



**Gas Sample Form No. 79-1089**  
Independent Storage Providers (ISP) - PG&E Exchange Agreement

Sheet 1

**Please Refer to Attached  
Sample Form**

## INDEPENDENT STORAGE PROVIDERS (ISP) - PG&E EXCHANGE AGREEMENT

This Exchange Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Pacific Gas and Electric Company (“PG&E”), a California corporation, and \_\_\_\_\_ (“ISP”), a \_\_\_\_\_ (entity type). PG&E and ISP shall also be hereinafter referred to individually as a “Party” and jointly as the “Parties.”

### 1. OVERVIEW OF EXCHANGE SERVICE

#### 1.1. Exchange Service and the Exchange Agreement

This Exchange Agreement sets forth the procedures and requirements for PG&E to provide gas service to a PG&E customer using the facilities of an ISP (“Exchange Service”). This service was approved by the CPUC in Decision No. 06-09-039. The PG&E customer must, at its own cost, build a service or delivery line to a PG&E meter facility, which in turn is directly connected to the ISP, establishing a customer-PG&E-ISP service interconnection. Using the ISP-PG&E Exchange Service, gas will then be received or delivered through this interconnection and, by exchange, delivered or received by PG&E at a pre-existing ISP-PG&E interconnection. Absent the availability of the Exchange Service, this customer would obtain service directly from PG&E in accordance with PG&E’s tariffs.

The ISP will receive an Exchange Fee for providing this service, paid by the PG&E customer to PG&E, and then paid by PG&E to the ISP. This Exchange Fee and charges are described in Section 3.4. The customer will take service from PG&E under Schedule G-ESISP, “Exchange Service through ISP Facilities.” The customer, PG&E and the ISP will all sign the G-ESISP Service Agreement (“Service Agreement”) that activates Exchange Service for that customer. As part of the Service Agreement, all parties will confirm that the other agreements necessary to provide this Exchange Service have been signed.

#### 1.2. PG&E Customers Eligible for Exchange Service

The following PG&E customers are eligible for Exchange Service (“Exchange Service Customer”):

- (a) A PG&E noncore or electric generator end-use customer (“End-Use Customer”) who qualify for service under PG&E’s Schedule G-ESISP, “Exchange Service through ISP Facilities.” Other PG&E end-use customers are not eligible.
- (b) A California gas producer (“California Producer” or “Producer”), as defined by PG&E’s gas Rule 1, which includes a gathering system operator acting on the Producer’s behalf, and who qualify for service under PG&E’s Schedule G-ESISP.

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- (c) Any PG&E customer that is already connected to the ISP by a customer-owned pipeline.

### 2. EFFECTIVE DATE AND TERM

#### 2.1. Effective Date

The effective date of this Exchange Agreement shall be the first day of the month following the date this Agreement has been signed by both Parties.

#### 2.2. Term

Upon execution, the Exchange Agreement will be of indefinite term, and can only be terminated by (a) breach of this Agreement by one of the Parties, (b) governmental action pursuant to Section 5.4, below, or (c) approval of the CPUC.

### 3. EXCHANGE SERVICE PROVISIONS

#### 3.1. Notice of Customer Expression of Intent

PG&E and the ISP will notify each other if either has entered into discussions with a potential Exchange Service Customer and there is a written, mutual expression of such intent by the Customer to receive Exchange Service. Such notification must be made in writing within ten (10) business days after the date of the written, mutual expression of intent, and must state the customer's name, its representative and its contact information, including telephone number and E-mail address.

#### 3.2. Approval of New Exchange Service Customers

Both PG&E and the ISP must approve a new interconnection for purposes of providing Exchange Service to a PG&E customer.

Such approvals will not be withheld by PG&E, unless providing Exchange Service to this customer using the ISP interconnection (a) will impair the integrity of the system or operation of the PG&E pipeline system or ISP storage facilities, (b) reduce the service reliability to other PG&E customers, or (c) will be inconsistent with the otherwise applicable terms of PG&E service.

The ISP reserves the right to refuse to establish an interconnection for the purpose of providing Exchange Service to a potential Exchange Service Customer.

#### 3.3. Service for an Exchange Service Customer

Exchange Service Customers will take service under PG&E's Schedule G-ESISP. The Customer, PG&E and the ISP will sign the G-ESISP Service

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Agreement that specifies the other necessary agreements and obligations of the Parties.

### 3.4. Exchange Fee

PG&E will pay the ISP an Exchange Fee, in dollars per therm, for the Exchange Service pursuant to PG&E's schedule G-ESISP. The total Exchange Fee charges will be the multiplication of the volumetric Exchange Fee times the metered volumes in therms for the Exchange Service Customer. The Exchange Service Customer will pay all the Exchange Fee charges to PG&E. PG&E in turn will pay the ISP this amount less the Revenue Fees and Uncollectible (RF&U) accounts expense that PG&E is required to collect as specified in Preliminary Statement, Section C.6 of PG&E's tariffs. To the extent the Exchange Fee is negotiable, the Exchange Service Customer and the ISP must agree on the fee to be charged at any point in time. This negotiated Exchange Fee will be specified in the G-ESISP Service Agreement.

### 3.5. Operational and Balancing Requirements

This Exchange Agreement and the provision of Exchange Service hereunder shall not modify in any way the rights and obligations of the Parties, including daily balancing, under any preexisting PG&E-ISP Operational Balancing Agreement(s) (OBA). As needed to meet its obligations under the OBA, the ISP shall provide storage service for balancing to Exchange Service Customers.

Nominations and scheduling of gas by an Exchange Service Customer must remain in compliance with PG&E's tariffs. For the purposes of administering the OBA, PG&E will add the net of all Exchange Service Customer scheduled volumes to the net of the nominations to the ISP and thereby arrive at the scheduled amount at the PG&E-ISP interconnection point for the gas day. PG&E will confirm these numbers to the ISP scheduler as a normal part of the scheduling process.

In no case may the ISP be allowed to transport gas on behalf of Exchange Service Customers via the subject interconnections other than pursuant to those transactions that are scheduled by PG&E and subject to PG&E tariffs.

### 3.6. Gas Quality

The ISP and the Exchange Service End-use Customer will agree on gas quality standards. The gas quality agreement can be separate or combined with the storage services agreement. The ISP or the Customer will provide PG&E a copy of such agreement, or the relevant gas quality section of a combined agreement, within ten (10) days of its signing.

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### 3.7. Storage Services from the ISP

A PG&E Exchange Service Customer will have the opportunity to contract with the ISP for storage services, beyond those required for balancing as specified in Section 3.5. The Customer and the ISP will make these additional arrangements, which are separate and distinct from the Exchange Service being provided hereunder.

### 3.8. Title, Control and Possession of Gas

Upon exchange, title, control and possession of all gas exchanged by PG&E and the ISP pursuant to this Agreement will be pursuant to each Party's tariffs and agreements.

## 4. EXCHANGE SERVICE FACILITIES

### 4.1. Metering and Interconnection Facilities

A PG&E Exchange Service Customer will connect to a PG&E-owned metering facility that is then connected to the ISP facilities.

All pipeline and appurtenant facilities needed to connect the Exchange Service Customer to PG&E's meter facility and for PG&E to provide gas service to the Customer will be constructed, owned and maintained by the Exchange Service Customer at its expense.

PG&E will be responsible for designing, installing, operating and maintaining the metering facilities, pursuant to its applicable tariffs. In addition to the meter, the metering facilities may include gas quality measurement, regulation and communication equipment. Pressure regulation between a California Producer and the ISP will be the responsibility of either the ISP or the Producer, not PG&E.

The ISP will have the right to receive contemporaneous meter readings and gas quality data from the PG&E-owned metering facilities. Exchange Service Customers will be required to approve this sharing of data related to their service. The ISP will provide and maintain the communication equipment needed to transmit this data from the PG&E meter facility to the ISP.

The ISP will be responsible for constructing, owning and maintaining the interconnection tap between its pipeline and PG&E's meter facility.

### 4.2. Condition and Safety of Facilities

Both the ISP and PG&E will meet their statutory and regulatory obligations to maintain, inspect and operate their respective facilities used to provide the Exchange Service in a manner consistent with all applicable federal and state safety and pipeline integrity regulations under federal and state law.

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### 4.3. No ISP Facilities on Customer Side of PG&E Meter

The ISP will not expand its system by constructing, acquiring, leasing or otherwise owning by any means, any facilities on the Exchange Service Customer's side of the PG&E meter. Nothing herein is intended to restrict the ability of the ISP to expand or modify its storage facilities on the ISP's side of the PG&E meter, consistent with applicable legal requirements.

## 5. REGULATORY

### 5.1. Applicable Laws, Orders, Rules and Regulations

This Agreement is subject to all valid applicable local, state and federal laws, orders, rules, and regulations of any governmental body, agency, or official having jurisdiction. Nothing in this Agreement shall be interpreted to require either Party to take any action that would be inconsistent with its applicable tariffs or violate any governmental regulation or authority.

### 5.2. Hinshaw Exemption

PG&E shall not be required to take any action hereunder, including but not limited to entering into any contracts with shippers or other parties transporting gas to or from the ISP's facilities at the PG&E-ISP interconnection point, which, in PG&E's judgment, may jeopardize PG&E's retention of its "Hinshaw Exemption" under the Natural Gas Act.

### 5.3. Jurisdiction of the FERC

The ISP shall not be required to take any action hereunder, including, but not limited to, entering into contracts with shippers or other parties transporting gas on PG&E's facilities, which, in the ISP's judgment, may cause the ISP to be subject to the jurisdiction of the FERC.

### 5.4. Governmental Action

Notwithstanding any other provisions of this Agreement, if at any time during the term hereof, any court or governmental authority having jurisdiction shall propose to take any action whereby either Party's delivery, receipt, and/or use of gas hereunder shall be proscribed or subjected to terms, conditions, regulations, restraints, or limits that in the reasonable judgment of that Party prevents it from (a) obtaining the benefit of its bargain hereunder or (b) acting in a reasonable manner to fulfill the terms of this Agreement, such Party shall forthwith notify the other Party, including full particulars of the action proposed to be taken, in order to give that Party the opportunity to intervene or protest such action being taken.

If such court or governmental authority nevertheless takes any such action that, in the reasonable judgment of the Party that is directly affected by that action, prevents it from (a) obtaining the benefit of its bargain hereunder or

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(b) acting in a reasonable manner to fulfill the terms of this Agreement, such Party shall have the unilateral right to terminate this Agreement at any time upon twelve (12) months written notice, unless the circumstances reasonably support a shortened time period to terminate, by written notice to the other Party, without further liability hereunder, except as to redelivery of any outstanding gas imbalances and payment of any outstanding Exchange Fee charges. Prior to exercising such right of termination, both Parties herein shall enter into good faith negotiations in an effort to reach mutual agreement to modify this Agreement as reasonably required in order to avoid such termination.

### 5.5. Existing and Additional Facilities

Nothing herein shall be construed as a dedication by either Party of its respective facilities to the other Party. Further, nothing herein shall obligate either Party to construct any additional facilities (including measuring facilities) or to modify any existing facilities to provide for the receipt or delivery of gas. Any new facilities or necessary modifications for either receipt or delivery of gas at the interconnection point between PG&E and the ISP shall be addressed separately.

## 6. INDEMNIFICATION

Notwithstanding the provisions of Section 9 hereof, each Party (“Indemnifying Party”) agrees to protect, defend and indemnify the other Party, its officers, directors, employees, attorneys and agents (collectively, the “Indemnified Party”) against, and hold the Indemnified Party harmless from, any and all obligations, losses, claims, actions (including remedial or enforcement actions of any kind and administrative or judicial proceedings, suits, orders or judgments), causes of action, liabilities, penalties, damages, including liability resulting from injury to or death of any person and loss of or damage to any property or to natural resources, or from any violation of any local, state, or federal law or regulation, including but not limited to environmental laws or regulations, or from strict liability posed by any law or regulation; or costs and expenses (including reasonable attorneys’ and consultants’ fees and expenses) (collectively, “Claims”), arising out of, or related to, or in any way connected with and caused by the Indemnifying Party’s negligence, willful misconduct, or criminal misconduct in the performance of or failure to perform this Agreement. As to such claims as may be caused in part by the negligence, willful misconduct, or criminal misconduct of the Indemnified Party, the Indemnifying Party will indemnify the Indemnified Party only to the extent of the contributory negligence of the Indemnifying Party. The Indemnifying Party shall pay all costs that may be incurred by the other Party in enforcing this indemnity obligation, including all reasonable attorneys’ fees. The indemnification provisions of this Exchange

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Agreement are not intended to create or alter any rights or claims of any third parties, or any obligations, responsibilities or liabilities the Parties may have to any third parties.

### 7. ASSIGNMENT

This Exchange Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors and assigns; provided, however, that no Party may assign or transfer this Agreement or any part thereof, or any right or obligation hereunder, without the written consent of the other Party, which may not be unreasonably withheld. Any such assignment which requires written consent hereunder, but which is made without such written consent, shall be null and void. Notwithstanding the above, any assignment of the entire interest and obligations of the assigning Party may be made to a parent or affiliate of such assigning Party, or to an entity succeeding to all or substantially all of the business properties and assets of the assigning Party, following written notice to the other Party.

### 8. FORCE MAJEURE

In the event either Party is rendered unable, wholly or in part, by *force majeure* (as defined below) to carry out its respective obligations under this Exchange Agreement, it is agreed that, upon such Party giving notice and reasonably full particulars of such *force majeure* in writing (by telecopy, FAX or E-mail) or by telephone (and confirmed in writing within seventy-two [72] hours), to the other Party within a reasonable time after the occurrence of the cause relied on, then the obligations of the Party giving such notice, so far as they are affected by such *force majeure*, shall be suspended during the continuance of the effects of the cause, and the Party subject to such cause shall remedy it so far as possible with all reasonable dispatch.

The term "*force majeure*," as employed herein, shall mean an event or events beyond the reasonable control of a Party and which could not be avoided by the exercise of due diligence by the party claiming *force majeure* and shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, terrorism, and civil disturbances. Failure of an administrative agency to authorize recovery of costs shall not constitute *force majeure*. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any *force majeure* shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing Party or others when such course is inadvisable in the discretion of the Party having the difficulty.



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### 9. DISPUTE RESOLUTION

#### 9.1. Remedies for Nonperformance, Breach or Other Default

Each Party agrees that its sole remedies for nonperformance, breach or other default by the other Party in the performance of its obligations under this Agreement shall be as specified in this Agreement. Both Parties agree to use commercially reasonable efforts and actions to correct any such nonperformance, breach or default in a timely manner.

#### 9.2. Meet and Confer Obligation

Within thirty (30) days of written notice from either Party to the other that there is a dispute, claim, or need for interpretation arising out of or relating to this Exchange Agreement, the Parties shall meet and attempt to reach an amicable settlement by management-level negotiation. If the matter is not resolved within thirty (30) days of such meeting, the matter shall be resolved in the manner set forth in Section 9.3 and 9.4, which shall be in lieu of litigation before any regulatory agency or state or federal courts.

#### 9.3. Non-binding Mediation

Upon agreement by the Parties, the Parties may attempt to resolve their dispute through non-binding mediation utilizing a mutually agreed upon mediator. The Parties may establish ground rules for the mediation at least fourteen (14) days in advance of the mediation meeting. The mediation shall be held in San Francisco, California and shall commence within thirty (30) days of the parties' agreement to participate in the mediation. An officer for each Party shall participate therein. Each Party shall bear its own mediation costs. The costs and expenses of the mediator shall be divided equally between the Parties.

#### 9.4. Binding Arbitration

If no settlement is reached as a result of the procedures prescribed in Section 9.3, the matter, other than those tariff and service matters that must be resolved solely before the CPUC, shall be submitted to binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association (AAA) including any rules for expedition of the hearing process); provided, however, such rules shall be modified as necessary to reflect the following:

- (a) Unless the Parties otherwise agree, the arbitration panel shall be composed of three persons. Each Party shall nominate one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall act as the presiding arbitrator or chair of the panel. Such third arbitrator shall have at least 10 years experience as a lawyer or lawyer and judge and shall have significant experience in the natural gas pipeline industry. If either Party fails to nominate

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an arbitrator within thirty (30) days of receiving notice of the nomination of an arbitrator by the other Party, such (second) arbitrator shall be appointed by the AAA at the request of the first Party. If the two arbitrators so selected fail to select a third presiding arbitrator, the third arbitrator shall be appointed by the AAA. Should a vacancy occur on the panel, it shall be filled by the method by which that arbitrator was originally selected.

- (b) The arbitration shall be held at a location to be agreed by the Parties, or, failing such an agreement, at San Francisco, California.
- (c) The arbitrators shall hold a preliminary meeting with the Parties within thirty (30) days of the appointment of the third arbitrator for the purpose of determining or clarifying the issues to be decided in the arbitration, the specified procedures to be followed, and the schedule for briefing and/or hearings. The arbitrators shall hold a hearing and, within sixty (60) days of the matter having been submitted for decision shall issue a written decision and include findings of fact and conclusions of law.
- (d) Such decision shall thereafter be deemed to be part of this Agreement and incorporated by reference herein.
- (e) Pending such decision, the Parties shall continue to operate under the Agreement; however, the decision by the arbitrators should consider specifically the appropriateness of retroactive adjustments to the date the dispute first arose.
- (f) The United States District Court for the Northern District of California or the Superior Court of the State of California in and for the City and County of San Francisco may enter judgment upon the panel's decision, either by confirming the decision or by vacating, modifying, or correcting the decision. The Court may vacate, modify, or correct any such decision only: (i) if there exists any of the grounds therefore referred to in the United States Arbitration Act, or (ii) to the extent that the panel's conclusions of law are erroneous.
- (g) The cost of the arbitrator appointed by or for the ISP shall be paid for by the ISP; the cost of the arbitrator appointed by or for PG&E shall be paid for by PG&E; and the cost of the third arbitrator and any attendant cost shall be borne equally by the Parties.
- (h) Neither Party shall be assessed any punitive damages.
- (i) In the event it is necessary to enforce an arbitration award, all costs of enforcement, including reasonable attorney fees (for in-house and outside counsel), shall be payable to the prevailing Party.

### 9.5. Choice of Law

The resolution of disputes subject to this Section shall be governed by, and the arbitrators shall render their decision in accordance with, the substantive laws of the State of California, without regard to its choice of law rules.

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### 10. NOTICES AND OTHER CORRESPONDENCE

#### 10.1. Mailing Addresses

Any notice, request, demand, or statement provided for in this Exchange Agreement shall be in writing and deemed given when deposited in the United States mail, postage prepaid, directed to the post office address of the Parties as follows:

*[ISP and PG&E CONTACT INFORMATION*

*ADDRESS*

*TELEPHONE*

*FAX ATTN:*

*E-MAIL]*

#### 10.2. Changes In Contact Information

Either Party may from time-to-time change or designate another address, or telephone or facsimile number for such purposes upon thirty (30) calendar days prior written notice by the Party requesting such change.

#### 10.3. Electronic Communications

Notices, requests, and demands may also be delivered by facsimile or other electronic transmittal provided that such facsimile or electronically conveyed notice, request or demand is confirmed in writing delivered as provided in paragraph 10.1 within three (3) business Days of receipt of facsimile or other electronic notice. Notices regarding routine operations may be exclusively communicated by facsimile or other electronic means. All nominations and confirmations may be communicated by facsimile or via electronic data exchange when such systems are operational.

### 11. OTHER PROVISIONS

#### 11.1. Waiver

No consent, waiver, or acquiescence, expressed or implied, by either Party of any breach or default by the other Party in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of any such obligation or any other obligation of the other Party. Failure on the part of either Party to complain of any act or failure to act by the other Party or to declare the other Party in default, regardless of how long such failure continues, shall not constitute a waiver by such Party of any of its rights hereunder.

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### 11.2. California Law

THIS AGREEMENT AND THE OBLIGATION OF THE PARTIES HEREUNDER SHALL BE INTERPRETED, CONSTRUED AND CONTROLLED BY THE LAWS OF THE STATE OF CALIFORNIA.

### 11.3. Ambiguities or Uncertainties

This Agreement was jointly negotiated, and any ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against either Party, but shall be construed in a manner which most accurately reflects the intent of the Parties when this Agreement was executed.

### 11.4. Modification or Amendment

This Agreement may be modified or amended only by an instrument in writing executed by both Parties hereto.

### 11.5. Further Assurances

Each Party shall do all necessary acts and make, execute, and deliver such written instruments as shall from time to time be reasonably necessary to carry out the terms of this Agreement.

### 11.6. Phrasing

Whenever the context may require, the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

### 11.7. Headings

The descriptive headings of all paragraphs of this Agreement are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such paragraphs.

### 11.8. Severability

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

### 11.9. PG&E's Gas Tariffs

PG&E's Gas Tariffs, as approved by the CPUC and subject to any subsequent changes or revisions, are by reference made a part hereof. This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction.



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### 11.10. Intention of Agreement

This Agreement is intended solely for the benefit of the Parties and their permitted successors and assigns and, except as may be specifically set forth herein, is not intended to and shall not confer rights or benefits upon any other party.

IN WITNESS WHEREOF, the Parties have, through their duly authorized officers or employees, executed this Agreement as of the date herein above written.

PACIFIC GAS AND ELECTRIC COMPANY

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

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

(ISP)

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

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