

Distribution Investment Deferral Framework RFO

Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

This confidentiality agreement (“Confidentiality Agreement”) is entered into by and between Pacific Gas and Electric Company, a California corporation, (“PG&E”) and Participant as indicated on its Shortlisted Offer, each of which may be referred to herein separately as a “Party” or together as the “Parties” and is entered into and dated as of the date of PG&E’s Shortlist notification to Participant (“Execution Date”).

Whereas, each Party (“Provider”) may have furnished and is furnishing to the other Party (“Recipient”) certain Confidential Information, as defined below, in order to assess Participant’s offer to sell certain products and services as submitted into PG&E’s Distribution Investment Deferral Framework (“DIDF”) Solicitation (“Solicitation”) pursuant to California Public Utilities Commission Decision (D).18-02-004 and the negotiation of an agreement (“Agreement”) in connection with the Solicitation, if applicable;

Whereas, it is to the mutual benefit of each Party hereto to enter into this Confidentiality Agreement and provide for the procedure to exchange and protect Confidential Information, as defined below, pursuant to this Confidentiality Agreement;

NOW, THEREFORE, in consideration of Provider’s disclosure to Recipient of Confidential Information and other valuable consideration, the Parties agree as follows:

1. Definition of Confidential Information

The term “Confidential Information” shall mean all information that either Party has furnished or is furnishing to the other Party, which with respect to Participant as Provider must in addition be clearly marked “Confidential” (or promptly identified in writing as such when furnished to PG&E in intangible form), in connection with or pertaining to the Solicitation or any Agreement, whether furnished before or after the Execution Date of this Confidentiality Agreement, whether intangible or tangible, and in whatever form or medium provided, and regardless of whether owned by Provider, as well as all information generated by Recipient or its Representatives, as defined below, that contains, reflects, or is derived from such furnished information. “Confidential Information” shall also include information regarding the Parties’ bidding and negotiation process, including the status of such process, and potential commercial relationship concerning the Solicitation or any Agreement. Capitalized terms not otherwise defined herein shall have the respective meaning given in the Solicitation.

2. Disclosure to Representatives

Recipient agrees that it shall maintain the Confidential Information in strict confidence and that the Confidential Information shall not, without Provider’s prior written consent, be disclosed by Recipient or by its affiliates, or their respective officers, directors, partners, employees, agents, or representatives (collectively, “Representatives”) in any manner whatsoever, in whole or in part, and shall not be used by Recipient or by its Representatives other than in connection with the Solicitation and the evaluation or negotiation of the Agreement; provided that, PG&E may use Confidential Information, consolidated with other market information and not specifically attributed to the Provider, to analyze or forecast market conditions or prices, for its own internal use or in the context of regulatory or other proceedings. Moreover, Recipient agrees to transmit the Confidential Information only to such of its Representatives who need to know the Confidential Information for the sole purpose of assisting Recipient with such permitted uses, as applicable; provided that, Recipient shall inform its Representatives of this Confidentiality Agreement and

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secure their agreement to abide in all material respects by its terms. In any event, Recipient shall be fully liable for any breach of this Confidentiality Agreement by its Representatives as though committed by Recipient itself.

3. Nondisclosure

Recipient further agrees that it:

- (a) shall not disclose any Confidential Information provided to it by Provider to any third party for any purpose, except as provided in Section 5 below (or Section 2 above if a Representative is a third party);
- (b) shall not distribute all or any portion of Confidential Information to any Representative for any purpose other than as permitted by Section 2 above; and
- (c) shall destroy or return all such Confidential Information upon Provider's request; provided that, each Party shall have the right to retain one copy of Confidential Information for regulatory compliance or legal purposes, and neither Party shall be obligated to purge extra copies of Confidential Information from electronic media used solely for disaster recovery backup purposes.

4. Exclusions to Confidential Information

For purposes of this Confidentiality Agreement, Confidential Information does not include information that:

- (a) is in the public domain at the time of the disclosure by Provider or is subsequently made available to the general public through no violation of this Confidentiality Agreement by Recipient;
- (b) Recipient can demonstrate was at the time of disclosure by Provider already in Recipient's possession and was not acquired, directly or indirectly, from Provider on a confidential basis;
- (c) is independently developed by Recipient without use of or reference to the Confidential Information; or
- (d) is disclosed with the prior written consent of Provider.

5. Required and Permitted Disclosure

Recipient agrees not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law or as Recipient may be required to disclose to duly authorized governmental or regulatory agencies ("Required Disclosure"). In the event that Recipient or any of its Representatives becomes subject to a Required Disclosure, Recipient agrees:

- (a) to the extent practicable, to use reasonable efforts to notify Provider prior to disclosure and to prevent or limit such disclosure; and

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- (b) if disclosure of such Confidential Information is required to prevent Recipient from being held in contempt or subject to other legal detriment, to furnish only such portion of the Confidential Information as it is legally compelled to disclose and to exercise its reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information.

After using such reasonable efforts, Recipient shall not be prohibited from complying with the Required Disclosure and shall not be liable to the other Party for monetary or other damages incurred in connection with the Required Disclosure.

In addition to the Required Disclosure, PG&E shall be permitted to disclose Confidential Information as follows: (i) to PG&E's Procurement Review Group ("PRG"), as defined in California Public Utilities Commission ("CPUC") Decision (D) 02-08-071 and subject to confidential treatment by PRG members; (ii) to the CPUC (including CPUC staff) under seal for purposes of review (if such seal is applicable to the nature of the Confidential Information), and (iii) to the Independent Evaluator, as defined and specified in the PG&E Distribution Deferral Investment Framework ("DIDF") Solicitation Protocol ("Protocol"). PG&E shall also be permitted to disclose Participant's Confidential Information in order to comply with (A) any applicable law, regulation, or any exchange or control area rule, or (B) any applicable regulation, rule, or order of the CPUC, California Energy Commission, the California Air Resources Board, or the Federal Energy Regulatory Commission, including any mandatory discovery or data request issued by any of the foregoing entities.

6. No License Rights

This Confidentiality Agreement and any Confidential Information used or disclosed hereunder shall not be construed as granting, expressly or by implication, Recipient any rights by license or otherwise to such Confidential Information or to any invention, patent or patent application, or other intellectual property right, now or hereafter owned or controlled by Provider.

7. Publicity

Subject to Sections 4 and 5, neither Party will disclose any information or make any news release, advertisement, public communication, response to media inquiry or other public statement regarding this Confidentiality Agreement and the Confidential Information disclosed hereunder (including without limitation the potential commercial relationship between the Parties, the inclusion of an offer on PG&E's shortlist of offers, or the status of negotiations) or the performance hereunder or with respect to an offer, without the prior written consent of the other Party.

8. No Future Contracts

Entry into this Confidentiality Agreement and the disclosure of Confidential Information hereunder shall not constitute an offer or acceptance or promise of any future contract or amendment of any existing contract. Each Party shall retain such rights with respect to its own Confidential Information as it had prior to entering into this Confidentiality Agreement. Neither Party shall have any legal obligation with respect to any contemplated transaction because of this Confidentiality Agreement nor any other written or oral expression with respect to any transaction except, in the case of this Confidentiality Agreement, for the matters specifically agreed to herein.

Distribution Investment Deferral Framework RFO**Confidentiality Agreement****9. No Representation or Warranties**

Any Confidential Information exchanged under this Confidentiality Agreement shall carry no warranties or representations of any kind, either expressed or implied, unless specifically expressed per the terms of the Protocol. Recipient shall not rely on the Confidential Information for any purpose other than to make its own evaluation thereof or as provided in the Protocol.

10. Injunctive Relief

Recipient acknowledges and agrees that, in the event of any breach of this Confidentiality Agreement, Provider may be irreparably and immediately harmed and monetary damages may not be adequate to make Provider whole. Accordingly, it is agreed that, in addition to any other remedy to which it may be entitled in law or equity and, with respect to PG&E as Provider any remedy under the Protocol, Provider shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to cease breaches or prevent threatened breaches of this Confidentiality Agreement and/or to compel specific performance of this Confidentiality Agreement, and that neither Recipient nor its Representatives will oppose the granting of such equitable relief if a court finds a breach or threatened breach. Each Party expressly agrees that it shall bear all costs and expenses, including attorneys' fees and costs that it may incur as Provider in enforcing the provisions of this Confidentiality Agreement.

11. Term and Provisions Surviving Termination

This term of this Confidentiality Agreement shall be two (2) years from the Execution Date; provided however, that either Party may earlier terminate this Confidentiality Agreement by giving the other Party thirty (30) days prior written notice of its intention to terminate this Confidentiality Agreement. Any such expiration or termination shall not abrogate either Party's obligations hereunder with respect to Confidential Information received prior to such expiration or termination nor those terms herein relating to the interpretation or enforcement of this Confidentiality Agreement relating to said obligations. Such obligations and terms shall survive for a period of three (3) years from said expiration or termination.

12. No Waiver

Any waiver of any provision of this Confidentiality Agreement, or a waiver of a breach hereof, must be in writing and signed by both Parties to be effective. Any waiver of a breach of this Confidentiality Agreement, whether express or implied, shall not constitute a waiver of a subsequent breach hereof.

13. Binding Nature and Amendment

This Confidentiality Agreement contains the entire understanding between the Parties with respect to Confidential Information received hereunder. No change or modification shall be effective unless made in writing and signed by an authorized representative of each Party. Any conflict between the language of any legend or stamp on any Confidential Information received hereunder, any provision of the Protocol, or Agreement relating to Confidential Information provided during the term of the Agreement, on the one hand, and this Confidentiality Agreement, on the other hand, shall be resolved in favor of the language of this Confidentiality Agreement. This Confidentiality Agreement may not be amended or modified except by a written agreement executed by both Parties.

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THIS CONFIDENTIALITY AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA. THE PARTIES AGREE THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED IN ANY WAY TO THIS CONFIDENTIALITY AGREEMENT SHALL BE BROUGHT SOLELY IN A COURT OF COMPETENT JURISDICTION SITTING IN THE CITY AND COUNTY OF SAN FRANCISCO. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENT TO THE JURISDICTION OF ANY SUCH COURT AND HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING IN ANY SUCH COURT, ANY OBJECTION TO VENUE WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING AND ANY RIGHT OF JURISDICTION ON ACCOUNT OF THE PLACE OF RESIDENCE OR DOMICILE OF ANY PARTY THERETO. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM ARISING OUT OF OR RELATED TO THIS CONFIDENTIALITY AGREEMENT.

15. Severability

If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such unenforceability or invalidity shall not affect the enforceability or validity of any other provision of this Confidentiality Agreement.

16. Notice

Any notice given hereunder by either Party shall be made in writing and shall be effective once delivered, by any of the following means: (a) facsimile or e-mail, with indication of complete electronic transmission thereof and receipt of a copy sent via certified U.S. Mail, return receipt requested, as evidenced by a signed delivery receipt; or (b) overnight delivery by a nationally recognized overnight delivery service, as verified by a delivery receipt or signature, addressed as follows:

To Participant: At the name, address and email as indicated in Participant's Offer to PG&E. To PG&E:
Pacific Gas and Electric Company
Electric Supply Department
Attn: DIDF Manager
77 Beale Street, (MC B25J)
San Francisco, California 94105
Facsimile: (415) 973-3946
Email: DIDFRFO@pge.com.

Either Party may periodically change any address to which notice is to be given it by providing written notice of such change to the other Party.

IN WITNESS WHEREOF, each Party has acknowledged and accepted this Confidentiality Agreement as of the Execution Date by Participant accepting its Shortlist status and by PG&E providing to Participant the Shortlist notification.