**BIOMETHANE CONFIRMATION AGREEMENT**

This confirmation agreement (“Confirmation”) confirms the transaction (“Transaction”) between Pacific Gas and Electric Company, a California corporation, but limited for all purposes hereunder to its electric procurement and electric fuels functions (“Buyer” or “PG&E”), and [***Seller to insert its full name, place of formation and type of entity***] (“Seller”), each individually a “Party” and together the “Parties”, dated as of the Execution Date, for the sale and purchase of the Product defined herein.

Except as otherwise expressly stated herein, this Confirmation is subject to, and incorporates by reference with the same force and effect as if set forth herein, all of the terms and provisions of the NAESB Base Contract (defined below) and NAESB Special Provisions (defined below). The NAESB Base Contract, NAESB Special Provisions and this Confirmation shall be referred to collectively herein as the “Contract”.

Capitalized terms used but not defined in this Confirmation shall have the meanings ascribed to them in the NAESB Base Contract and NAESB Special Provisions (collectively the “NAESB Contract”). If there is a conflict between the terms in this Confirmation and those in the NAESB Contract, this Confirmation shall control.

1. Definitions.
	* 1. Annual Contract Quantity” means the sum of the applicable Monthly Contract Quantity for the calendar year, additionally set forth in Appendix 2. ***[PG&E note: numbers should add up.]***
		2. "Annual Verification” means the annual process described in the CARB Mandatory Reporting Regulations during which verifiers confirm that biomass fuels reported as exempt meet all applicable requirements of the Cap-and-Trade Regulation and Mandatory Reporting Regulations and are therefore correctly reported as exempt.
		3. “Approval Deadline” means July 1, 2020 as the deadline for receipt or waiver of both the CPUC Approval or Bankruptcy Court Approval of the Biomethane Transaction and the executed contracts from the DGEMS phase of Buyer’s 2019 System Reliability RFO; [***PG&E note: still evaluating this date***]
		4. “Bankruptcy Court Approval” means the Bankruptcy Court has entered an order (which order has become final and non-appealable), granting P G&E’s motion for approval of the Transaction and approving and authorizing the Transaction, subject to CPUC Approval;
		5. “Biomethane” means pipeline quality biomethane (measured in MMBtus) that is capable of receiving a positive emissions data verification statement which determines it to be exempt from Cap and Trade compliance obligations pursuant to the CARB Cap and Trade and Mandatory Reporting Regulations., including all credits associated with such Biomethane;
		6. Biomethane Adder is the $/ MMBtu adder set forth in Section XX for Biomethane which has received or is capable of receiving a positive emissions data verification statement.
		7. “CARB” means the California Air Resource Board or its successor body;
		8. “CEC” means the California Energy Commission or its successor agency;
		9. “Confirmation Term” means the term of this Confirmation, which begins on the Effective Date and continues until the date which is 90 days after the final positive emissions data verification statement delivery of Biomethane delivered during the Delivery Period, unless the Transaction is earlier terminated by the Parties prior to any delivery of Product, in which case the Confirmation Term will end on the date of termination;
		10. “Contract” means, collectively and taken together, all terms, documents, attachments and incorporated references in and constituting the NAESB Base Contract, NAESB Special Provisions and this Confirmation;
		11. “Monthly Contract Quantity” means the monthly increments of Biomethane set forth in the Appendix 2 for the Delivery Period;
		12. “Contract Price” means the price (in U.S. dollars) per MMBtu that Buyer will pay to Seller for delivered Biomethane pursuant to the Confirmation as specified in Section XX;
		13. “CPUC Approval” means a final and non-appealable order or decision of the CPUC, without conditions or modifications unacceptable to either of the Parties, which approves the Transaction in its entirety, including the terms of the Confirmation and payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Transaction.
			1. CPUC Approval will be deemed to have occurred on the date that a CPUC order or decision containing such findings becomes final and non-appealable;
			2. For the purpose of this Confirmation, a CPUC Energy Division disposition which contains such findings, or deems approved an advice letter requesting such findings, shall be deemed to satisfy the CPUC decision requirement set forth above;
		14. “Delivery End Date” means the date on which the final delivery in the Delivery Period is completed except where Buyer terminates the Confirmation or deliveries, in which case the Delivery End Date shall be the date of termination of the Confirmation or deliveries;
		15. “Delivery Period” means the continuous ten-year period between the Expected Delivery Start Date and the Delivery End Date unless Buyer terminates deliveries because of an Event of Default or Force Majeure.
		16. “Delivery Point” means PG&E Citygate;
		17. “Delivery Start Date” means the date on which Seller begins deliveries of Biomethane to Buyer under the terms of this Confirmation, which shall be the later to occur of (i) the first day of the month directly following the Effective Date or (ii) the Expected Delivery Start Date on which Seller begins;
		18. “Effective Date” means the date that all Conditions Precedent are satisfied or waived by one or both of the Parties;
		19. “Execution Date” shall mean the date on which the last Party has executed this Confirmation;
		20. “Expected Delivery Start Date” means the date on which Seller expects to make its first delivery of Biomethane to the Buyer at the Delivery Point pursuant to the terms of this Confirmation;
		21. “Final Verified Quantity” means the Biomethane that receives positive verification during the Annual Verification and is accepted by the ARB as exempt Biomethane with no compliance obligations under the Cap and Trade program.
		22. “Gas Index” or the ”NGI Bidweek Index” means the volume weighted average price during the last 5 business days of the month (Bidweek) for gas to be delivered for the entire following month at the PG&E Citygate Delivery Point as published in Natural Gas Intelligence Bidweek Survey, or any successor thereto, for the applicable calendar month during the Delivery Period;
		23. “Government Action” means a California or federal law promulgated or California state action requiring that compliance is taken, in each case before or after the Confirmation Effective Date of any Confirmation, by a Governmental Authority, that (i) was not in effect on the date the Transaction was entered into by the Parties, or (ii) was not imposed on the Transaction at the time the Parties agreed to the Transaction;
		24. “Government Authority” means any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority;
		25. “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the use of Biomethane and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere ; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits;
		26. “Interim Unverified Quantity” means the Scheduled Quantity minus the Interim Verified Quantity.
		27. “Interim Verified Quantity” means the Biomethane delivered in a calendar month for which Seller provides verification documentation (attestation, affidavit, pipeline injection statements that detail the actual volume and heat content) to prove that Product is Biomethane.
		28. “Meter” means a natural gas meter suitable in size and reliability for the Project, including all necessary related gauges and accessories as generally adopted and used in the natural gas business;
		29. “NAESB Base Contract” means the North American Energy Standards Board (“NAESB”) Base Contract for the Sale and Purchase of Natural Gas, as amended, between the Parties to the Transaction;
		30. “NAESB Special Provisions” means Special Provisions to the NAESB Base Contract;
		31. “Product” means and consist of Biomethane, as applicable, RPS Eligible Biomethane, and any and all Green Attributes, credits, benefits, emissions reductions, offsets, reporting rights and allowances attributable to the production of Biomethane and its displacement of conventional fuel sources used to generate electricity;
		32. “Project” means the Biomethane production facility described in Appendix 1, below, including all units, together with all appurtenant facilities and equipment, including any control and communications systems, necessary to deliver the Biomethane to Buyer;
		33. “RPS” or the “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time; and
		34. “RPS Eligible Biomethane” means Biomethane which additionally meets the requirements of theCEC’s RPS Eligibility Guidebook, Ninth Edition Revised (or latest edition) regulations, including all credits associated with such Biomethane;
		35. “Scheduled Quantity” means the amount of Biomethane to be delivered ratably through pipeline nominations to the Delivery Point in a calendar month from the Projects;
2. Project.
	* 1. All Product sold hereunder shall be generated by the Projects as specified in Appendix 1. Seller may amend Appendix 1 to deliver Biomethane from additional Projects, provided that Seller provides Notice with verification that such Project is capable of providing Product prior to ten business days of delivering from such Project.
		2. Each Party will promptly notify the other Party if any Project subject to this Transaction is no longer able to provide Biomethane. Seller may deliver Biomethane from another Project.
3. The following provisions 3.1.1 and 3.1.2 shall replace Section 3.1 under the NAESB Base Contract in its entirety for only this Confirmation:

3.1.1 Performance Obligation.

Seller agrees to sell and deliver to the Delivery Point, and Buyer agrees to receive and purchase, the Contract Quantity of Product from the Projects.

Seller agrees that the Biomethane delivered to Buyer at the Delivery Point will meet the requirements of exempt Biomethane pursuant to the CARB Cap and Trade regulations.

Seller agrees to take all action such that Biomethane delivered receives a positive verification during the Annual Verification and is accepted by the ARB as exempt Biomethane with no compliance obligations under the Cap and Trade program

Buyer and Seller acknowledge and agree that Buyer, as permitted by existing law and regulation, will have exclusive rights to offer, bid, or otherwise submit all or a portion of the Product for resale, assignment, transfer or exchange, and Buyer is entitled to receive and retain any and all related revenues, credits and interest derived from any disposition of Product as permitted by law.

Further, Seller will enable Buyer, Buyer’s designee, or the owner/operator of a related gas-fired facility or electric generator to claim the Biomethane for purposes of compliance with the Cap and Trade program and generate a Renewable Energy Credit.

Seller agrees to take all commercially reasonable actions to enable Buyer to use, monetize or resell the Product.

Seller acknowledges that certain Government Authorities may require Buyer to deliver information or comply with regulations related to the Transaction including reporting, registering, tracking, allocating for or accounting for Product. Seller agrees, within ten (10) Business Days following Buyer’s Notice, to take all commercially reasonable actions and execute or provide (or cause to be executed or provided) any and all documents, accounting, information or instruments with respect to the generation of Product from the Project reasonably necessary (i) to permit Buyer to comply with such requirements; and/or (ii) to allow Buyer to manage its obligations pursuant to this Transaction or applicable Law.

 3.1.2 Additional Performance Obligations for RPS Eligible Biomethane [***PG&E note: language regarding Buyer and Seller understanding about the amount of Product from Projects B and C.]***

* + 1. For Projects in California, in addition to being Biomethane, Product will be RPS Eligible Biomethane.
		2. Seller will take commercially reasonable actions to efforts to cooperate with any reasonable request of Buyer to enable Buyer or Buyer’s third-party designee to claim the Green Attributes and generate a Renewable Energy Credit.
1. Contract Quantity.

On a calendar year basis during the Delivery Period, Seller shall deliver to Buyer at the Delivery Point the Annual Contract Quantity for the applicable calendar Year as designated in Appendix 2. On a monthly basis, Seller shall deliver the Scheduled Quantity as described below in Section XX.

1. Quantity Notification & Delivery Obligation.

During the Delivery Period, two business days before the start of the calendar month, Seller will Notify Buyer of the Scheduled Quantity for the calendar month, which Scheduled Quantity may be between 75% to 125% of the applicable Monthly Contract Quantity.

Seller shall deliver ratably over the month the Scheduled Quantity for the applicable month to Buyer at the Delivery Point.

Upon such notification, Seller’s obligation to deliver the Biomethane pursuant to the notification becomes a Firm obligation as defined in Section 2.19 of the NAESB Base Contract.

If, having notified Buyer, Seller fails to deliver the quantity of Biomethane scheduled for delivery on the particular day, Seller shall be fully liable to Buyer for the amount of any costs to Buyer for pipeline noncompliance charges that result, in whole or in part, from Seller’s failure to deliver, in addition to all Claims as described in Section 8 of the NAESB Base Contract.

The Parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Transportation and nomination activities are governed by Section 4.1-3 of the NAESB Base Contract.

1. Delivery Point.
	* 1. Seller shall deliver Biomethane to Buyer at the Delivery Point. Buyer shall take title and risk of loss of the Biomethane at the Delivery Point.
		2. Seller shall be solely responsible for all transportation-related pipeline charges for the transportation of the Biomethane from the Project to the Delivery Point.
2. Metering.

Seller shall ensure that a pipeline quality Meter is installed at each Project to measure the amount of Biomethane produced at the Project. Seller shall provide the production Meter data to Buyer pursuant to a format and schedule to be established by Buyer and Seller and as Buyer may reasonably request. Production Meter data as described in this paragraph is subject to Buyer’s right to examine, audit and obtain copies under Section 7.6 of the NAESB Base Contract as modified for purposes of this Confirmation.

1. Verification and Annual True-up.
	1. Only Final Verified Quantity will count towards deliveries of Annual Contract Quantity for the purposes of calculating Events of Default or Force Majeure termination rights.
	2. To the extent that Seller delivered Interim Unverified Quantity in any calendar month, Seller may provide documentation during the Annual Verification process such that the Interim Unverified Quantity may receive a positive verification statement.
	3. If during the verification process, only for any Interim Unverified Quantity that receives a positive verification statement and becomes Final Verified Quantity, Buyer will remit payment for this Interim Unverified Quantity multiplied by the Biomethane Adder in accordance with Section 7.2 of the Base Contract.
	4. If Product for which Buyer has paid the Biomethane Adder does not qualify as Final Verified Quantity, Seller shall remit payment to Buyer for this amount multiplied by the Biomethane Adder in accordance with Section 7.2 of the Base Contract. Such quantity will not be considered part of the Annual Contract Quantity for purposes of determining an Event of Default or Termination event. If Seller does not remit payment by ten business days after invoiced, Buyer has the right to draw down collateral.
2. Delivery Period.

Delivery of Product shall occur during the Delivery Period, which shall be for a period of ten (10) years, beginning on the Expected Delivery Start Date, which is **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][Seller to designate]** and ending on the Delivery End Date. Seller shall complete all deliveries by **[\*] [Seller to designate]**, theDelivery End Date**,** unless the Transaction is earlier terminated by the Parties. The Delivery Period shall be no longer than 120 consecutive months from the Delivery Start Date.

1. Confirmation Term.
	1. Delete the second sentence of Section 12 of the NAESB Base Contract and replace it with the following for only this Confirmation:

“The rights of either Party pursuant to: (i) Articles 7, 10, 13 and 15 (ii) Waiver of Jury Trial provisions (if applicable), (iii) Arbitration provisions (if applicable), (iv) the obligations to make payment hereunder, and (v) the obligation of either Party to indemnify the other pursuant hereto, shall survive the termination of the Base Contract, and any transaction.”

* 1. Seller’s obligations under this Confirmation for regulatory compliance, and confidentiality as described in Section 15.10 of the NAESB Base Contract as modified for this Confirmation shall survive the separate or collective termination of this Transaction, the Confirmation and the Confirmation Term.
1. Contract Price and Remittance.
	* 1. The Contract Price per MMBtu of Biomethane is equal to the Gas Index plus the Biomethane Adder.
		2. The Biomethane Adder is US$ \_\_\_/ MMBtu
		3. For each calendar month during the Delivery Period that Seller delivers to Buyer Biomethane, Buyer shall pay Seller a monthly payment calculated as the sum of:
			1. Interim Verified Quantity \* Contract Price; and
			2. Interim Unverified Quantity \* Gas Index
		4. Buyer will not pay Seller the Biomethane Adder for deliveries above the Annual Contract Quantity in each calendar year.
		5. Buyer will remit payment on or before the later of the Payment Date or 10 business days after receipt of invoice by Buyer and Seller has provided documentation supporting Interim Verified Quantity. If Seller has not provided such documentation with Seller’s invoice, then such Scheduled Quantity will be Interim Unverified Quantity.
		6. Buyer will remit payment according to Section 7.2 of the NAESB Base Contract.
		7. Delete Section 7.4 of the NAESB Base Contract in its entirety and replace it with the following for only this Confirmation:

7.4. If the invoiced Party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced Party will pay such disputed amount into an escrow, trust or other account which will provide the other Party reasonable assurance that the amounts can be paid upon resolution of the dispute. Within ten (10) Days of the original Payment Date of the disputed amount, the Party disputing the amount shall provide the other Party with details of its dispute and any supporting documentation available. If the Parties are unable to resolve the dispute within ten (10) Days of delivery and receipt of such supporting documentation, the Parties shall use the negotiation process set forth in Section 23 of the Confirmation, and if that process fails to reach resolution, the Parties shall engage in the arbitration process set forth in Section 23 of the Confirmation.

* + 1. In Section 7.7 of the NAESB Base Contract, add the following after the words “subject to netting under this Section” at the end of the first sentence, only for this Confirmation:

“provided further, however, that the Party due payment under Section 7.3 may net all undisputed sums due thereunder against any amounts payable by it when making payments under Section 7.”

1. Conditions Precedent.
	1. All the Parties’ obligations except for the Parties’ confidentiality obligations under Section 15.10 of the NAESB Base Contract as modified for this Confirmation, are conditioned upon the following:
		* 1. Seller shall have provided written evidence in a form reasonably satisfactory to Buyer that:
				1. Each Project meets or will meet the requirements as set forth in the CARB Cap and Trade regulations to be able to be qualified to deliver Biomethane;
				2. Biomethane to be delivered to Buyer from each Project meets or will meet the Gas Quality specifications set forth in PG&E’s gas tariffs then on file with the CPUC;
				3. Seller has an Operating Balance Agreement with the interconnecting pipeline connected to its Project, and
				4. Seller can deliver Biomethane to a Delivery Point pool account;
			2. CPUC Approval has been obtained; and
			3. Bankruptcy Court Approval has been obtained.

The CPUC Approval, Bankruptcy Court Approval and Seller’s conditions in paragraph (a) above shall collectively constitute the Conditions Precedent. The Confirmation, Transaction and Confirmation Term hereunder, shall terminate as described below and in Section 23 of this Confirmation in the event of a failure to satisfy the Conditions Precedent. Termination because of (1) a failure to satisfy the Conditions Precedent or (2) an early termination of the Transaction shall also terminate all of the Parties’ obligations under the Confirmation as of the transaction termination date, except for the confidentiality obligations described above in Section 15.10 of the NAESB Base Contract.

* + 1. Buyer shall have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve the Transaction, or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Notwithstanding anything to the contrary in the Agreement, Buyer shall not have any obligation or liability to Seller or any third party for any action or inaction of the CPUC, Bankruptcy Court or other Governmental Authority affecting the approval or status of this Transaction.
		2. In the event that (i) the CPUC or Bankruptcy Court issues a final and non-appealable order not approving this Transaction in its entirety, or (ii) the CPUC or Bankruptcy Court issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, then either Party may, in its sole discretion, elect to terminate this Agreement upon Notice to the other Party.
		3. Buyer shall provide Seller with Notice of the CPUC Approval and the Bankruptcy Court Approval (collectively, the “Approvals”). If either the (i) CPUC Approval (ii) Bankruptcy Court Approval, or (iii) the executed contracts from the DGEMS phase of Buyer’s 2019 System Reliability RFO has not been received or waived by the Approval Deadline, then either Party may terminate this Transaction upon notice to the other Party; provided that a Party’s right to terminate for failure to satisfy or waive the Approvals must be exercised within thirty (30) days from the Approval Deadline.
1. Seller’s Representations, Warranties and Covenants.

Seller, and, if applicable, its successors, represents and warrants that throughout the Confirmation Term:

* + 1. Each Project meets the requirements set forth in the CARB Cap and Trade regulations for Biomethane;
		2. Biomethane to be delivered to Buyer from the Project meets the Gas Quality specifications set forth in PG&E’s gas tariffs then on file with the CPUC, and all pipeline specifications for the connected pipeline, if applicable;
		3. All documentation provided for Interim Verified Quantity and Final Verified Quantity is true to best of Seller’s knowledge.
		4. Seller warrants that it has not delivered or attempted to deliver Product or any attribute of Product to another buyer.
1. Commodity Trade-Option Representations.

To the extent that this Transaction (alone or combined with related transactions) is deemed by either Party or by the Commodity Futures Trading Commission (“CFTC”) to be a commodity trade option under part 32 of the CFTC’s regulations (including certain forward transactions with volumetric optionality that are not excluded from the definition of “swap”): The seller of the option represents to the buyer of the option that in connection with this Transaction, the seller of the option is either (i) an eligible contract participant as defined in Section 1a(18) of the Commodity Exchange Act (“Act”), as further jointly defined or interpreted by the CFTC and the Securities Exchange Commission or expanded by the CFTC pursuant to Section 1a(18)(C) of the Act (an “ECP”), or (ii) a producer, processor, commercial user of or a merchant handling the commodity that is the subject of this Transaction, or the products or byproducts thereof, and is offering or entering into this Transaction solely for purposes related to its business as such. The buyer of the option represents to the seller of the option that in connection with this Transaction the buyer of the option is a producer, processor, commercial user of or a merchant handling the commodity that is the subject of this Transaction or the products or by-products thereof and is offering or entering into this Transaction solely for purposes related to its business as such. Both parties hereby confirm to each other that this Transaction is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt commodity for immediate or deferred delivery.

1. Regulatory Certifications.
	* 1. Buyer and Seller shall cooperate in order for the Parties to meet their respective obligations pursuant to this Transaction for Biomethane from the Project to be verified as Biomethane and, as applicable, RPS Eligible Biomethane, and for Buyer to obtain and use all benefits, credits and other attributes from the Product and Project and to comply with applicable law and regulations. Such cooperation shall include, but not be limited to, cooperating in any authorized audit or inspection, and producing reports, verifications and confirmations as allowed or mandated by law or regulation.
		2. Seller shall have the primary responsibility of bearing all associated regulatory costs associates with this Transaction related to the generation of \_\_\_\_\_\_ credits.
2. Further Assurances
	* 1. Each Party will provide the other Party with such cooperation, additional documentation, certifications or other information as may be reasonably necessary to carry out the purposes of this Confirmation (including pursuant to any audit of this Confirmation by an independent third-party verifier accredited by the CARB Mandatory Reporting Regulation.
		2. Buyer and Seller each acknowledge and agree that notwithstanding the use of any authorized agents to perform its obligations hereunder, Buyer and Seller shall remain responsible as to the other with respect to any and all obligations set forth in this Confirmation of either Buyer or Seller to provide information, data, documentation or other cooperation to the other Party. Any authorized agents or contractors shall also be covered by a non-disclosure agreement with the principal Party, proof of which must be provided to Buyer or Seller before providing data, documentation or other cooperation.
3. Events of Default.

The following constitute Events of Default under Section 10.2 of the NAESB Base Contract, and could result in termination of the Transaction as described in Section XX below:

* + 1. The Final Verified Quantity applicable to a calendar year is less than 80% of the Annual Contract Quantity applicable to that calendar year.
		2. Seller delivers or attempts to deliver Product or any attribute of Product to another buyer.
		3. This Confirmation may be terminated by either Party if an Event of Default under Section 10.2 of the NAESB Base Contract continues for longer than thirty (30) consecutive days. Termination under this provision will be with immediate effect with regard to the terminating Party’s obligations under the Confirmation upon the terminating Party’s providing prior written Notice to the defaulting Party, subject to the provisions in Section 10.3 of the NAESB Base Contract.
		4. This Confirmation may be terminated by either Party upon the occurrence of a material breach of the Confirmation or the Base Contract other than an Event of Default that is not cured within thirty (30) days of the breaching Party receiving written Notice of such breach, subject to the provisions in Section 10.3 of the NAESB Base Contract.
		5. Notwithstanding anything to the contrary contained in the Contract with respect to Buyer, Seller acknowledges and agrees that (i) Buyer’s representations and warranties are made subject to the provisions of the Bankruptcy Code and any order of the Bankruptcy Court; and (ii) until Buyer’s exit from the Chapter 11 Cases has occurred, the existence or continuation of Buyer being Bankrupt is not an Event of Default with respect to Buyer under this Transaction and does not entitle Seller to terminate this Transaction solely because of such existence or continuation.
1. Event of Default Termination Payment.
	* 1. In an Event of Default, the Non-Defaulting Party has the right to terminate this Transaction, whereby the Defaulting Party will owe the Non-Defaulting Party an Early Termination Payment as described in and governed by Section 10.3.1 of the NAESB Base Contract.
		2. The Early Termination Payment shall be calculated in a commercially reasonable manner for the replacement of the remaining Annual Contract Quantity and Monthly Contract Quantity, including any and all credits, benefits, emissions reductions, offsets, reporting rights and allowances attributable to the production of Biomethane and its displacement of conventional fuel sources used to generate electricity.
		3. The Early Termination Payment will also include the Biomethane Adder for any Scheduled Quantity that is not Final Verified Quantity.
2. Force Majeure Event and Termination Right.
	* 1. Add the following after Section 11.6 of the NAESB Base Contract for only this Confirmation:

11.6.1 Force Majeure Mitigation. The suspension of a Party’s performance under the Transaction due to a claim of Force Majeure must be of no greater length of time than the time period of the delay caused by the Force Majeure Event. A Party suspending performance due to a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to avoid, or abate, or otherwise to mitigate, in all material respects, the effects of such event of Force Majeure. The Parties shall take all reasonable steps to resume normal performance under this Transaction after the cessation of any Force Majeure event.

11.6.2 Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Confirmation after the occurrence of the following:

(i) If the Final Verified Quantity applicable to a calendar year is less than 60% of the Annual Contract Quantity applicable to that calendar year because of a Force Majeure Event.; or

 (ii) a majority of Projects (defined by expected Biomethane volume from each Project) are destroyed or rendered inoperable for any part of the Delivery Period by a Force Majeure Event caused by a catastrophic natural disaster.

Add the following as Section 11.7 under the NAESB Base Contract:

11.7 Seller shall not be entitled to claim Force Majeure under this Confirmation as an excuse for its performance to the extent that Seller cannot produce credible evidence showing that a Force Majeure Event was the primary cause of Seller’s failure to perform its obligations under this Confirmation.

1. Termination of Transaction,
	* 1. This Transaction may be terminated by Buyer upon written Notice to Seller in the event that any Conditions Precedent remain unsatisfied and not waived 30 days after the Expected Delivery Start Date. Any termination of the Transaction properly exercised by a Party with regard to the Conditions Precedent shall be without liability, penalty, or obligation, except for the Parties’ confidentiality obligations. Such Notice shall become effective one (1) business day after its provision.
		2. If Seller has an Event of Default or Force Majeure event, Buyer may terminate receiving deliveries or paying for the Biomethane adder for deliveries which are already scheduled.
		3. This Confirmation may be terminated by Buyer upon twenty days prior written Notice to Seller for an Event of Default.
		4. This Confirmation may be terminated by Buyer for certain failures of performance due to a Force Majeure Event, as more fully described in Section 19 of this Confirmation.
2. Termination of Transaction – General.
	* 1. Notwithstanding anything in the preceding “Termination of Transaction” sections, the obligations of either Party to make payment or cooperate with verification hereunder or with respect to any Transactions entered into prior to the effective date of such termination, including any related adjustments, shall survive the termination of this Transaction.
		2. The termination of a different transaction or agreement between Buyer and Seller, in whole or in part, shall not operate as a termination of any part of the Transaction, Confirmation or Confirmation Term, nor shall it cancel or excuse any performance, obligations or liabilities specified in the Confirmation.

1. Safety. Seller will be required to meet all safety standards associated with the production and delivery of Biomethane for this Transaction.
2. Delete the last paragraph of Section 15.10 of the NAESB Base Contract and replace it with the following, only for this Confirmation:

15.10 Confidentiality.

(a) Seller acknowledges that Buyer is currently a party to proceedings before the U.S. Bankruptcy Court (Bankruptcy Case Nos. 19-30088(DM) and 19-30089(DM). Seller acknowledges further that Buyer may disclose all or any portion of the Contract to the CPUC and U.S. Bankruptcy Court in connection with any proceeding or process held relating to the Contract, including proceedings or processes to obtain CPUC Approval and Bankruptcy Court Approval of the Contract and/or Confirmation.

(b) Buyer and Seller may disclose the following information regarding this Confirmation, without prior Notice or consent of the other Party:

(i) Party names;

(ii) Resource(s);

(iii) Confirmation Term;

(iv) Project name, location(s), and information in Appendix A;

(v) Capacity of each facility designated as the Project;

(vi) The fact that a facility designated as the Project is on-line and delivering;

(vii) Delivery Point;

viii) The quantity of Product expected or actually delivered under this Confirmation; and

(c) The Parties agree that the Contract documents may be shared on a confidential basis, without prior Notice or consent of the other Party, with the Parties’ counsel and advisors, the United States Trustee for the Northern District of California, and on a confidential professional–eyes-only-basis with counsel and advisors engaged by any official committee of creditors appointed by the United States Trustee for the Northern District of California pursuant to section 1102(a)(1) of the Bankruptcy Code.

(d) Each Party shall provide prior Notice to the other Party of disclosure of confidential information of such other Party for purposes of compliance with any applicable regulation, rule, or order of the CPUC, Federal Energy Regulatory Commission, CEC, the Bankruptcy Court, or other Governmental Authorities.

1. Dispute Resolution.
	* 1. The following shall be the exclusive process for resolving disputes arising between the Parties regarding or relating to the Confirmation or Transaction. The Parties shall first seek to resolve the dispute by negotiations between senior executives who have authority to settle the controversy. Either Party may initiate this negotiation process by written notice to the other Party outlining that Party’s position regarding the dispute (“Negotiation Notice”). The senior executives shall meet at a mutually acceptable time and place within fifteen (15) Business Days after the date of the Negotiation Notice to exchange relevant information concerning the dispute and to attempt to resolve the dispute. If a senior executive intends to be accompanied at a meeting by an attorney, the other Party’s senior executive shall be given at least three Business Days’ Notice of such intention and may also be accompanied by an attorney. All negotiations are confidential and shall be treated as compromise and settlement negotiations under the Federal Rules of Evidence or any similar applicable rules of evidence.
		2. If negotiations as described above are unsuccessful, a Party may submit the dispute to binding arbitration before the JAMS tribunal in Palo Alto, California, by providing the other Party with written notice, by certified mail return receipt requested, initiating arbitration. The notice shall set forth the nature of the dispute, the support for the Party’s position, and a proposed arbitrator (“Arbitration Notice”).
		3. Within ten (10) Business Days of receipt of the Arbitration Notice, the Parties shall attempt to agree upon a single neutral arbitrator. In the event the Parties are unable to agree upon a single neutral arbitrator within that period, within ten (10) Business Days of the Arbitration Notice each Party shall select an arbitrator and notify the other Party of such selection. Within ten (10) Business Days following their selection, the two (2) arbitrators shall select a third neutral arbitrator who shall have no prior affiliation or representation of either Party, or if such arbitrators fail to select a third arbitrator within such time period, the JAMS shall select the third arbitrator and the time for that process will be extended as necessary to accommodate JAMS. Unless mutually agreed otherwise, the Parties will direct JAMS to select an arbitrator with the experience and expertise specified in the following paragraph. Where there are three (3) arbitrators, all decisions of the arbitrators will be by simple majority. The arbitrator(s) may extend the foregoing time deadlines in their reasonable discretion keeping in mind that the Parties’ intention is to have the dispute resolved expeditiously.
		4. The arbitration shall be governed by the Federal Arbitration Act (9 U.S.C., Section 1, et seq) and conducted in accordance with the Commercial Arbitration Rules of the JAMS (“JAMS Rules”). All arbitrators shall be, and always remain , wholly impartial and shall decide the case impartially. All arbitrators shall make the disclosures required by the JAMS Rules. No arbitrator shall have any financial interest (directly or indirectly) in the dispute or any financial dependence (directly or indirectly) upon or an interest in any of the Parties (other than de minimus common stock ownership in the ultimate parent company of such Seller). All arbitrators shall be knowledgeable of the natural gas business and have the relevant experience.
		5. The validity, construction, and interpretation of this covenant to arbitrate, and all procedural aspects, including time deadlines or extensions of time deadlines, of the arbitration conducted pursuant hereto shall be decided by the arbitrator(s). The Parties shall be entitled to appropriate discovery in the arbitration proceeding, which may also be used to revise the Parties positions prior to submitting the final version of the final settlement amount calculations for decision by the arbitrators. It is the intent of the Parties that the arbitrator(s) shall, if practicable, render a final decision within forty-five (45) days after agreement on the single arbitrator or the appointment of a third arbitrator, as the case may be. The arbitration proceeding shall be conducted at a location to be mutually agreed upon, or if not mutually agreed to, at the location specified by the arbitrator(s). The arbitrator(s) are authorized, if they consider it appropriate, to decide any disputes by summary disposition on the documents and written testimony without hearing oral testimony. Prior to rendering the final award, the arbitrators shall submit to the Parties an unsigned draft of the proposed award and each Party, within ten (10) Business days after receipt of such draft decision, may serve on the other Party and file with the arbitrator(s) a written statement commenting upon any alleged errors of fact, law, computation, or otherwise. The arbitrator(s) shall render a final binding award within ten (10) Business Days after the receipt of the later of the written statements of the Parties.
		6. Each of the Parties will bear their own costs of the arbitration, but the costs of the arbitrator(s), facilities, hearing and any other charges of JAMS will be shared equally. Penal, punitive, treble, multiple, consequential, incidental or similar damages may not be recovered or awarded, and any such limitation on any and all such damages shall survive termination of the Contract.
		7. The Parties and the arbitrator shall maintain the arbitration and the award resulting from the arbitration in confidence to the fullest extent possible allowed by law.
		8. The Parties agree that judgment on an arbitration decision and award may be entered by any court of competent jurisdiction, and that all arbitration decisions and awards shall be enforceable under the Federal Arbitration Act and any other applicable federal or state law governing the enforcement of such decisions and awards. Any right to appeal from, or to cause judicial review of, any arbitration decision and award shall be subject to and limited by the provisions concerning appeals set forth in the Federal Arbitration Act. If a Party files a complaint in any court with respect to any matter subject to arbitration hereunder, the defendant in such court action shall be entitled to recover its reasonable attorneys’ fees in connection with the court action.

Delete Section 14 in its entirety.

1. Add the following after Section 7.6 under the NAESB Base Contract:

7.6.1 Right to Audit.

For the avoidance of doubt, Buyer will have the right to audit Seller’s records and calculations supporting the generation and verification of Biomethane.

1. The following provision shall replace Section 10.7 under the NAESB Base Contract only or this Confirmation:

10.7 Collateral Requirements for the Delivery of Biomethane.

(a) For purposes of calculating the Seller’s collateral requirements of this Confirmation, the Net Settlement Amount described in Section 10.3.2 of the NAESB Base Contract shall be five (5) percent of the three (3) highest consecutive calendar years of expected annual payments during the Delivery Period. This shall be calculated using the product of (A) and (B), summed for the calendar year, where (A) and (B) are: :

-(A) Monthly Contract Quantity

(B) the sum of the PG&E Citygate forward price (Nymex settle plus PG&E Citygate Basis settle) for the applicable month plus the Biomethane Adder.

 (b) Notwithstanding anything to the contrary governed by Section 10.1 of the NAESB Base Contract, Buyer shall not be required to post collateral to Seller.

1. Assignment.

Neither Seller nor Buyer shall assign this Transaction, in whole, or in part, without the prior written consent of the non-assigning party (and shall not relieve the assignor from liability under the Transaction), which consent will not be unreasonably delayed, or withheld; provided that the non-assigning party agrees to provide its consent so long as (a) the assignee assumes all of the assignor’s obligations and liabilities, including its qualification requirements, and payment and performance obligations under the Transaction, (b) the assignee agrees in writing to be bound by the terms, conditions, representations and warranties of the Transaction, and (c) regarding assignment by Seller, the Seller delivers evidence satisfactory to Buyer of the proposed assignee’s technical and financial capability to fulfill Sellers obligations under the Transaction.

*Seller shall not assign the Contract, in whole, or in part, without the prior written consent of Buyer (and such assignment shall not relieve Seller from liability under the Contract), which consent will not be unreasonably delayed, or withheld so long as, among other things, (a) the assignee assumes all of Seller’s obligations and liabilities, including its qualification requirements, and payment and performance obligations under the Contract; (b) the assignee agrees in writing to be bound by the terms, conditions, representations and warranties of the Contract; and (c) the transferring Party delivers evidence satisfactory to Buyer of the proposed assignee’s technical and financial capability to fulfill Seller’s obligations under the Contract. Buyer may assign the Contract, or any part of it, including this Confirmation, at any time, for any reason without Seller’s approval. Buyer shall provide notice of assignment to Seller within thirty (30) days of the effective date of assignment of any portion of the Contract.*

1. Miscellaneous.
	* 1. The following provision shall replace Section 15.3 of the NAESB Base Contract in its entirety only for this Confirmation:

15.3 Waiver. No waiver of any breach of this Contract, or delay, failure or refusal to exercise or enforce any rights under this Contract, shall be held to be a waiver of any other or subsequent breach, or be construed as a waiver of any such right then existing or arising in the future.”

* + 1. The following provision shall replace Section 15.5 of the NAESB Base Contract in its entirety only for this Confirmation:

15.5 Governing Law. The interpretation and performance of the Confirmation shall be governed by the laws of the State of California without regard to principles of conflict of laws. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Contract.

* + 1. Add the following as Section 15.14 under the NAESB Base Contract only for this Confirmation:

15.14. Joint Efforts. This Contract shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed.

* + 1. Add the following as Section 15.15 under the NAESB Base Contract:

15.15. Independence of the Parties. Each Party will be deemed to represent to the other Party each time a transaction is entered into that: (i) it is acting for its own account, and it has made its own independent decisions to enter that transaction and as to whether that transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (ii) it is not relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into that transaction; it being understood that information and explanations related to the terms and conditions of a transaction shall not be considered investment advice or a recommendation to enter into that transaction; (iii) no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of that transaction; (iv) it is capable of assessing the merits (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that transaction; (v) it is capable of assuming, and assumes, the risks of that transaction; and (vi) the other Party is not acting as a fiduciary for, or an advisor to, it in respect of that transaction.

(e) Add the following as Section 15.16 under the NAESB Base Contract for only this Confirmation:

 15.16. WAIVER OF RIGHTS: SELLER AND BUYER (A) CERTIFY THAT THEY ARE NOT “CONSUMERS” WITHIN THE MEANING OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SUBCHAPTER E OF CHAPTER 17, SECTIONS 17.41 ET SEQ., AS AMENDED (THE “DTPA”), A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS, AND (B) EACH WAIVES ITS RIGHTS UNDER THE DTPA. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, EACH PARTY VOLUNTARILY CONSENTS TO THIS WAIVER. BY THIS PROVISION, EACH PARTY INTENDS TO WAIVE ANY RIGHT TO SUE UNDER THE DTPA FOR ANY CLAIM ARISING FROM OR RELATING IN ANY WAY TO THIS CONTRACT, INCLUDING BUT NOT LIMITED TO THE NEGOTIATION, PERFORMANCE OR BREACH OF THE CONTRACT. THIS WAIVER IS IN ADDITION TO ANY OTHER DEFENSE THAT EITHER PARTY MAY HAVE TO A DTPA CLAIM, INCLUDING BUT NOT LIMITED TO A DEFENSE THAT THE PARTIES ARE NOT "CONSUMERS" WITHIN THE MEANING OF THE STATUTE OR THAT THE CLAIM IS SUBJECT TO THE EXEMPTIONS ENUMERATED IN THE STATUTE.

ACCEPTED AND AGREED:

|  |  |
| --- | --- |
| **[Seller]** | PACIFIC GAS AND ELECTRIC COMPANY, a California corporation |
|   |   |
| Name:  | Name:  |
| Title:  | Title:  |
| Date:  | Date:  |

Appendix 1 ***[Seller to provide for each Project.]***

Project Name: **[•] [Seller to designate]**

Project Location (Lat/Long, city, state): **[•] [Seller to designate]**

Feedstock for production of Biomethane: **[•] [Seller to designate, e.g., biomass, landfill, wastewater treatment, dairy, municipal solid waste]**

Production Process: **[•] [Seller to designate, e.g., anaerobic decomposition, or constructed reactor digester]**

Point of Pipeline Interconnection:

Basis for the Project to be Exempt (How the project meets requirements of 95852.1.1):

Expected online date for new project or new production:

Expected Percentage of Annual Contract Quantity from the Project:

Appendix 2 ***[Seller to provide for each calendar year.]***

|  |  |  |
| --- | --- | --- |
| **Year** | **Month** | **Monthly Contract Quantity(MMBtu/month)** |
| 2020 | January | *[Seller to designate]* |
|  | February | *[Seller to designate]* |
|  | March | *[Seller to designate]* |
|  | April | *[Seller to designate]* |
|  | May | *[Seller to designate]* |
|  | June | *[Seller to designate]* |
|  | July | *[Seller to designate]* |
|  | August | *[Seller to designate]* |
|  | September | *[Seller to designate]* |
|  | October | *[Seller to designate]* |
|  | November |  |
|  | December |  |
|  | Annual Contract Quantity(MMBtu/year) |  |