco, a municipal corporation organized and existing under the laws of the state of California (“CCA”), and Pacific Gas and Electric Company (“PG&E”), a corporation organized and existing under the laws of the state of California. From time to time, CCA and PG&E shall be individually referred to herein as a “Party” and collectively as the “Parties.”

Section 1: General Description of Agreement

1.1 This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto by which CCA shall offer electrical energy services. Each Party, by agreeing to undertake specific activities and responsibilities for or on behalf of customers, acknowledges that each Party shall relieve and discharge the other Party of the responsibility for said activities and responsibilities with respect to those customers. Except where explicitly defined herein (including Attachment A hereto) the definitions controlling this Agreement are contained in PG&E’s applicable rules or in the relevant community choice aggregation tariff.

1.2 The form of this Agreement has been developed as part of the CPUC regulatory process to implement Assembly Bill 117, was intended to conform to CPUC directions, was approved by the CPUC for use between PG&E and CCAs and may only be waived, altered, amended or modified as provided herein or in the applicable community choice aggregation tariff, or as may otherwise be authorized by the CPUC.

1.3 This Agreement incorporates by reference the applicable community choice aggregation tariff, PG&E Electric Rule 23 and PG&E Electric Schedule E-CCA, as authorized and modified from time to time by the CPUC.

1.4 This Agreement is entered into by PG&E under the requirements of the Community Choice Aggregation laws and implementing tariffs, and changes to the previously approved form of Service Agreement are pursuant to the direction of the CPUC.

Section 2: Representations

2.1 Each Party represents that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirements.

2.2 Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.

2.3 Each Party represents that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this agreement constitutes such Party’s legal, valid and binding obligation, enforceable against such Party in accordance with its terms.

2.4 Each Party shall (a) exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

Section 3: Term of Service

The term of this Agreement shall commence on the date of execution by both Parties hereto (the "Effective Date") and shall terminate on the earlier of (a) the date CCA informs PG&E that it is no longer operating as a CCA in PG&E's service territory; (b) the earlier termination pursuant to Section 4 hereof; (c) the effective date of a new CCA Service Agreement between the Parties hereto; or (d) two (2) years after the Effective Date. Unless the CCA has ceased operating as a result of events (a) or (b) above, the Parties agree to negotiate in good faith a new CCA Service Agreement that would become effective on or before the date that is two (2) years after the Effective Date.

Notwithstanding the Effective Date of this Agreement, the CCA acknowledges that it may only offer Community Choice Aggregation Services to customers after it has complied with applicable laws and tariffs governing the commencement of service to customers.

Section 4: Events of Default and Remedy for Default

4.1 An Event of Default under this Agreement shall include either Party's material breach of any provision of this Agreement, including those incorporated by reference herein, and failure to cure such breach within thirty (30) calendar days after receipt of written notice thereof from the non-defaulting Party; or such other period as may be provided by this Agreement or PG&E's applicable community choice aggregation tariff, PG&E Electric Rule 23 and PG&E Electric Schedule E-CCA.

4.2 In the event of such an Event of Default, the non-defaulting Party shall be entitled to exercise any and all remedies (a) available under PG&E's applicable community choice aggregation tariff, PG&E Electric Rule 23; and/or (b) provided for by law or in equity to the extent not inconsistent with PG&E's community choice aggregation tariff and Section 15 below. In addition, in the event of an Event of Default, this Agreement may be effectively terminated only upon Commission authorization. Notwithstanding any other provision of this Agreement, this Agreement may not be terminated for an Event of Default or breach of any Party's obligations under this Agreement or applicable tariffs without Commission authorization.

Section 5: Billing and Payment

5.1. PG&E will bill and the CCA agrees to pay PG&E for all services and products provided by PG&E in accordance with the terms and conditions set forth in PG&E's community choice aggregation tariff, as stated in PG&E's Electric Rule 23 and PG&E's Electric Schedule E-CCA. PG&E shall prepare and submit detailed bills for such services and products to CCA. CCA payment of such bills are due upon presentation, and shall be considered late 30 calendar days after CCA's receipt of the bill. Any services provided by the CCA to PG&E shall be by separate agreement between the Parties and are not a subject of this Agreement.

5.2. PG&E will pay CCSF amounts collected from CCA customers in accordance with the rules and schedule in Electric Rule 23. Rule 23.P.1.c.(3)(c) currently provides that if billing charges have not been received from the CCA by the day following PG&E's actual meter read date, PG&E may render the bill for PG&E charges only, without CCA charges. Notwithstanding this provision, for the first two years after the effective date of this agreement, PG&E will allow CCSF to provide billing charges to PG&E within three business days following the date PG&E

provides meter read or estimated data to CCA and will not render bills to CCSF CCA customers without CCA charges unless CCSF has failed to provide billing charges within that three business day period.

5.3. Rule 23.Q.3 currently provides that PG&E shall remit payments to the CCA for amounts paid by the CCA customer for payment of CCA charges and that payments are due on or before the later of seventeen calendar days after the bill was rendered to the customer, or the next business day after the payment is received from the customer. PG&E agrees that its payment to the CCA will be due on the next business day after the payment is received from the customer. Payments by PG&E will be deemed late on the day following the due date specified above. If PG&E is late making payments, PG&E will pay interest on these amounts, calculated on a daily basis, and compounded at the end of each calendar month, from the date it is late to the date it provides payment to the CCA. The interest rate applicable in each calendar month may vary and shall be equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California.

5.4. If CCSF is late making payments under section 5.1 above, it shall owe interest calculated in the same manner as the interest rate provided for in section 5.3 above.

5.5 The Parties agree that their only rights to offset amounts due under this Agreement and under the CCA tariff are those rights (a) provided for in Rule 23, parts S.7 and T.2; (b) provided for in any express agreements between the parties regarding bond/re-entry fee obligations, and (c) any rights otherwise expressly permitted by the CPUC in an order issued after the execution of this Agreement. The Parties also agree that they shall have no right to offset amounts due under other non-CCA contracts and tariffs from the amounts due under this Agreement and the CCA tariff.

Section 6: Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred, except as provided for in this Section. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability, except in the event of an action covered by the Indemnification provisions of Section 7 of this Agreement or by the indemnification provisions in any Nondisclosure Agreement relating to the disclosure of confidential information to the CCA, in which event this Section 6 shall not be applicable. Notwithstanding this provision, CCA can request penalties from PG&E at the CPUC for alleged willful violations of this Agreement, which claim shall be considered and evaluated under the Commission's rules and authorities. This Section 6 shall not apply to any claims or actions that a party would be able to bring in the absence of this Agreement.

Section 7: Indemnification

7.1 To the fullest extent permitted by law, and subject to the limitations set forth in Section 6 of this Agreement, each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party, and its current and future direct and indirect parent companies, affiliates and their shareholders, officers, directors, members of its governing board, commissioners, employees, agents, servants and assigns (collectively, the "Indemnified Party"), and at the Indemnified Party's option, the Indemnifying Party shall defend the Indemnified Party, from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including, but not limited to, the Indemnified Party's employees and its affiliates'

employees, subcontractors and subcontractors' employees, or any other liability incurred by the Indemnified Party, including reasonable expenses, legal and otherwise, which shall include reasonable attorneys' fees, caused wholly or in part by any negligent, grossly negligent or willful act or omission by the Indemnifying Party, its officers, directors, employees, agents or assigns arising out of this Agreement, except to the extent caused wholly or in part by any negligent, grossly negligent or willful act or omission of the Indemnified Party.

7.2 If any claim covered by Section 7.1 is brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in, and unless in the opinion of counsel for the Indemnified Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

7.3 The Indemnifying Party's obligation to indemnify under this Section 7 shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any statutory scheme, including, without limitation, under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

Section 8: Assignment and Delegation

8.1 Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this Section 8 shall be void.

8.2 Notwithstanding the provisions of this Section 8, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, shall serve as the point of contact between its subcontractor and the other Party, and shall provide the other Party with thirty (30) calendar days' prior written notice of any such subcontracting, which notice shall include such information about the subcontractor as the other Party shall reasonably require. If either Party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner which is in conformity with that Party's obligations under this Agreement.

Section 9: Independent Contractors

Each Party shall perform its obligations under this Agreement (including any obligations performed by a Party's designees as permitted under Section 8 of this Agreement) as an independent contractor.

Section 10: Entire Agreement

This Agreement consists of, in its entirety, this Community Choice Aggregator Service Agreement and all attachments hereto, all Community Choice Aggregation Service Requests submitted pursuant to this Agreement and PG&E's community choice aggregation tariffs, PG&E Electric Rule 23 and PG&E Electric Schedule E-CCA. This Agreement supersedes all other agreements or understandings, written or oral, between the Parties related to the subject matter hereof, with the express exception of any Nondisclosure Agreement relating to the disclosure of confidential information to the CCA. This Agreement may be modified from time to time only by an instrument in writing, signed by both Parties.

Section 11: Nondisclosure

11.1 Notwithstanding anything provided below, prior to receiving any PG&E confidential customer information, CCA agrees to enter into the CCA Non-Disclosure Agreement and be bound by its terms with respect to Confidential Information as defined therein.

Neither Party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party, any trade secrets, and other information of a similar nature, whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to this Agreement or from a party who was under an obligation of confidentiality to the other Party to this Agreement or information developed by either Party independent of any Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving Party shall, upon termination of this Agreement or at any time upon the request of the disclosing Party, promptly return or destroy all Confidential Information of the disclosing Party then in its possession.

11.2 Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure. If a request for Confidential Information supplied by PG&E is made of CCA under applicable public records laws, including without limitation the City and County of San Francisco Sunshine Ordinance and the California Public Records Act and CCA believes that it is obligated to disclose Confidential Information in response to such request, CCA shall provide PG&E with prompt notice of such request so that PG&E may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. However, a disclosure that is required by law shall not constitute a breach of this Agreement.

Section 12: Enforceability

If any provision of this Agreement or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those

provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

Section 13: Notices

13.1 Except as otherwise provided in this Agreement, any notices under this Agreement shall be in writing and shall be effective upon delivery if delivered by (a) hand; (b) U.S. Mail, first class postage pre-paid, or (c) facsimile, with confirmation of receipt to the Parties as follows:

If the notice is to CCA:

Name of Entity: Clean Power SF c/o San Francisco Public Utilities Commission
Contact Name: Mike Campbell, Director, CleanPowerSF
Business Address: 1155 Market Street, San Francisco, CA 94103
Facsimile: (415) 554-1854

If the notice is to PG&E:

Contact Name: Felecia Lokey, Senior Director, Customer Engagement
Business Address: 245 Market Street, M/C N8C, San Francisco, CA 94105
Facsimile: (415) 973-3457

13.2 Each Party shall be entitled to specify as its proper address any other address in the United States upon written notice to the other Party.

13.3 Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters relating to Community Choice Aggregation service. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party.

Section 14: Time of Essence

The Parties expressly agree that time is of the essence for all portions of this Agreement.

Section 15: Dispute Resolution

15.1 The form of this Agreement has been filed with and approved by the CPUC as part of PG&E's applicable tariffs. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the Party's obligations hereunder, including any alleged material breach that has not ripened into an Event of Default under Section 4 of this Agreement, shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending such resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2.

15.2 If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes, or the parties may mutually agree to pursue mediation or binding arbitration to resolve such issues. Notwithstanding the foregoing, in Exigent

Circumstances (i.e., a failure by a Party to perform its obligations hereunder that poses a substantial threat of irreparable economic or other harm to CCA, PG&E, or electric customers), either Party may seek an emergency order from the Commission in accordance with the CPUC's applicable rules, regulations and procedures. PG&E (without conceding that an Assigned Commissioner or an Administrative Law Judge have the authority to do so) and CCA agree to comply with an interim order of an Assigned Commissioner (or of an Administrative Law Judge, in consultation with the Assigned Commissioner) assigned by the Commission to handle such a claim for emergency relief, but each retains all authority to challenge any such order. CCA shall also comply with the requirements of Rule 23.T.3 regarding proceeding before the CPUC in exigent circumstances.

15.3 If the dispute involves a request for damages arising out of an Event of Default or other breach as determined by the Commission, parties understand that the Commission has no authority to award damages. To determine the amount of such damages, the parties may agree to pursue mediation or binding arbitration, or either of them may bring an action in a court of competent jurisdiction. Notwithstanding the foregoing, the Parties expressly agree and acknowledge that the Commission shall have the sole jurisdiction to adjudicate any claims (other than the amount of damages) in connection with this Agreement.

15.4 This Section 15 shall not apply to any claims or actions that a party would be able to bring in the absence of this Agreement.

Section 16: Applicable Law and Venue

This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of California, and shall exclude any choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance. Except for matters and disputes with respect to which the CPUC is the initial proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in San Francisco County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

Section 17: Force Majeure

Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any event of force majeure or other cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. It is agreed that upon the Party so affected giving written notice and reasonably full particulars of such force majeure to the other Party within a reasonable time after the cause relied on, then the obligations of the Party, so far as they are affected by the event of force majeure, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied with all reasonable dispatch. In the event of force majeure, as described herein, both Parties shall take all reasonable steps to comply with this Agreement and PG&E's applicable CCA tariffs despite occurrence of a force majeure event.

Section 18: Unauthorized Use of Energy (Energy Theft)

18.1 The CCA represents and warrants that for each of its Customers, and at all times during which it provides community choice aggregation services as a Community Choice Aggregator, the CCA shall completely, accurately, and in a timely manner account for each of its Customer's loads, by providing PG&E a copy of its monthly load data provided to the CAISO and working with PG&E to resolve any discrepancies. Load data not accounted for in this manner may provide grounds for termination of this Agreement in accordance with the procedures described in Sections 4 and 15 of this Agreement. For verification purposes only, PG&E shall have complete access to the load data provided to the CAISO by the CCA. Such information is to remain confidential, and shall not be disclosed to any unauthorized person other than the CPUC, the California Independent System Operator or other law enforcement or regulatory authority.

18.2 PG&E shall notify the CCA immediately and the CCA shall notify PG&E immediately of any suspected unauthorized energy use. The Parties agree to preserve any evidence of unauthorized energy use. Once unauthorized energy use is suspected, PG&E, in its sole discretion, may take any or all of the actions permitted under PG&E's applicable tariffs.

Section 19: Not a Joint Venture

Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

Section 20: Conflicts Between this Agreement and PG&E's Community Choice Aggregation Tariff

Should a conflict exist or develop between the provisions of this Agreement and PG&E's community choice aggregation tariff, PG&E Electric Rule 23 and PG&E Electric Schedule E-CCA, as approved by the CPUC, the provisions of PG&E's community choice aggregation tariff shall prevail.

Section 21: Amendments or Modifications

21.1 Except as provided in Section 21.2, no amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade.

21.2 This Agreement may be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement to conform to changes directed or necessitated by the CPUC. In the event the Parties are unable to agree on the required changes or modifications to this Agreement, their dispute shall be resolved in accordance with the provisions of Section 15 hereof or, in the alternative, CCA may elect to terminate this Agreement upon written notice to PG&E, which shall be effective upon the receipt thereof. PG&E and CCA retain the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application or other appropriate document for a change in PG&E's rates, charges, classification, service or rules, or any agreement relating thereto.

Section 22: Audits

22.1 PG&E shall retain such specific records as may be required to support the accuracy of: (a) meter data provided in PG&E's consolidated billings, (b) remittances of CCA customer payments to CCA; (c) opt-out requests processed by PG&E, and (d) charges for services provided by PG&E (collectively "Audit Matters"). When the CCA reasonably believes that errors related to Audit Matters may have occurred, the CCA may request the production of such documents as may be required to verify the accuracy of such Audit Matters. Such documents shall be provided within ten (10) business days of such request. In the event the CCA, upon review of such documents, continues to believe that PG&E's duty with respect to any Audit Matter has been breached, the CCA may direct that an audit be conducted. The CCA shall designate their own employee representative or their contracted representative to audit PG&E's records.

22.2 If CCSF undertakes to directly receive customer opt outs, CCSF shall retain such specific records as may be required to support the accuracy of opt-out requests processed by CCSF. When PG&E reasonably believes that errors related to such matters may have occurred, PG&E may request the production of such documents as may be required to verify the accuracy of such matters. Such documents shall be provided within ten (10) business days of such request. In the event that PG&E, upon review of such documents, continues to believe that CCA's duty with respect to any such matter has been breached, PG&E may direct that an audit be conducted. PG&E shall designate their own employee representative or their contracted representative to audit CCA's records.

22.3 Any such audit shall be undertaken by the Party, or their contracted representative at reasonable times without interference with the other Party's business operations, and in compliance with that Party's otherwise applicable security procedures. PG&E and the CCA agree to cooperate fully with any such audit.

22.4 Specific records to support the accuracy of meter data provided in the consolidated billings may require examination of billing and metering support documentation maintained by subcontractors. Consistent with Section 8.2 of this Agreement, PG&E shall include a similar clause in its agreements with subcontractors requiring subcontractors to comply with the requirements of Section 22 of this Agreement.

22.5 The CCA will notify PG&E in writing of any exception taken as a result of an audit. PG&E shall refund the amount of any undisputed exception to the CCA within ten (10) days. If PG&E fails to make such payment, PG&E agrees to pay interest, accruing monthly, at a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California. Interest will be computed from the date of written notification of exceptions to the date PG&E reimburses the CCA for any exception. The cost of such audit shall be paid by the auditing Party; provided, however, that in the event an audit verifies overcharges of five percent (5%) or more, then PG&E shall reimburse the CCA for the cost of the audit.

22.6 This right to audit shall extend for a period of three (3) years following the date of final payment under this Agreement. Each party and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period, except that PG&E need only retain recordings of customer calls to its call center in accordance with its generally applicable retention period for such calls, provided that such retention period is no less than six (6) months from the date of the call.

Section 23: Miscellaneous

23.1 Unless otherwise stated in this Agreement: (a) any reference in this Agreement to a section, subsection, attachment or similar term refers to the provisions of this Agreement; (b) a reference to a section includes that section and all its subsections; and (c) the words “include,” “includes,” and “including” when used in this Agreement shall be deemed in each case to be followed by the words “without limitation.” The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

23.2 The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization other than a Party or a successor or assignee of a Party to this Agreement.

23.3 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

23.4 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing.

23.5 Each Party shall be responsible for paying its own attorneys’ fees and other costs associated with this Agreement, except as provided in Sections 6 and 7 hereof.

23.6 To the extent that the CPUC has a right under then-current law to audit either Party’s compliance with this Agreement or other legal or regulatory requirements pertaining to Community Choice Aggregation transactions, that Party shall cooperate with such audits. Nothing in this Section shall be construed as an admission by either Party with respect to the right of the CPUC to conduct such audits or the scope thereof.

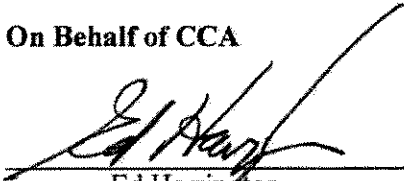
23.7 Except as otherwise provided in this Agreement, all rights of termination, cancellation or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy in this Agreement.

23.8 During the period between the initial customer notification of a particular phase of service offered by CCA (per Rule 23.H and I), and the Mass Enrollment date for that phase (per Rule 23.J), if CCA provides a list to PG&E of the customers in that phase on or before the date of the first notice, PG&E will provide a weekly report of the names, billing addresses, and associated load amounts for each of the customers in that phase which opted out that week. However, if CCA undertakes to receive opt outs directly, PG&E shall not be required to provide such weekly reports. CCA shall pay for the actual costs of the work needed to generate these reports not to exceed two hours of account assistance per report under Section 9.d of PG&E Tariff E-CCA.

23.9 This Agreement contains material changes from the form of Service Agreement (Form 79-1029) previously approved by the CPUC. The changes to sections 11.2, 22.1(c) and 22.2 (with respect to release of the identity of customers who have opted out prior to mass enrollment) and 23.8 in this Agreement shall not go into effect until such time as PG&E receives CPUC approval and authorization of these specific changes. The Parties agree to use their best efforts to obtain such CPUC approval and authorization expeditiously.

The Parties have executed this Agreement on the dates indicated below, to be effective upon the later date.

On Behalf of CCA



Ed Harrington
General Manager
San Francisco Public Utilities
Commission


On Behalf of PG&E

Felecia Lokey
Senior Director
Customer Engagement

Date: 5/27/2010

Date: _____

Approved as to form:




Thomas J. Long
Deputy City Attorney
City and County of San Francisco

On Behalf of CCA

On Behalf of PG&E

Ed Harrington
General Manager
San Francisco Public Utilities
Commission



Felecia Lokey
Senior Director
Customer Engagement

Date: _____

Date: 05/27/2010

Approved as to form:

Thomas J. Long
Deputy City Attorney
City and County of San Francisco

ATTACHMENT A

A. Definitions:

Billing Services - The consolidated billing services described in PG&E's community choice aggregation tariff which are provided by PG&E.

Community Choice Aggregation Customer - An end-use customer located within PG&E's service territory who purchases Community Choice Aggregation Services through the CCA.

Community Choice Aggregator (CCA) - An entity that provides electric supply services to Community Choice Aggregation customers within PG&E's service territory. A CCA may also provide certain energy efficiency and conservation programs to its Community Choice Aggregation customers as provided for under PG&E's tariffs.

CCA Charges - Charges for Community Choice Aggregation Services provided by the CCA.

PG&E Charges - Charges (a) for services provided by PG&E; or (b) which are energy-related and which are approved by the CPUC or the Federal Energy Regulatory Commission (including any nonbypassable charges (such as Competition Transition Charges, Cost Responsibility Surcharges, and any other nonbypassable charges adopted by a regulatory body) or Fixed Transition Amount Charges owing to PG&E or its affiliates, as those terms are defined under the California Public Utilities Code). Fixed Transition Amount Charges are also referred to as Trust Transfer Amount (TTA) Charges.

B. Contact Persons (Section 13.3):

Billing Services

PG&E Contact: Thomas Varghese, Manager, Customer Care, Service and Sales

CCA Contact: Mike Campbell, Director, CleanPowerSF

C. Parties' Representatives (Section 15.1):

PG&E Representative:

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