

Appendix A

Sample Statewide Customized Offering Agreement

These are sample 2011 Statewide Customized Offering Agreements. It is subject to change, therefore be sure to review the actual agreement you receive before signing.

PG&E Statewide Customized Retrofit and Demand Response Agreement

2011 CUSTOMIZED RETROFIT AND DEMAND RESPONSE AGREEMENT

This Agreement is entered into by [Pacific Gas and Electric Company] ("UTILITY") and the Project Sponsor (third party entity or UTILITY Customer if self sponsored), as indicated. Project Sponsor agrees to review these terms and conditions. Any implementation of this project will be deemed the Project Sponsor's acceptance of these terms and conditions. If these terms and conditions are not acceptable, the Project Sponsor must notify UTILITY and refrain from any implementation of the project, otherwise will do so at their own risk.

Application Information

Project Name: _____

App. Number: _____

Date Received: _____ Demand Response Calculated Approach M&V Required

Utility Customer Information

COMPANY NAME

CORP. PARENT NAME (if applicable)

ADDRESS

CITY/STATE

ZIP CODE

CONTACT NAME

E-MAIL ADDRESS

TITLE

() _____
TELEPHONE NO.

() _____
FAX NO.

TAX STATUS: Corp. Non-Corp. Exempt Exempt Reason: _____

COMPANY/CORP. FEDERAL TAX ID

Project Sponsor Information

COMPANY NAME

CORP. PARENT NAME (if applicable)

ADDRESS

CITY/STATE

ZIP CODE

CONTACT NAME

E-MAIL ADDRESS

TITLE

() _____
TELEPHONE NO.

() _____
FAX NO.

TAX STATUS: Corp. Non-Corp. Exempt Exempt Reason: _____

COMPANY/CORP. FEDERAL TAX ID

Site Information

SITE NAME

SITE I.D. # (if applicable)

SITE ADDRESS

CITY/STATE

ZIP CODE

SITE CONTACT NAME

CONTACT PHONE #

ELECTRIC SERVICE AGREEMENT(S) #

GAS SERVICE AGREEMENT(S) #

Approved Customized Retrofit Estimate

MEASURE DESCRIPTION	kWh	Permanent kW	therms	\$ Amount
Sub-Total				
Measure Cost Adjustment				
Site Cap Adjustment				
Total Incentive				
10% Measurement and Verification Adder				

Approved Demand Response Dispatch-able Peak Demand Reduction Estimate

MEASURE DESCRIPTION	Dispatch-able Peak kW	\$ Amount
Total Incentive		
10% Measurement and Verification Adder		

1.0 **PROJECT DESCRIPTION** This Agreement is limited to the **Customized Retrofit and Demand Response** Project(s) (“Project(s)”) described on the Customized Retrofit and Demand Response Incentive Application and Form (both together referred as “Application”) incorporated by reference into this Agreement. As stated in the Application, UTILITY shall pay incentives in accordance with the terms and conditions of this Agreement.

1.1 **DOCUMENTS INCORPORATED BY REFERENCE** The following documents are incorporated by reference and are made part of this Agreement: Project Sponsor’s approved Application, UTILITY acceptance letter(s) based on measures proposed in the Application, and the 2011 Statewide Customized Offering Procedures Manual for Business (“Program Manual”).

2.0 **ELIGIBILITY** Customized Retrofit and Demand Response funding is limited and is available on a first come, first served basis. Funds will be reserved only upon UTILITY approval of the Application. The Customized Retrofit and Demand Response Program offers two types of incentives, Customized Retrofit and Demand Response. A Project may be eligible for one or both of these incentives.

Customized Retrofit Projects must meet the following requirements to be eligible for incentives: (1) Project must be nonresidential and be located within UTILITY’s service territory. (2) UTILITY Customers must pay the Public Purpose Programs (“PPP”) surcharge on their UTILITY bills. (3) Projects will be evaluated using either the Customized Savings Approach or the Measured Savings Approach. (4) Projects must exceed the Title 24 energy efficiency requirements set by the California Energy Commission (“CEC” applicable at the time this Agreement is signed, or current industry standards using UTILITY-approved project baselines if Title 24 standards are not available. (5) Projects must meet all other Customized Retrofit and Demand Response requirements. (6) The Project Sponsor certifies that the energy savings and permanent peak reduction components of this Project have not and will not receive funds from any other energy conservation program funded by the PPP fund, the CEC or the California Public Utilities Commission (“CPUC”).

Demand Response Projects must meet the following requirements to be eligible for incentives: (1) Project must be commercial, industrial, or agricultural and be located within UTILITY’s service territory. (2) Customer must receive retail electric service from UTILITY. (3) Customer must have an existing electric meter that is capable of recording usage in 15-minute intervals and that

can be read remotely by UTILITY. (4) Project site's associated service agreement must have a maximum demand greater than or equal to 200 kW within the last 12 billing months, or the facility must be able to demonstrate a load reduction greater than or equal to 30 kW. (5) Projects will be evaluated using either the Calculated Savings Approach or the Measured Savings Approach (for measures requiring Measurement and Verification (M&V)). (6) Projects must meet all other Customized Retrofit and Demand Response Program requirements. (7) Project Sponsor certifies that the dispatch-able peak reduction components of the Project have not and will not receive funds from any energy conservation program funded by the PPP fund, the CEC or the CPUC.

3.0 SUBMITTAL REQUIREMENTS FOR PAYMENT As a condition of payment, Project Sponsor shall submit to UTILITY the documents described below. Required documents include but are not limited to: 1) Completed, signed Application; 2) Complete engineering calculations and documentation to demonstrate energy savings, permanent peak demand reduction, and dispatch-able peak demand reduction (including archival diskette if applicable); 3) Schematic drawings and/or manufacturer specification sheets if applicable; 4) Invoices and/or documentation to support Project cost at UTILITY'S request; 5) Additional Project-specific documents as requested by UTILITY prior to payment of incentives; and 6) Operating Report if the Measured Savings Approach is used.

4.0 INSPECTIONS As a condition of payment, Project Sponsor is responsible for ensuring that UTILITY has reasonable access for all inspections, including but not limited to those as described below: 1) Customized Retrofit and Demand Response Pre-Installation Equipment Inspection to examine the existing/baseline equipment and to check the accuracy of Project Sponsor's equipment survey; 2) Customized Retrofit Post-Installation Equipment Inspection to check installed equipment and to verify accuracy of Project Sponsor's equipment survey; 3) DR Post-Installation dispatch-able load reduction demonstration(s), 4) Customized Retrofit and Demand Response Post-operation inspection to check the energy savings of the Measures after installed equipment has been operating. This inspection can take place after the Operating Report has been submitted or earlier, at UTILITY's discretion.

5.0 REVIEW AND DISCLAIMER UTILITY'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT, ENERGY EFFICIENCY MEASURES, OR DEMAND RESPONSE MEASURES DO NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT MEASURES. PROJECT SPONSOR SHALL IN NO WAY REPRESENT TO ANY THIRD PARTY THAT UTILITY'S REVIEW OF THE MEASURES OR PROJECT, INCLUDING, BUT NOT LIMITED TO, UTILITY'S AND/OR ITS CONSULTANTS' REVIEW OR ANALYSIS OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE MEASURES OR PROJECT, IS A REPRESENTATION BY UTILITY AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, AND RELIABILITY OF SUCH MEASURES OR PROJECT. PROJECT SPONSOR IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY AND RELIABILITY OF PROJECT SPONSOR'S PROJECT AND MEASURES.

6.0 PAYMENTS Incentive payments will only be paid after all Customized Retrofit and Demand Response requirements are met by Project Sponsor to UTILITY's satisfaction. UTILITY retains sole discretion to determine the appropriate baseline values, dispatch-able peak reduction and energy savings calculations used to determine incentive payments. Incentive payments shall only be paid on Customized Retrofits that exceed Title 24 standards applicable when this Agreement is signed or industry standards in the absence of Title 24 standards. DR Projects are not subject to a standard baseline. UTILITY reserves the right to modify or cancel the incentive amount if the actual system installed differs from the installation in Project Sponsor's approved Application(s).

6.1 CUSTOMIZED RETOFIT INCENTIVE PAYMENTS The total incentive payment under the Calculated Savings Approach or Measured Savings Approach shall not exceed the total incentive in the Final Approved Energy Savings Estimate (as presented on Page 2 of this Agreement). Projects with increased measure costs or installation of more efficient equipment are eligible for incentive payments above the total incentive, based on actual installed measure costs and energy savings from the actual installed equipment. Projects using the Measured Savings Approach are eligible for up to an additional 10% of the approved incentive amount in the event that actual energy savings are higher than projected. See Program Manual for details. The total incentive payment may be limited as described in the Program Manual. The calculations shall be in accordance with the Program Manual. The following Energy Savings incentive rates shall apply for the types of retrofit projects: Lighting, 5 cents/kWh; AC & Refrigeration I, 15 cents/kWh; AC & Refrigeration II, 9 cents/kWh; Other (motors, etc), 9 cents/kWh; and Natural Gas, 1.00 cents/therm. The following Demand Reduction rates shall apply for the types of retrofit projects: Lighting, \$100/kW; AC & Refrigeration I, \$100/kW; AC & Refrigeration II, \$100/kW; and Other (motors, etc), \$100/kW. UTILITY will make the applicable incentive payment to Customers, in one or more installments, only after the appropriate documents have been submitted and approved, and the appropriate inspections of the Project have been satisfactorily completed, in accordance with the rules set forth in the Program Manual. All Project(s) must be installed and fully operational by June 1, 2012. UTILITY reserves the right to cease making incentive payments, required the return of incentive payments and or/terminate this Agreement if the projects(s) is not installed and fully operational by June 1, 2012. Energy savings for which incentives are paid cannot exceed the actual usage provided by the UTILITY Non-utility supply, such as cogeneration or deliveries from another commodity supplier, does not qualify as usage from the UTILITY (with the exception of Direct Access customers or customers paying departing load fees for which the UTILITY collects PPP surcharges).

6.2 DR INCENTIVE PAYMENTS The total dispatch-able peak incentive payment under either the Calculated Savings or Measured Savings Approach shall not exceed the total incentive approved in the Approved Demand Response Dispatch-able Peak Demand Reduction Estimate (as presented in this Agreement), and is limited to \$300,000 per customer. The total dispatch-able peak demand reduction (DR) incentive is limited to 50% of the incremental DR measure cost. The calculations

shall be in accordance with the Program Manual. The following dispatch-able peak reduction incentive rates shall apply for the DR program enrollment categories: Category 1, \$125/kW; Category 2, \$50/kW. Enrollment category 1 includes the following DR programs: AMP, BIP, CPP and PeakChoice with committed load reduction efforts option. Enrollment category 2 includes the following DR programs: DBP and PeakChoice Best Efforts Options. UTILITY will make the applicable incentive payment in one or more installments, only after the appropriate documents have been submitted and approved, and the appropriate inspections of the Project have been satisfactorily completed, in accordance with the rules set forth in the Program Manual. The first installment, 25% of the total DR incentive, will be paid upon successful post-field inspection, and completion and approval of the Post Installation Review. The last installment, and final 75% of the total DR incentive, will be paid after successful load reduction demonstration, completion of the DR Load Verification Review, and enrollment in a Demand Response Program for at least 3 years. Customer must enroll in a DR program upon receiving the first incentive payment installment. The customer is required to stay in a DR program for three years. Customer can move from one DR program to another, within an enrollment category, according to PG&E tariff. Customer can change from Category 2 to Category 1, but not from Category 1 to Category 2. If the customer cancels out of the DR program prior to three years, UTILITY is entitled to a 100% refund of the incentive. The equipment needs to be in place for a period of not less than five years. All 2011 Project(s) must be installed and fully operational by June 1, 2012. UTILITY reserves the right to cease making incentive payments, require the return of incentive payments and or/terminate this Agreement if the Project is not installed and fully operational by December 31, 2012.

7.0 **PAYMENT DISQUALIFICATION** A prorated part of the incentives shall be repaid by Project Sponsor to UTILITY if:

For Customized Retrofit, Customer fails to pay the PPP surcharge throughout the Term of this Agreement.

For DR Projects, Customer ceases to receive retail electric service from UTILITY any time throughout the Term of this Agreement.

For both Customized Retrofit and DR Projects, UTILITY did not receive the energy benefit for which the incentive is paid, for a period of not less than five years.

7.1 Project Sponsor agrees that if 1) Project Sponsor does not provide UTILITY with 100 percent of the related benefits specified in the Application, for a period of five years from the UTILITY approved installation date, or 2) the energy benefit to UTILITY ceases (for example, if UTILITY Customer stops using the equipment, no longer pays the PPP surcharge for energy efficiency projects, or discontinues retail electric service with UTILITY), Project Sponsor will return to UTILITY the prorated portion of the Incentive dollars based on the actual period of time for which UTILITY Customer provided the energy benefit.

7.2 **Project Sponsor shall repay any payments made by UTILITY within 30 days of notification by UTILITY that repayment is required. UTILITY is entitled to offset against payments owed to Project Sponsor any amount due to UTILITY which remains unpaid 40 calendar days after UTILITY'S written demand for payment. Project Sponsor may designate in writing a third party to whom UTILITY shall make incentive payments.**

8.0 **TERM AND TERMINATION** The Term of this Agreement shall commence on the last date that a Party executes this Agreement and shall terminate no later than five years from the Project Installation Report approval date, unless terminated earlier pursuant to this Agreement.

9.0 **ASSIGNMENT** Project Sponsor consents to UTILITY's assignment of all of UTILITY's rights, duties and obligations under this Agreement to the CPUC and/or its designee. Such assignment shall relieve UTILITY of all rights, duties and obligations arising under this Agreement. Other than UTILITY's assignment to the CPUC or its designee, neither Party shall assign its rights or delegate its duties without the prior written consent of the other Party, except in connection with the sale or merger of a substantial portion of its properties. Any such assignment or delegation without written consent shall be null and void. Consent to assignment shall not be unreasonably withheld. If an assignment is requested, the Project Sponsor is obligated to provide additional information if requested by UTILITY.

10.0 **PERMITS AND LICENSES** Project Sponsor, at its own expense, shall obtain and maintain licenses and permits needed to perform its work. Failure to maintain necessary licenses and permits constitutes a material breach of Project Sponsor's obligations.

11.0 **ADVERTISING, MARKETING AND USE OF UTILITY'S NAME** Project Sponsor shall not use UTILITY's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers to participate in the Project, without UTILITY's prior written consent. Project Sponsor shall make no representations to its customers on behalf of UTILITY.

12.0 **INDEMNIFICATION** Project Sponsor shall indemnify, defend and hold harmless, and releases UTILITY, its affiliates, subsidiaries, parent company, officers, directors, agents and employees, from and against all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise), which arise from or are in any way connected with any: injury to or death of persons, including but not limited to employees of UTILITY or Project Sponsor; (ii) injury to property or other interests of UTILITY, Project Sponsor, or any third party; (iii) violation of local, state, or federal common law, statute, or regulation, including but not limited to environmental laws or regulations; or (iv) strict liability imposed by any law or regulation; so long as such injury, violation, or strict liability (as set forth in (i) - (iv) above) arises from or is in any way connected with Project Sponsor's performance of, or failure to perform, this Agreement, however caused, regardless of any strict liability or negligence of UTILITY whether active or passive, excepting only such loss, damage, cost, expense, liability, strict liability, or violation of law or regulation that is caused by the sole negligence or willful misconduct of UTILITY, its officers, managers or employees.

12.1 Project Sponsor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste as a result of the work performed under this Agreement are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from strict liability, or violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs incurred as a result of such releases or spills are expressly within the scope of this indemnity.

12.2 Project Sponsor shall, on UTILITY's request, defend any action, claim or suit asserting a claim which might be covered by this indemnity. Project Sponsor shall pay all costs and expenses that may be incurred by UTILITY in enforcing this indemnity, including reasonable attorney's fees.

12.3 If this Agreement is assigned pursuant to Section 9.0, the Project Sponsor agrees that this indemnification shall continue to apply to UTILITY and shall apply to the assignee.

13.0 **LIMITATION OF LIABILITY** UTILITY shall not be liable for any incidental or consequential damages, including without limitation, loss of profits or commitments to Subcontractors, and any special, incidental, indirect or consequential damages incurred by Project Sponsor or its Customer.

14.0 **CPUC AUTHORITY TO MODIFY** This Agreement shall at all times be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction.

15.0 **INTEGRATION** This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of the Agreement. It supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between Project Sponsor and UTILITY, whether oral or written, and has been induced by no representations, statements or agreements other than those expressed herein. Neither Project Sponsor nor UTILITY shall be bound by any prior or contemporaneous obligations, conditions, warranties or representations with respect to the subject matter of this Agreement.

NO AMENDMENT, MODIFICATION OR CHANGE TO THIS AGREEMENT SHALL BE BINDING OR EFFECTIVE UNLESS EXPRESSLY SET FORTH IN WRITING AND SIGNED BY UTILITY'S REPRESENTATIVE AUTHORIZED TO EXECUTE THE AGREEMENT.

16.0 **WRITTEN NOTICE** Any written notice, demand or request required or authorized in connection with this Agreement, shall be deemed properly given if delivered in person or sent by facsimile, email, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by UTILITY.

<p>UTILITY</p> <p>UTILITY Project Manager:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Fax # (facsimile):</p> <p>Email:</p>

PROJECT SPONSOR

Name _____
Company _____
Address _____
City, State, Zip _____
Fax # (facsimile) _____
Email _____

Notices shall be deemed received (a) if personally or hand-delivered, upon the date of delivery to the address of the person to receive such notice if delivered before 5:00 p.m., or otherwise on the Business Day following personal delivery; (b) if mailed, three Business Days after the date the notice is postmarked; (c) if by facsimile, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; (d) if by email; or (e) if by overnight courier: on the Business Day following delivery to the overnight courier within the time limits set by that courier for next-day delivery.

17.0 **CONFLICTS BETWEEN TERMS** Should a conflict exist between the main body of this Agreement and the Documents Incorporated by reference, the main body of this Agreement shall control. Should a conflict exist in the Documents Incorporated by reference, the Documents shall control in the following order: 1) Program Manual; 2) UTILITY acceptance letter(s) and incentive estimate(s) based on Measures as approved in Application(s); and 3) Project Sponsor's approved Application(s). Should a conflict exist between an applicable federal, state, or local law, rule, regulation, order or code and this Agreement, the law, rule, regulation, order or code shall control. Varying degrees of stringency among the main body of this Agreement, the Documents Incorporated by reference, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any conflict or inconsistency concerning this Agreement.

18.0 **CANCELLATION OF AGREEMENT** UTILITY may suspend or terminate the Agreement, without cause, upon written notice to Customer/ Project Sponsor.

This program is funded by California Utility Customers and administered by UTILITY under the auspices of the CPUC.

SCE Statewide Customized Offering Agreement

SDG&E Statewide Customized Offering Agreement

2011 Energy Efficiency Business Incentive Customized Offering

Application Information

Project Name: _____ o Service Account/Agreement <500kW or <250,000 therms
App. Number: _____ o Service Account/Agreement >=500kW or >=250,000 therms
Date Received: _____ o Calculated Approach o M&V Required

Utility Customer Information

COMPANY NAME _____ CORP. PARENT NAME (if applicable) _____
ADDRESS _____ CITY/STATE _____ ZIP CODE _____
CONTACT NAME _____ E-MAIL ADDRESS _____
TITLE _____ TELEPHONE NO. _____ FAX NO. _____
TAX STATUS: o Corp. o Non-Corp. o Exempt Exempt Reason: _____ COMPANY/CORP. FEDERAL TAX ID _____

Project Sponsor Information

COMPANY NAME _____ CORP. PARENT NAME (if applicable) _____
ADDRESS _____ CITY/STATE _____ ZIP CODE _____
CONTACT NAME _____ E-MAIL ADDRESS _____
TITLE _____ TELEPHONE NO. _____ FAX NO. _____
TAX STATUS: o Corp. o Non-Corp. o Exempt Exempt Reason: _____ COMPANY/CORP. FEDERAL TAX ID _____

Site Information

SITE NAME _____ SITE I.D. # (if applicable) _____
SITE ADDRESS _____ CITY/STATE _____ ZIP CODE _____
SITE CONTACT NAME _____ CONTACT PHONE # _____ ELECTRIC ACCOUNT(S) # _____ GAS ACCOUNT(S) # _____

IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, USE OR APPLICATION.

7.0 PAYMENTS Payments of Incentives will be made only after all Program requirements are met by Project Sponsor to SDG&E's sole satisfaction. Project Sponsor may authorize payment of the Incentives to Customer, and Customer may authorize payment of the Incentives to Project Sponsor. Such authorization is strictly between Customer and Project Sponsor and may be revoked or modified at any time by providing written notification to SDG&E specifying the change. Should a dispute arise regarding the authorization, the most recently dated written communication or authorization shall govern.

7.1 SDG&E retains sole discretion to determine the appropriate baseline values and energy savings calculations used to determine Incentive payments. Incentives shall only be paid on Projects that exceed Title 24 standards applicable when this Agreement is signed or industry standards in the absence of Title 24 standards. SDG&E reserves the right to modify or cancel the Incentive amount if the actual measure installed differs from the measure described in Project Sponsor's approved Application(s).

7.2 The total Incentive payment shall not exceed the total incentive amount listed in the Final Approved Savings Amount table in this Agreement. The total Incentive payment will be limited by a Customer Project Site Cap of approximately 15% of the average annual 2011 Energy Efficiency Business Incentive Budget as filed in the Application of San Diego Gas & Electric Company (U-902-M) for Approval of Electric and Natural Gas Energy Efficiency Programs and Budget for Year 2011, and/or the Project Cost Cap of 50% of the total measure costs for calculated measures, which are calculated on a per measure basis, whichever is less. The following incentive rates shall apply for the types of retrofit projects: Lighting, \$0.05/kWh; Air Conditioning & Refrigeration, \$0.15/kWh; Air Conditioning & Refrigeration II, \$0.09/kWh; Natural Gas, 1.00/therm; and Other, \$0.09/kWh. The following Peak Demand Reduction Incentive Rates shall apply for the type of retrofit projects: Lighting, \$100/kW; Air Conditioning & Refrigeration, \$100/kW; and Other, \$100/kW.

7.3 The total Incentive payment is based on the calculated energy savings derived from the actual use of electricity and/or gas provided by SDG&E. Electricity and/or gas provided by any party other than SDG&E, including, but not limited to, cogeneration or deliveries from another commodity supplier, do not qualify (with the exception of Direct Access customers or customers paying departing load fees for which SDG&E collects the PPP surcharge, the PGC surcharge and/or the DSM surcharge).

7.4 SDG&E will make the applicable Incentive payment to the designated payee, in one (1) or more installments, only after all required and/or requested documents have been submitted to and approved by SDG&E and the appropriate inspection(s) of the Project or Project Site have been completed to SDG&E's satisfaction.

7.5 All Projects and/or measures must be installed and fully operational one year from approval date to be eligible for Incentive payments. SDG&E reserves the right to cease making Incentive payments, require the return of Incentive payments and/or terminate this Agreement if the Project(s) is not installed and fully operational one year from the approval date, unless an extension is granted by SDG&E, at its sole discretion.

8.0 PAYMENT DISQUALIFICATION Any Incentives received by Project Sponsor shall be repaid to SDG&E, in whole or in part, as follows:

8.1 If Customer fails to pay the PPP surcharge, the PGC surcharge or the DSM surcharge at any time during the Term of this Agreement, Project Sponsor shall refund to SDG&E any prorated amount of the Incentive dollars that SDG&E determines must be repaid, in its sole discretion, based on the energy savings that occurred during the payment of the PPP surcharge, the PGC surcharge or the DSM surcharge.

8.2 If (1) Project Sponsor does not provide SDG&E with 100% of the related benefits specified in the Application for a period of five (5) years from the Project Installation Report approval date, or (2) the energy benefit to SDG&E ceases in any way during the five (5) year period from the Project Installation Report approval date, including, but not limited to, Customer and/or the Project Site ceasing to receive electricity and/or gas service from SDG&E, the measure, equipment and/or Project ceasing to function, or Customer ceasing the use of the equipment, measure or Project Site, Project Sponsor shall refund to SDG&E any prorated amount of the Incentive dollars that SDG&E determines must be repaid, in its sole discretion, based on the actual period of time for which Customer provided the energy benefit.

8.3 Project Sponsor shall repay any amounts due to SDG&E within thirty (30) calendar days of notification by SDG&E that repayment is required in accordance with Sections 8.1 and 8.2 above. SDG&E shall be entitled to offset against payments owed to Project Sponsor any amount due to SDG&E that remains unpaid forty (40) calendar days after SDG&E'S written demand for payment.

9.0 TERM AND TERMINATION The term of this Agreement shall commence on the last date that a Party executes this Agreement and shall terminate no later than five (5) years from the Project Installation Report approval date, unless terminated earlier pursuant to this Agreement ("Term").

10.0 ASSIGNMENT Project Sponsor consents to SDG&E's assignment of all of SDG&E's rights, duties and obligations under this Agreement to the CPUC and/or its designee. Such assignment shall relieve SDG&E of all rights, duties and obligations arising under this Agreement. Other than SDG&E's assignment to the CPUC or its designee, neither Party shall assign its rights or delegate its duties without the prior written consent of the other Party, except in connection with the sale or merger of a substantial portion of its properties. Any such assignment or delegation without written consent shall be null and void. Consent to assignment shall not be unreasonably withheld. If an assignment is requested, Project Sponsor is obligated to provide additional information if requested by SDG&E.

11.0 PERMITS AND LICENSES Project Sponsor, at its own expense, shall obtain and maintain and cause its contractors and/or subcontractors to obtain and maintain licenses and permits required by federal, state, local, or other relevant governing or regulatory bodies to perform its work. Any failure by Project Sponsor or its contractors and/or subcontractors to maintain necessary licenses and permits constitutes a material breach of Project Sponsor's obligations under this Agreement.

12.0 ADVERTISING, MARKETING AND USE OF SDG&E'S NAME Project Sponsor shall not use SDG&E's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers to participate in the Project, without SDG&E's prior written consent. Project Sponsor shall make no representations to its customers on behalf of SDG&E.

13.0 INDEMNIFICATION Project Sponsor shall indemnify, defend and hold harmless, and release SDG&E, its affiliates, subsidiaries, parent companies, officers, directors, agents and employees, from and against all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise), which arise from or are in any way connected with any: (i) injury to or death of persons, including, but not limited to, employees of SDG&E or Project Sponsor; (ii) injury to property or other interests of SDG&E, Project Sponsor, or any third party; (iii) violation of local, state, or federal common law, statute, or regulation, including, but not limited to, environmental laws or regulations; or (iv) strict liability imposed by any law or regulation; so long as such injury, violation, or strict liability (as set forth in (i) - (iv) above) arises from or is in any way connected with Project Sponsor's performance of, or failure to perform, this Agreement, however caused, regardless of any strict liability or negligence of SDG&E whether active or passive, excepting only such loss, damage, cost, expense, liability, strict liability, or violation of law or regulation that is caused by the sole negligence or willful misconduct of SDG&E, its officers, managers or employees.

13.1 Project Sponsor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste as a result of the work performed under this Agreement are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from strict liability, or violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs incurred as a result of such releases or spills are expressly within the scope of this indemnity.

13.2 Project Sponsor shall, on SDG&E's request, defend any action, claim or suit asserting a claim that may be covered by this indemnity. Project Sponsor shall pay all costs and expenses that may be incurred by SDG&E in enforcing this indemnity, including reasonable attorney's fees. This indemnity shall survive the termination of this Agreement for any reason.

13.3 If this Agreement is assigned pursuant to Section 10.0, Project Sponsor agrees that this indemnification shall continue to apply to SDG&E and shall apply to the assignee.

14.0 LIMITATION OF LIABILITY SDG&E shall not be liable for any special, incidental, indirect, or consequential damages, including without limitation, loss of profits or commitments to subcontractors, and any special, incidental, indirect or consequential damages incurred by Project Sponsor or Customer.

15.0 WRITTEN NOTICE Any written notice, demand or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person or sent by facsimile, email, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by SDG&E.

SDG&E

Program Manager _____
SDG&E _____
Address 8335 Century Park Court, CP12C
City, State, Zip San Diego, CA 92123
Fax # (facsimile) (619) 819-4206

PROJECT SPONSOR

Name _____
Company _____
Address _____
City, State, Zip _____
Fax # (facsimile) _____

Notices shall be deemed received (a) if personally or hand-delivered, upon the date of delivery to the address of the person to receive such notice if delivered before 5:00 p.m., or otherwise on the Business Day following personal delivery; (b) if mailed, three (3) Business Days after the date the notice is postmarked; (c) if by facsimile or email, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; or (d) if by overnight courier, on the Business Day following delivery to the overnight courier within the time limits set by that courier for next-day delivery.

16.0 CONFLICTS BETWEEN TERMS Should a conflict exist between this Agreement and the documents incorporated by reference, this Agreement shall control. Should a conflict exist in the documents incorporated by reference, the documents shall control in the following order: 1) Program Manual; 2) SDG&E acceptance letter(s) and incentive estimate(s) based on EEMs as approved in the Application(s); and 3) Project Sponsor's approved Application(s). Should a conflict exist between an applicable federal, state, or local law, rule, regulation, order or code and this Agreement, the law, rule, regulation, order or code shall control. Varying degrees of stringency among the main body of this Agreement, the documents incorporated by reference, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any conflict or inconsistency concerning this Agreement.

17.0 MISCELLANEOUS This Agreement shall at all times be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of this Agreement and supersedes all prior agreements, representations, writings and discussions between the Parties, whether oral or written, with respect to the subject matter hereof. No amendment, modification or change to this Agreement shall be binding or effective unless expressly set forth in writing and signed by SDG&E's representative authorized to execute the Agreement. IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

UTILITY

By: _____
Title: Supervisor, Commercial & Industrial, Customer Programs
Name Printed: _____
Date: _____

PROJECT SPONSOR

By: _____
Title: _____
Name Printed: _____
Date: _____