



## GUARANTEE

This GUARANTEE ("Guarantee") dated as of \_\_\_\_\_, 19\_\_\_\_, is made by \_\_\_\_\_, a corporation ("Guarantor"), for the benefit of Pacific Gas and Electric Company, a California corporation ("PG&E"), in consideration of PG&E entering into contracts with or furnishing service or credit to \_\_\_\_\_, an Electric Service Provider. ("ESP").

WHEREAS, PG&E and ESP have entered or expect to enter into one or more service agreements and other agreements and transactions relating thereto ("Agreements");

WHEREAS, PG&E's Direct Access Tariff provides that PG&E may require an ESP to establish its creditworthiness through, among other things, a security deposit in the form of a guarantee;

NOW, THEREFORE, for value received, and to induce PG&E to enter into such Agreements with ESP and to extend credit to ESP, Guarantor provides this Guarantee to PG&E as a part of the consideration for PG&E entering into such Agreements and agrees as follows:

1. Guarantee. Guarantor unconditionally guarantees to PG&E its successors and assigns the prompt and complete payment of all amounts due and payable by ESP to PG&E pursuant to the Agreements and PG&E's Direct Access Tariffs, ("Obligations") whether by acceleration or otherwise to a maximum amount, at any one time, of \_\_\_\_\_ (\$ \_\_\_\_\_ Guarantee Cap") except as otherwise provided in Section 4 (f) below, plus costs of collection, including reasonable attorney's fees and any other reasonable costs of enforcing this Guarantee.

This is a continuing guarantee of payment and performance and not of collection. If ESP defaults in the payment or performance when due or any part of it for any reason, Guarantor will pay all sums due and owing or provide performance directly to PG&E promptly upon PG&E's demand on Guarantor. PG&E shall have the right to demand payment from Guarantor to the same extent as PG&E would have the right under PG&E's Direct Access Tariffs and the Agreements to draw on a cash deposit posted by ESP. All payments hereunder shall be made without setoff or counterclaim except to the extent of any setoff or counterclaims and defenses to payment which ESP has arising out of the transaction or transactions under which payment of the Guarantee is sought, other than those arising out of the insolvency of, or filing under the Bankruptcy Code by, ESP.

2. Guarantor's Obligations. Guarantor's Obligations under this Guarantee are absolute and unconditional, shall remain in full force until all Obligations have been paid or performed or until terminated in accordance with Section 3 hereof, and shall not be released or discharged for: (i) PG&E's waiver of ESP's performance of any obligation or ESP's default under the Agreements; (ii) PG&E's extension of time for payment or performance by ESP under the Agreements or the amendment, extension or renewal of the Agreements or any Obligations; (iii) any delay or failure by PG&E to enforce or exercise any right or remedy under the Agreements, or waiver by PG&E of any such right or remedy; (iv) any failure by ESP's customers to pay for ESP's services or any part thereof; (v) any transfer, assignment or mortgaging by ESP or PG&E of any interest in the Agreements or this Guarantee; (vi) the release or discharge of ESP from the performance or observance of any obligations by operation of law or otherwise; (vii) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets and liabilities, or the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, or other similar proceeding affecting ESP, or the disaffirmance of the Agreements in any such proceeding; (viii) any merger, consolidation or other reorganization to which ESP, Guarantor or any related entity is a party, or any direct or indirect sale or disposition of Guarantor's or ESP's assets or Guarantor's direct or indirect ownership interest in ESP; or (ix) the release, acceptance or disposal of any collateral by PG&E for any of the Obligations.

Guarantor is aware of, and consents to, the terms of the Agreements and agrees that the Agreements

may be amended by PG&E and ESP without notice to or consent of Guarantor and that Guarantor's Obligations hereunder shall continue in full force and effect with respect to the Agreements as so amended.

No delays on the part of PG&E in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by PG&E of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

**Guarantor is further aware of, and consents to the credit rating requirements of PG&E's Direct Access Tariff and any of PG&E's other applicable tariffs related to the financial condition of guarantors. Guarantor must maintain a credit rating of Baa2 or higher from Moody's or BBB or higher from Standard and Poor's, Fitch or Duff & Phelps. Guarantor shall promptly notify PG&E of any material change in Guarantor's credit rating or financial condition. Guarantor shall also furnish evidence of an acceptable credit rating or financial condition, as set forth in PG&E's Direct Access Tariff, to PG&E upon request. In the event that PG&E determines that the Guarantor's credit worthiness has materially changed, as set forth in PG&E's Direct Access Tariff, PG&E may declare Guarantor and ESP to be in default under this Guarantee and the Agreements and may exercise its remedies under the Agreements and the relevant provisions of PG&E's Direct Access Tariff .**

3. Termination and/or Revocation. This Guarantee shall remain in full force and effect until the earlier of (1) the termination of all Agreements between ESP and PG&E subject to this Guarantee, or (2) Sixty (60) days after PG&E's receipt of written notice of revocation of this Guarantee from Guarantor. Termination or revocation of this Guarantee shall not eliminate any liability or obligation of Guarantor relating to or arising out of any Obligations or transaction under or pursuant to Agreements occurring prior to the effective date of such termination, including, without limitation, subsequent interest, late charges, or balancing account adjustments.

4. Waivers by Guarantor.

- (a) Guarantor waives: notice of the acceptance of this Guarantee; all notices of the making of Agreements between PG&E and ESP or transactions under such Agreements; demand or presentment for payment to ESP or the making of any protest; notice of the amount of the Obligations outstanding at any time; notice of nonpayment or failure to perform on the part of ESP; notice of any amendment, modification or waiver of or under the Agreements; and all other notices or demands not specifically required hereunder.
- (b) PG&E shall not be required to make demand on or file suit against ESP or any other party in an attempt to collect any obligation from ESP or any other party, to foreclose against any security now or hereafter existing for the Obligations, or to exercise or exhaust any other right or remedy to which PG&E may be entitled prior to enforcing this Guarantee.
- (c) PG&E shall not be obligated to file any claim relating to the Obligations owing to PG&E in the event ESP becomes subject to a bankruptcy, reorganization or similar proceeding (whether voluntary or involuntary), and the failure of PG&E to so file shall not affect Guarantor's Obligations hereunder. In the event that any payment to PG&E with respect to any of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect to such Obligations as if such payment had not been made.
- (d) Until all Obligations have been paid in full, Guarantor waives any rights to succeed to or enforce any rights which PG&E may have with respect to ESP or to any collateral which PG&E may have to secure performance of the Obligations. Until all Obligations have been paid in full, Guarantor shall not claim or enforce any right of subrogation, reimbursement, indemnity or any similar right against ESP on account of any payment or action by Guarantor under this Guarantee. Guarantor waives all defenses based on any loss or deferral of such rights.
- (e) Guarantor waives the defense of the statute of limitations on any action hereunder or for the collection of any indebtedness or the performance of any of the Obligations hereby guaranteed.
- (f) Guarantor acknowledges that it is able to and will keep itself fully informed of ESP's financial condition and waives any responsibility of PG&E to inform Guarantor of any matter relating thereto. Guarantor further agrees that, upon written notice from PG&E, the Guarantee Cap

may be adjusted from time to time to meet the security requirements of PG&E's Direct Access Tariff and any other of PG&E's applicable tariffs on file with and authorized by the CPUC. **The increased cap will become effective five business days thereafter unless the Guarantor provides PG&E with notice of rejection of the cap increase within the five day period. Guarantor understands that its rejection of the cap increase may result in ESP being required to establish credit from another source, or any other consequence outlined in PG&E's Direct Access Tariff.**

5. Representation and Warranties. Guarantor hereby represents and warrants that (i) it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation; (ii) the execution, delivery and performance by Guarantor of this Guarantee are within its corporate powers, have been duly authorized by all necessary corporate action and do not violate Guarantor's charter or by-laws or any law, order or contractual restriction binding on Guarantor; (iii) no consents of or filings with any governmental authority or any other person are required for the execution, delivery, performance or enforceability of this Guarantee, except those which have been duly obtained or made; and (iv) this Guarantee has been duly authorized, executed and delivered by Guarantor and constitutes Guarantor's legal, valid and binding obligation, enforceable against it in accordance with the terms of this Guarantee (except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights in general and general principles of equity).

6. Miscellaneous.

- (a) No provision of this Guarantee may be amended or waived except by a written instrument executed by Guarantor and PG&E.
- (b) This Guarantee shall bind and benefit the successors and assigns of Guarantor and PG&E, but Guarantor may not assign its obligations hereunder without the prior written consent of PG&E.
- (c) This Guarantee shall not be deemed to benefit any person except PG&E and its successors and assigns (including any holder of a collateral security interest in PG&E's rights under this Guarantee).
- (d) Guarantor agrees to pay, and shall be liable for, in addition to any Obligations which it has guaranteed to pay, any and all costs and expenses incurred by PG&E (including reasonable attorney's fees) incurred as a result of enforcing this Guarantee.
- (e) Should any one or more provisions of this Guarantee be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective and enforceable.
- (f) In the event of an ambiguity in or dispute regarding the interpretation of this instrument, the interpretation shall not be resolved by any rule providing for interpretation against the party who causes the uncertainty to exist or against the drafting party.
- (g) This Guarantee shall be governed by, and construed in accordance with, the laws of the State of California. Any and all litigation or alternative dispute resolution proceeding that may arise as a result of this Guarantee shall be brought and litigated in the courts of the State of California.
- (h) Any notice or other communication given hereunder by either Guarantor or PG&E to the other party ("Notice") shall be in writing and delivered personally or by registered or certified mail, postage prepaid and return receipt requested, or by facsimile, as follows:

i) if to Guarantor

Guarantor: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

ii) if to PG&E

Pacific Gas and Electric Company  
150 Spear Street, Z6B  
San Francisco, CA 94105  
Attention: Financial Analyst

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by facsimile shall be confirmed by the sender promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving Notice as provided above of such changes of address.

(i) Where there are prior guarantees to PG&E or its affiliates by Guarantor for or concerning Obligations of ESP or other guarantees between the parties, the provisions of this Guarantee will govern should there be any conflict or other inconsistency between the provisions of said guarantees.

IN WITNESS WHEREOF, Guarantor has executed this Guarantee as of the date first above written.

Guarantor: \_\_\_\_\_

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

Name and Title of Signature: \_\_\_\_\_