

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric  
Company (U 902 M) for Approval of Demand  
Response Programs and Budgets for Years 2009  
through 2011

Application 08-06-002

**AMENDED APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902-M)  
FOR APPROVAL OF DEMAND RESPONSE PROGRAMS AND BUDGETS FOR  
YEARS 2009 THROUGH 2011**

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**VOLUME III OF VI**

Application of San Diego Gas & Electric  
Company (U-902-M) for Approval of  
Demand Response Programs and Budgets  
for the Years 2009 through 2011.

Application 08-06-002

**CHAPTER II**  
**PREPARED DIRECT TESTIMONY**  
**OF MARK W. WARD**  
**SAN DIEGO GAS & ELECTRIC COMPANY**

**BEFORE THE PUBLIC UTILITIES COMMISSION**  
**OF THE STATE OF CALIFORNIA**  
**September 19, 2008**

## **Summer Saver Program**

## **2009-2011 Demand Response Program Description Summer Saver Program**

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### **1. Utility**

San Diego Gas & Electric Company

### **2. Program**

Summer Saver is a third-party administered capacity reduction program that cycles or temporarily curtails the central air conditioning equipment of participating residential and small business customers. The event season for this program runs from May 1<sup>st</sup> through October 31<sup>st</sup>.

### **3. Program Description**

Market Sector: Residential and Non-Residential  
Program Classification: Day-Of, SDG&E-specific

The Summer Saver program utilizes wireless technology to cycle residential and small commercial central air conditioning units. Residential customers may select either a 50% or 100% cycling option. Small commercial customers up to 100kW can select either a 30% or 50% cycling option.

### **4. Contract Period**

The initial capacity delivery agreement was approved October 6, 2003. This agreement between SDG&E and Alternate Energy Resources (AER), Inc., formerly known as Converge, as initially approved by D. 04-06-011 and filed by SDG&E in Advice Letter 1693-E is now known as the Summer Saver program. The program anticipates maintaining its adopted program structure reflecting further modifications recently adopted by D. 06-11-049. The SDG&E/AER contract specifies that the Summer Saver program will continue through 2016.

### **5. Eligibility**

Residential customers and commercial facilities that use up to a maximum of 100kW on average during a 12-month period are eligible to participate in the Summer Saver program.

## **6. Operating Months**

Summer Saver program events can be activated during the control season from May 1 through October 31 of each program year.

## **7. Curtailment Window**

Summer Saver cannot curtail a participating customer more than four hours during a given event day. The curtailment event must also be launched after 12:00pm and terminated by 8:00pm.

## **8. Minimum Qualifying Load Criteria for Program**

Summer Saver does not have minimum qualifying load criteria in order to launch an event.

## **9. Event Trigger**

### **Day-Of Event:**

Summer Saver is classified as a Day-Of program. A program event may be triggered if warranted by temperature and system load conditions.

A Summer Saver program event may be activated by a variety of events, including whenever SDG&E's electric system supply portfolio reaches resource dispatch equivalence of 15,000 Btu/kWh heat rate, or as system operating conditions warrant. An event may also be triggered as warranted by extreme system conditions such as special alerts issued by the California Independent System Operator, SDG&E system emergencies related to grid operations, or under conditions of high forecasted California spot market prices or for testing/evaluation purposes. SDG&E will evaluate and consider all relevant information, including temperature and system load conditions, as well as other system operational conditions, energy market conditions and other emergency conditions in determining whether to initiate a Summer Saver event.

## **10. Notification Time**

**Day-Of Event:** This program does not notify participating customers of an event, rather, an automatic signal is sent to the cycling device on the customer's air conditioning unit to activate the cycling process.

**11. Curtailment Level**

Residential customers may select either a 50% or 100% cycling option. Small commercial customers can select either 30% or 50% cycling option.

**12. Incentive Payment**

**Day-Of Event:** Customers are paid a capacity payment of \$25 per enrolled kW. Residential customers participating at the 100% cycling level are paid a capacity payment of \$50 per kW.

**13. Event Minimum Load Reduction**

Not applicable.

**14. Event Frequency Limits**

Events triggered during May 1<sup>st</sup> through October 31<sup>st</sup> cannot be less than two-hours in duration, but no more than four hours. Events cannot be triggered more than 40 hours in a program month or 120 hours in a program year. They also cannot occur on holidays or more than three days in any calendar week.

**15. Non-Compliance Penalties**

There is no non-compliance penalty applicable to participating customers.

**16. Meter Requirements and Who Pays**

The number of meters required to determine the aggregate performance based estimate (PBE) is specifically detailed in article 10 of the SDG&E/AER contract. In order to measure the PBE for each program year, Interval Data Recorders (“IDR”) will be installed by SDG&E at a minimum of 100 participating facilities to serve as a statistical sample that is representative of the population of participating facilities.

**17. Enabling Technology Requirements/Responsibility**

The technology utilized is a digital control unit installed at a participating facility and used to control a participant’s end-use equipment. AER is responsible for the installation and maintenance of the enabling technology employed in order to control end-use devices.

**18. a.) Budget for 2006-2008**

**18. b.) Budget for 2009-2011**

The Converge, AER, (Summer Saver) is funded through Decision 04-06-011. The budget for the program is "Confidential by Contract".

**19. Goal/Expected Load Reduction**

See the accompanying SDG&E testimony of Kathryn Smith.

**20. EM&V Plan**

The EM&V takes into account the collected meter activity on the end-use equipment. The EM&V plan looks at the customer behavior during the peak load demand day of the event control season. See the accompanying SDG&E testimony of Kathryn Smith.

**21. Comments**

Customers participating in the Summer Saver program are eligible to concurrently participate in the Peak Time Rebate (PTR) program. Customers will receive both the \$1.25 PTR payment and the \$25/kw capacity payment for Summer Saver for both day-ahead and day-of events. The customer will receive a bill credit for the reduced energy consumption achieved through the PTR program and receive a single capacity payment through the enrollment process for Summer Saver.

**22. a.) Enrollment from 2006-2008, including:**

- Number of Participants: as of May 1, 2008, the Summer Saver program has a total of 19,436.
- Type of Participants: 16,147 of these participants are residential participants and 3,289 are commercial participants.
- Megawatts: These customers yield 31MW
- Megawatts by Type of Participant: Commercial Customers yield 17.81MW and Residential Yield 13.19MW.

**22. b.) Estimated Enrollment for Each Year (2009-2011), and How it was Determined**

Enrollment for 2009 to 2011 was projected at a growth rate of 25 percent from both market segments. This was determined based upon historical growth patterns, continued awareness of the program, and continued cross-promotional efforts with Energy Efficiency.

**23. How Programs Fit Into Local Resource Adequacy**

This is a dispatchable DR program and therefore provides qualifying capacity.

**24. Estimated Load Impact, Based on Protocols to be Adopted**

See the accompanying SDG&E testimony of Kathryn Smith.

**25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted**

See the accompanying SDG&E testimony of Kevin McKinley.

**26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)**

The marketing costs and marketing implementation activities are the contractual responsibility of the capacity provider, AER, Inc. These activities have included but are not limited to direct mail campaigns, radio advertising, and co-marketing activities with related HVAC I energy efficiency programs and contracted third party vendors. In addition, AER is exploring options to incorporate HVAC EE/DR cross promotions as deemed appropriate for its outreach campaign.

**27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond**

SDG&E is participating in the CAISO's working group process for developing demand response functionality for the MRTU Release 1A expected in 2009. SDG&E will determine any necessary program changes in order for the program to participate in MRTU Release 1A. Currently, SDG&E is committed to submitting its day-ahead and day-of demand response forecasts to the CAISO for use in the CAISO's load forecast adjustments in 2008.



**28. Other Relevant Information, as Appropriate and Necessary**

**29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance**

SDG&E's currently-effective contract with AER, Inc. was most recently filed with the Commission in Advice Letter 1871-E.

**30. The Actual (Observed) DR Load Reduction Due to the Program, and How it was Distributed Among Enrolled Customers**

N/A

**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

N/A

**32. Baseline and/ or Terms of Settlement**

N/A

**Residential Automated Controls Pilot Program**

**(RACT)**

## **2009-2011 Demand Response Program Description Residential Automated Controls Pilot**

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### **1. Utility**

San Diego Gas & Electric Company

### **2. Program**

The Residential Automated Controls Pilot

### **3. Program Description**

Market Sector: Residential

Program Classification: Pilot, SDG&E-specific

The Residential Automated Control Pilot will test, implement and evaluate several new and existing automated load reduction enabling technologies. The resulting effects of this pilot will facilitate the promotion of new and existing enabling technologies that will help achieve load reduction goals during critical peak energy usage periods.

This pilot will also promote an integrated energy solution approach for Demand Response (DR) and Energy Efficiency (EE) measures for targeted residential customers. This pilot will activate and monitor the associated curtailment technologies during critical peak energy usage events as warranted by extreme system conditions such as special alerts issued by the California Independent System Operator, SDG&E system emergencies related to grid operations, or under conditions of high forecasted California spot market prices or for testing/evaluation purposes. SDG&E will evaluate and consider all relevant information, including temperature and system load conditions, as well as other system operational conditions, energy market conditions and other emergency conditions in determining when to initiate an event. This pilot will target and primarily focus on small subsets of pre and post 1978 residential dwellings within the SDG&E territory. The difference between pre and post 1978 residential dwellings is the adoption of energy efficiency standards imposed by the California Energy Commission.

Automated DR technology solutions that could potentially maximize load reduction without compromising comfort within the home include, but are not necessarily limited to, energy management systems, programmable controllable thermostats, online curtailment management and monitoring tools, smart plug-load appliances, and load control devices. The utility load reduction signal and/or communication will activate these installed technologies and allow participants to automatically reduce electric usage during a Peak-Time Rebate (PTR) event as well.

#### **4. Contract Period**

The pilot may enroll up to 500 customers per year, with a cap of 1,500 customers over the three-year program cycle. Enrolled participants are expected to remain in the pilot throughout the entire cycle, and must verify annually that the enabling technology is still installed and operational. Participants may opt out of the pilot at any time, and SDG&E reserves the right to remove the enabling technology at no cost to the participant.

#### **5. Eligibility**

Customer participation acceptance will be dependent on the customers' 2007 and 2008 electrical usage patterns within pre and post 1978 homes. This pilot will primarily be marketed to customers with monthly electric usage of greater than 700 kWh. SDG&E has previously utilized this kWh threshold target to identify central air conditioning and pool pump owners. Participants who fall below 700 kWh monthly usage during ongoing pilot participation will be permitted to remain on the pilot as long as the Smart Meter and end-use equipment requirements are met. In addition, a lower qualifying usage of 400 kWh per month will be used to include multi-family units with room air conditioners. Program participation criteria will include the following:

1. An SDG&E Smart Meter
2. End-use equipment that can be curtailed
3. 700 kWh monthly summer average of 2007/2008 usage for single family units
4. 400kWh monthly summer average of 2007/2008 usage for multi-family units

#### **6. Operating Months**

The pilot will operate throughout the year, with customers subject to load curtailments at any time, based on proposed event triggers. Curtailment events may be called based on:

1. CAISO Stage II Alerts
2. Local Transmission/Distribution Emergencies (fires, rolling blackouts, etc.)
3. Local load of 4000 MW or more

#### **7. Curtailment Window**

The curtailment window for a typical event will be from 11am-6pm.

#### **8. Minimum Qualifying Load Criteria for Program**

Enrolled customers must have a monthly summer usage of 700 kWh in a single-family home and 400 kWh in a multi-family unit in order to participate in the pilot.

**9. Event Triggers**

**Day-Ahead Event:** Next Day Local Load Forecast of 4000MW or more.

**Day-Of Event:** CAISO Stage II Alert, Local Transmission/Distribution Emergencies, Local load of 4000MW or more.

**10. Notification Time**

**Day-Ahead Event:** N/A

**Day-Of Event:** Customers will be notified of an event as early as 10am and as late as one hour prior to an event being called.

**11. Curtailment Level**

N/A

**12. Incentive Payment**

The pilot itself will not provide a specific participation incentive, but rather will enable participating customers to receive applicable bill credits for their participation in, and load reductions achieved under SDG&E's new Peak Time Rebate (PTR) program. Customers that maintain at least one automated enabling technologies will receive a bill credit of \$1.25/kWh reduction during a PTR event. The increased PTR incentive of \$1.25/kWh will be paid as described in the PTR program tariff. The utility-sent signal and/or communication will allow participants to have their enabling technology automate remotely to effectively reduce electric usage during a PTR event. The actual reduction in consumption will be measured using a customer-specific reference level as specified in the PTR tariff, with the applicable bill credit reflected for any regularly scheduled billing period in which the actual reduction in consumption is greater than zero. If no PTR events are called or the actual reduction in consumption is less than or equal to zero, then no bill credit will be given.

Because the pilot is set to begin in 2009, but SDG&E's expected implementation of the PTR program may not take place until 2010, initial pilot participants in 2009 will receive a small incentive payment of \$50 to encourage pilot start-up participation, technology acceptance, and encourage ongoing participation in pilot activities.

**13. Event Minimum Load Reduction**

N/A

**14. Event Frequency Limits**

Events may be called without a maximum or minimum frequency limit.

**15. Non-Compliance Penalties**

There will not be a non-compliance penalty.

**16. Meter Requirements and Who Pays**

All potential pilot technologies are expected to work in conjunction with the customers' existing Smart Meter. The utility will incur all associated installation costs for the Smart Meter and curtailment technology. The SDG&E Smart Meter will be the bridge between the SDG&E Advanced Metering Infrastructure and the participants' curtailment technology.

**17. Enabling Technology Requirements/Responsibility**

An enabling technology is defined to be technology which can be initiated via a signal from the Utility that will reduce electric energy end-use for specific electric equipment or appliances, is included in a designated Utility demand response program, and has been registered with the Utility by the customer (e.g., programmable communicating thermostats (PCTs), AC cycling, etc.). The registration process may include customer specific information such as account number, enabling technology description, signaling method(s), specific electric equipment or appliances controlled, and control modes utilized (e.g., on/off, duty cycling, temperature off-set, temperature set point, and/or average load adjustment).

**18. a.) Budget for 2006-2008**

N/A

**18. b.) Budget for 2009-2011**

2009 – \$551,217

2010 – \$544,415

2011 – \$594,039

**19. Goal/Expected Load Reduction**

The pilot program does not have specific load reduction goals since its primary focus is to demonstrate and provide a platform for customers to test multiple automated technologies that facilitate and enable their participation in a demand response program

**19. EM&V Plan**

See the accompanying SDG&E testimony of Kathryn Smith

**21. Comments**

**22. a.) Enrollment from 2006-2008, including:**

- Number of Participants
  - N/A
- Type of Participants
  - N/A
- Megawatts, and
  - N/A
- Megawatts by Type of Participant
  - N/A

**22. b.) Estimated Enrollment for Each Year (2009-2011), and How it was Determined**

2009 – Targeted enrollment up to 500 participants

2010 – Targeted total enrollment up to 1,000 participants

2011 – Targeted total enrollment up to 1,500 participants

The curtailment technologies will be offered to up to 1,500 residential customers with installed Smart Meter technology over the three year program cycle.

**23. How Programs Fit Into Local Resource Adequacy**

N/A

**24. Estimated Load Impact, Based on Protocols to be Adopted**

N/A

**25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted**

N/A

**26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)**

The marketing plan will identify, inform, recruit, and maintain residential participants that will employ an automated demand response technology within their home. Once customers with moderate to high electric summer usage are identified, customer specific site information will be utilized to evaluate the most effective technologies.

SDG&E will explain and communicate the functionality of each technology by marketing these specific technologies to customers as a way to not only reduce their peak time energy usage but to also effectively benefit the environment. Customer acceptance and retention of the technologies will be an important focus of the pilot and critical to the development and implementation of future residential demand response programs.

Both single-family and multi-family dwellings will have a significant role within the pilot. While it is anticipated the single-family homes will deliver the vast majority of demand reduction, multi-family homes will also have an instrumental role in reducing peak energy usage during critical peak periods.

Results of customers' efforts toward energy use reduction will be conveyed through monthly summer mailers, with this information also providing participating customers information about the benefits achieved with the automated enabling technologies. SDG&E will work with prospective participants to identify specific end uses or equipment that will work with the proposed curtailment technologies. Once customers join the pilot, they will be contacted by their preferred communication channel; by direct mail, email, phone, and through the SDG&E website. SDG&E's Energy Information Center (EIC) staff will be trained on how to answer enrollment concerns and questions. SDG&E will contract a third party to complete the installation of demand response technologies, with the installation scheduling being a collaborative effort in order to minimize any disruptions to the customer. Marketing efforts will also include PTR information in order to promote PTR as an additional benefit.

**27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond**

N/A

**28. Other Relevant Information, as Appropriate and Necessary**

N/A

**29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance**

N/A



**30. The Actual (Observed) DR Load Reduction Due to the Program, and How it was Distributed Among Enrolled Customers**

N/A

**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

N/A

**32. Baseline and/ or Terms of Settlement**

N/A

**Optional Binding Mandatory Curtailment Program**

**(OBMC)**

# 2009-2011 Demand Response Program Description

## Optional Binding Mandatory Curtailment Program (OBMC)

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### 1. Utility

San Diego Gas & Electric

### 2. Program

Optional Binding Mandatory Curtailment (OBMC)

### 3. Program Description

Market Sector:	Non-Residential
Program Classification:	Day-Ahead and Day-Of, Statewide
Program Status:	Active: May 1, 2007

This program is available in combination with a customer's otherwise applicable tariff(s), on a voluntary basis, to non-residential customers who are able to reduce electric load such that the entire load on the SDG&E circuit, that provides service to the customer, is reduced by 15% or to or below the required Maximum Load Levels (MLLs) for the entire duration of each and every OBMC event.

If the circuit is shared with other SDG&E customers, customers applying for OBMC must coordinate with other customers on the circuit to ensure that load reductions meet program requirements.

Applicable customers are large manufacturers, warehouses, government facilities, water agencies, and universities.

### 4. Contract Period

Customers must remain on the program for a minimum of 12 calendar months.

**5. Eligibility**

This program is available in combination with a customer's otherwise applicable tariff(s), on a voluntary basis, to non-residential customers who are able to reduce electric load such that the entire load on the SDG&E circuit, that provides service to the customer, is reduced by 15% or to or below the required Maximum Load Levels (MLLs) for the entire duration of each and every OBMC event.

**6. Operating Months**

Year-round

**7. Curtailed Window**

No limit--duration as long as required

**8. Minimum Qualifying Load Criteria for Program**

This program is available in combination with a customer's otherwise applicable tariff(s), on a voluntary basis, to non-residential customers who are able to reduce electric load such that the entire load on the SDG&E circuit, that provides service to the customer, is reduced by 15% or to or below the required Maximum Load Levels (MLLs) for the entire duration of each and every OBMC event

**9. Event Trigger**

Customers are required to reduce load by the required amount upon each and every notice from the California Independent System Operator (CAISO) that a firm load curtailment is required within the SDG&E service territory, and maintain the load reduction for the full duration of each outage

**10. Notification Time**

Activation within 15 minutes

**11. Curtailed Level**

Entire load on the impacted circuit must be reduced by 15% or to or below the required MLL.

**12. Incentive Payment**

The program offers no financial incentive payment amount, but provides participating customers an exemption from rotating blackouts

**13. Event Minimum Load Reduction**

MLL at the circuit level

**14. Event Frequency Limits**

No limits

**15. Non-Compliance Penalty**

\$6 kWh for all load not reduced to MLL

**16. Meter Requirements and Who Pays**

Each participating customer must have an approved interval meter and approved meter communications equipment installed and read by SDG&E. SDG&E must have access to the customer's meter data on a daily basis for a period of no less than ten (10) calendar days to establish a valid customer specific baseline.

An approved interval meter is capable of recording usage in 15-minute intervals and being read remotely by SDG&E.

**17. Enabling Technology Requirements/Responsibility**

N/A

**18. a.) Budget for 2007-2008**

\$0

**18. b.) Budget for 2009-2011**

\$0 (this program is not funded through the demand response programs proceeding)

**19. Goal/Expected Load Reduction**

See the accompanying SDG&E testimony of Kathryn Smith

**20. EM&V Plan**

See the accompanying SDG&E testimony of Kathryn Smith

**21. Comments**

Initially authorized by D. 04-04-006, this program has no participants but remains available as an option to customers.

**22. a). Enrollment from 2006-2008, including:**

- Number of Participants: 0 meters
- Type of Participants: None
- Megawatts: None
- Megawatts by Type of Participant: NA

**22. b) Estimated Enrollment for Each Year (2009-2011) and How it was Determined**

None currently enrolled

**23. How Programs Fit Into Local Resource Adequacy**

N/A

**24. Estimated Load Impact, Based on Protocols to be Adopted**

See the accompanying SDG&E testimony of Kathryn Smith.

**25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted**

See the accompanying SDG&E testimony of Kevin McKinley.

**26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)**

N/A

**27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond**

SDG&E is participating in the CAISO's working group process for developing demand response functionality for the MRTU Release 1A expected in 2009. SDG&E will determine any necessary program changes in order for the program to participate in MRTU Release 1A. Currently, SDG&E is committed to submitting its day-ahead and day-of demand response forecasts to the CAISO for use in the CAISO's load forecast adjustments in 2008.

**28. Other Relevant Information, as Appropriate and Necessary**

**29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance**

N/A

**30. The Actual (Observed) DR Load Reduction Due to the Program, and how it was distributed among Enrolled Customers**

None

**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

None

**32. Baseline and/ or Terms of Settlement**

Customer Specific Baseline: None

Participating Customers: Measured at the circuit level to meet the required MLL compared to the last 10 days

**Scheduled Load Reduction Program**

**(SLRP)**



## **2009-2011 Demand Response Program Description Scheduled Load Reduction Program (SLRP)**

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### **1. Utility**

San Diego Gas & Electric

### **2. Program**

Scheduled Load Reduction Program (SLRP)

### **3. Program Description**

Market Sector:	Non-Residential
Program Classification:	Weekly during the summer, Statewide
Program Status:	Active: May 1, 2001

The Scheduled Load Reduction Program (SLRP) offers bill credits to business that commit to reducing their load by a set amount on pre-determined days from June 1 through September 30 regardless of whether there is an electricity shortage.

Non-residential customers must be served under a time-of-use (TOU) rate and have a monthly maximum demand of 100 kW or greater and be able to reduce a minimum fifteen percent (15%) of the Customer Specific Baseline Usage, with a minimum load reduction of 100kW, have an interval data recorder (IDR), and have telecommunication capabilities are eligible to participate in SLRP.

### **4. Contract Period**

Customers must remain on the program for a minimum of 12 calendar months.

### **5. Eligibility**

Non-residential customers must be served under a time-of-use (TOU) rate and have a monthly maximum demand of 100 kW or greater and be able to reduce a minimum fifteen percent (15%) of the Customer Specific Baseline Usage, with a minimum load reduction of 100kW, have an interval data recorder (IDR), and have telecommunication capabilities are eligible to participate in SLRP.

**6. Operating Months**

June through September

**7. Curtailment Window**

Four hour increments, based on participant's pre-selected curtailment blocks.

**8. Minimum Qualifying Load Criteria for Program**

Non-residential customers must be served under a time-of-use (TOU) rate and have a monthly maximum demand of 100 kW or greater and be able to reduce a minimum fifteen percent (15%) of the Customer Specific Baseline Usage, with a minimum load reduction of 100kW,

**9. Event Trigger**

There is no event trigger, as the load reduction level and time is pre-selected by participants

**10. Notification Time**

N/A

**11. Curtailment Level**

Based on each participant's pre-selected load reduction level.

**12. Incentive Payment**

\$0.10 kWh

**13. Event Minimum Load Reduction**

SDG&E offers the SLRP program to customers who can reduce a minimum fifteen percent (15%) of the Customer Specific Baseline Usage, with a minimum load reduction of 100kW

**14. Event Frequency Limits**

Once per scheduled 4 hour per week

**15. Non-Compliance Penalty**

There is no financial penalty for not reducing load; however participants can be removed from the program for five failures to curtail during the event season. In addition, monthly incentives will be lost if load shifting to the on-peak period occurs.

**16. Meter Requirements and Who Pays**

Each participating customer must have an approved interval meter and approved meter communications equipment installed and read by SDG&E. The Utility must have access to the customer's meter data on a daily basis for a period of no less than ten (10) calendar days to establish a valid customer specific baseline. An approved interval meter is capable of recording usage in 15-minute intervals and being read remotely by the Utility.

**17. Enabling Technology Requirements/Responsibility**

None required.

**18. a.) Budget for 2007-2008**

\$0

**18. b.) Budget for 2009-2011**

\$0 (this program is not funded through the demand response programs proceeding)

**19. Goal/Expected Load Reduction**

See the accompanying SDG&E testimony of Kathryn Smith.

**20. EM&V Plan**

See the accompanying SDG&E testimony of Kathryn Smith.

**21. Comments**

This program was established by the California Legislature in 2001, pursuant to the provisions of SB5X. SDG&E has no customers enrolled in the program, but will continue to make it available as an option to customers.

22. a.) Enrollment from 2006-2008, including:

- Number of Participants: 0 meters
- Type of Participants: None
- Megawatts: None
- Megawatts by Type of Participant: NA

22. b.) Estimated Enrollment for Each Year (2009-2011) and How it was Determined

None

23. How Programs Fit Into Local Resource Adequacy

N/A

24. Estimated Load Impact, Based on Protocols to be Adopted

See the accompanying SDG&E testimony of Kathryn Smith.

25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted

See the accompanying SDG&E testimony of Kevin McKinley.

26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)

N/A

26. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond

N/A

28. Other Relevant Information, as Appropriate and Necessary

N/A

29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance

N/A

**30. The Actual (Observed) DR Load Reduction Due to the Program, and how it was distributed among Enrolled Customers**

N/A

**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

No changes proposed

**32. Baseline and/ or Terms of Settlement**

Customer Specific Baseline: Incentives are based on comparing load and usage for the same hours during the ten previous days. Compliance is measured on an hourly basis, and incentives will only be paid if the full curtailment commitment for the event is met.

Participating Customers. Compliance is measured on an hourly basis, and incentives will only be paid if the full curtailment commitment for the event is met.

**Technical Assistance Program**

**(TA)**

# 2009-2011 Demand Response Program Description Technical Assistance Program (TA)

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## **1. Utility**

San Diego Gas & Electric

## **2. Program**

Technical Assistance

## **3. Program Description**

Market Sector: Non-Residential  
Program Classification: Cross Cutting, Statewide

The Technical Assistance Program (TA) is an energy audit designed to help customers identify methods for reducing energy costs and encouraging greater participation in demand response and energy efficiency programs. An incentive is available to pay for or offset the cost of the comprehensive TA audit. The Technical Assistance program is a very useful tool for customers to clearly identify and put in place their personalized demand response strategy. This program is an extremely important to customers and is crucial to helping customers manage their demand use with the new CPP default rate. The CPP default rate will result in significantly higher rates during a CPP event.

## **4. Contract Period**

Not Applicable

## **5. Eligibility**

Customers who have a demand of 20 kW or greater, are on a TOU rate and have not previously had a TA audit are eligible. Customers may either be utility bundled or direct access. The program is designed to help customers understand the energy efficiency and demand response opportunities available to them for managing their energy consumption and energy costs. The specific target markets for TA include:

- Customers with lighting, motor, pumping, process or other load that can be temporarily turned off, re-scheduled, or suspended.
- Commercial, institutional, governmental or other buildings with energy management systems (EMS) connected to air conditioning systems, or other load that can be modulated or cycled.

- Customers who have previously participated in SDG&E's energy efficiency or demand response programs.
- Customers who are working with an SDG&E DR Aggregator
- Customers who want integrated energy solutions
- Customers who want to get strategies in place to support the new rate structures and help manage costs.

**6. Operating Months**

Year-Round

**7. Curtailement Window**

N/A

**8. Minimum Qualifying Load Criteria for Program**

20 kW Peak Demand

**9. Event Trigger**

N/A

**10. Notification Time**

N/A

**11. Curtailement Level**

N/A

**12. Incentive Payment**

The payment to the TA Auditor shall not exceed \$100/kW of approved load shed potential.

**13. Event Minimum Load Reduction**

N/A

**14. Event Frequency Limits**

N/A

**15. Non-Compliance Penalties**

N/A



**16. Meter Requirements and Who Pays**

Existing TOU Meter is required. If a new meter is required, the eventual DR program in which the customer enrolls would pay for the meter under the terms of that program.

**17. Enabling Technology Requirements/Responsibility**

N/A

**18. a.) Budget for 2006-2008**

	2006	2007	2008
Operating & Maintenance (Administration)	\$1,162,159	\$1,178,758	\$1,195,168
Capital	\$0	\$0	\$0
Measurement & Evaluation	\$37,889	\$38,221	\$38,549
Incentive Payments	\$750,000	\$750,000	\$750,000
Total Program Budget	\$1,950,049	\$1,966,979	\$1,983,717

**18. b.) Budget for 2009-2011**

	2009	2010	2011
Total Program Budget	\$3,322,805	\$3,337,097	\$3,351,424

**19. Goal/Expected Load Reduction**

N/A. While not directly producing a load reduction, TA identifies opportunities through which customers may be able to achieve load reductions.

**20. EM&V Plan**

See the accompanying SDG&E testimony of Kathryn Smith.

**21. Comments**

**22. a.) Enrollment from 2006-2008, including:**

- Number of Participants – 512 (1/2006 – 4/2008)
- Type of Participants - Non-Residential
- Megawatts, and – 49.11 MW (1/2006 – 4/2008)
- Megawatts by Type of Participant - 49.11MW – All Non-Residential

**22. b.) Estimated Enrollment for Each Year (2009-2011), and How it was Determined**

N/A

**23. How Programs Fit Into Local Resource Adequacy**

N/A

**24. Estimated Load Impact, Based on Protocols to be Adopted**

N/A

**25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted**

N/A

**26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)**

The TA Program is marketed through the SDG&E Account Executives, as well as through educational, outreach and other marketing activities targeting business customers, ESCOs, trade associations, other local business groups and government entities to generate interest and participation in the program. In addition direct customer contact by Account Executives, Demand Response Program outreach, phone and e-mail support will be provided.

**27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond**

N/A

**28. Other Relevant Information, as Appropriate and Necessary**

An On-Bill Financing option is designed primarily to facilitate the purchase and installation of comprehensive, qualified energy efficiency measures by customers who might not otherwise be able to act given capital constraints and/or administrative and time burdens. It is designed to build on the success of the 2006-2008 program cycle offering. SDG&E proposes to establish a sustainable loan pool from non-PGC ratepayer funds to fund loans during 2009, 2010 and 2011.

Participating customers who install comprehensive projects to address all feasible end uses will be eligible to receive a full rebate or incentive from the participating rebate/incentive program(s) and to finance the balance of comprehensive qualified energy efficiency and demand response measures.

**29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance**

Attached is a copy of contract for a TA auditor.

**30. The Actual (Observed) DR Load Reduction Due to the Program, and How it was Distributed Among Enrolled Customers**

N/A


**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

SDG&E will offer customers a fully integrated TA Energy audit in addition to the current DR focused TA. This integrated and comprehensive energy efficiency and demand response offering for the 2009 – 2011 program cycle. In the 2006 - 2008 program cycle SDG&E's TA audit was a comprehensive for the demand response strategies but was only a lead finding mechanism for the energy efficiency piece. The integrated approach will help customers save time by having one audit and money by being both energy efficient and demand response ready. Audits have proven to be an important tool for educating customers about energy management opportunities in their facility, and encouraging their participation in programs. The purpose for an IDSM audit will be to provide a single coordinated audit service for the customer, and eliminate what may appear to be confusing or competing energy options between the two types of programs. Offering this IDSM audit will help customers defaulting to the new rate structure. This integrated approach will be helpful in supporting the new market segmentation approach for energy efficiency programs in the next program cycle.

**32. Baseline and/ or Terms of Settlement**

N/A



A  Semptra Energy utility®

**San Diego Gas & Electric Company Standard Service Agreement for Labor and/or Services**

<b>PROJECT:</b>	<b>Technical Assistance Auditor</b>	
		<i>MAIL ORIGINAL AND DUPLICATE INVOICE TO</i>
<b>CONTRACTOR:</b>		<b>San Diego Gas &amp; Electric Company ACCOUNTS PAYABLE P.O. BOX 129007 San Diego, CA - 92112</b>

This Standard Service Agreement ("Agreement") is made effective as of 00/00/0000 between San Diego Gas & Electric Company ("Company") and ("Contractor").

The Parties hereby agree as follows:

**SCOPE**

Contractor shall perform, at its own proper cost and expense, in the most substantial and skillful manner, to the satisfaction of Company, the following generally described services ("Services"):

- A. Perform Initial Site Assessment**
  - Identify temporary demand response strategies by interviewing knowledgeable customer contacts at the customer's facility
  - During customer Interview discuss their operation regarding:
    - i. Operating schedules
    - ii. Schedule flexibility
    - iii. Space functions
      - 1. End uses (office, warehouse, lab)
      - 2. Environmental requirements (temperature limits, humidification requirements)
      - 3. Critical activities
    - iv. Ability and willingness to participate in demand response activities
      - Determine Energy Use System types, sizing and service
        - i. HVAC, Lighting, Process equipment etc.
      - Determine Capabilities of Building Controls
        - i. Centralized or distributed
        - ii. Systems controlled/monitored
      - iii. Ability to provide automated demand response
      - iv. Sub metered electrical usage information
      - v. Energy Efficiency Opportunities
  - Identify and list any obvious potential Energy Efficiency Measures that may benefit the customer. (Note: It is not the intent of this consulting service agreement to

quantify Energy Efficiency savings, but to simply make report notation for future examination. No additional compensation will be given for non-demand response (measures).

**AUTHORIZED REPRESENTATIVES**

Company designates the individual or individuals named below as Company Representatives for all matters relating to the performance of the Services. The actions taken by the Company Representatives shall be deemed acts of the Company. Company may at any time upon written notice to Contractor change the designated Company Representative.

Company Representative:

Contractor designates the individual or individuals named below as Contractor Representative for all matters relating to the performance of Services. The actions taken by Contractor Representative shall be deemed acts of Supplier. Contractor Representative or designated superintendent shall be at the jobsite at all times during the Services. Contractor may at any time upon written notice to Company change the designated Contractor Representative.

Contractor Representative:

**COMPENSATION**

Contractor shall be compensated for the Services at the rates set forth below in an amount Not-To-Exceed (“NTE”) \$000,000.00. Contractor shall notify Company in writing when the costs incurred under this Agreement based upon this Compensation Article equal ninety percent (90%) of \$000,000.00. Company will not be required to pay Contractor for the Services more than the NTE price unless and until, at Company’s sole option, Company elects in writing to increase the NTE price of the Agreement.

Contractor hereby agrees to accept as full compensation for satisfactory performance of the Services the following labor rates and factors:

**Comprehensive Audits:**

Contractor will perform a site audit and complete SDG&E’s Technical Assistance Comprehensive Energy Audit Report. This report will identify and quantify kW load reduction potential as part of a demand response strategy and identify energy efficiency leads. Contractor shall submit SDG&E’s Comprehensive Energy Audit Report (Form 2B) with supporting energy calculations to SDG&E Technical Assistance Program Management for review. Contractor Comprehensive Energy Audit payment shall be based on the lesser of: SDG&E’s Technical Assistance program approved incentive of \$100.00/kW or the actual cost to complete Comprehensive Energy Audit Report (Form 2B).

**Preliminary Audits:**

On a case by case basis, with prior Program Manager approval, a Contractor may do a cursory audit of customer facility and complete SDG&E’s Technical Assistance Preliminary Audit Report (Form 2A) and submit to SDG&E Technical Assistance Program Manager for review. Contractor Preliminary Audit payment shall be based on the lesser of: \$1,000.00 per completed Preliminary Report contingent upon approval by SDG&E Technical Assistance

Program Manager or the actual cost to complete the Preliminary Audit Report.

Engineering/Audit related work (P.E.) \$000.00 per hour

Engineering/Audit related work (Non-P.E.) \$000.00 per hour

**COMMENCEMENT AND COMPLETION OF SERVICES**

This Agreement shall commence as of 00/00/0000 and shall be in full force and effect through 00/00/0000, unless terminated earlier by Company in accordance with the terms of this Agreement. Contractor agrees to commence and perform the Services in accordance with the requests of Company Representative identified herein. The nature of the Services is such that timely performance is critical to the orderly progress of related work and to the operating schedule of Company.

**INVOICING INSTRUCTIONS**

Contractor shall invoice Company in accordance with the Compensation Schedule. All invoices submitted shall reference the Standard Service Agreement Number and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.

Company shall make payment Net 30 days after receipt and approval of an undisputed invoice to the following address or to the address on each Release, if applicable:

**COMPLETE AGREEMENT**

This Agreement, including all Schedules attached hereto and which are incorporated by reference, constitutes the complete and entire Agreement between the parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein. **THE PARTIES HEREBY AGREE THAT NO TRADE USAGE; PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.** The following Schedules are attached hereto and incorporated herein by this reference:

**SCHEDULE A - GENERAL TERMS AND CONDITIONS**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of 00/00/0000.

San Diego Gas & Electric Company

<b>By:</b>	<b>By:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>

## SCHEDULE A - GENERAL TERMS AND CONDITIONS

- 1 **PARTIES.** This Standard Service Agreement ("Agreement") is entered into between Company and Contractor. Contractor is the firm, person, corporation, or business entity performing the work specified in this Agreement.
- 2 **CONTRACT FORMATION.** By this Agreement, Company offers to contract with Contractor solely upon the terms and conditions stated herein. Any additional or different terms and conditions proposed by Contractor prior to the execution of this Agreement are not agreed to, and hereby expressly rejected. Any additional or different terms and conditions proposed by Contractor after the date of this Agreement shall be of no force and effect unless expressly agreed to in writing by Company. Contractor accepts and shall be bound by the terms and conditions of this Agreement upon the earlier of (a) the date on which it executes and returns the acknowledgment copy or (b) when it commences performance. No other form of acceptance shall be binding on Company.
- 3 **CHANGE ORDERS.** Company may at any time, in writing, direct or authorize Contractor to make changes or modifications to the work within the general scope of this Agreement. If such changes or modifications necessitate (a) an increase, or (b) decrease in the amount due, or (c) the nature or quantity of the goods and services or (d) in the time required for performance, or (e) otherwise, such matters shall be agreed upon in writing prior to proceeding with the change. No payment shall be required from Company for any change or modification which is not authorized in writing.
- 4 **INVOICING.** If Contractor's invoice price does not match the Agreement price, Company shall pay Contractor the lesser of the amount payable under the Order or the Invoice. Contractor will be notified of the reason for the adjustment. When Contractor is considered to be a retailer, Contractor's invoices shall properly identify California sales or use tax as a sales or use tax, and separately state the amount of such tax and any freight, installation, technical service or other charge which is excludable from such tax.
- 5 **PERFORMANCE.** Contractor shall perform the Services in accordance with established professional business standards and ethics and in conformity with each and every term of this Agreement. Contractor shall remedy any and all deficiencies in its Services that result from Contractor's failure to adhere to the Scope of Work.
- 6 **WARRANTIES.** Contractor expressly represents and warrants that all the Services performed hereunder shall be in compliance with the performance standards, drawings, specifications and any other description of services set forth in the Scope of Work, and the terms and conditions of this Agreement. Company may reject any Services furnished hereunder failing to meet such standards, and require Contractor to promptly repeat, correct or replace such defective Services, at **NO** charge to Company\* or, at Company's election, Company may hire a third party to complete the Services at Contractor's expense. Contractor further warrants and agrees that none of the material to be furnished by Contractor and its subcontractors, if any, in the performance of the Scope of Work shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available.
- 7 **INSPECTION.** All Services performed by Contractor shall be subject to the inspection and approval of Company at all times, but such right of inspection of the Services shall not relieve Contractor of responsibility for the proper performance of the Services, nor shall such inspection waive Company's right to reject the Services at a later date. Contractor shall provide Company access to Contractor's facility or facilities where the Services are being performed and sufficient, safe and proper work conditions for such inspection. Contractor shall furnish Company such information concerning its operations and/or the performance of the Services as Company may request.
- 8 **ADHERENCE TO COMPANY'S RULES.** Contractor shall conduct its operations in strict observation of access routes, entrance gates or doors, parking and temporary storage areas as designated by Company. Under no circumstances shall any of Contractor's personnel, vehicles or equipment enter, move or be stored upon any area not authorized in writing by Company.
- 9 **COMPANY SECURITY PROCEDURES.** Contractor shall abide by all Company Security procedures, rules and regulations and shall cooperate with Company Security personnel whenever on Company's property whether owned or leased.
10. **ANTI-CONDUIT RULES** Contractor understands that the California Public Utilities Commission ("CPUC") and the Federal Energy Regulatory Commission ("FERC") have issued certain Affiliate Transaction Rules including, without limitation, the anti-conduit procedures contained in CPUC Decisions ("D") 97-12-088 as modified by D.06.12.029 (go to: <http://www.cpuc.ca.gov/static/energy/electric/electric-markets/affiliate.htm>); FERC Order 697 (18 C.F.R. Section 35.39(g)); and FERC Order No. 2004 (go to: <http://www.ferc.gov/legal/maj-ordreg/land-docs/order2004.asp>) (the "Rules"). The Contractor understands and agrees to abide by these Rules as well as the Sempra Energy Communication Guidelines ("Guidelines"). Contractor shall not be a conduit under either the Rules or Guidelines and will refrain, and cause its permitted subcontractors to refrain from taking any action that could reasonably constitute a conduit to circumvent the Rules or Guidelines. Contractor acknowledges receipt of the Guidelines.
- 11 **INDEPENDENT CONTRACTOR.** It is agreed that Contractor shall perform the Services under this Agreement as an independent contractor and no principal-agent or employer-employee relationship or joint-venture or partnership shall be created with Company. Contractor represents to Company that Contractor and its subcontractors and agents are properly licensed, fully experienced and qualified (including having all necessary authorizations) to perform the class and type of the Services as specified in this Agreement, in addition to being properly insured, equipped, organized, staffed and financed to handle such Services. Contractor shall perform the Services in an orderly and professional manner in accordance with industry standards. Contractor shall not employ for the Services any personnel or subcontractor unskilled in the work assigned. Contractor shall use prudent business practices in its relationships with subcontractors, suppliers and agents.
- 12 **OWNERSHIP OF INTELLECTUAL PROPERTY.** Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, enhancement, modification, development or discovery (hereinafter, collectively, "Invention"), whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that Contractor may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Services shall be owned by Company and shall be delivered to Company upon completion of the Services. Contractor agrees that any copyrightable Invention, including without limitation, Contractor's preliminary formulations and other work on which the copyrightable Invention is based on or derived from, shall constitute a "work made for hire". Contractor hereby assigns and grants to Company, without royalty or any further consideration, Contractor's entire right, title and interest in and to any such Inventions, including any work made for hire. At Company's request, Contractor shall execute an assignment or other document confirming such transfer upon the completion of any work made for hire.
- 12.1 Contractor hereby grants to Company an irrevocable, assignable, nonexclusive royalty-free unrestricted license to use, copy, distribute and make derivatives of any proprietary rights or specialized knowledge of Contractor that are part of any "Work Product" (defined below) furnished by Contractor to Company under this Agreement.
- 12.2 If requested by Company, Contractor agrees to take all actions necessary, at Company's sole cost and expense, to obtain, maintain or enforce patents, copyrights, trade secrets and other proprietary rights in connection with any Invention, and Contractor agrees that its obligations under this Article shall survive termination or expiration of this Agreement.
- 12.3 Any and all material and tangibly expressed information prepared, accumulated or developed by Contractor, any subcontractor or their respective employees or representatives, including, without limitation, documents, drawings, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith (hereinafter, collectively "Work Product"), shall become the sole property of Company without any further consideration to be provided therefore when (i) prepared or in process, in connection with the Services and (ii) whether or not delivered by Contractor. Contractor shall deliver the Work Product, or any portion thereof, to the Company on request, together with any other requested materials and/or equipment furnished to Contractor by Company hereunder, and, in any event, upon termination or expiration of this Agreement.
- 13 **INDEMNITY.**
- 13.1 As between Company and Contractor, Contractor shall be solely responsible for and Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever resulting from: (a) injuries to or death of any and all individuals, including, without limitation, members of the general public, or any employee, agent, independent contractor or consultant or affiliate of either Company or Contractor, arising out of or connected in any manner with Contractor's performance of Services, (b) damage to, loss, and/or destruction of property, including, without



limitation, to, property of Company or Contractor arising out of or connected in any manner with Contractor's performance of Services, or (c) third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any manner to Contractor's or any of its subcontractor's acts or omissions in breach of this Agreement. This indemnification obligation shall not apply to the extent that injuries, death, loss, damage or destruction is caused by either the willful misconduct of Company or Company's sole negligence.

13.2 Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including reasonable attorneys' fees (including fees and disbursements of in-house and outside counsel), of any kind whatsoever arising from or in connection with: (a) actual or alleged infringement or misappropriation by Contractor or any subcontractor or other representative of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the Services, including without limitation, any deliverable or related "work product"; and (b) Contractor's violation of any third party license to use intellectual property in connection with the Services, including, without limitation, any deliverable or related "work product."

13.3 If any claim or action is brought against Company arising out of or related to this Agreement or the Services provided hereunder, then Contractor shall assume the defense of such claim or action, with counsel reasonably acceptable to Company, unless in the opinion of counsel for Company a conflict of interest between Company and Contractor may exist with respect to such claim or action. If a conflict precludes Contractor from assuming the defense, then Contractor shall reimburse Company on a monthly basis for Company's defense costs through separate counsel of Company's choice. If Contractor assumes the defense of Company with acceptable counsel, Company, at its sole option and expense, may participate in the defense with counsel of Company's own choice without relieving Contractor of any of its obligations hereunder.

13.4 Contractor's obligation to indemnify Company under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, penalty or benefits payable by or for Contractor under any statutory scheme, including without limitation, any Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

#### 14. INSURANCE.

GENERAL REQUIREMENTS. Insurance requirements are set forth as follows, but shall not in any way limit the amount or scope of liability of Contractor under this Agreement. This Article 14. constitutes the minimum insurance and requirements relating thereto.

14.1 EFFECTIVENESS, CERTIFICATES, NOTICE OF CANCELLATION. On or before the effective date of this Agreement, and thereafter during its term, Contractor shall provide Company with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Article. Contractor shall not commence Services until Contractor has obtained all insurance required by this Article and has provided acceptable certificates of insurance. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to Company, ten (10) days for non-payment of premium. Contractor shall provide Company with renewal certificates of insurance or binders within five (5) business days prior to or after such expiration. Insurance shall be maintained without lapse in coverage during the term of this Agreement. Company shall also be given certified copies of Contractor's policies of insurance, upon request.

14.2 AS CONTRIBUTION FROM COMPANY. The required policies, and any of Contractor's policies providing coverage excess of the required policies, shall provide that the coverage is primary for all purposes and Contractor shall not seek any contribution from any insurance or self-insurance maintained by Company

14.3 RATING. All required policies of insurance shall be written by companies having an A. M. Best rating of "A -VII" or better, or equivalent.

14.4 DEDUCTIBLE. Contractor shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.

14.5 ADDITIONAL INSURED. San Diego Gas & Electric Company and its parent company, and its subsidiaries, affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns shall be named as an additional insured for all policies listed below in 14.7.1 and 14.7.4. Commercial General Liability insurance listed in 14.6.1 shall provide a severability of interest or cross-liability clause.

14.6 Waiver of Subrogation. Each policy of insurance maintained by Contractor below in sections 14.7.1, 14.7.3 and 14.7.4 shall contain a waiver of subrogation in favor of San Diego Gas & Electric Company.

14.7 Types of insurance required to be provided by Contractor:

14.7.1 Commercial General Liability Insurance. Contractor shall carry and maintain an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Contractor for Work performed under this Agreement. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$1,000,000.00 per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

14.7.2 Commercial Automobile Liability Insurance. Contractor shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property, (including loss of use thereof), and occurring in any way related to the use by or on behalf of Contractor, in pursuit of the Services, including loading or unloading of any of Contractor's automobiles (including owned, non-owned, leased, rented/or hired vehicles). Such coverage shall be in an amount of not less than \$1,000,000.00 combined single limit.

14.7.3 Workers' Compensation & Employers' Liability Insurance. In accordance with the laws of the State(s) in which the Work shall be performed, Contractor shall maintain in force workers' compensation insurance for all of its employees. If applicable, Contractor shall obtain U.S. Longshoremen's and Harbor Workers compensation insurance, separately, or as an endorsement to workers' compensation insurance. Contractor shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 per accident and per employee for disease. In lieu of such insurance, Contractor may maintain a self-insurance program meeting the requirements of the State(s) in which the Services shall be performed along with the required Employer's Liability insurance.

14.7.4 Pollution Liability Insurance. If applicable to scope of work under this Agreement, Contractor shall maintain pollution liability insurance or insurance policies insuring against liability arising out of activities contemplated under this Agreement or as might be required by federal, state, regional, municipal and local laws, in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.7.5 Professional Liability Insurance. If the Contractor is providing professional design, engineering or other professional services (including Design-Build), Contractor shall maintain Professional Liability insurance covering liability arising out of error, omission, or negligent act in the performance, or lack thereof, of professional services contemplated under this Agreement in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.8 Contractor's Subcontractors. In accordance with the Article of this Agreement entitled "SUBCONTRACTORS", Contractor shall accept total responsibility to require all other persons, firms and corporations engaged or employed by Contractor in connection with the performance of the Scope of Work to carry and maintain coverage with limits not less than those required in this Article. Contractor shall incorporate insurance requirement by reference within any contract executed by Contractor and its subcontractors, sub-subcontractors, suppliers, and agents shall cause each subcontractor, sub-subcontractor, supplier, and agent to comply with the terms of this Agreement. Contractor will obtain and verify accuracy in their entirety of certificates of insurance evidencing required coverage prior to permitting its subcontractors, sub-subcontractors, suppliers, and agents from performing work or services on the property of Company. Contractor will furnish original certificates of insurance with additional insured endorsements from all of its subcontractors, sub-subcontractors, suppliers, and agents as evidence thereof as Company may reasonably request.

14.9 Reports. Contractor shall immediately report to Company, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Contractor or its consultants, subcontractors, sub-subcontractors, suppliers, agents or Contractor's receipt of notice or knowledge of any claim by a third party of any occurrence that might give rise to such a claim over \$100,000. Upon completion of Contractor's Services, Contractor shall submit to Company a written summary of all such injuries, losses, damage, notices or third party claims and occurrences that might give rise to such claims. Nil reports are required.

15 SUPPLIER DIVERSITY. It is the policy of Company to provide maximum opportunity for women; minority and service disabled veteran

business enterprises, hereinafter referred to as DBE (Diverse Business Enterprises), to participate in the performance of contracts. Company expects as satisfactory performance to this Agreement, Contractor to utilize DBE subcontractors and suppliers and to use good faith efforts to set and attain goals in parity with Company goals when contracting for work with Company. Contractor shall submit on a timely basis any documentation required by Company to report Contractor's DBE expenditures in connection with this Agreement.

16 **ASSIGNMENT.** Contractor shall give personal attention to the execution of the Services herein provided for, and shall not permit this Agreement to be assigned voluntarily, involuntarily or by operation of law; nor employ any subcontractor for the execution of the same or any part thereof, without the express prior written authorization of Company. No such written authorization, however, shall be construed as discharging or releasing Contractor in any way from the performance of the Services or the fulfillment of any obligation specified in this Agreement. Contractor shall remain jointly and severally liable with any permitted assignee for any failure to comply fully with all applicable obligations hereunder this Agreement. Company may assign in whole or in part its rights and obligations under this Agreement at any time without the consent of Contractor.

17 **TIME.** Time is expressly agreed to be of the essence in any performance related to this Agreement and each, every and all of the terms, conditions and provisions herein.

18 **GOVERNING LAW.** The formation, interpretation, performance and enforcement of this Agreement shall be governed by and enforced under the laws of the State of California, without reference to principles of conflicts of laws.

19 **COMPLIANCE WITH LAWS.** Contractor and its subcontractors at all times during performance of the Services shall comply with and observe, all applicable federal, state, regional, municipal and local laws, ordinances, rules, codes, regulations, executive orders, applicable employment, safety and environmental orders and any applicable orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor, Company or the Services furnished under this Agreement, as in effect from time to time, including, but not limited to, the Immigration Control Act of 1968 and the Foreign Corrupt Practices Act (15 USCS §§ 78A and 78m et seq).

20 **TERMINATION.** It is also expressly agreed that Company shall have the right to terminate this Agreement, or any part thereof, at any time for its sole convenience upon two (2) business days written notice to Contractor. Contractor shall fully justify and document to Company in writing any termination charges claimed by Contractor (which shall not exceed 110% of the reasonable and actual cost already incurred of direct labor, materials and overhead). In no event shall Contractor be entitled to payment for any Services which has not been authorized by Company, or is not yet performed, or any anticipated profits for any Services that have not been authorized or performed. Any payment of termination charges shall occur within thirty (30) days of receipt of Contractor's written submittal of charges and justification to Company's satisfaction. Company shall have the right to review and verify by independent audit, any termination charges claimed by Contractor prior to payment.

21 **LIENS.** Without limiting the generality of any other provisions herein, Contractor shall indemnify, defend, and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any mechanics lien or stop notice claim against Company by Contractor, subcontractors, employees or agents pertaining to the Services specified in this Agreement. If Contractor fails to remove or discharge by bond, payment or otherwise any lien or claim within five (5) business days after Company's written demand to do so, Company may offset the compensation otherwise payable to Contractor under this Agreement or any other agreement in order to pay such liens directly.

22 **RETENTION.** Company shall have the right to withhold a retention from payments due Contractor. The amount of the retention shall be paid within 45 days after completion as defined by California Civil Code Section 3260. Provided, however, the Company may require Contractor to provide conditional or unconditional lien releases, as a condition to withhold the retention and such additional amounts due Contractor as necessary until such liens have been satisfied by Contractor. In addition, Company may use the retention to satisfy directly the claim of any lienor.

23 **AUDIT.** Company reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any Services performed under this Agreement. Any such audit or examination may be undertaken by Company or its contracted representative at reasonable times during normal business hours and in conformance with generally accepted auditing standards. Contractor agrees to fully cooperate with any such audit(s).

23.1 Contractor shall include a similar clause in its arrangements with its subcontractors reserving the right to designate Contractor's own employee representative(s), its contracted representative(s) from a certified public accounting firm, and/or representative(s) from Company, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item related to the Services.

23.2 Contractor shall be notified in writing of any exception taken as a result of an audit of Contractor or a subcontractor. Contractor shall refund the amount of any exception to Company within ten (10) days. If Contractor fails to make such payment, Contractor shall pay interest on any unpaid portion of such payment, accruing monthly, at a rate equal to the lesser of ten percent (10%) per annum or the maximum lawful rate. Interest shall be computed from the date of written notification of exception(s) to the date Contractor reimburses Company in full for any exception(s). In the event an audit in accordance with this Article discloses an overcharge of five percent (5%) or greater, then Contractor shall reimburse Company for the cost for the performance of such audit.

23.3 Company's right to audit shall extend for a period of five (5) years following the date of final payment under this Agreement. Contractor and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

24 **TAXES.** Contractor assumes exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by the equipment, materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with, the performance of the Services. Provided that the conditions of indemnification as set forth in this Agreement are satisfied, Contractor shall indemnify, defend and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any claim, liability, penalty, interest and expense arising by reason of Contractor's failure to pay such taxes, charges or contributions.

24.1 Without limiting the generality of this Article, Contractor agrees to treat all individuals performing the Services under this Agreement as employees of Contractor for purposes of federal and state income taxes, Social Security and Medicare taxes, unemployment and disability insurance premiums. No exceptions shall be permitted under this Article without a written Amendment to this Agreement prior to any individual performing any required Services under this Agreement. Contractor agrees that, at any time during the performance of this Agreement, Company shall have the right to audit Contractor's compliance with this provision in accordance with the Article entitled "AUDIT".

24.2 To the extent any portion of the Services are performed in the State of California, either (a) Contractor represents that Contractor is a California resident and shall provide Company with an original and a copy of Form 590, Certificate of Residence, in accordance with California Revenue and Taxation Code Section 18662 and regulations thereunder; or (b) seven percent (7%) of all compensation payable to Contractor for Services performed in California shall be withheld in accordance with applicable California Franchise Tax Board ("FTB") or successor regulations, unless Company has been notified in writing by FTB that withholding is waived or a lower rate or withholding is authorized.

24.3 Contractor and Company shall make commercially reasonable efforts to cooperate with each other to minimize the tax liability of both parties to the extent legally permissible (and with no duty to increase either parties tax liability), including separately stating taxable charges on Contractor's invoices and supplying resale and exemption certificates, if applicable, and any other information as reasonably requested.

24.4 Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, the Parties acknowledge and agree that: (i) any obligations of confidentiality contained herein and therein do not apply and have not applied from the commencement of discussions between the Parties to the tax treatment and tax structure of any transaction related to the Services or any other transactions or arrangements; and (ii) each Party (and each of its employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that the foregoing is not intended to affect any privileges that each Party is entitled, in its sole discretion, to maintain, including with respect to any confidential communications with its attorney or any confidential communications with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code.

25 **VALIDITY.** The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.

26 **DISPUTES.** Any dispute that cannot be resolved between Contractor Representative and Company Representative shall be referred to Company Director – Supply Management and an officer of Contractor for resolution. If Company and Contractor cannot reach an agreement

within a reasonable period of time, Company and Contractor shall have the right to pursue litigation as provided for herein. In no event shall the litigation of any controversy or the settlement thereof delay the performance of this Agreement.

26.1 In the event of any litigation to enforce or interpret any terms of this Agreement, unless the parties agree in writing otherwise, such action shall be brought in any Superior Court of California having jurisdiction (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Southern District of California), and the parties hereby submit to the exclusive jurisdiction of said court.

26.2 In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, (including expert testimony) and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing party.

27 **CONFIDENTIALITY.** For purposes of this Agreement, the term "Confidential Information" means proprietary information concerning the business, operations and assets of Company its parent company(ies), subsidiaries and/or affiliates, including, without limitation, the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of Services under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information shall not include: (a) information known to Contractor prior to obtaining the same from Company; (b) information in the public domain at the time of disclosure by Contractor; (c) information obtained by Contractor from a third party who did not receive same, directly or indirectly, from Company; or (d) information approved for release by express prior written consent of an authorized officer of Company. Contractor shall have the burden of proof in establishing that its use of Company information is permitted by (a), (b), (c) and/or (d) of this provision.

27.1 Contractor hereby agrees that it shall use the Confidential Information solely for the purpose of performing Services under this Agreement and not in any way detrimental to Company, its parent company(ies), subsidiaries and/or affiliates. Neither Contractor nor its directors, officers, employees, agents or representatives shall use the Confidential Information for their own benefit.

27.2 Contractor agrees to use at least the same degree of care Contractor uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Contractor shall keep confidential and not disclose the Confidential Information. Contractor shall cause each of its directors, officers, employees, agents, representatives, subcontractors and suppliers to become familiar with, and abide by, the terms of this Agreement.

27.3 Notwithstanding any other provisions of this Article. Contractor may disclose any of the Confidential Information in the event, but only to the extent that, based upon advice of counsel, Contractor is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency or regulatory authority. Prior to making or permitting any such disclosure, Contractor shall provide Company with prompt written notice of any such requirement so that Company (with Contractor's assistance if requested by Company) may seek a protective order or other appropriate remedy.

27.4 Subject to Section 27.2, Contractor shall not, without the prior written consent of Company, disclose to any third party the fact that such Confidential Information has been made available to Contractor.

27.5 At any time upon the request of Company, Contractor shall promptly deliver to Company or destroy if so directed by Company (with such destruction to be certified to Company) all documents (and all copies thereof, however stored) furnished to or prepared by Contractor that contain Confidential Information and all other documents in Contractor's possession that contain or that are based on or derived from Confidential Information.

27.6 Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is five (5) years after the date of disclosure of such Confidential Information.

27.7 The parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Contractor are specifically enforceable. Accordingly, the parties agree that in the event of a breach or threatened breach of this Agreement by Contractor, Company, its parent company(ies), subsidiaries and/or affiliates, who shall be third party beneficiaries of this Agreement, shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to Company, its direct and indirect parent company(ies), subsidiaries or affiliates.

28. ENVIRONMENTAL TERMS

28.1 **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

28.2. "**Hazardous Materials**" means any chemical, substance, material, controlled substance, object, product, by-product, residual, condition, solid, gas or waste or combination thereof which is hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or effects. Hazardous Materials include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, and substances defined as "hazardous substances," "hazardous material," "hazardous wastes," or "toxic substances" in, under or pursuant to any Environmental Law (as that term is defined below). "Hazardous Materials" shall also include oil or petroleum and petroleum products, asbestos, and any asbestos containing materials, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which now are, or become in the future, listed, defined or regulated in any manner by any Environmental Law (as that term is defined below). For purposes of this Agreement, the terms "encumbrance" and "encroachment" shall not be deemed to include the presence of any Hazardous Material contamination on, in or under the Property or its underlying groundwater.

28.3. "**Environmental Law**" means applicable federal, state, regional, county or local law, regulation, decision of the courts, ordinance, rule, code, order, directive, guideline, permit, or permit conditions which, now or in the future, relate in any way to worker or workplace safety, environmental conditions, environmental quality or policy, or health and safety issues or concerns (including product safety). Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 USC, §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC, §§6901 et seq.), the Federal Water Pollution Control Act (33 USC §§ 1251 et seq.), the Safe Drinking Water Act (42 USC §§300 et seq.), the Hazardous Materials Transportation Act (49 USC §§ 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code, §§25300 et seq.), the Toxic Substance Control Act (15 USC §§2601, et seq.), the California Hazardous Waste Control Law (California Health & Safety Code, §§25100 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), the Safe Drinking Water and Toxic Enforcement Act (California Health & Safety Code §§25249.5, et seq.), the California Occupational Safety and Health Act (California Labor Code §§6300 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), and applicable regulations or rules promulgated thereunder.

28.4. "**Governmental Agency**" shall mean any federal, state regional, municipal or local governmental agency or other public or political body having the jurisdiction, mandate, authority or power to regulate, implement, coordinate, administer or enforce any Environmental Law.

28.5. "**Materials and Licenses**" Supplier agrees that all materials and equipment to be supplied or used by Supplier, its subcontractors, if any, in the performance of its obligations under this Agreement, including, but not limited to vehicles, loading equipment, and containers, shall be in good condition and fit for the use(s) for which they are employed by Supplier or its subcontractor, if any. Supplier further agrees that none of the materials to be supplied or used by Supplier and its subcontractors, if any, in the performance of its obligations under this Agreement shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available. The materials, equipment and Services shall comply with all applicable Environmental Laws as of its delivery and installation and Supplier shall comply with applicable provisions of Environmental Laws, including, but not limited to, providing any Proposition 65 warnings and Material Safety Data Sheets. All materials and equipment used in the Services (including any warranty re-installation) shall at all times be maintained, inspected and operated as required by applicable Environmental Law. Supplier further agrees that all licenses, permits, registrations and certificates or other approvals required by any Environmental Law or Governmental Agency shall be procured and maintained for such materials and equipment at all times during the use of the same by Supplier or its subcontractors, if any, in the performance of any of Supplier's

obligations under this Agreement.

28.6. **"Duty to Comply with Laws"** Supplier specifically agrees that in the performance of its obligations under this Agreement, Supplier shall at all times fully comply with and cause each of its subcontractors, if any, to fully comply with all applicable Environmental Laws. Supplier further agrees that Supplier shall have and cause its subcontractors, if any, to have and keep in effect all licenses, permits, registrations, certificates, training, and approvals required by any Environmental Law or by any Governmental Agency for the Services undertaken by Supplier or its subcontractors, if any, in the performance of Supplier's obligations under this Agreement.

28.7. **"Indemnification"** Supplier hereby specifically agrees to indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, demands, causes of action, costs and expenses including, but not limited to, all reasonable consulting, engineering, attorneys (in-house and outside counsel) or other professional fees including disbursements, which Indemnitees, or any of them, may incur or suffer by reason of:

- (1) any unauthorized release of a Hazardous Material;
  - (2) any enforcement or compliance proceeding commenced by or in the name of any Governmental Agency because of an alleged, threatened or actual violation of any Environmental Law;
  - (3) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Environmental Law; and/or
  - (4) any other cause of whatsoever nature;
- arising out of or in any way connected with Supplier's performance under this Agreement, except to the extent the same were caused by the willful misconduct or sole negligence of the Indemnitees.

28.8. **"Release"** In the event of any unauthorized release of a Hazardous Material, Supplier shall perform the following actions:

- (1) Take all reasonable steps necessary to stop and contain said release;
- (2) Make any report of such release as required under Environmental Law;
- (3) Clean up such release as required by the applicable Governmental Agency.

28.9. **"Notification"** Supplier shall immediately notify Company Representative of the following upon the occurrence of any unauthorized release of Hazardous Material in connection with the Services:

- (1) A description of the release;
- (2) The identification of the Hazardous Material and the volume released;
- (3) Death of any person;
- (4) Property damage;
- (5) Any communication from any Governmental Agency that alleges that Supplier is not acting in compliance with Environmental Law.
- (6) Any communication from any Governmental Agency that affects any of Company's Supplier's, or any subcontractor's permits or licenses.

28.10. **"Reports"** Supplier shall submit within 36 hours of the unauthorized release to Company Representative a written report, in a format required by Company describing in detail any event of any unauthorized release of a Hazardous Material which shall include the following information:

- (1) Name and address of Supplier and any subcontractor(s) involved.
- (2) Name and address of Supplier's commercial and environmental liability insurance carrier.
- (3) Name and address of any injured or deceased persons, if applicable.
- (4) Name and address of any property damage, if applicable.
- (5) A detailed description of the release including the identification of the Hazardous Material, the date and time of the release, the volume released, and the nature of the any environmental contamination.
- (6) A determination of whether any of Company's personnel, equipment, tools or materials were involved.
- (7) A detailed description of all reports made to any Governmental Agency, and a description of the actions taken to respond to the release.

28.11. **"No Transportation of Company's Hazardous Material."** Supplier shall NOT (a) transport any Hazardous Material that Company generated for purposes of treatment, storage, recycling and/or disposal; or (b) conduct any treatment, storage, recycling and/or disposal of any Company generated Hazardous Material unless specifically authorized by Company to perform such activities in writing. If Supplier is authorized by Company to perform such activities then the following terms and conditions shall apply:

28.12. **"Authorized Treatment Facility."** Supplier shall not transport any Company generated Hazardous Material to any treatment, storage, recycling and/or disposal facility (hereinafter called "TSDF") not authorized by Company in writing. Prior to transporting Company generated Hazardous Material in each case, Supplier shall confirm that the TSDF has procured and maintained in effect all licenses, permits, registrations, certificates or other authorizations required by any Environmental Law or Governmental Agency to lawfully receive, handle, transport, store, treat, recycle, incinerate, dispose of, or otherwise manage or use such Hazardous Material. Supplier shall not transport any Company generated Hazardous Material to any TSDF which is unable or fails to provide such confirmation and Supplier shall immediately notify Company. Company reserves the right at any time, in Company's sole discretion, to cancel its authorization of any TSDF by written notice to Supplier.

28.13. **"Hazardous Waste Manifest."** Company shall, when required by Environmental Law, provide Supplier with a complete and executed Hazardous Waste Manifest or other shipping documentation for Company generated Hazardous Material to be transported for treatment, storage, recycling and/or disposal. Supplier's transportation, recycling, treatment, storage, and/or disposal of any such Hazardous Material in accordance with this Agreement shall be documented by Supplier utilizing, among other things, the Hazardous Waste Manifest tracking system or other records as required by Environmental Law, copies of which shall be provided to Company within ten (10) days of shipment.

28.14. **"No Asbestos or Asbestos-Containing Materials (ACM)."** Supplier shall not supply, sell, deliver or furnish to Company any Products or Goods, pursuant to this Agreement, that contain asbestos or ACM in any concentration or amount whatsoever, unless otherwise consented to in writing by Company, on the basis that no feasible replacement Products or Goods (that do not contain asbestos or ACM) are available.

## 29. HAZARDOUS MATERIALS

29.1. **"Hazardous Materials and Toxic Chemicals."** Supplier shall provide the following to Company for each material which Supplier furnishes under this Agreement: (a) a completed Material Safety Data Sheet (MSDS) for each material which contains a *hazardous material* as defined above; and (b) a written statement for each material that is a Mixture or Trade Name Product which contains a *Toxic Chemical* subject to the reporting requirements of Section 313 or EPCRA (40 CFR Section 372 et seq.) including: (1) the name and associated CAS (Chemical Abstract Services Registry) number of the *Toxic Chemical*; (2) the specific concentration at which each such *Toxic Chemical* is present in each such Mixture or Trade Name Product; and (3) the weight of each such *Toxic Chemical* in each such Mixture or Trade Name Product. Supplier shall indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, administrative actions, judgments, costs or expenses including expert witness, consulting and attorneys' fees (including fees and disbursements of in-house and outside counsel) that Company suffers as a result of Supplier's failure to comply with these requirements.

29.2. **"Proposition 65."** If any part of the Services would require that a warning pursuant to Proposition 65 (California Health & Safety Code sections 25249.5, et seq.), be provided to exposed individuals, then Supplier shall provide such warning to those individuals, including but not limited to members of the public, Company's employees, Supplier's employees, and any subcontractor's employees.

## 30. Use of Company Equipment

In the event Company loans Contractor any equipment for use under this Agreement, title to said property shall remain in Company. Notwithstanding the foregoing, Contractor shall be responsible for loss, damage, destruction, theft, maintenance, and repair of said property while in the possession of Contractor. Prior to use, Contractor shall have inspected said property and have satisfied Contractor that the property is in good repair and working condition. Contractor shall only allow qualified personnel to operate said equipment. Contractor shall surrender possession of said equipment upon demand by Company.

31. **"REMEDIES."** Contractor agrees that if: (a) Contractor abandons the Services, or (b) Contractor shall become bankrupt or insolvent, or shall assign this Agreement, or sublet any part thereof, without the express prior written authorization of Company, or (c) Contractor, in the sole opinion of Company Representative, violates any of the provisions of this Agreement, or (d) Contractor executes this Agreement in bad faith, or (e) Contractor, in the sole opinion of the Company Representative is not performing the Services in accordance with the terms of this Agreement, Company may notify Contractor, to discontinue all or any part of the Services and Contractor shall thereupon discontinue the Services or such parts thereof. Company shall thereupon have the right to continue and complete the Services or any part thereof, by contract or otherwise, and Contractor shall be liable to Company for any and all loss, penalties, fines, excess cost and consequential, special, incidental and indirect damages incurred by Company in completing the Services caused by Contractor's failure to execute the requirements of this Agreement. The

remedies herein shall be inclusive and additional to any other rights or remedies in law or equity, and no action by Company shall constitute a waiver of any such other rights or remedies. If it is determined for any reason by a tribunal of competent jurisdiction that Contractor was not in default, the parties rights and obligations shall be the same as if notice of termination had been issued pursuant to the Article entitled **"TERMINATION."**

32. **OFFSET.** Company may upon written notice to Contractor, setoff any amount due from Contractor, whether or not under this Agreement, against any amount due Contractor or claimed to be due by Contractor under this Agreement. In addition, Company may withhold from Contractor any amount sufficient to reimburse Company for any loss, damage, expense or liability for Contractor's actual, alleged or reasonably probable failure, based on factual evidence, to comply with the terms and conditions of this Agreement.

33. **SURVIVAL.** The obligations imposed on Contractor pursuant to each Article of this Agreement, which by its terms contains subject matter which relates to time periods subsequent to the term of this Agreement, including without limitation the following Articles, Warranty, Indemnity, Disputes, Confidentiality, and this Survival provision, shall survive completion of the Services or termination of the Agreement. 34. **EQUAL OPPORTUNITY.** This Agreement incorporates Executive Orders No. 11246, 11625, 11701, 11738 and 12138, the Vietnam Era Veterans Readjustment Act of 1974, the Vocational Rehabilitation Act of 1973, and the regulations thereunder, as amended from time to time, to the extent applicable. Contractor agrees not to discriminate in employment opportunities on the basis of race, color, religion, sex or national origin. Contractor further agrees to comply with applicable laws regarding environmental protection and with respect to affirmative action for qualified veterans and for qualified handicapped persons.

35. **NO PUBLICITY.** Supplier shall not, without Company's prior written consent, engage in advertising, promotion or publicity related to this Agreement, or make public use of any Company identification in any circumstances related to this Agreement or otherwise. "Identification" means any corporate name, trade name, trademark, service mark, insignia, symbol, logo or any other product, service or organization designation, or any specification or drawing owned by Company or its affiliates or any representation thereof.

36. **EXCUSABLE DELAYS.** Contractor shall notify Company in writing immediately of any delay or anticipated delay in Contractor's performance of this Agreement due to causes or circumstances beyond the reasonable control of Contractor. Notice shall include the reason for and anticipated length of the delay. Company may determine, in its sole judgment, to extend the date of performance for a period equal to the time lost by reason of the delay. Contractor shall not be eligible under any circumstances for additional compensation due to any such extension of time. Any extension of time pursuant to this Article shall be documented by a written amendment to this Agreement signed by both Parties. Examples of such possibly excusable delays are natural calamities, strikes and boycotts, war or civil unrest or governmental actions and other events that are commonly deemed Force Majeure. None of the foregoing, however, shall require Company to grant any extension of time for completing the Services.

37. **REPORTS.** Contractor shall provide periodic status reports as requested by Company Representative. The status reports shall make periodic comparisons of the Services rendered to date against the Scope of Work including, any milestones and costs. Such reports shall include an explanation of any significant variations, an identification of any potential or known developments that may impact Company or the Services and any corrective actions implemented.

38. **SUBCONTRACTORS.** Contractor must obtain Company's written consent prior to retaining subcontractor(s) to perform any of the Services. If Company authorizes Contractor to utilize any subcontractors under this Agreement, Contractor shall at all times be responsible for the acts and omissions of subcontractors and agents employed directly or indirectly by Contractor. Contractor shall be responsible for performance of all the Services, whether performed by Contractor or its subcontractors or agents. This Agreement shall not give rise to any contractual relationship between Company and any subcontractor or agent of Contractor. Company shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor or agent of Contractor. Upon request of Company, Contractor shall furnish to Company copies of any executed subcontracts entered into between Contractor and any subcontractor or agent.

39. **SUSPENSION OF SERVICES.** Company may, at any time, by written notice, require Contractor to stop all, or any portion, of the Services for a period of up to ninety (90) days ("Suspension Period") and any further period to which the Parties agree. Upon receipt of notice, Contractor shall immediately cease performance under this Agreement for the entire Suspension Period. Prior to the expiration of the Suspension Period, Company shall either: (a) cancel the Suspension Period; (b) permit the Suspension Period to expire whereupon Contractor shall resume its performance of the Services; or (c) terminate this Agreement pursuant to the provisions of the Article entitled **"TERMINATION"**. If the suspension is canceled or permitted to expire, Contractor shall be granted a corresponding adjustment to all time periods and completion dates. Company shall not be liable for any payments to Contractor for expenses incurred during the Suspension Period.

40. **NO WAIVER.** The failure of Company to insist upon or enforce, in any instance, strict performance by Contractor of any of the terms or conditions of this Agreement, or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert, or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in a written notice issued pursuant to this Agreement.

41. **GOVERNMENT CONTRACT CLAUSES INCORPORATED BY REFERENCE.** Contractor shall comply with all applicable requirements set forth in the Federal Acquisition Regulations (or any successor thereto) in effect on the date of this Agreement, which are incorporated herein by reference, with the same force and effect as if they were given in full text. The terms and conditions thereof shall be controlling over any conflicting terms and conditions set forth in this Agreement or any written amendment hereto.

42. **NO ORAL MODIFICATIONS.** No modification of any provisions of this Agreement shall be valid unless in writing and signed by duly authorized representatives of both Parties. Company Representative is not the duly authorized representative for amendments to this Agreement. Representatives of both Parties internally authorized to execute such documents pursuant to its corporate policies shall sign any amendments to this Agreement.

43. **CAPTIONS.** The captions in this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

44. **COUNTERPARTS.** This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

45. **AUTHORITY.** Each individual executing this Agreement on behalf of the Parties represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of their Party and that this Agreement is binding upon their Party in accordance with its terms and conditions.

46. **CONSTRUCTION OF AGREEMENT.** Both Parties have participated in the negotiating and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either Party as the drafting party.

47. **NOTICES.** All notices to be given under this Agreement shall be in writing and either sent by: (1) pre-paid U.S. first-class mail, in which case notice will be deemed delivered as of two business days after mailing; (2) a nationally recognized pre-paid overnight courier service, in which case notice shall be deemed delivered as of the date shown on the courier's delivery receipt; or (3) telecopy sent during business hours of the recipient, in which case notice shall be deemed delivered when transmitted provided that a transmission report is generated reflecting the accurate transmission of the notice. All correspondence shall reference the Agreement number. Notices shall be directed to the addresses of the parties on the front page of this Agreement.

48. **SEVERAL LIABILITY.** In the event that more than one legal entity acquires goods and Services hereunder from Contractor and is a party to this Agreement, compensation payable or other obligations owed by each such entity with respect to any goods and/or Services provided by Contractor under this Agreement shall be exclusively the obligation of the entity that acquires such goods and/or Services. No such entity shall have any liability whatsoever (whether by direct payment, offset or otherwise) in connection with goods and/or Services acquired by any other such entity. Each such entity is severally and not jointly liable to Contractor hereunder, and each such entity disclaims any and all financial or other responsibility, except with respect to goods and/or services that are furnished and invoiced to such entity.

**Technology Incentives Program**

**(TI)**

## **2009-2011 Demand Response Program Description Technology Incentives Program (TI)**

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### **1. Utility**

San Diego Gas & Electric Company

### **2. Program**

Technology Incentives

### **3. Program Description**

Market Sector: Non-Residential

Program Classification: Cross-Cutting, Statewide

The Technology Incentive Program (TI) is a financial incentive program intended to encourage customer adoption and installation of demand response measures by offsetting the cost of purchase and installation of demand response measures. The Technology Incentive program is expected to be a valuable tool for customers on dynamic pricing rates, as a means of assisting them in implementing load reduction opportunities. The TI incentive for non automated demand response technologies is \$100/kW.

The Automated Demand Response (AutoDR) component of the TI Program provides a financial incentive of \$300/kW intended to encourage customer adoption and installation of technology designed to link facility energy management control systems with external utility generated price or emergency signals.

For the 2009 – 2011 program cycle SDG&E proposes to keep the scope for AutoDR broad to include any acceptable means for attaining an automated load drop for SDG&E's DR programs. The incentive level will be set at the lesser of \$300/kW or the equipment and installation cost for any approved technologies.

### **4. Contract Period**

N/A

**5. Eligibility**

Non-residential customers 20kW and above are eligible participate in the TI program and AutoDR. Customers may either be utility bundled or direct access. The specific target markets for TI include:

- Customers defaulting to the new rate structure.
- Customers who want end to end automation utilizing AutoDR.
- Customers with lighting, motor, pumping, process or other load that can be temporarily turned off, re-scheduled, or suspended.
- Commercial, institutional, governmental or other buildings with energy management systems (EMS) connected to air conditioning systems, or other load that can be modulated or cycled.
- Customers who have previously participated in SDG&E's energy efficiency or demand response programs.
- Customers with energy efficient Savings By Design owner-occupied commercial new construction projects who want to participate in demand response.

**6. Operating Months**

Year Round

**7. Curtailement Window**

N/A

**8. Minimum Qualifying Load Criteria for Program**

20 kW

**9. Event Trigger**

N/A

**10. Notification Time**

N/A

**11. Curtailement Level**

N/A



**12. Incentive Payment**

\$100/kW for non-Auto DR and for Auto DR \$300/kW, not to exceed the equipment and installations cost of the TI measures.

All applications for technology incentives must be submitted with an invoice and supporting documents to the Technology Incentive Program Manager. When approved, the customer can implement the TI measures and schedule a load shed test to demonstrate their ability to reduce load. The customer will then will be eligible to receive \$100/kW for Non AutoDR TI or \$300/kW for AutoDR for identified and approved load reduction capability not to exceed the cost of the equipment and installation. Based on the results of this test, the first 60% of the incentive will be paid to the customers. The customer receives the remaining 40% of the technology incentive upon enrollment in a demand response with a one year commitment. To better serve our customers needs, the customer will have the ability to sign over their incentive payments to the firm who installs their TI measures.

**13. Event Minimum Load Reduction**

N/A

**14. Event Frequency Limits**

N/A

**15. Non-Compliance Penalties**

N/A

**16. Meter Requirements and Who Pays**

Existing TOU Meter. If a new meter is required the DR program the customer/aggregator selects will pay for the meter.

**17. Enabling Technology Requirements/Responsibility**

The Technology Incentive program pays for or off-sets the cost for the customer to install demand response enabling controls/equipment up to \$100/kW for Non AutoDR and up to \$300/kW for AutoDR, not to exceed to cost of equipment/installation. Any costs over this amount can be covered by the customer or vendor.

18. a.) Budget for 2006-2008

	2006	2007	2008
Operating & Maintenance (Administration)	\$451,403	\$457,882	\$464,270
Capital	\$0	\$0	\$0
Measurement & Evaluation	\$44,269	\$44,766	\$45,259
Incentive Payments	\$6,179,097	\$7,211,342	\$4,428,688
Total Program Budget	\$6,674,768 Budget was reduced by \$500,000 *\$6,174,768	\$7,713,990	\$4,938,217

18. b.) Budget for 2009-2011

	2009	2010	2011
Total Program Budget	\$4,353,880	\$4,274,764	\$4,034,197

19. Goal/Expected Load Reduction

N/A

20. EM&V Plan

See the accompanying SDG&E testimony of Kathryn Smith.

21. Comments

22. a.) Enrollment from 2006-2008, including:

- Number of Participants - 68
- Type of Participants – Non Residential
- Megawatts, and – 5.2MW
- Megawatts by Type of Participant – 5.2MW All Non Residential

22. b.) Estimated Enrollment for Each Year (2009-2011), and How it was Determined

N/A

23. How Programs Fit Into Local Resource Adequacy

N/A

**24. Estimated Load Impact, Based on Protocols to be Adopted**

N/A

**25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted**

N/A

**26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)**

The TI Program will be marketed through the SDG&E Account Executives, as well as through educational, outreach and other marketing activities targeting business customers, ESCOs, trade associations, other local business groups and government entities to generate interest and participation in the program. In addition direct customer contact by Account Executives, Demand Response Program outreach, phone and e-mail support will be provided.

**27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond**

N/A

**28. Other Relevant Information, as Appropriate and Necessary**

**29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance**

Copy of TI Load Shed Test Engineer Agreement included.

**30. The Actual (Observed) DR Load Reduction Due to the Program, and How it was Distributed Among Enrolled Customers**

N/A


**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

- Streamline the TI payment structure for most TI projects so that their will be two incentive payments. When the customer has successfully completed the load shed test and the kW load reduction has been approved by the Test Engineer and the TI application, invoice and other applicable documents have been received the customer will receive the first 60% payment. The customer receives the remaining 40% of the technology incentive upon enrollment in demand response with a one year commitment.

**32. Baseline and/ or Terms of Settlement**

N/A



A  Sempra Energy utility®

**San Diego Gas & Electric Company Standard Service Agreement for Labor and/or Services**

<b>PROJECT:</b>	<b>TATI Engineering Support</b>	<i>MAIL ORIGINAL AND DUPLICATE INVOICE TO</i>
<b>CONTRACTOR:</b>		<b>San Diego Gas &amp; Electric Company</b>
		<b>ACCOUNTS PAYABLE</b>
		<b>P.O. BOX 129007</b>
		<b>San Diego, CA - 92112</b>

This Standard Service Agreement ("Agreement") is made effective as of 00/00/0000 between San Diego Gas & Electric Company ("Company") and ("Contractor").

The Parties hereby agree as follows:

**SCOPE**

Contractor shall perform, at its own proper cost and expense, in the most substantial and skillful manner, to the satisfaction of Company, the following generally described services ("Services"):

**Technical Assistance Program Report Review and Approval**

- 1) Review SDG&E Technical Assistance Comprehensive Energy Audit Reports for accuracy and completeness in relation to the technical requirements and guidelines.
- 2) Evaluate the demand response measures separately, and in aggregate, for technical and economic feasibility and repeatability, reliability, duration and magnitude of indicated demand reduction. Provide approved demand reduction for each measure and in total based on the above criteria.
- 3) Provide written report, in electronic format, to Program Manager summarizing the review and evaluation for each Technical Assistance Report assigned to Review Engineer.  
Approve the kW load reduction from the TA audit and then determine the incentive due to the auditing firm that preformed the TA audit. SDG&E's TA Program pays the lesser of: \$100/kW approved in the TA audit or the cost of the actual audit.

**Demand Response TA Program Support**

- 1) Provide support to the TA program as requested by the Program Manager. This could include but is not limited to developing informational materials, updates to existing program materials, attending seminars or meetings.
- 2) Provide technical guidance to Program Manager.
- 3) Every two weeks an EXCEL spreadsheet will be sent to the Program Manager indicating the status of each TA audit report review. Any issues requiring the attention

of the Program Manager will be included.

**Technology Incentive Program Load Shed Test Review and Approval**

- 1) Review SDG&E customer Technical Incentive Applications for measures in comparison to previously reviewed Technical Assistance Report.
- 2) Schedule load shed tests with Contractors/Customers and be on site to witness the actual TI load shed tests.
- 3) Provide written report, in electronic format, to Program Manager summarizing the review and evaluation for each TI load shed test. The report will identify the approved demand reduction amount from the TI load shed test to be used in calculating the TI incentive payment.

**Demand Response TI Program Support**

- 1) Provide support to the TI program as requested by the Program Manager. This could include but is not limited to developing informational materials, updates to existing program materials, testing procedures and guidelines and attending seminars or meetings.
- 2) Provide technical guidance to Program Manager
- 3) Every two weeks an EXCEL spreadsheet will be sent to the Program Manager indicating the status of each TI Load Shed Test approval. Any issues requiring the attention of the Program Manager will be included
- 4) Assist customers with development of their testing plan, as required.
- 5) Observe testing at customer facilities, as required.

Every two weeks an EXCEL spreadsheet will be sent to the Program Manager indicating the status of each TI Project. Any issues requiring the attention of the Program Manager will be included.

**AUTHORIZED REPRESENTATIVES**

Company designates the individual or individuals named below as Company Representatives for all matters relating to the performance of the Services. The actions taken by the Company Representatives shall be deemed acts of the Company. Company may at any time upon written notice to Contractor change the designated Company Representative.

Company Representative:

Contractor designates the individual or individuals named below as Contractor Representative for all matters relating to the performance of Services. The actions taken by Contractor Representative shall be deemed acts of Supplier. Contractor Representative or designated superintendent shall be at the jobsite at all times during the Services. Contractor may at any time upon written notice to Company change the designated Contractor Representative.

Contractor Representative:

**COMPENSATION**

Contractor shall be compensated for the Services at the rates set forth below in an amount Not-To-Exceed (“NTE”) \$000,000.00. Contractor shall notify Company in writing when the costs incurred under this Agreement based upon this Compensation Article equal ninety percent (90%) of \$000,000.00. Company will not be required to pay Contractor for the Services more than the NTE price unless and until, at Company’s sole option, Company elects in writing to increase the NTE price of the Agreement.

Contractor hereby agrees to accept as full compensation for satisfactory performance of the Services the following labor rates and factors:

Principal Engineer	000
Senior Engineer	000
Staff Engineer	000
Survey Technician/ Auditor	00
Administrative Support	00

Contractor will be reimbursed for travel and expenses authorized in writing in advance by Company Representative. Travel and expense reimbursement will be at cost without any overhead or other mark-ups.

Reimbursable Expenses (See Schedule B)

**COMMENCEMENT AND COMPLETION OF SERVICES**

This Agreement shall commence as of 00/00/0000 and shall be in full force and effect through 00/00/0000 unless terminated earlier by Company in accordance with the terms of this Agreement. Contractor agrees to commence and perform the Services in accordance with the requests of Company Representative identified herein. The nature of the Services is such that timely performance is critical to the orderly progress of related work and to the operating schedule of Company.

**INVOICING INSTRUCTIONS**

Contractor shall invoice Company in accordance with the Compensation Schedule. All invoices submitted shall reference the Standard Service Agreement Number and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.

Company shall make payment Net 30 days after receipt and approval of an undisputed invoice to the following address or to the address on each Release, if applicable:

**COMPLETE AGREEMENT**

This Agreement, including all Schedules attached hereto and which are incorporated by reference, constitutes the complete and entire Agreement between the parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein. **THE PARTIES HEREBY AGREE THAT NO TRADE USAGE; PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS**

**AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.** The following Schedules are attached hereto and incorporated herein by this reference:

**SCHEDULE A - GENERAL TERMS AND CONDITIONS    SCHEDULE B - REIMBURSABLE EXPENSES**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of 00/00/0000.

San Diego Gas & Electric Company

TATI Review & Test Engineering Firm

<b>By:</b>	<b>By:</b>
<b>Name:</b>	<b>Name:</b>
<b>Title:</b>	<b>Title:</b>



## SCHEDULE A - GENERAL TERMS AND CONDITIONS

- 1 **PARTIES.** This Standard Service Agreement ("Agreement") is entered into between Company and Contractor. Contractor is the firm, person, corporation, or business entity performing the work specified in this Agreement.
- 2 **CONTRACT FORMATION.** By this Agreement, Company offers to contract with Contractor solely upon the terms and conditions stated herein. Any additional or different terms and conditions proposed by Contractor prior to the execution of this Agreement are not agreed to, and hereby expressly rejected. Any additional or different terms and conditions proposed by Contractor after the date of this Agreement shall be of no force and effect unless expressly agreed to in writing by Company. Contractor accepts and shall be bound by the terms and conditions of this Agreement upon the earlier of (a) the date on which it executes and returns the acknowledgment copy or (b) when it commences performance. No other form of acceptance shall be binding on Company.
- 3 **CHANGE ORDERS.** Company may at any time, in writing, direct or authorize Contractor to make changes or modifications to the work within the general scope of this Agreement. If such changes or modifications necessitate (a) an increase, or (b) decrease in the amount due, or (c) the nature or quantity of the goods and services or (d) in the time required for performance, or (e) otherwise, such matters shall be agreed upon in writing prior to proceeding with the change. No payment shall be required from Company for any change or modification which is not authorized in writing.
- 4 **INVOICING.** If Contractor's invoice price does not match the Agreement price, Company shall pay Contractor the lesser of the amount payable under the Order or the Invoice. Contractor will be notified of the reason for the adjustment. When Contractor is considered to be a retailer, Contractor's invoices shall properly identify California sales or use tax as a sales or use tax, and separately state the amount of such tax and any freight, installation, technical service or other charge which is excludable from such tax.
- 5 **PERFORMANCE.** Contractor shall perform the Services in accordance with established professional business standards and ethics and in conformity with each and every term of this Agreement. Contractor shall remedy any and all deficiencies in its Services that result from Contractor's failure to adhere to the Scope of Work.
- 6 **WARRANTIES.** Contractor expressly represents and warrants that all the Services performed hereunder shall be in compliance with the performance standards, drawings, specifications and any other description of services set forth in the Scope of Work, and the terms and conditions of this Agreement. Company may reject any Services furnished hereunder failing to meet such standards, and require Contractor to promptly repeat, correct or replace such defective Services, at **NO** charge to Company\* or, at Company's election, Company may hire a third party to complete the Services at Contractor's expense. Contractor further warrants and agrees that none of the material to be furnished by Contractor and its subcontractors, if any, in the performance of the Scope of Work shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available.
- 7 **INSPECTION.** All Services performed by Contractor shall be subject to the inspection and approval of Company at all times, but such right of inspection of the Services shall not relieve Contractor of responsibility for the proper performance of the Services, nor shall such inspection waive Company's right to reject the Services at a later date. Contractor shall provide Company access to Contractor's facility or facilities where the Services are being performed and sufficient, safe and proper work conditions for such inspection. Contractor shall furnish Company such information concerning its operations and/or the performance of the Services as Company may request.
- 8 **ADHERENCE TO COMPANY'S RULES.** Contractor shall conduct its operations in strict observation of access routes, entrance gates or doors, parking and temporary storage areas as designated by Company. Under no circumstances shall any of Contractor's personnel, vehicles or equipment enter, move or be stored upon any area not authorized in writing by Company.
- 9 **COMPANY SECURITY PROCEDURES.** Contractor shall abide by all Company Security procedures, rules and regulations and shall cooperate with Company Security personnel whenever on Company's property whether owned or leased.
- 10 **ANTI-CONDUIT RULES.** Contractor understands that the California Public Utilities Commission ("CPUC") and the Federal Energy Regulatory Commission ("FERC") have issued certain Affiliate Transaction Rules including, without limitation, the anti-conduit procedures contained in CPUC Decisions ("D") 97-12-088 as modified by D.06.12.029 (go to: <http://www.cpuc.ca.gov/istatic/energy/electric/electric+markets/affiliate.htm>); FERC Order 697 (18 C.F.R. Section 35.39(g)); and FERC Order No. 2004 (go to: <http://www.ferc.gov/legal/maj-ordreg/land-docs/order2004.asp>) (the "Rules"). The Contractor understands and agrees to abide by these Rules as well as the Semptra Energy Communication Guidelines ("Guidelines"). Contractor shall not be a conduit under either the Rules or Guidelines and will refrain, and cause its permitted subcontractors to refrain from taking any action that could reasonably constitute a conduit to circumvent the Rules or Guidelines. Contractor acknowledges receipt of the Guidelines.
- 11 **INDEPENDENT CONTRACTOR.** It is agreed that Contractor shall perform the Services under this Agreement as an independent contractor and no principal-agent or employer-employee relationship or joint-venture or partnership shall be created with Company. Contractor represents to Company that Contractor and its subcontractors and agents are properly licensed, fully experienced and qualified (including having all necessary authorizations) to perform the class and type of the Services as specified in this Agreement, in addition to being properly insured, equipped, organized, staffed and financed to handle such Services. Contractor shall perform the Services in an orderly and professional manner in accordance with industry standards. Contractor shall not employ for the Services any personnel or subcontractor unskilled in the work assigned. Contractor shall use prudent business practices in its relationships with subcontractors, suppliers and agents.
- 12 **OWNERSHIP OF INTELLECTUAL PROPERTY.** Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, enhancement, modification, development or discovery (hereinafter, collectively, "Invention"), whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that Contractor may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Services shall be owned by Company and shall be delivered to Company upon completion of the Services. Contractor agrees that any copyrightable Invention, including without limitation, Contractor's preliminary formulations and other work on which the copyrightable Invention is based on or derived from, shall constitute a "work made for hire". Contractor hereby assigns and grants to Company, without royalty or any further consideration, Contractor's entire right, title and interest in and to any such Inventions, including any work made for hire. At Company's request, Contractor shall execute an assignment or other document confirming such transfer upon the completion of any work made for hire.
- 12.1 Contractor hereby grants to Company an irrevocable, assignable, nonexclusive royalty-free unrestricted license to use, copy, distribute and make derivatives of any proprietary rights or specialized knowledge of Contractor that are part of any "Work Product" (defined below) furnished by Contractor to Company under this Agreement.
- 12.2 If requested by Company, Contractor agrees to take all actions necessary, at Company's sole cost and expense, to obtain, maintain or enforce patents, copyrights, trade secrets and other proprietary rights in connection with any Invention, and Contractor agrees that its obligations under this Article shall survive termination or expiration of this Agreement.
- 12.3 Any and all material and tangibly expressed information prepared, accumulated or developed by Contractor, any subcontractor or their respective employees or representatives, including, without limitation, documents, drawings, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith (hereinafter, collectively "Work Product"), shall become the sole property of Company without any further consideration to be provided therefore when (i) prepared or in process, in connection with the Services and (ii) whether or not delivered by Contractor. Contractor shall deliver the Work Product, or any portion thereof, to the Company on request, together with any other requested materials and/or equipment furnished to Contractor by Company hereunder, and, in any event, upon termination or expiration of this Agreement.
- 13 **INDEMNITY.**
- 13.1 As between Company and Contractor, Contractor shall be solely responsible for and Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever resulting from: (a) injuries to or death of any and all individuals, including, without limitation, members of the general public, or any employee, agent, independent contractor or consultant or affiliate of either Company or Contractor, arising out of or connected in any manner with Contractor's performance of Services, (b) damage to, loss, and/or destruction of property, including, without

limitation, to, property of Company or Contractor arising out of or connected in any manner with Contractor's performance of Services, or (c) third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any manner to Contractor's or any of its subcontractor's acts or omissions in breach of this Agreement. This indemnification obligation shall not apply to the extent that injuries, death, loss, damage or destruction is caused by either the willful misconduct of Company or Company's sole negligence.

13.2 Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, shareholders, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including reasonable attorneys' fees (including fees and disbursements of in-house and outside counsel), of any kind whatsoever arising from or in connection with: (a) actual or alleged infringement or misappropriation by Contractor or any subcontractor or other representative of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the Services, including without limitation, any deliverable or related "work product"; and (b) Contractor's violation of any third party license to use intellectual property in connection with the Services, including, without limitation, any deliverable or related "work product."

13.3 If any claim or action is brought against Company arising out of or related to this Agreement or the Services provided hereunder, then Contractor shall assume the defense of such claim or action, with counsel reasonably acceptable to Company, unless in the opinion of counsel for Company a conflict of interest between Company and Contractor may exist with respect to such claim or action. If a conflict precludes Contractor from assuming the defense, then Contractor shall reimburse Company on a monthly basis for Company's defense costs through separate counsel of Company's choice. If Contractor assumes the defense of Company with acceptable counsel, Company, at its sole option and expense, may participate in the defense with counsel of Company's own choice without relieving Contractor of any of its obligations hereunder.

13.4 Contractor's obligation to indemnify Company under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, penalty or benefits payable by or for Contractor under any statutory scheme, including without limitation, any Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

#### 14. INSURANCE.

GENERAL REQUIREMENTS. Insurance requirements are set forth as follows, but shall not in any way limit the amount or scope of liability of Contractor under this Agreement. This Article 14. constitutes the minimum insurance and requirements relating thereto.

14.1 EFFECTIVENESS, CERTIFICATES, NOTICE OF CANCELLATION. On or before the effective date of this Agreement, and thereafter during its term, Contractor shall provide Company with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Article. Contractor shall not commence Services until Contractor has obtained all insurance required by this Article and has provided acceptable certificates of insurance. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to Company, ten (10) days for non-payment of premium. Contractor shall provide Company with renewal certificates of insurance or binders within five (5) business days prior to or after such expiration. Insurance shall be maintained without lapse in coverage during the term of this Agreement. Company shall also be given certified copies of Contractor's policies of insurance, upon request.

14.2 AS CONTRIBUTION FROM COMPANY. The required policies, and any of Contractor's policies providing coverage excess of the required policies, shall provide that the coverage is primary for all purposes and Contractor shall not seek any contribution from any insurance or self-insurance maintained by Company

14.3 RATING. All required policies of insurance shall be written by companies having an A. M. Best rating of "A -VII" or better, or equivalent.

14.4 DEDUCTIBLE. Contractor shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.

14.5 ADDITIONAL INSURED. San Diego Gas & Electric Company and its parent company, and its subsidiaries, affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns shall be named as an additional insured for all policies listed below in 14.7.1 and 14.7.4. Commercial General Liability insurance listed in 14.6.1 shall provide a severability of interest or cross-liability clause.

14.6 Waiver of Subrogation. Each policy of insurance maintained by Contractor below in sections 14.7.1, 14.7.3 and 14.7.4 shall contain a waiver of subrogation in favor of San Diego Gas & Electric Company.

14.7 Types of insurance required to be provided by Contractor:

14.7.1 Commercial General Liability Insurance. Contractor shall carry and maintain an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Contractor for Work performed under this Agreement. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$1,000,000.00 per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

14.7.2 Commercial Automobile Liability Insurance. Contractor shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property, (including loss of use thereof), and occurring in any way related to the use by or on behalf of Contractor, in pursuit of the Services, including loading or unloading of any of Contractor's automobiles (including owned, non-owned, leased, rented/or hired vehicles). Such coverage shall be in an amount of not less than \$1,000,000.00 combined single limit.

14.7.3 Workers' Compensation & Employers' Liability Insurance. In accordance with the laws of the State(s) in which the Work shall be performed, Contractor shall maintain in force workers' compensation insurance for all of its employees. If applicable, Contractor shall obtain U.S. Longshoremen's and Harbor Workers compensation insurance, separately, or as an endorsement to workers' compensation insurance. Contractor shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 per accident and per employee for disease. In lieu of such insurance, Contractor may maintain a self-insurance program meeting the requirements of the State(s) in which the Services shall be performed along with the required Employer's Liability insurance.

14.7.4 Pollution Liability Insurance. If applicable to scope of work under this Agreement, Contractor shall maintain pollution liability insurance or insurance policies insuring against liability arising out of activities contemplated under this Agreement or as might be required by federal, state, regional, municipal and local laws, in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.7.5 Professional Liability Insurance. If the Contractor is providing professional design, engineering or other professional services (including Design-Build), Contractor shall maintain Professional Liability insurance covering liability arising out of error, omission, or negligent act in the performance, or lack thereof, of professional services contemplated under this Agreement in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.8 Contractor's Subcontractors. In accordance with the Article of this Agreement entitled "SUBCONTRACTORS", Contractor shall accept total responsibility to require all other persons, firms and corporations engaged or employed by Contractor in connection with the performance of the Scope of Work to carry and maintain coverage with limits not less than those required in this Article. Contractor shall incorporate insurance requirement by reference within any contract executed by Contractor and its subcontractors, sub-subcontractors, suppliers, and agents shall cause each subcontractor, sub-subcontractor, supplier, and agent to comply with the terms of this Agreement. Contractor will obtain and verify accuracy in their entirety of certificates of insurance evidencing required coverage prior to permitting its subcontractors, sub-subcontractors, suppliers, and agents from performing work or services on the property of Company. Contractor will furnish original certificates of insurance with additional insured endorsements from all of its subcontractors, sub-subcontractors, suppliers, and agents as evidence thereof as Company may reasonably request.

14.9 Reports. Contractor shall immediately report to Company, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Contractor or its consultants, subcontractors, sub-subcontractors, suppliers, agents or Contractor's receipt of notice or knowledge of any claim by a third party of any occurrence that might give rise to such a claim over \$100,000. Upon completion of Contractor's Services, Contractor shall submit to Company a written summary of all such injuries, losses, damage, notices or third party claims and occurrences that might give rise to such claims. Nil reports are required.

15 SUPPLIER DIVERSITY. It is the policy of Company to provide maximum opportunity for women; minority and service disabled veteran

business enterprises, hereinafter referred to as DBE (Diverse Business Enterprises), to participate in the performance of contracts. Company expects satisfactory performance to this Agreement, Contractor to utilize DBE subcontractors and suppliers and to use good faith efforts to set and attain goals in parity with Company goals when contracting for work with Company. Contractor shall submit on a timely basis any documentation required by Company to report Contractor's DBE expenditures in connection with this Agreement.

16 **ASSIGNMENT.** Contractor shall give personal attention to the execution of the Services herein provided for, and shall not permit this Agreement to be assigned voluntarily, involuntarily or by operation of law; nor employ any subcontractor for the execution of the same or any part thereof, without the express prior written authorization of Company. No such written authorization, however, shall be construed as discharging or releasing Contractor in any way from the performance of the Services or the fulfillment of any obligation specified in this Agreement. Contractor shall remain jointly and severally liable with any permitted assignee for any failure to comply fully with all applicable obligations hereunder this Agreement. Company may assign in whole or in part its rights and obligations under this Agreement at any time without the consent of Contractor.

17 **TIME.** Time is expressly agreed to be of the essence in any performance related to this Agreement and each, every and all of the terms, conditions and provisions herein.

18 **GOVERNING LAW.** The formation, interpretation, performance and enforcement of this Agreement shall be governed by and enforced under the laws of the State of California, without reference to principles of conflicts of laws.

19 **COMPLIANCE WITH LAWS.** Contractor and its subcontractors at all times during performance of the Services shall comply with and observe, all applicable federal, state, regional, municipal and local laws, ordinances, rules, codes, regulations, executive orders, applicable employment, safety and environmental orders and any applicable orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor, Company or the Services furnished under this Agreement, as in effect from time to time, including, but not limited to, the Immigration Control Act of 1968 and the Foreign Corrupt Practices Act (15 USCS §§ 78A and 78m et seq).

20 **TERMINATION.** It is also expressly agreed that Company shall have the right to terminate this Agreement, or any part thereof, at any time for its sole convenience upon two (2) business days written notice to Contractor. Contractor shall fully justify and document to Company in writing any termination charges claimed by Contractor (which shall not exceed 110% of the reasonable and actual cost already incurred of direct labor, materials and overhead). In no event shall Contractor be entitled to payment for any Services which has not been authorized by Company, or is not yet performed, or any anticipated profits for any Services that have not been authorized or performed. Any payment of termination charges shall occur within thirty (30) days of receipt of Contractor's written submittal of charges and justification to Company's satisfaction. Company shall have the right to review and verify by independent audit, any termination charges claimed by Contractor prior to payment.

21 **LIENS.** Without limiting the generality of any other provisions herein, Contractor shall indemnify, defend, and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any mechanics lien or stop notice claim against Company by Contractor, subcontractors, employees or agents pertaining to the Services specified in this Agreement. If Contractor fails to remove or discharge by bond, payment or otherwise any lien or claim within five (5) business days after Company's written demand to do so, Company may offset the compensation otherwise payable to Contractor under this Agreement or any other agreement in order to pay such lienors directly.

22 **RETENTION.** Company shall have the right to withhold a retention from payments due Contractor. The amount of the retention shall be paid within 45 days after completion as defined by California Civil Code Section 3260. Provided, however, the Company may require Contractor to provide conditional or unconditional lien releases, as a condition to withhold the retention and such additional amounts due Contractor as necessary until such liens have been satisfied by Contractor. In addition, Company may use the retention to satisfy directly the claim of any lienor.

23 **AUDIT.** Company reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any Services performed under this Agreement. Any such audit or examination may be undertaken by Company or its contracted representative at reasonable times during normal business hours and in conformance with generally accepted auditing standards. Contractor agrees to fully cooperate with any such audit(s).

23.1 Contractor shall include a similar clause in its arrangements with its subcontractors reserving the right to designate Contractor's own employee representative(s), its contracted representative(s) from a certified public accounting firm, and/or representative(s) from Company, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item related to the Services.

23.2 Contractor shall be notified in writing of any exception taken as a result of an audit of Contractor or a subcontractor. Contractor shall refund the amount of any exception to Company within ten (10) days. If Contractor fails to make such payment, Contractor shall pay interest on any unpaid portion of such payment, accruing monthly, at a rate equal to the lesser of ten percent (10%) per annum or the maximum lawful rate. Interest shall be computed from the date of written notification of exception(s) to the date Contractor reimburses Company in full for any exception(s). In the event an audit in accordance with this Article discloses an overcharge of five percent (5%) or greater, then Contractor shall reimburse Company for the cost for the performance of such audit.

23.3 Company's right to audit shall extend for a period of five (5) years following the date of final payment under this Agreement. Contractor and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

24 **TAXES.** Contractor assumes exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by the equipment, materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with, the performance of the Services. Provided that the conditions of indemnification as set forth in this Agreement are satisfied, Contractor shall indemnify, defend and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any claim, liability, penalty, interest and expense arising by reason of Contractor's failure to pay such taxes, charges or contributions.

24.1 Without limiting the generality of this Article, Contractor agrees to treat all individuals performing the Services under this Agreement as employees of Contractor for purposes of federal and state income taxes, Social Security and Medicare taxes, unemployment and disability insurance premiums. No exceptions shall be permitted under this Article without a written Amendment to this Agreement prior to any individual performing any required Services under this Agreement. Contractor agrees that, at any time during the performance of this Agreement, Company shall have the right to audit Contractor's compliance with this provision in accordance with the Article entitled "AUDIT".

24.2 To the extent any portion of the Services are performed in the State of California, either (a) Contractor represents that Contractor is a California resident and shall provide Company with an original and a copy of Form 590, Certificate of Residence, in accordance with California Revenue and Taxation Code Section 18662 and regulations thereunder; or (b) seven percent (7%) of all compensation payable to Contractor for Services performed in California shall be withheld in accordance with applicable California Franchise Tax Board ("FTB") or successor regulations, unless Company has been notified in writing by FTB that withholding is waived or a lower rate or withholding is authorized.

24.3 Contractor and Company shall make commercially reasonable efforts to cooperate with each other to minimize the tax liability of both parties to the extent legally permissible (and with no duty to increase either parties tax liability), including separately stating taxable charges on Contractor's invoices and supplying resale and exemption certificates, if applicable, and any other information as reasonably requested.

24.4 Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, the Parties acknowledge and agree that: (i) any obligations of confidentiality contained herein and therein do not apply and have not applied from the commencement of discussions between the Parties to the tax treatment and tax structure of any transaction related to the Services or any other transactions or arrangements; and (ii) each Party (and each of its employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that the foregoing is not intended to affect any privileges that each Party is entitled, in its sole discretion, to maintain, including with respect to any confidential communications with its attorney or any confidential communications with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code.

25 **VALIDITY.** The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.

26 **DISPUTES.** Any dispute that cannot be resolved between Contractor Representative and Company Representative shall be referred to Company Director – Supply Management and an officer of Contractor for resolution. If Company and Contractor cannot reach an agreement

within a reasonable period of time, Company and Contractor shall have the right to pursue litigation as provided for herein. In no event shall the litigation of any controversy or the settlement thereof delay the performance of this Agreement.

26.1 In the event of any litigation to enforce or interpret any terms of this Agreement, unless the parties agree in writing otherwise, such action shall be brought in any Superior Court of California having jurisdiction (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Southern District of California), and the parties hereby submit to the exclusive jurisdiction of said court.

26.2 In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, (including expert testimony) and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing party.

#### 27 CONFIDENTIALITY.

27.1 For purposes of this Agreement, the term "Confidential Information" means information concerning the business, operations and assets of Company and its parent company(ies), subsidiaries and/or affiliates, including, without limitation, the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of Services under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel (including Confidential Customer Information), pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information shall not include: (a) information known to Contractor prior to obtaining the same from Company; (b) information in the public domain at the time of disclosure by Contractor; (c) information obtained by Contractor from a third party who did not receive same, directly or indirectly, from Company; or (d) information approved for release by express prior written consent of an authorized officer of Company. Contractor shall have the burden of proof in establishing that its use of Confidential information is permitted by (a), (b), (c) and/or (d) of this provision. "Confidential Customer Information" means Confidential Information related to Company's customers, including, but not limited to, names, addresses, billing information and energy usage data of Company's customers.

27.2 Contractor hereby agrees that it shall use the Confidential Information solely for the purpose of performing Work under this Agreement and not in any way detrimental to Company, its parent company(ies), subsidiaries and/or affiliates. Neither Contractor nor its directors, officers, employees, agents, representatives, subcontractors or suppliers ("Representatives") shall use the Confidential Information for their own benefit.

27.3 Contractor agrees to use at least the same degree of care Contractor uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Contractor shall keep confidential and not disclose the Confidential Information to any third party, other than to Contractor's Representatives. Contractor shall cause each of its Representatives to become familiar with, and abide by, the terms of this Agreement.

27.4 Notwithstanding any other provisions of this Section 28, Contractor may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Contractor is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency or regulatory authority (including the CPUC). Prior to making or permitting any such disclosure, Contractor shall provide Company with prompt written notice of any such requirement so that Company (with Contractor's assistance if requested by Company) may seek a protective order or other appropriate remedy.

27.5 Subject to Section 28.4, Contractor shall not, without the prior written consent of Company, disclose to any third party the fact that such Confidential Information has been made available to Contractor.

27.6 At any time upon the request of Company, Contractor shall promptly deliver to Company or destroy if so directed by Company (with such destruction to be certified to Company) all Confidential Information of Company (including all copies, backups and abstracts thereof, however stored), all documents (and all copies, backups and abstracts thereof, however stored) furnished to or prepared by Contractor that contain Confidential Information of Company and all other documents in Contractor's possession that contain or that are based on or derived from Confidential Information of Company.

27.7 Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is five (5) years after the date of disclosure of such Confidential Information, except that with respect to Confidential Customer Information, such confidentiality provisions shall remain in full force and effect in perpetuity.

27.8 The parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of the confidentiality provisions of this Agreement and the obligations of Contractor in respect thereof are specifically enforceable. Accordingly, the parties agree that in the event of a breach or threatened breach of any confidentiality provision of this Agreement by Contractor, Company, and its parent company(ies), subsidiaries and/or affiliates, who shall be third party beneficiaries of this Agreement, shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to Company, and its direct and indirect parent company(ies), subsidiaries or affiliates.

#### 28. ENVIRONMENTAL TERMS

28.1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

28.2. "Hazardous Materials" means any chemical, substance, material, controlled substance, object, product, by-product, residual, condition, solid, gas or waste or combination thereof which is hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or effects. Hazardous Materials include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, and substances defined as "hazardous substances," "hazardous material," "hazardous wastes," or "toxic substances" in, under or pursuant to any Environmental Law (as that term is defined below). "Hazardous Materials" shall also include oil or petroleum and petroleum products, asbestos, and any asbestos containing materials, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which now are, or become in the future, listed, defined or regulated in any manner by any Environmental Law (as that term is defined below). For purposes of this Agreement, the terms "encumbrance" and "encroachment" shall not be deemed to include the presence of any Hazardous Material contamination on, in or under the Property or its underlying groundwater.

28.3. "Environmental Law" means applicable federal, state, regional, county or local law, regulation, decision of the courts, ordinance, rule, code, order, directive, guideline, permit, or permit conditions which, now or in the future, relate in any way to worker or workplace safety, environmental conditions, environmental quality or policy, or health and safety issues or concerns (including product safety). Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 USC, §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC, §§6901 et seq.), the Federal Water Pollution Control Act (33 USC §§ 1251 et seq.), the Safe Drinking Water Act (42 USC §§300 et seq.), the Hazardous Materials Transportation Act (49 USC §§ 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code, §§25300 et seq.), the Toxic Substance Control Act (15 USC §§2601, et seq.), the California Hazardous Waste Control Law (California Health & Safety Code, §§25100 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), the Safe Drinking Water and Toxic Enforcement Act (California Health & Safety Code §§25249.5, et seq.), the California Occupational Safety and Health Act (California Labor Code §§6300 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), and applicable regulations or rules promulgated thereunder.

28.4. "Governmental Agency" shall mean any federal, state regional, municipal or local governmental agency or other public or political body having the jurisdiction, mandate, authority or power to regulate, implement, coordinate, administer or enforce any Environmental Law.

28.5. "Materials and Licenses" Supplier agrees that all materials and equipment to be supplied or used by Supplier, its subcontractors, if any, in the performance of its obligations under this Agreement, including, but not limited to vehicles, loading equipment, and containers, shall be in good condition and fit for the use(s) for which they are employed by Supplier or its subcontractor, if any. Supplier further agrees that none of the materials to be supplied or used by Supplier and its subcontractors, if any, in the performance of its obligations under this Agreement shall

contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available. The materials, equipment and Services shall comply with all applicable Environmental Laws as of its delivery and installation and Supplier shall comply with applicable provisions of Environmental Laws, including, but not limited to, providing any Proposition 65 warnings and Material Safety Data Sheets. All materials and equipment used in the Services (including any warranty re-installation) shall at all times be maintained, inspected and operated as required by applicable Environmental Law. Supplier further agrees that all licenses, permits, registrations and certificates or other approvals required by any Environmental Law or Governmental Agency shall be procured and maintained for such materials and equipment at all times during the use of the same by Supplier or its subcontractors, if any, in the performance of any of Supplier's obligations under this Agreement.

28.6. **"Duty to Comply with Laws"** Supplier specifically agrees that in the performance of its obligations under this Agreement, Supplier shall at all times fully comply with and cause each of its subcontractors, if any, to fully comply with all applicable Environmental Laws. Supplier further agrees that Supplier shall have and cause its subcontractors, if any, to have and keep in effect all licenses, permits, registrations, certificates, training, and approvals required by any Environmental Law or by any Governmental Agency for the Services undertaken by Supplier or its subcontractors, if any, in the performance of Supplier's obligations under this Agreement.

28.7. **"Indemnification"** Supplier hereby specifically agrees to indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, demands, causes of action, costs and expenses including, but not limited to, all reasonable consulting, engineering, attorneys (in-house and outside counsel) or other professional fees including disbursements, which Indemnitees, or any of them, may incur or suffer by reason of:

- (1) any unauthorized release of a Hazardous Material;
  - (2) any enforcement or compliance proceeding commenced by or in the name of any Governmental Agency because of an alleged, threatened or actual violation of any Environmental Law;
  - (3) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Environmental Law; and/or
  - (4) any other cause of whatsoever nature;
- arising out of or in any way connected with Supplier's performance under this Agreement, except to the extent the same were caused by the willful misconduct or sole negligence of the Indemnitees.

28.8. **"Release"** In the event of any unauthorized release of a Hazardous Material, Supplier shall perform the following actions:

- (1) Take all reasonable steps necessary to stop and contain said release;
- (2) Make any report of such release as required under Environmental Law;
- (3) Clean up such release as required by the applicable Governmental Agency.

28.9. **"Notification"** Supplier shall immediately notify Company Representative of the following upon the occurrence of any unauthorized release of Hazardous Material in connection with the Services:

- (1) A description of the release;
- (2) The identification of the Hazardous Material and the volume released;
- (3) Death of any person;
- (4) Property damage;
- (5) Any communication from any Governmental Agency that alleges that Supplier is not acting in compliance with Environmental Law.
- (6) Any communication from any Governmental Agency that affects any of Company's Supplier's, or any subcontractor's permits or licenses.

28.10. **"Reports"** Supplier shall submit within 36 hours of the unauthorized release to Company Representative a written report, in a format required by Company describing in detail any event of any unauthorized release of a Hazardous Material which shall include the following information:

- (1) Name and address of Supplier and any subcontractor(s) involved.
- (2) Name and address of Supplier's commercial and environmental liability insurance carrier.
- (3) Name and address of any injured or deceased persons, if applicable.
- (4) Name and address of any property damage, if applicable.
- (5) A detailed description of the release including the identification of the Hazardous Material, the date and time of the release, the volume released, and the nature of the any environmental contamination.
- (6) A determination of whether any of Company's personnel, equipment, tools or materials were involved.
- (7) A detailed description of all reports made to any Governmental Agency, and a description of the actions taken to respond to the release.

28.11. **"No Transportation of Company's Hazardous Material."** Supplier shall NOT (a) transport any Hazardous Material that Company generated for purposes of treatment, storage, recycling and/or disposal; or (b) conduct any treatment, storage, recycling and/or disposal of any Company generated Hazardous Material unless specifically authorized by Company to perform such activities in writing. If Supplier is authorized by Company to perform such activities then the following terms and conditions shall apply:

28.12. **"Authorized Treatment Facility."** Supplier shall not transport any Company generated Hazardous Material to any treatment, storage, recycling and/or disposal facility (hereinafter called "TSDF") not authorized by Company in writing. Prior to transporting Company generated Hazardous Material in each case, Supplier shall confirm that the TSDF has procured and maintained in effect all licenses, permits, registrations, certificates or other authorizations required by any Environmental Law or Governmental Agency to lawfully receive, handle, transport, store, treat, recycle, incinerate, dispose of, or otherwise manage or use such Hazardous Material. Supplier shall not transport any Company generated Hazardous Material to any TSDF which is unable or fails to provide such confirmation and Supplier shall immediately notify Company. Company reserves the right at any time, in Company's sole discretion, to cancel its authorization of any TSDF by written notice to Supplier.

28.13. **"Hazardous Waste Manifest."** Company shall, when required by Environmental Law, provide Supplier with a complete and executed Hazardous Waste Manifest or other shipping documentation for Company generated Hazardous Material to be transported for treatment, storage, recycling and/or disposal. Supplier's transportation, recycling, treatment, storage, and/or disposal of any such Hazardous Material in accordance with this Agreement shall be documented by Supplier utilizing, among other things, the Hazardous Waste Manifest tracking system or other records as required by Environmental Law, copies of which shall be provided to Company within ten (10) days of shipment.

28.14. **"No Asbestos or Asbestos-Containing Materials (ACM)."** Supplier shall not supply, sell, deliver or furnish to Company any Products or Goods, pursuant to this Agreement, that contain asbestos or ACM in any concentration or amount whatsoever, unless otherwise consented to in writing by Company, on the basis that no feasible replacement Products or Goods (that do not contain asbestos or ACM) are available.

29. HAZARDOUS MATERIALS

29.1. **"Hazardous Materials and Toxic Chemicals."** Supplier shall provide the following to Company for each material which Supplier furnishes under this Agreement: (a) a completed Material Safety Data Sheet (MSDS) for each material which contains a *hazardous material* as defined above; and (b) a written statement for each material that is a Mixture or Trade Name Product which contains a *Toxic Chemical* subject to the reporting requirements of Section 313 or EPCRA (40 CFR Section 372 et seq.) including: (1) the name and associated CAS (Chemical Abstract Services Registry) number of the *Toxic Chemical*; (2) the specific concentration at which each such *Toxic Chemical* is present in each such Mixture or Trade Name Product; and (3) the weight of each such *Toxic Chemical* in each such Mixture or Trade Name Product. Supplier shall indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, administrative actions, judgments, costs or expenses including expert witness, consulting and attorneys' fees (including fees and disbursements of in-house and outside counsel) that Company suffers as a result of Supplier's failure to comply with these requirements.

29.2. **"Proposition 65."** If any part of the Services would require that a warning pursuant to Proposition 65 (California Health & Safety Code sections 25249.5, et seq.), be provided to exposed individuals, then Supplier shall provide such warning to those individuals, including but not limited to members of the public, Company's employees, Supplier's employees, and any subcontractor's employees.

30. **"Use of Company Equipment."**

In the event Company loans Contractor any equipment for use under this Agreement, title to said property shall remain in Company. Notwithstanding the foregoing, Contractor shall be responsible for loss, damage, destruction, theft, maintenance, and repair of said property while in the possession of Contractor. Prior to use, Contractor shall have inspected said property and have satisfied Contractor that the property is in good repair and working condition. Contractor shall only allow qualified personnel to operate said equipment. Contractor shall surrender possession of said equipment upon demand by Company.

31. **"REMEDIES."** Contractor agrees that if: (a) Contractor abandons the Services, or (b) Contractor shall become bankrupt or insolvent, or shall

assign this Agreement, or sublet any part thereof, without the express prior written authorization of Company, or (c) Contractor, in the sole opinion of Company Representative, violates any of the provisions of this Agreement, or (d) Contractor executes this Agreement in bad faith, or (e) Contractor, in the sole opinion of the Company Representative is not performing the Services in accordance with the terms of this Agreement, Company may notify Contractor, to discontinue all or any part of the Services and Contractor shall thereupon discontinue the Services or such parts thereof. Company shall thereupon have the right to continue and complete the Services or any part thereof, by contract or otherwise, and Contractor shall be liable to Company for any and all loss, penalties, fines, excess cost and consequential, special, incidental and indirect damages incurred by Company in completing the Services caused by Contractor's failure to execute the requirements of this Agreement. The remedies herein shall be inclusive and additional to any other rights or remedies in law or equity, and no action by Company shall constitute a waiver of any such other rights or remedies. If it is determined for any reason by a tribunal of competent jurisdiction that Contractor was not in default, the parties rights and obligations shall be the same as if notice of termination had been issued pursuant to the Article entitled "**TERMINATION.**"

32. **OFFSET.** Company may upon written notice to Contractor, setoff any amount due from Contractor, whether or not under this Agreement, against any amount due Contractor or claimed to be due by Contractor under this Agreement. In addition, Company may withhold from Contractor any amount sufficient to reimburse Company for any loss, damage, expense or liability for Contractor's actual, alleged or reasonably probable failure, based on factual evidence, to comply with the terms and conditions of this Agreement.

33. **SURVIVAL.** The obligations imposed on Contractor pursuant to each Article of this Agreement, which by its terms contains subject matter which relates to time periods subsequent to the term of this Agreement, including without limitation the following Articles, Warranty, Indemnity, Disputes, Confidentiality, and this Survival provision, shall survive completion of the Services or termination of the Agreement. 34. **EQUAL OPPORTUNITY.** This Agreement incorporates Executive Orders No. 11246, 11625, 11701, 11738 and 12138, the Vietnam Era Veterans Readjustment Act of 1974, the Vocational Rehabilitation Act of 1973, and the regulations thereunder, as amended from time to time, to the extent applicable. Contractor agrees not to discriminate in employment opportunities on the basis of race, color, religion, sex or national origin. Contractor further agrees to comply with applicable laws regarding environmental protection and with respect to affirmative action for qualified veterans and for qualified handicapped persons.

35. **NO PUBLICITY.** Supplier shall not, without Company's prior written consent, engage in advertising, promotion or publicity related to this Agreement, or make public use of any Company identification in any circumstances related to this Agreement or otherwise. "Identification" means any corporate name, trade name, trademark, service mark, insignia, symbol, logo or any other product, service or organization designation, or any specification or drawing owned by Company or its affiliates or any representation thereof.

36. **EXCUSABLE DELAYS.** Contractor shall notify Company in writing immediately of any delay or anticipated delay in Contractor's performance of this Agreement due to causes or circumstances beyond the reasonable control of Contractor. Notice shall include the reason for and anticipated length of the delay. Company may determine, in its sole judgment, to extend the date of performance for a period equal to the time lost by reason of the delay. Contractor shall not be eligible under any circumstances for additional compensation due to any such extension of time. Any extension of time pursuant to this Article shall be documented by a written amendment to this Agreement signed by both Parties. Examples of such possibly excusable delays are natural calamities, strikes and boycotts, war or civil unrest or governmental actions and other events that are commonly deemed Force Majeure. None of the foregoing, however, shall require Company to grant any extension of time for completing the Services.

37. **REPORTS.** Contractor shall provide periodic status reports as requested by Company Representative. The status reports shall make periodic comparisons of the Services rendered to date against the Scope of Work including, any milestones and costs. Such reports shall include an explanation of any significant variations, an identification of any potential or known developments that may impact Company or the Services and any corrective actions implemented.

38. **SUBCONTRACTORS.** Contractor must obtain Company's written consent prior to retaining subcontractor(s) to perform any of the Services. If Company authorizes Contractor to utilize any subcontractors under this Agreement, Contractor shall at all times be responsible for the acts and omissions of subcontractors and agents employed directly or indirectly by Contractor. Contractor shall be responsible for performance of all the Services, whether performed by Contractor or its subcontractors or agents. This Agreement shall not give rise to any contractual relationship between Company and any subcontractor or agent of Contractor. Company shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor or agent of Contractor. Upon request of Company, Contractor shall furnish to Company copies of any executed subcontracts entered into between Contractor and any subcontractor or agent.

39. **SUSPENSION OF SERVICES.** Company may, at any time, by written notice, require Contractor to stop all, or any portion, of the Services for a period of up to ninety (90) days ("Suspension Period") and any further period to which the Parties agree. Upon receipt of notice, Contractor shall immediately cease performance under this Agreement for the entire Suspension Period. Prior to the expiration of the Suspension Period, Company shall either: (a) cancel the Suspension Period; (b) permit the Suspension Period to expire whereupon Contractor shall resume its performance of the Services; or (c) terminate this Agreement pursuant to the provisions of the Article entitled "**TERMINATION.**" If the suspension is canceled or permitted to expire, Contractor shall be granted a corresponding adjustment to all time periods and completion dates. Company shall not be liable for any payments to Contractor for expenses incurred during the Suspension Period.

40. **NO WAIVER.** The failure of Company to insist upon or enforce, in any instance, strict performance by Contractor of any of the terms or conditions of this Agreement, or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert, or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in a written notice issued pursuant to this Agreement.

41. **GOVERNMENT CONTRACT CLAUSES INCORPORATED BY REFERENCE.** Contractor shall comply with all applicable requirements set forth in the Federal Acquisition Regulations (or any successor thereto) in effect on the date of this Agreement, which are incorporated herein by reference, with the same force and effect as if they were given in full text. The terms and conditions thereof shall be controlling over any conflicting terms and conditions set forth in this Agreement or any written amendment hereto.

42. **NO ORAL MODIFICATIONS.** No modification of any provisions of this Agreement shall be valid unless in writing and signed by duly authorized representatives of both Parties. Company Representative is not the duly authorized representative for amendments to this Agreement. Representatives of both Parties internally authorized to execute such documents pursuant to its corporate policies shall sign any amendments to this Agreement.

43. **CAPTIONS.** The captions in this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

44. **COUNTERPARTS.** This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

45. **AUTHORITY.** Each individual executing this Agreement on behalf of the Parties represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of their Party and that this Agreement is binding upon their Party in accordance with its terms and conditions.

46. **CONSTRUCTION OF AGREEMENT.** Both Parties have participated in the negotiating and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either Party as the drafting party.

47. **NOTICES.** All notices to be given under this Agreement shall be in writing and either sent by: (1) pre-paid U.S. first-class mail, in which case notice will be deemed delivered as of two business days after mailing; (2) a nationally recognized pre-paid overnight courier service, in which case notice shall be deemed delivered as of the date shown on the courier's delivery receipt; or (3) teletype sent during business hours of the recipient, in which case notice shall be deemed delivered when transmitted provided that a transmission report is generated reflecting the accurate transmission of the notice. All correspondence shall reference the Agreement number. Notices shall be directed to the addresses of the parties on the front page of this Agreement.

48. **SEVERAL LIABILITY.** In the event that more than one legal entity acquires goods and Services hereunder from Contractor and is a party to this Agreement, compensation payable or other obligations owed by each such entity with respect to any goods and/or Services provided by Contractor under this Agreement shall be exclusively the obligation of the entity that acquires such goods and/or Services. No such entity shall have any liability whatsoever (whether by direct payment, offset or otherwise) in connection with goods and/or Services acquired by any other such entity. Each such entity is severally and not jointly liable to Contractor hereunder, and each such entity disclaims any and all financial or other responsibility, except with respect to goods and/or services that are furnished and invoiced to such entity.

**SCHEDULE B - REIMBURSABLE EXPENSES**

All invoices for reimbursable expenses shall include the Standard Service Agreement Number, an itemized listing supported by copies of the original bills, invoices, expense accounts and other miscellaneous supporting data. All authorized travel either to San Diego/Los Angeles or from San Diego/Los Angeles to other locations shall be approved in writing in advance by Company Representative. Travel time shall NOT be reimbursed except for travel during normal/regular business hours.

1. Auto Mileage  
Auto mileage shall be reimbursed at \$0.405 per mile, or at the current rate as specified by the United States Internal Revenue Service.
2. Air Travel  
Airfares shall be reimbursed based on the most direct route at coach class travel rates. Upgrading (coach to a higher class) of airline tickets shall only be reimbursed when approved by Contract Manager, and only when the business schedule requires immediate travel and only higher class accommodations are available. Downgrading (exchange) of airline ticket where Contractor receives financial or personal gain shall NOT be permitted. If a trip is postponed, reservations shall be canceled immediately. Contractor shall provide copies of passenger receipts to Company to receive travel expense reimbursement. Travel arrangements shall be made as early as possible (preferably three [3] weeks) to take advantage of advance reservation rates.
3. Combining Business Travel with Personal Travel  
Contractor may combine personal travel with Company business only if the personal travel does NOT increase the reimbursable cost to Company.
4. Air Travel Insurance  
Company shall NOT pay for air travel insurance.
5. Accommodations  
Company shall reimburse hotel room fees at preferred corporate or contract rates. Company may reimburse hotel room fees at the standard rate based on single room occupancy in cases where a corporate or contract rate is NOT available.
6. Laundry  
Any laundry and dry cleaning charges shall ONLY be paid if Contractor is on travel for Company assignment for a period in excess of six (6) consecutive days.
7. Entertainment  
Company shall NOT pay for the rental of premium channel movies, use of health club facilities or other forms of entertainment.
8. Meals  
Meals shall be reimbursed on an actual cost basis up to a maximum of \$50.00 (Fifty Dollars) per day of travel. Itemized receipts are required and shall be submitted for all meals in the form of a credit card receipt or cash register tape. Company shall NOT pay for alcoholic beverages. In lieu of itemizing meal expenses and submitting receipts, Contractor may claim a standard \$31.00 (Thirty-One Dollars) per diem for

the duration of the business travel.

9. Telephone Usage

Contractor shall submit support documentation regarding all telephone calls charged to Company. The support documentation shall include the name of the party being called and the purpose of the call. Company shall NOT pay for additional business calls unless directly related to this Agreement. Personal telephone calls shall NOT be reimbursed.

10. Ground Transportation

Public transportation shall be utilized whenever possible, however if necessary, rental car expenses shall be reimbursed for authorized travel only. Cab fare (on a shared basis whenever possible) is reimbursable. Receipts shall be required to document all ground transportation charges.

11. Car Rental

If authorized, Company shall reimburse reasonable car rental charges including gas actually purchased for authorized travel ONLY. Contractor shall be required to rent at an economy car level classification or equivalent, unless the size or purpose of the group using the vehicle dictates a larger size in accordance with the following table:

Travelers	Classification
1-2	Economy/Compact
3	Medium/Intermediate
4-5	Full Size/Standard
6-8	Van

Contractor shall fuel rental cars prior to rental return as rental companies normally add a large surcharge to refueling services.

12. Parking

Contractor shall be reimbursed at cost for reasonable parking expenses incurred in the performance of Services while on Company business.

13. Tolls and Fees

Contractor shall be reimbursed at cost for reasonable transportation-related toll and fees incurred in the performance of Services while on Company business.

14. Baggage Handling

Contractor shall be reimbursed for baggage handling service fees at standard reasonable rates.

15. Other Business Expenses

Any business supplies, equipment rental, reprographics and facsimile expenses shall be reimbursed at cost when traveling on Company business.

16. Non-Allowable Expenses

Company shall NOT provide any reimbursement for travel expenses for family members, personal items, charitable contributions, or for any other type of reimbursable.



**Customer Education, Awareness and Outreach**

**(CEAO)**

# **2009-2011 Demand Response Program Description**

## **Customer Education, Awareness & Outreach (CEAO)**

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### **1. Utility**

San Diego Gas & Electric Company

### **2. Program**

Customer Education and Awareness (CEAO)

### **3. Program Description**

The Customer Education, Awareness and Outreach Programs are a comprehensive, multi-faceted marketing/communications effort that entails a variety of initiatives aimed at increasing customer knowledge, understanding of demand response and inciting behavior change/action. This effort is essential to the successful communication, participation and execution of the overall demand response program portfolio. These initiatives provide the foundation for delivering demand response benefits to customers, and will complement the program specific marketing efforts to acquire new customers, retain existing customers and encourage participation when called upon. The various general awareness and education initiatives are intended to increase the overall awareness and understanding of 1) the demand response concept; 2) the benefits demand response delivers to customers; and 3) the importance of demand response programs in the customers energy management mix.

Customer Education, Awareness and Outreach will extend across residential, small/medium commercial, large commercial and industrial and direct access customer segments, and will include the following:

#### **Education, Awareness and Outreach Umbrella**

The Education, Awareness and Outreach Umbrella Campaign aims to educate customers on the concept and benefits of demand response, as well as how demand response fits into the customer's overall energy management mix. It becomes the platform or overarching message those folds in all demand response programs and benefits. This will be accomplished through the use of mass media channels, e.g. print and broadcast advertising together with targeted communications, e.g. direct mail, and e-mail, Account Executive contact and educational resources, e.g. online tools, audits, seminars, workshops and community outreach events.

Unlike traditional demand side management, demand response is driven by specific conditions and is therefore episodic. Consequently, there may be a long delay between enrollment in a program and an actual need for program participation/execution. Implementing an on-going

awareness and education campaign, in conjunction with retention efforts, is necessary to continue momentum and ensure SDG&E receives the necessary participation/reduction when demand response events are called.

While the Umbrella Campaign will reach all customers, audience segmentation will be used to determine the appropriate messaging and media vehicle (tactic). The general emphasis will be on increasing awareness and understanding of demand response, its benefits and how it fits in with the energy management mix among all customer segments utilizing mass communication channels, targeted media and outreach events and basic demand response messages. As we build awareness through continuity of messages and media over time, this broader focus will educate and prepare customers for dynamic pricing and the savings opportunities that can be realized through the use of advanced meters and demand side management programs.

Additionally, we will specifically target industries or regions based on customer's energy use consumption/information, which can lead to greater DRP participation, as it prepares us to be more responsive to unique needs within our service area. Increased focus will be given to those customers that may be closer to adopting demand response as part of their energy management mix e.g. customers with IDR meters, customers with demands greater than 200 kW, customers with load that can be temporarily turned off, re-scheduled, or suspended, customers with energy management systems (EMS) or direct load control devices connected to air conditioning systems, or other load that can be modulated or cycled, and/or customers who have participated in SDG&E's energy efficiency programs. Overtime, this segment will increase as AMI is implemented throughout the customer base. As more customers are given the capability to participate, a greater emphasis will be made to raise their level of awareness about demand response and its benefits and encourage enrollment/participation in the various programs.

Furthermore, online tools or enhancements will be developed to help educate customers by providing an individualized and interactive experience that will illustrate the benefits of demand response to each customer.

SDG&E will also provide demand response information to be integrated into one of the energy end-use modules of the successful Builder Operator Certification Program, the professional development program featuring classroom training and in-facility assignments. For the residential market, SDG&E will work together with large big box retailers to offer mutual benefit workshops and seminars within their seminar schedule. Energy Efficiency and Demand Response will be integrated and presented as solutions to energy use and energy management

### **Business Collaborative Outreach**

The Business Collaborative Outreach Program will provide direct interaction and communications to local municipalities and business communities within SDG&E's service territory to broaden awareness of demand response. The messaging to small and medium commercial customers will incorporate methods for businesses to help manage energy costs through various SDG&E tools and programs.

The program targets specific groups because it's an efficient way to strategically reach broad audiences and hence the audience we seek to inform. Each community reaches out to their own constituents with regularly scheduled meetings. There are also twenty-five (25) incorporated cities in San Diego/Orange County region representing over 90,000 business accounts receiving electric and gas services. Within these geographical boundaries are a number of underserved local municipalities that historically have not actively participated in load reduction programs.

The program will target these groups through a collaborative communication process. SDG&E will specifically target small to medium size business customers via business associations and trade organizations. Targets include:

- Economic Development Councils
- Local Chamber and trade associations
- Smaller local associations such as the Business Improvement Districts
- Underserved and smaller, lesser known municipalities and cities within greater San Diego and Orange
- Small and mid-size businesses
- Business assistance organizations (such as, Small Business Administration/SCORE)

The key underlying objective is to proactively position SDG&E as a business energy resource and facilitator for program education and participation. Customer messages will be tailored in a manner that will enable customers to understand and participate in demand response programs. SDG&E will provide information to show how customers can shift and reduce during critical energy periods. We will also include information on how to reduce consumption on an ongoing basis (energy efficiency and conservation). This will position SDG&E as the "One-stop-shop" for all your energy needs.

### **1.1 Outreach Programs**

This program (outreach events) will leverage local community, civic events, tradeshows, ethnic fairs and community networks to optimize the number of people who hear and understand demand response, understand the benefits of demand response, and decide to take action when necessary. Outreach events allow us to meet with neighborhoods and communities and educate and create awareness of our demand response programs one-on-one. The events and sponsorships tap into the civic/community infrastructures. We will ask community organizations and individuals to work with us to help the community in capacity building and ensure efficient use of resources. We understand the community's desire for providing service and gaining visibility for their neighborhood. We believe this program would be beneficial for all parties as

SDG&E seeks a sustainable energy for the future and all community and civic organizations seek a sustainable quality of life for the region.

**1.2 Marketing Activities**

The education, awareness and outreach effort will use a combination of mass media communications channels and targeted communications channels to ensure the messages reach the intended audiences with enough frequency to be “top-of-mind” and break through the communication clutter. The marketing may include a mix of print, radio, TV, direct mail, personal contact, email, web information, trade shows, trade association meetings, customer workshops, energy-related and other community events and partnerships with business and industry organizations. The messaging will resonate by using both head and heart as the motivating factors to incite change or modify behaviors.

In addition, online tools will be developed to assist customers in understanding their energy usage and pricing signals, allow for online enrollment, and respond to alerts. The Web will also be used to expand marketing and outreach to our increasingly diverse target audience, improve timely customer contacts by reducing DRP related follow-up calls by providing more complete, accurate, and consistent information, and to quantify results.

The marketing plan for each individual demand response program is also a component of education, awareness and outreach and all marketing/communication efforts will be complementary.

In 2009-2011 SDG&E will implement segmentation research and messaging. Marketing campaigns will provide a wide range of action-oriented solutions targeted to “personas” identified through segmentation research. “Bundled” marketing efforts or a menu of demand response, energy efficiency and conservation programs will provide customers with a full array of EE and DR options. By providing energy management “packaged” solutions for each industry segment we will be better able to communicate with and serve our customers.

**Large Commercial Industrial:** These customers will be provided communication and marketing information primarily through their assigned account representative. This segment is already familiar with the objectives of demand reduction and many of the available programs. The following marketing tactics are planned for this segment:

Date	Activity
Each Year	Umbrella Campaign with mass reach
Each Year	Marketing tactics to communicate program benefits
2009- 2011	IDSM Workshops and Seminars

**Medium Commercial Industrial:** We will market to these customers using newly assigned Account Managers, workshops, seminars, and but not limited to, presentations, mass advertising, email, newsletters and direct mail. Customers will be informed of load reduction strategies and available programs. They can proactively request additional information via the company website or the DRP toll-free phone number or through their Account Manager.

Participation from this segment is expected to increase greatly when the Advanced Metering Infrastructure (AMI) project is rolled out. AMI will provide these customers with the necessary metering and the communications will heighten awareness of energy management opportunities.

The following marketing tactics are planned for this segment:

<b>Date</b>	<b>Activity</b>
Each Year	Umbrella Campaign with mass reach
Each Year	Marketing tactics to communicate program benefits and support each program
Each Year	Business Collaborative Outreach
Each Year	Outreach events
2009- 2011	IDSMS Workshops and Seminars

**Small Commercial Industrial / Residential:**

Participation from this segment is expected to increase greatly when the Advanced Metering Infrastructure (AMI) project is rolled out. AMI will provide these customers with the necessary metering and the increased communications will increase awareness of energy management opportunities.

<b>Date</b>	<b>Activity</b>
Each Year	Umbrella campaign and tactics
Each Year	Business Collaborative Outreach
Each Year	Outreach events

4. Contract Period

N/A – Information Program

5. Eligibility

N/A – Information Program

6. Operating Months (As noted with each program)

N/A – Information Program

7. Curtailment Window

N/A – Information Program

8. Minimum Qualifying Load Criteria for Program

N/A – Information Program

9. Event Trigger )

**Day-Ahead Event:** N/A – Information Program

**Day-Of Event:** N/A – Information Program

10. Notification Time

**Day-Ahead Event:** N/A – Information Program

**Day-Of Event:** N/A – Information Program

11. Curtailment Level

N/A – Information Program

12. Incentive Payment

**Day-Ahead Event:** N/A – Information Program

**Day-Of Event:** N/A – Information Program

13. Event Minimum Load Reduction

N/A – Information Program

14. Event Frequency Limits

N/A – Information Program

15. Non-Compliance Penalties

N/A – Information Program

16. Meter Requirements and Who Pays

N/A – Information Program

17. Enabling Technology Requirements/Responsibility

N/A – Information Program

18. a.) Budget for 2006-2008

2006 - \$2,804,358

2007 – \$3,212,673

2008 – \$2,924,651

18. b.) Budget for 2009-2011

	2009	2010	2011
<b>Operating &amp; Maintenance (Administration)</b>	<b>\$1,800,754</b>	<b>\$2,009,733</b>	<b>\$2,218,722</b>
<b>Capital</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>Measurement &amp; Evaluation</b>			
<b>Incentive Payments</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>Total Program Budget</b>	<b>\$1,800,754</b>	<b>\$2,009,733</b>	<b>\$2,218,722</b>

19. Goal/Expected Load Reduction )

N/A – Information Program

20. EM&V Plan (Built into each program)

21. Comments

22. a.) Enrollment from 2006-2008, including:

N/A – Information Program

- Number of Participants
- Type of Participants
- Megawatts, and
- Megawatts by Type of Participant



22. b.) Estimated Enrollment for Each Year (2009-2011), and How it was Determined

N/A – Information Program

23. How Programs Fit Into Local Resource Adequacy

N/A – Information Program

24. Estimated Load Impact, Based on Protocols to be Adopted

N/A – Information Program

25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted

N/A – Information Program

26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)

N/A Information Program

27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond

N/A Information Program

28. Other Relevant Information, as Appropriate and Necessary

N/A Information Program

29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance

N/A Information Program

30. The Actual (Observed) DR Load Reduction Due to the Program, and How it was Distributed Among Enrolled Customers

N/A Information Program

31. Proposed Changes in the Programs for 2009-2011 (if any) from Existing Activities, and Reasons for those Proposed Changes

SDG&E will begin using the segmentation research to bundle programs and communicate benefits appropriate to each segment through communication channels that are highly targeted. Using an approach that appeals to both the head and the heart, and using language that is user-friendly vs. technical speak to persuade consumers to invest in IDSM programs and conservation.

32. Baseline and/or Terms of Settlement

N/A Information Program

**Flex Alert Network**

**(FAN)**

## **2009-2011 Demand Response Program Description Flex Alert Network (FAN)**

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### **1. Utility**

San Diego Gas & Electric Company

### **2. Program**

Flex Alert Network (FAN), formerly known as the Flex Your Power Now (FYPN!)

### **3. Program Description**

Market Sector: All

Program Classification: Statewide Informational

Flex Alert Network (FAN), formerly known as the Flex Your Power Now (FYPN!), is an extension of Flex Your Power (FYP). The FYP is California's statewide energy efficiency marketing and outreach campaign, initiated in 2001. It is a partnership of California's utilities, residents, businesses, institutions, government agencies, and non-profit organizations working to save energy. The campaign includes retail promotions, a comprehensive website, an electronic newsletter, educational materials, and advertising. The FYP campaign's primary funding comes from the Public Goods Charge as approved by the Commission.

FAN issues a Flex Alert to notify California businesses, governments and residents when California's energy resources are reaching peak levels to prevent Stage 1 Electrical Emergencies. When a Flex Alert day is called, Californians are requested to follow specific conservation and load-shifting measures to reduce their electricity use. The recommendations include turning off all unnecessary lighting, postponing the use of major appliances until after 7 pm, and adjusting the air conditioning thermostat up to 78°F.

As part of the California Energy Efficiency Strategic Plan, a working group is exploring different alternatives for statewide branding for demand side awareness. The results of these studies will inform the Commission's decision regarding the future direction of statewide marketing and outreach. Upon receiving further CPUC direction, the current Flex Alert Network statewide marketing and outreach campaign may be modified to further promote a different statewide brand.

SDG&E proposes a phased down approach from the FAN program to allow messaging to become more focused to support communications associated with demand response programs.

**4. Contract Period**

N/A

**5. Eligibility**

N/A

**6. Operating Months**

N/A

**7. Curtailment Window**

N/A

**8. Minimum Qualifying Load Criteria for Program**

N/A

**9. Event Trigger**

N/A

**10. Notification Time**

N/A – Information Program

**11. Curtailment Level**

N/A – Information Program

**12. Incentive Payment**

N/A – Information Program

**13. Event Minimum Load Reduction**

N/A – Information Program

**14. Event Frequency Limits**

N/A – Information Program

**15. Non-Compliance Penalties**

N/A – Information Program

**16. Meter Requirements and Who Pays**

N/A – Information Program

**17. Enabling Technology Requirements/Responsibility**

N/A – Information Program

**18. a.) Budget for 2006-2008**

	2006	2007	2008
Operating & Maintenance (Administration)	\$597,089	\$597,089	\$597,089
Capital			
Measurement & Evaluation	\$83,808	\$83,808	\$83,808
Incentive Payments			
<b>Total Program Budget</b>	<b>\$680,897</b>	<b>\$680,897</b>	<b>\$680,897</b>

**18. b.) Budget for 2009-2011**

	2009	2010	2011
<b>Total Program Budget</b>	<b>\$626,943</b>	<b>\$417,962</b>	<b>\$208,981</b>

**19. Goal/Expected Load Reduction**

N/A

**20. EM&V Plan**

See the accompanying SDG&E testimony of Kathryn Smith.

**21. Comments**

22. a.) Enrollment from 2006-2008, including:

- Number of Participants
- Type of Participants
- Megawatts, and
- Megawatts by Type of Participant

N/A

22. b.) Estimated Enrollment for Each Year (2009-2011), and How it was Determined

N/A

23. How Programs Fit Into Local Resource Adequacy

N/A

24. Estimated Load Impact, Based on Protocols to be Adopted

N/A

25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted

N/A

26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)

N/A

27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond

N/A

28. Other Relevant Information, as Appropriate and Necessary

N/A

29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance

N/A

**30. The Actual (Observed) DR Load Reduction Due to the Program, and How it was Distributed Among Enrolled Customers**

N/A

**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

SDG&E will continue to work with its statewide partners in conjunction with the ongoing work on the Commission's Energy Efficiency and Demand Response Strategic Plan to identify the appropriate future scope of the FAN program, and will begin to phase down its activities as other similar efforts ramp up in conjunction with other programs..

**32. Baseline and/ or Terms of Settlement**

N/A

**Demand response-Emerging Technologies**

**(DR-ET)**



# 2009-2011 Demand Response Program Description

## Demand Response-Emerging Technologies

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### 1. Utility

San Diego Gas & Electric Company

### 2. Program

Demand Response Emerging Technology Program (formerly Emerging Markets).

### 3. Program Description

Participation in a demand response (DR) program can present numerous challenges for a customer, requiring an investment in time and resources. For a residential customer, the decision to reduce power is generally motivated by convenience, while for a business customer, power reductions are generally motivated by technology that integrates well with existing systems, financial considerations and other tradeoffs. Implementing a load shedding strategy may involve installing new load reduction or energy monitoring technologies, creating new or modified tasks for the homeowner or business employees during an event, or modifying activities or process operations. Technology and automation eases strategy implementation by controlling electrical demand during peaks and emergency events.

The Demand Response Emerging Technologies (DR-ET) program formerly known as Emerging Markets Program (EMP) is a technology development and transfer program in which new, novel and/or cross cutting technologies are evaluated and demonstrated for delivering demand response. Based on efficiency and effectiveness, these technologies are accordingly transferred to DR Programs and promoted in customer segments to maximize the DR potential.

The program also engages in state wide initiatives involving new technology evaluations and small scale demonstrations aimed at reducing, managing or controlling the electrical demand of utility customers. New technologies are assessed for compatibility with SDG&E programs and technology deployments; such as Smart Meter and depending on their DR potential, changes are proposed. The program provides technical support related to statewide codes and standards for demand response. SDG&E believes this is an area with great potential for moving the market toward innovative demand response technologies and standards.

Additionally, to achieve the short term (2009 – 2011) goals of the California Energy Efficiency Strategic Plan, DR-ET will pursue an integrated demand response, energy efficiency and renewable energy strategy in its technology demonstrations. This strategy will prepare the utility achieve the long term zero energy performance goals (2020 in residential buildings and 2030 in commercial buildings).

**4. Contract Period**

N/A

**5. Eligibility**

Residential, Commercial and Industrial customer segments

**6. Operating Months**

N/A

**7. Curtailment Window**

N/A

**8. Minimum Qualifying Load Criteria for Program**

N/A

**9. Event Trigger:**

N/A

**Day-Ahead Event:**

**Day-Of Event:**

**10. Notification Time:**

N/A

**Day-Ahead Event:**

**Day-Of Event:**

**11. Curtailment Level**

N/A

**12. Incentive Payment:**

N/A

**Day-Ahead Event:**

**Day-Of Event:**

**13. Event Minimum Load Reduction**

N/A

**14. Event Frequency Limits**

N/A

**15. Non-Compliance Penalties**

N/A

**16. Meter Requirements and Who Pays**

As part of the demonstration and evaluation process, electric meters and sub-meters are installed at customer sites. All costs for the meters, installation and subsequent removal after completion of the demonstration and evaluation are paid by this program.

**17. Enabling Technology Requirements/Responsibility**

N/A. This is an enabling technology demonstration and evaluation program through which new, innovative and cross-cutting DR enabling technologies are evaluated and demonstrated in all customer segments (residential, commercial & industrial). Customers may either be utility bundled or direct access. Technologies are installed and evaluated at customer sites to provide actual impact (effectiveness, benefits and implementation and/or operational issues) to be expected from their application. The program, in partnership with the technology provider is responsible for the technology deployed and removed in each demonstration and evaluation project.

**18. a.) Budget for 2006-2008**

\$1,968,816

**18. b.) Budget for 2009-2011**

2009 -- \$717,743

2010 -- \$708,148

2011 -- \$716,604

**19. Goal/Expected Load Reduction**

The primary objective is to identify and evaluate new, innovative and cross-cutting existing technologies that maximize demand response. Technologies that have potential to improve the capability, reliability and/or consistency of demand response are demonstrated and based on results, are accordingly promoted and supported. Improving demand response helps the state as well as the SDG&E customers by reducing energy costs through the reduction of peak energy demands, as well as reducing the likelihood of rolling blackouts and rotating outages.

**20. EM&V Plan**

The typical evaluation, measurement and verification metrics used in DR program implementation are not applicable since this is a technology evaluation and small scale demonstration program. Furthermore, due to the diversity of technologies evaluated, a single plan can not be used. However some common elements used in the evaluation of technologies include but are not limited to: technical capability and improvement over existing, load shed application and strategy limitations, applicability to different loads types, compatibility of control signal with SDG&E infrastructure, costs, ease of installation/implementation, customer response and feedback, etc.

**21. Comments**

**22. a.) Enrollment from 2006-2008, including:**

N/A

- Number of Participants
- Type of Participants
- Megawatts, and
- Megawatts by Type of Participant

**22. b.) Estimated Enrollment for Each Year (2009-2011), and How it was Determined**

N/A

**23. How Programs Fit Into Local Resource Adequacy**

N/A

**24. Estimated Load Impact, Based on Protocols to be Adopted**

N/A

**25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted**

N/A

**26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)**

All funds for outreach activities for this program are provided by this program. Through active participation in technology seminars and showcases SDG&E promotes its interest in the development of new demand response technologies. Additional channels in trade associations, technical organizations and other electric utilities are used to identify and explore partnerships with technology inventors, developers and manufacturers.

Initial demonstrations of new technology are marketed directly to customers through their assigned account representatives. Using these established relationships, customers are more likely participate in real-life demonstrations. Customers without assigned account representatives such as the residential segment are approached directly through mailings and advertisements.

**27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond**

N/A

**28. Other Relevant Information, as Appropriate and Necessary**

The program is aimed at new, innovative and cross cutting technologies for demand response applications that are typically 3 or more years away from commercial availability. Innovative products are evaluated followed by small scale demonstrations of promising technologies. Based on efficiency and effectiveness, these technologies are accordingly promoted to customer segments to maximize the DR potential. Where applicable, the program encourages technology deployments through partnerships with inventors, manufacturers and distributors. Based on the developmental stage of a technology, the program provides opportunities for technology inventors, manufacturers and distributors to facilitate introduction of new load reduction products to market. When appropriate, incentives are provided to manufacturers to advance technology progress for a certain end use. In this process, a set amount of funds are made available to bring a new product to market.

Some of the program strategy elements are described below:

- Conduct small scale technology demonstrations in all SDG&E customer segments (residential and/or non-residential, i.e. commercial & industrial).
- Promote new promising technologies and provide technical assistance to DR program staff during the transfer process to improve implementation success.
- Working in partnership with customers, research organizations, external stakeholders and SDG&E program staff, identify technologies for potential inclusion in statewide codes and standards.

- Promote collaborations with trade associations, organizations and other utilities to drive program objectives and reduce demonstration and evaluation cost.
- Engage with inventors and research organizations to support, steer and advance new technology development.
- Organize and hold technology workshops and showcases to increase general awareness and interest in new demand response technologies and provide opportunities for inventors and technology developers to explore partnerships with SDG&E.
- Where appropriate, motivate developers and manufacturers via a “Golden Carrot” incentive to advance technological progress for a certain end use.
- Participate in DR seminars and forums to identify new technologies and potential implementation strategies for improving demand response.

Through this technology developmental process, the potential for more reliable, consistent and efficient demand response will be realized.

**29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance**

N/A

**30. The Actual (Observed) DR Load Reduction Due to the Program, and How it was Distributed Among Enrolled Customers**

N/A

**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

No changes are proposed.

**32. Baseline and/ or Terms of Settlement**

N/A

**PEAK Student Energy Actions Program**

**(PEAK)**

# 2009-2011 Demand Response Program Description

## PEAK Student Energy Actions Program (PEAK)

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### 1. Utility

San Diego Gas & Electric Company

### 2. Program

PEAK Student Energy Actions Program (PEAK)

### 3. Program Description

PEAK Student Energy Actions (PEAK) is a comprehensive energy education program collaboratively implemented by San Diego Gas & Electric (SDG&E), San Diego schools, and The Energy Coalition (Coalition), a 501(c)3 nonprofit organization. PEAK is a standards-based program that focuses on demand response and energy efficiency, and empowers students to become advocates of smart energy management in their homes, schools and communities.

PEAK complements each level of the Integrated Demand Side Management model by using education as a means of shifting behavior. PEAK's comprehensive, hands-on program is correlated to the State of California's science, math and language arts standards for grades three through seven. The program teaches students the science of energy and instills an ethic of smart energy management. Throughout their participation in the PEAK program, students are presented with the necessary tools to formulate thoughtful conclusions about energy usage at the individual and community levels.

The primary objectives of PEAK are to:

- 1 Deliver high-quality, science-based energy education to the next generation of energy consumers.
- 2 Engage students, their families and schools as demand responders and energy efficiency practitioners.
- 3 Provide professional development for teachers on energy education.
- 4 Maximize sustainable residential demand response and energy efficiency potential.

Program Deliverables

1. Student Recruitment and Retention
2. Teacher Trainings
3. Products for Student Distribution
4. Educational Kick-off Assemblies
5. Site Visits



PEAK empowers students to connect with their homes, schools and communities in a variety of ways that not only reinforce the concepts that they are learning, but also to encourage them to teach others about the importance of smart and sustainable energy management. At the core of the PEAK program are the four PEAK Student Energy Actions which are utilized in a thematic manner to educate students on how their personal behavior and the behavior of others have a direct impact on the demand for energy.

The four PEAK Energy Actions are:

- 1 Shifting Use Off Peak Demand Time
- 2 Cutting Waste Through Conservation
- 3 Plugging Into New and Efficient Technologies
- 4 Planning for a Healthy and Sustainable Energy Future

PEAK's approach is unique. Through the application of hands-on educational tools, all programmatic elements are carefully designed to educate students and their families about demand-side energy management. For example, PEAK views teachers as the most vital resource to the success of any educational program and treats them accordingly by providing personal attention and proactive, ongoing programmatic support to increase teacher success and student performance.

California's Energy Action Plan calls for the integration of demand side resources in an effort to minimize potential lost opportunities. More recently, the CPUC energy efficiency decision recognized the importance of education and training in integrating key demand side resources. From its inception, the PEAK program has operated in this same vein. Through the 4 PEAK Student Energy Actions, students not only learn about the benefits of demand response, energy efficiency and renewable resources, but also instill a lasting ethic of smart energy management.

In summary, the PEAK program:

- 1 Fosters strong, sustainable relationships between SDG&E and local communities.
- 2 Is consistent with California's Energy Action plan.
- 3 Supports SDG&E to meet their integrated education goals.

#### **4. Contract Period**

At the beginning of the 2009-2011 funding cycle, PEAK will have over 7,500 students participating in the program. In order to leverage previous marketing and recruitment efforts, to strengthen SDG&E relationships with schools, and sustain a high level of teacher involvement, PEAK will continue to provide ongoing program support to PEAK schools that have participated during the 2006-2008 funding cycle.

PEAK will maintain quality control and content integrity by offering advanced teacher trainings, educational assemblies, classroom support, power plant field trips, and CFL distributions. In addition, PEAK will expand the program's geographic reach, enrolling new schools throughout San Diego and South Orange County. Including the 7,500 students from the current funding cycle, PEAK aims to enroll an additional 4,500 students by the end of 2011

**5. Eligibility**

The PEAK program will target grades three through seven.

**6. Operating Months**

The program is available year round.

**7. Curtailment Window**

N/A

**8. Minimum Qualifying Load Criteria for Program**

N/A

**9. Event Trigger**

Day-Ahead Event: N/A

Day-Of Event: N/A

**10. Notification Time (N/A)**

Day-Ahead Event:

Day-Of Event:

**11. Curtailment Level**

N/A

**12. Incentive Payment**

Day-Ahead Event: N/A

Day-Of Event: N/A

**13. Event Minimum Load Reduction**

N/A

**14. Event Frequency Limits**

N/A

**15. Non-Compliance Penalties**

N/A

**16. Meter Requirements and Who Pays**

N/A

**17. Enabling Technology Requirements/Responsibility**

N/A

**18. a.) Budget for 2006-2008**

\$900,000

**18. b.) Budget for 2009-2011**

2009 -- \$311,826

2010 -- \$301,431

2011 -- \$301,590

**19. Goal/Expected Load Reduction**

N/A

**20. EM&V Plan**

See the accompanying SDG&E testimony of Kathryn Smith.

**21. Comments**

**22. a.) Enrollment from 2006-2008, including:**

- Number of Participants - As of March 28, 2008, the PEAK program has successfully recruited 13 schools throughout San Diego County and more than 5,000 PEAK students.
- Type of Participants – Grades three through seven
- Megawatts, and – N/A Information Program
- Megawatts by Type of Participant – N/A Information Program

**22. b.) Estimated Enrollment for Each Year (2009-2011), and How it was Determined**

PEAK will recruit approximately 1,500 new students for each year of the 2009-2011 program cycle. In addition, the Coalition shall retain the 7,500 students currently participating in the program.

**23. How Programs Fit Into Local Resource Adequacy**

N/A

**24. Estimated Load Impact, Based on Protocols to be Adopted**

N/A

**25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted**

N/A

**26. Marketing and Outreach Funding Disaggregated by Target Customer (if appropriate given future guidance on EE/DR coordination)**

N/A

**27. Proposal of and Schedule for How Each Program Will Align with MRTU Release 1/1A and Beyond**

N/A

**28. Other Relevant Information, as Appropriate and Necessary**

N/A

**29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance**

N/A

**30. The Actual (Observed) DR Load Reduction Due to the Program, and How it was Distributed Among Enrolled Customers**

N/A

**31. Proposed Changes in the Programs for 2009-2011(if any) from Existing Activities, and Reasons for those Proposed Changes**

To enhance the current program, PEAK will provide:

- Additional Product Distributions - In addition to a CFL, each participating student will also receive a faucet aerator and low-flow showerhead, to be accompanied by an educational info sheet outlining energy saving measures.
- GHG Education and Monitoring - Incorporate greenhouse gas emissions education and awareness element, which will include GHG monitoring hardware/software at selected pilot schools.
- Energy Careers Module - Update PEAK curriculum will include information about careers in the energy industry.
- Advanced Teacher Training - Update the Teacher Training module will incorporate advanced energy education for interested teachers.
- Program Promotion and Recognition - Challenge the local government and community to make smart energy management a priority within their city and recognize outstanding efforts at School District and City Council meetings.

**32. Baseline and/ or Terms of Settlement**

N/A

**Permanent Load Shifting**

**(PLS)**

## **2009-2011 Demand Response Program Description Permanent Load Shifting (PLS)**

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1. **Utility**

San Diego Gas & Electric

2. **Program**

Permanent Load Shifting

3. **Program Description**

Permanent Load Shifting (PLS) occurs when a customer moves energy usage from one time period to another on an ongoing basis. In the RFP issued by SDG&E, PLS of customer end-use equipment is to occur, at a minimum from the period of 11:00 a.m. to 6:00 p.m. to the period of 6:00 p.m. to 11:00 a.m. each weekday (Monday through Friday), excluding holidays, during the summer months May 1st through October 31st.

4. **Contract Period**

Contract one (1), March 26, 2008 – December 31, 2011

Contract two (2), April 1, 2008 – December 31, 2011

5. **Eligibility**

Non-residential customers who shift a minimum of 20kW

6. **Operating Months**

May 1 – October 31<sup>st</sup>

7. **Curtailment Window**

Does Not Apply.

8. **Minimum Qualifying Load Criteria for Program**

Customer must be able to shift 20 kW or greater to qualify for PLS program.

**9. Event trigger**

Does Not Apply

- a. Day-Ahead Event: Does Not Apply
- b. Day-Of Event: Does Not Apply

**10. Notification Time**

Does Not Apply

- a. Day-Ahead Event: Does Not Apply
- b. Day-Of Event: Does Not Apply

**11. Curtailment Level**

Does Not Apply

**12. Incentive Payment**

Contract one (1) – In pursuant to the contract  
Contract two (2) – In pursuant to the contract

**13. Event Minimum Load Reduction**

Does Not Apply

**14. Event Frequency Limits**

Does Not Apply

**15. Non-compliance Penalties**

Does Not Apply

**16. Meter Requirements and Who Pays**

Interval Data Recorder (IDR) will be installed with telecommunications capability compatible with the Utility's meter reading and telecommunications systems. Gas Chillers shall also be sub-metered. Meters will be installed and paid for by contractors.



**17. Enabling Technology Requirements/Responsibility**

Non-residential customers enable the implementation of the technology by signing up for the PLS program through Third Party Contractors. The technology is the ultimate responsibility of the contractors.

**18a.) Budget for 2006-2008**

Combined, SDG&E internal administration and Third Party implementation expenditures will be roughly \$3,867,500 dollars in 2008, which has been shifted from the 2006-2008 program cycle funds, as authorized by the Commission in D.06-11-049.

**18. b.) Budget for 2009-2011**

SDG&E's proposed budget for the internal contract administration activities associated with its two PLS contracts is as follows:

	2009	2010	2011
<b>Total Program Budget</b>	<b>\$99,983</b>	<b>\$102,789</b>	<b>\$105,599</b>

**19. Goal/Expected Load Reduction**

2009 - 2.97 MW; 2010 - 2.97 MW; 2011 - 2.97 MW, pursuant to contract provisions.

**20. EM&V Plan**

Data to include sampling, average rates, 15 minute average kW, temperature, operational modes, and data retrieval which will be uploaded to the Internet for viewing. See the accompanying SDG&E testimony of Kathryn Smith.

**21. Comments**

SDG&E was authorized to shift up to \$4,000,000 of its existing 2006-2008 program cycle demand response budget to fund the initial PLS proposals. Combined, the Third Parties implementing the programs expect to spend \$1,793,126 dollars in 2008, which will be shifted from the 2006-2008 program cycle funds as authorized by the Commission. A remaining \$2,012,656 is budgeted as part of the 2009-2011 program cycle.

**22. a.) Enrollment from 2006-2008**

Both contracts were signed in the first quarter of 2008, no customers have been enrolled to date.

**22. b.) Estimated Enrollment for 2009-2011**

Target customer base includes public cold storage, food processing and distribution centers, agriculture, grocery, military, education, health care and large retail, all pursuant to the specific program marketing and enrollment provisions of each contract.

**23. How Programs Fit Into Local Resource Adequacy**

N/A.

**24. Estimated Load Impact, Based on Protocols to be Adopted**

N/A. Each contract specifies the specific program results to be achieved.

**25. Estimated Cost Effectiveness (CE) Based on Protocols to be Adopted**

Each PLS proposal was subjected to cost-effectiveness analysis prior to SDG&E's Advice Letter filing, which was approved by Resolution E-4098.

**26. Marketing and Outreach Funding Disaggregated by Target Customer**

To Be Determined

**27. Proposal of and Schedule for How Each Program will align with MRTU Release 1/1A and Beyond**

N/A

**28. Other Relevant Information, as Appropriate and Necessary**

N/A

**29. Copies of Contracts with Providers/Aggregators, and Information Sufficient to Verify Contract Performance**

Contracts are confidential.

**30. The Actual (Observed) DR Lead Reduction due to the Program, and How it was distributed among enrolled customers**

To Be Determined

**31. Proposed changes in programs for 2009-2011**

This is a new program with new contracts, effective in 2008. No changes proposed.

**32. Baseline and/or Terms of Settlement**

Vendors will provide a metering and monitoring plan for SDG&E to approve for each individual sampled site.



## **APPENDIX C**

### **Proposed/Current Demand Response Program Tariffs**



**SCHEDULE EECC-CPP-D**

Sheet 1

ELECTRIC COMMODITY COST  
CRITICAL PEAK PRICING DEFAULT

APPLICABILITY

Critical Peak Pricing Default (CPP-D) is a commodity tariff that provides customers with an opportunity to manage their electric costs by either reducing load during high cost pricing periods or shifting load from high cost pricing periods to lower cost pricing periods. Except as set forth below, this schedule is the default commodity rate for customers currently receiving bundled utility service whose maximum demand is equal to or exceeds or is expected to equal or exceed 20 kW for twelve consecutive months and whose facility is equipped with the Appropriate Electric Metering, as described below in Special Condition (SC) 19. Subject to the availability of Appropriate Electric Metering and notwithstanding the terms and conditions contained herein, this schedule shall be optionally available to all non-residential customers requesting such service. Customers taking service under this schedule will continue to be subject to the terms and provisions of their otherwise applicable UDC tariff, unless superseded by conditions herein. Pursuant to the specific requirements set forth below, customers can opt-out from receiving service under this schedule and receive service under a different applicable commodity rate. This schedule is not applicable to Direct Access (DA) or Community Choice Aggregation (CCA) customers.

A maximum of eighteen (18) CPP Events can be triggered on non-holiday weekdays and Saturdays beginning May 1 through September 30 as described in Special Condition 16.

TERRITORY

Applicable throughout the entire territory served by the Utility.

RATES

Customers receiving service under this schedule shall be provided with Bill Protection for the first twelve months of service from the default date as described in Special Condition 8.

**Summer**

<b>Summer CPP Event Days</b>	<b>(\$/kWh)</b>
CPP Period	
Secondary	1.06781
Primary	1.02612
Secondary Substation	1.06781
Primary Substation	1.02612
Transmission	0.99998
Semi-Peak	
Secondary	0.08224
Primary	0.08086
Secondary Substation	0.08224
Primary Substation	0.08086
Transmission	0.07948
Off-Peak	
Secondary	0.06075
Primary	0.05953
Secondary Substation	0.06075
Primary Substation	0.05953
Transmission	0.05868

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N  
N  
N  
N

N





**SCHEDULE EECC-CPP-D**  
ELECTRIC COMMODITY COST  
CRITICAL PEAK PRICING DEFAULT

Sheet 3

N  
N  
N  
N

Franchise Fee Differential

A Franchise Fee Differential of 5.78% will be applied to the total bills calculated under this schedule for all customers residing within the corporate limits of the City of San Diego. Such Franchise Fee Differential shall be so indicated and added as a separate item to bills rendered to such customers.

Time Periods

All time periods listed are applicable to local time. The definition of time will be based upon the date service is rendered.

Summer (May 1 – Sept 30)

	<u>Non-CPP Event Days</u>	<u>CPP Event Days</u>
CPP Period		11 a.m. – 6 p.m. Weekdays and Saturdays Excluding Holidays
On-Peak	11 a.m. – 6 p.m. Weekdays	
Semi-Peak	6 a.m. – 11 a.m. Weekdays 6 p.m. – 10 p.m. Weekdays	6 a.m. – 11 a.m. Weekdays 6 p.m. – 10 p.m. Weekdays
Off-Peak	10 p.m. – 6 a.m. Weekdays Plus Weekends & Holidays	10 p.m. – 6 a.m. Weekdays Plus Weekends & Holidays

Winter (All Other)

On-Peak	5 p.m. – 8 p.m. Weekdays
Semi-Peak	6 a.m. – 5 p.m. Weekdays 8 p.m. – 10 p.m. Weekdays
Off-Peak	10 p.m. – 6 a.m. Weekdays Plus Weekends & Holidays

The time periods shown above will begin and end one hour later for the period between the second Sunday in March and the first Sunday in April, and for the period between the last Sunday in October and the first Sunday in November.

N

(Continued)

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**SCHEDULE EECC-CPP-D**  
ELECTRIC COMMODITY COST  
CRITICAL PEAK PRICING DEFAULT

N  
N  
N  
N

SPECIAL CONDITIONS

1. Definitions: The definitions of principle terms used in this schedule are found either herein or in Rule 1, Definitions.
2. Otherwise Applicable Rate: For the purposes contained herein, a customer's Otherwise Applicable Rate (OAR) shall be the applicable commodity rates contained in Schedule EECC, as set forth under the UDC retail rate schedule the customer would receive service under absent the CPP-D rate.
3. Default Date: Effective May 1, 2008, customers, as described in the Applicability section above, will transition to this schedule on the first day following the regularly scheduled meter reading date that falls on or after May 1, 2008. A customer receiving service under Schedule EECC-CPP-VOL at the time this schedule becomes effective shall default and be subject to the terms and conditions set forth herein on the date its existing 12-month commitment to Schedule EECC-CPP-VOL terminates. Customers that would otherwise be subject to the default provisions of this schedule, but for the absence of Appropriate Electric Metering, shall commence receiving service under this schedule on the first day following the regularly scheduled meter read date that occurs at least 90 days following the installation of an Advanced Metering Infrastructure (AMI) meter, unless the Utility and the customer mutually agree to an earlier date.
4. Demand Response Programs: Customers currently eligible to participate in Day-Of demand response programs will default to CPP-D as addressed in Special Condition 3. A customer currently participating in a Day-Ahead Demand Response program that is not compatible with CPP-D shall be excluded from the default process until such time that the customer's participation on the program has terminated. Upon such termination, whether at the customer's election or elimination of the program, the customer's account shall immediately default to CPP-D. For new customers and customers transitioning from a demand response program (DRP) or a different rate, the Default Date shall be the date service commences under this schedule.
5. Direct Access / Community Choice Aggregation: DA or CCA customers with the Appropriate Electric Metering, returning to bundled Utility service, shall default to CPP-D on the date that service commences under the Bundled Portfolio Service after the expiration of their six-month advance notice, as set forth in Rules 25.1 and 27, respectively.
6. Term of Service: Customers that do not opt-out from service under this schedule shall be obligated to a minimum twelve-month Term of Service. The initial Term of Service shall commence on the Default Date, established based on SC 3, 4 or 5, and shall terminate on the regularly scheduled meter reading date at the end of the twelfth month of service under this schedule. Subsequent Terms of Service shall commence on the date immediately following the customer's CPP-D Anniversary Date, defined below, and terminate on the regularly scheduled meter reading date at the end of the twelfth month term of service under this schedule.
7. Opt-Out Notification: The Utility will send a notification to customers advising them of their right to opt-out and receive service under the OAR. The Utility must be in receipt of a completed "Customer Election to Opt-Out" (Form 144-0810) no later than the first business day that is at least forty-five (45) days from the date the notification is mailed. An opt-out notice shall become effective on the first regularly scheduled meter reading date following receipt by the Utility. Customers that do not opt-out shall continue to receive service under this schedule for twelve months from the Default Date. All bills that may have been rendered to the customer prior to the effective date of its request to opt-out shall be recalculated and billed under the OAR.

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**SCHEDULE EECC-CPP-D**  
**ELECTRIC COMMODITY COST**  
**CRITICAL PEAK PRICING DEFAULT**

N  
N  
N  
N

SPECIAL CONDITIONS (Continued)

8. **Bill Protection:** Customers receiving service under this schedule shall be provided with Bill Protection for the first twelve months of service from the default date. Bill Protection ensures that a customer will not pay more for energy commodity service under this schedule than it would have had if it remained on its OAR. Bill Protection is applied for the initial Term of Service that a customer receives service under this schedule, provided the customer takes continuous service for the entire Term of Service on an open account. Bill protection will be computed on a cumulative basis at the end of the customer's initial Term of Service and, if warranted, the customer's account shall be rebilled under the OAR. Upon completion of the Bill Protection calculation, the Utility shall send the results to customers. Customers shall have until the first business day that is at least forty-five (45) days from the date the Utility mails the Bill Protection results to opt-out or continue receiving service under this schedule. An opt-out notice shall become effective on the first regularly scheduled meter reading date follow receipt by the Utility. All bills that may have been rendered to the customer prior to the effective date of its request to opt-out and following the customer's initial Term of Service shall be recalculated and billed under the OAR. A customer that opts-out during the 45-day opt-out period and, after receiving service under a different commodity tariff for twelve months, elects to receive service under this rate schedule shall not be eligible for Bill Protection. Additionally, a customer that began receiving service under Schedule EECC-CPP-VOL after May 31, 2007 shall be precluded from receiving Bill Protection under Schedule EECC-CPP-D.
9. **Opt-Out Process for subsequent Terms of Service:** At the end of a Term of Service, subsequent to the initial Term of Service, customers requesting to opt-out must notify the Utility by submitting a completed Customer Election to Opt-Out form at least 15 days in advance of the customer's CPP-D Anniversary date. Customers that do not provide such notice shall continue to receive service under this schedule for an additional Term of Service.
10. **CPP Anniversary Date:** The CPP Anniversary Date shall be the meter reading date that occurs at the end of the customer's twelve (12) month Term of Service.
11. **Early Termination:** An eligible customer may elect to return to DA or take service from a CCA during its Term of Service granted it has complied with all other applicable tariff requirements, including, but not limited to the terms and conditions set forth in Rules 25.1 and 27, respectively.
12. **CPP Maximum Demand** – The CPP Maximum Demand is the customer's maximum On-Peak demand recorded during the most recent full summer billing period. If a customer does not have a full summer billing period, the customer's CPP Maximum Demand will be established based on the maximum summer demand recorded during the available summer billing months.
13. **Capacity Reservation:** Customers shall be provided with the option to self-select and reserve a level of generation capacity, specified in kW, that would protect that portion of their load from the CPP-D Period rates applicable during a CPP Event. Customers electing to reserve capacity for multiple meters shall be required to submit a separate reservation level for each meter. All usage during a CPP Event that is protected under the customer's capacity reservation will be billed at the Non-CPP Event Day On-Peak period rate for CPP Events occurring on weekdays and the Off-Peak period rate for CPP Events occurring on Saturdays. All usage during a CPP Event that is not protected under the customer's capacity reservation will be billed at the CPP-D Period rates. A customer electing to reserve capacity, even if the election is

N

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**SCHEDULE EECC-CPP-D**  
ELECTRIC COMMODITY COST  
CRITICAL PEAK PRICING DEFAULT

SPECIAL CONDITIONS (Continued)

- 13. Capacity Reservation (Continued)  
zero, must notify the Utility of its election by submitting a completed Capacity Reservation Election and Customer Contact Information form (Form 144-0811) no later than five (5) business days prior to the first regularly scheduled meter reading date after the Default Date. The customer shall be responsible for paying a monthly Capacity Reservation Charge (CRC) for 12-months, as set forth in the Rates section, for each kW of reserved capacity.
- 14. Default Capacity Reservation Level: In the event a customer does not submit a completed CRC Election form, as set forth above, the customer's level of reserved capacity shall be set at an amount equal to fifty percent (50%) of the customer's CPP Maximum Demand. If the customer has not established a CPP Maximum Demand, the Default Capacity Reservation Level will be set to zero (0).
- 15. Non-Coincident Demand Charge Waiver: As applicable, for the initial Term of Service on this schedule, the maximum recorded demand during non-CPP Event hours on a CPP event day will not be considered for the purpose of determining and billing a non-coincident demand charge. If the recorded maximum demand occurs during CPP event hours on a CPP Event day, then it will be used to calculate the monthly non-coincident demand charge.
- 16. CPP Events and Triggers: A maximum of eighteen (18) CPP Events can occur on non-holiday-weekdays and Saturdays beginning May 1 through September 30. CPP Events shall be effective from 11:00 a.m. – 6:00 p.m. A CPP Event may be triggered for Tuesdays through Fridays if the forecasted temperature for the event day at Miramar Marine Corps Air Station (MCAS) is equal to or greater than 84° F and the Utility's actual system load, on the day before the event would occur, has reached or exceeded 3,837 MW by 2:30 p.m. A CPP Event may be triggered for Saturdays if the forecasted temperature for Saturday at Miramar Marine Corps Air Station (MCAS) is equal to or greater than 86° F and the Utility's actual system load has reached or exceeded 3,837 MW by 2:30 p.m. A CPP Event may be triggered for Mondays if the forecasted temperature for Monday at Miramar Marine Corps Air Station (MCAS) is equal to or greater than 86° F and the Utility's actual system load has reached or exceeded 3,472 MW by 2:30 p.m. The source for temperature forecasts will be the Weather Channel web page located at <http://www.weather.com/weather/local/USCA0983>. CPP events may also be triggered as warranted by extreme system conditions such as special alerts issued by the California Independent System Operator, or a local Utility emergency. If the California Independent System Operator cancels two (2) CPP Events, the two cancelled CPP Events will be credited as one (1) CPP event towards the maximum number CPP Events that can be called during the year.
- 17. Event Notification/Communication: Customers will be notified no later than 3 p.m. the day before a CPP Event will be in effect. When conditions exist that indicate a potential CPP Event would occur on a Monday or a day immediately following a holiday, the Utility may provide an informational notice to customers by 3 p.m. on the business day immediately preceding the Monday or holiday. If, on Sunday or a holiday, conditions exist that cause the triggering of a CPP Event for the next day, the Utility will provide firm notification to customers no later than 3 p.m. on that Sunday or holiday. Customers may elect to be notified of a CPP Event by e-mail message, text message, or alphanumeric pager. Notice will also be posted on the Utility's website. Customers shall be responsible for ensuring the receipt of any notifications sent by the Utility. Utility does not guarantee the reliability of the pager system, e-mail system or Internet site by which the customer

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**SCHEDULE EECC-CPP-D**  
**ELECTRIC COMMODITY COST**  
**CRITICAL PEAK PRICING DEFAULT**

N  
N  
N  
N

SPECIAL CONDITIONS (Continued)

- 17. Event Notification/Communication (Continued)  
has elected to receive notification. A Customer must use the Capacity Reservation Election and Customer Contact information form to inform the Utility of its preferred notification method and to provide the Utility with a valid and accurate email address or alphanumeric pager number, as applicable. The customer shall be responsible for notifying the Utility of any changes to the contact information. Once a CPP Event has been declared, there are no conditions that would warrant the CPP Event to be cancelled except as addressed in SC 16.
  - a. Notification Equipment: A customer requesting to receive CPP Event notifications using e-mail must, at its own expense, have access to the internet and shall be responsible for providing the Utility with a valid and accurate e-mail address. A customer requesting to be notified by alphanumeric pager must have, at its own expense, an alphanumeric pager that is capable of receiving a text message sent via the internet.
- 18. Demand Response Program (DRP) Participation: A customer receiving service under this schedule shall not be permitted to concurrently participate in a Day-Ahead DRP. Customers receiving service under this schedule shall be eligible to participate in a Day-Of DRP. However, under no circumstances will a customer participating in an available Day-Of DRP in combination with service under this schedule be entitled to receive an incentive payment under the program for demand response that occurs during a CPP Event.
- 19. Appropriate Electric Metering: A fifteen-minute interval data recording meter with related telecommunications capability, compatible with the Utility's meter reading, time-of-use billing, and telecommunications systems. For customers whose demand for electricity is equal to or greater than 20 kW for twelve consecutive months or is expected to equal or exceed 20 kW, and whose maximum demand is less than 200 kW, with facilities that are not currently equipped with the Appropriate Electric Metering, service under this schedule shall become effective no sooner than 90 days from the date of installation of an AMI meter, unless the Utility and the customer mutually agree to an earlier date.
- 20. Emergency Generation Limitations: Customers may achieve energy reductions by operating back-up or onsite generation. The customer will be solely responsible for meeting all environmental and other regulatory requirements for the operation of such generation. Notwithstanding all other applicable Utility Rules and Tariffs, customer may synchronize and operate its own generation in parallel with the electric system up to 60 cycles to minimize service interruption during the transfer of electric service between the Utility electric system and the customer's Emergency Generation, such operation shall only occur during the period starting 15 minutes prior to and ending 15 minutes after a CPP Event, as defined in this Schedule. Customers must receive approval of their interconnection plans from Utility prior to operation of their generator in parallel with Utility's system. In no event shall the customer operate its own generation in parallel with the Utility electric system during Utility service interruptions.

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**SCHEDULE EECC-CPP-E**

Sheet 1

ELECTRIC ENERGY COMMODITY COST  
CRITICAL PEAK PRICING EMERGENCY

APPLICABILITY

The Critical Peak Pricing-Emergency (CPP-E) schedule is an optional commodity tariff that offers customers the opportunity to respond to local Utility emergency situations and to manage their electric costs by either reducing load during high cost pricing periods or shifting load from high cost pricing periods to lower cost pricing periods. This schedule is available to non-residential customers served under a time-of-use (TOU) rate schedule with an annual maximum demand of 20 kilowatts (kW) or greater currently receiving bundled utility service who have an Interval Data Recorder (IDR) meter installed with related telecommunications capability, compatible with the Utility's meter reading and telecommunication system. This Schedule is optionally available to all customers that are subject to receiving service under Schedule EECC-CPP-D. Customers electing to opt-out of Schedule EECC-CPP-D and receive service under this Schedule shall not be eligible for Bill Protection. Customers who choose to take service under this Schedule will continue to be subject to the terms and provisions of their otherwise applicable UDC tariff, unless superseded by conditions herein. This schedule is not available to Direct Access customers or Community Choice Aggregation (CCA).

TERRITORY

Applicable throughout the entire territory served by the Utility.

<u>RATES</u>	<u>(\$/kWh)</u>
CPP-E Alert Period	
Secondary	2.08574
Primary	2.00214
Secondary Substation	2.08574
Primary Substation	2.00214
Transmission	1.95039
On-Peak - Summer	
Secondary	0.10077
Primary	0.09912
Secondary Substation	0.10077
Primary Substation	0.09912
Transmission	0.09731
Semi-Peak - Summer	
Secondary	0.08042
Primary	0.07904
Secondary Substation	0.08042
Primary Substation	0.07904
Transmission	0.07766

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San Diego Gas & Electric Company  
San Diego, California

Original Cal. P.U.C. Sheet No. 20573-E

Canceling Revised Cal. P.U.C. Sheet No. 20404-E

**SCHEDULE EECC-CPP-E**

Sheet 2

ELECTRIC ENERGY COMMODITY COST  
CRITICAL PEAK PRICING EMERGENCY

RATES (Continued)

<u>RATES</u>	<u>(\$/kWh)</u>
<u>Off-Peak - Summer</u>	
<u>Secondary</u>	<u>0.05893</u>
<u>Primary</u>	<u>0.05771</u>
<u>Secondary Substation</u>	<u>0.05893</u>
<u>Primary Substation</u>	<u>0.05771</u>
<u>Transmission</u>	<u>0.05686</u>
<u>On-Peak - Winter</u>	
<u>Secondary</u>	<u>0.09889</u>
<u>Primary</u>	<u>0.09731</u>
<u>Secondary Substation</u>	<u>0.09889</u>
<u>Primary Substation</u>	<u>0.09731</u>
<u>Transmission</u>	<u>0.09546</u>
<u>Semi-Peak - Winter</u>	
<u>Secondary</u>	<u>0.09040</u>
<u>Primary</u>	<u>0.08885</u>
<u>Secondary Substation</u>	<u>0.09040</u>
<u>Primary Substation</u>	<u>0.08885</u>
<u>Transmission</u>	<u>0.08733</u>
<u>Off-Peak - Winter</u>	
<u>Secondary</u>	<u>0.06570</u>
<u>Primary</u>	<u>0.06435</u>
<u>Secondary Substation</u>	<u>0.06570</u>
<u>Primary Substation</u>	<u>0.06435</u>
<u>Transmission</u>	<u>0.06342</u>

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**SCHEDULE EECC-CPP-E**

Sheet 3

ELECTRIC ENERGY COMMODITY COST  
CRITICAL PEAK PRICING EMERGENCY

SPECIAL CONDITIONS

FRANCHISE FEE DIFFERENTIAL

A Franchise Fee Differential of 5.78% will be applied to the total bills calculated under this schedule for all customers residing within the corporate limits of the City of San Diego. Such Franchise Fee Differential shall be so indicated and added as a separate item to bills rendered to such customers

1. Definitions: The definitions of principle terms used in this schedule are found either herein or in Rule 1, Definitions.
2. Qualifying Customer: This schedule is available to non-residential customers served under a time-of-use (TOU) rate schedule with an annual maximum demand of 20 kilowatts (kW) or greater currently receiving bundled Utility service who have an Interval Data Recorder (IDR) meter installed with related telecommunications capability, compatible with the Utility's meter reading and telecommunication system. This Schedule is optionally available to all customers that are subject to receiving service under Schedule EECC-CPP-D. Customer electing to opt-out of Schedule EECC-CPP-D and receive service under this schedule shall not be eligible for Bill Protection. Customers who choose to take service under this schedule will continue to be subject to the terms and provisions of their otherwise applicable UDC tariff, unless superseded by conditions herein. This schedule is not available to Direct Access customers or Community Choice Aggregation (CCA).
3. Program Operation:
  - a. CPP-E Alert Period: A CPP-E Alert Period shall be any day the Utility designates by sending a notification to the customer.
  - b. The CPP-E Alert Period commences at the next full 15-minute meter interval following the 30-minute notification.
  - c. The Alert Period shall remain in effect until the local Utility emergency no longer threatens firm load reduction, but in no case shall any single Alert Period exceed six (6) hours in any one day.
  - d. A CPP-E Alert Period shall be limited to a maximum of four (4) Alert Periods in any week, a maximum of 40 hours in a calendar month, and a maximum of 80 program hours per year.
  - e. Maximum Demand Charge: For the first (12) months on the CPP-E rate, the maximum recorded demand will only be disregarded if the recorded maximum demand for the billing period occurs during non CPP-E event hours on a CPP-E Operational Day. If the recorded maximum demand occurs during CPP-E event hours on a CPP-E Operational Day, then it will be used to calculate the monthly maximum charge.
4. Program Triggers: The CPP-E may be called primarily in the case of local Utility emergencies with the intent to avoid any firm load curtailment. A CPP-E Alert Period may also be initiated, as warranted, by extreme system conditions, such as special alerts being issued by the California Independent System Operator (CAISO). A CPP-E Alert Period may be initiated for local Utility emergencies on any day during the program year.
5. Program Availability: The CPP-E schedule is effective year round.

(Continued)

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**SCHEDULE EECC-CPP-E**

Sheet 4

ELECTRIC ENERGY COMMODITY COST  
CRITICAL PEAK PRICING EMERGENCY

SPECIAL CONDITIONS (Continued)

- 6. Incentive/Energy Payment: Incentive and/or energy payments do not apply to CPP-E participants.
- 7. Event Notification/Communication: The customer will be notified of the CPP-E Alert Period within 30 minutes of the event start time, via e-mail message, or alphanumeric pager or cell phone text message sent via the Internet to customer's cell phone. Receipt of such notice is the responsibility of the participating customer. Utility does not guarantee the reliability of the cell phone, pager system, or e-mail system or Internet site by which the customer receives notification.
  - a. Notification Equipment: Customers, at their expense, must have access to the Internet and an e-mail address to receive notification of a CPP-E event. In addition, all customers must have, at their expense, a cell phone or an alphanumeric pager that is capable of receiving a text message sent via the Internet.
- 8. Event Cancellation: Once a CPP-E Alert Period has been initiated, there are no conditions that would warrant the Alert Period to be cancelled.
- 9. Contract Requirement/Request for Service: Customers must submit a written request for service under this rate schedule including name, address and account number.
  - a. Customer must have all necessary equipment in place prior to electing service to be eligible.
  - b. The terms and conditions of Rule 12 require a minimum term of service of 12 months under this optional rate schedule. Cancellation shall be upon written notice from the customer to the Utility. Such transfer shall be effective on the customer's next regularly scheduled meter read date.
  - c. Service under this rate shall be effective beginning on the customer's next regularly scheduled meter read date, after receipt of written rate change authorization request and verification of installation of required metering and communication equipment.
- 10. Multiple Program Participation: A customer may participate simultaneously in Schedule EECC-CPP-E and the Demand Bidding Program (DBP), or the Clean Generation program. However, under no circumstances will a customer taking service under the above listed rate schedules and this schedule receive more than one incentive payment for the same interrupted/curtailed load.
- 11. Termination of Schedule: Schedule EECC-CPP-E will remain open until terminated by the CPUC. Customers electing service herein must remain on this rate for 12 consecutive months. In addition, the Utility reserves the right to terminate customer's service under this rate schedule with 30 days written notice.
- 12. Metering Requirement: Customer's electric meter must be an Interval Data Recorder with related telecommunications capability, compatible with the Utility's meter reading and telecommunications systems. If a customer meets the requirements of this tariff and does not have the appropriate telecommunications systems, the Utility will provide and install the equipment at no cost to the customer.

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**SCHEDULE EECC-CPP-E**

Sheet 5

ELECTRIC ENERGY COMMODITY COST  
CRITICAL PEAK PRICING EMERGENCY

SPECIAL CONDITIONS (Continued)

- 13. Utility Testing: A CPP-E event may also be initiated as warranted for testing/evaluation purposes.
- 14. Utility Reporting: Customers under this rate must agree to allow the Utility, the California Energy Commission (CEC) or its contracting agent to conduct a site visit for measurement and evaluation and to complete any surveys needed to enhance the CPP-E program. Customer shall provide all load data and background information, under appropriate confidentiality protections, needed to complete this evaluation. The data will also be made available to academic researchers, under appropriate confidentiality protections, to facilitate the understanding of demand response.
- 15. Failure to Reduce Energy: As per this tariff, the appropriate rate will apply to energy consumed during a CPP-E Alert Period.
- 16. Emergency Generation Limitations: Customers may achieve energy reductions by operating back-up or onsite generation. The customer will be solely responsible for meeting all environmental and other regulatory requirements for the operation of such generation. Notwithstanding all other applicable Utility Rules and Tariffs, customer may synchronize and operate its own standby generation in parallel with the electric system up to 60 cycles to minimize service interruption during the transfer of electric service between the Utility electric system and the customer's Emergency Standby Generation, such operation shall only occur during the period starting 15 minutes prior to and ending 15 minutes after a CPP-E Alert Period as defined in this Schedule. Customer must receive approval of their interconnection plans from Utility prior to operation of their generator in parallel with Utility's system. In no event shall the customer operate its own standby generation in parallel with the Utility electric system during Utility service interruptions.  
  
Upon termination or expiration of the term of this Schedule or associated Form Contract, customer agrees to either 1) dismantle all equipment necessary for customer's own standby generation to synchronize and operate in parallel with the Utility electric system for the purpose of electric service transfer from the Utility electric system to the customer's own standby generation, or 2) purchase and install a generator output meter meeting Utility's standards and either comply with applicable tariffs or take service under a contract.
- 17. Dispute Resolution: Any dispute arising from the provision of service under this schedule or other aspects of the CPP-E schedule will be deemed disputes over amounts billed for electricity and will be handled as provided for in the Utility's Rule 10, Disputed Bills.

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**SCHEDULE PTR**  
**PEAK TIME REBATE**

Sheet 1

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APPLICABILITY

This Schedule is applicable, in combination with the customer's otherwise applicable rate schedule, to electric bundled-service residential customers and bundled-service commercial customers as defined in the special conditions that have a Smart Meter installed, tested, and verified according to SDG&E procedures and once the required meter data management and billing system infrastructure is in place. California Alternate Rates for Energy (CARE) customers participating in a demand response program and net energy metered customers are eligible for the Residential and Small Commercial Peak Time Rebate program. Direct Access (DA) and Community Choice Aggregation (CCA) customers are not eligible for service under this Schedule.

TERRITORY

Within the entire territory served by the Utility.

RATES

A bill credit of \$0.75/kWh will be paid for each kWh of actual reduction in consumption during the Peak Time Rebate (PTR) event period. Customers with enabling technology will receive a higher bill credit of \$1.25/kWh. The actual reduction in consumption will be measured using a customer-specific reference level. The bill credit will be paid out for any regularly scheduled billing period in which the actual reduction in consumption is greater than zero. If no PTR events are called or the actual reduction in consumption is less than or equal to zero, then no bill credit will be given.

SPECIAL CONDITIONS

1. Definitions: The Definitions of terms used in this schedule are found either herein or in Rule 1, Definitions.
2. Program Operation:
  - a. Multiple/Summary Accounts. For customers with multiple accounts, summary billings, or multiple meters at a premise, the bill credit is calculated for each individual qualifying meter and applied, if applicable, to the corresponding service account.
3. Small Commercial customers: A small commercial customer is defined to be a customer enrolled in Schedule A or Schedule A-TOU. In addition, customers enrolled in Schedule PA that have a Maximum Demand of less than 20 kW are considered small commercial customers. This peak demand criteria shall be determined as having been met if: (1) there is a demand meter in place and the customer's Maximum Monthly Demand has been below 20 kW for at least nine out of the preceding twelve (12) months, or (2) there is no demand meter in place and the customer's monthly consumption has been below 12,000 kWh for at least nine (9) out of the preceding 12 months.
4. Peak Time Rebate Event period: The PTR event period is from 11 a.m. to 6 p.m. on the days when PTR events are initiated by SDG&E.
5. Customer-Specific Reference Level (CRL): In order to receive a bill credit, a valid reference level usage must be established by the first event of that billing period. A CRL is a customer specific calculation that will be calculated for each event. The CRL for each regularly scheduled billing period is defined to be the sum of all the CRLs corresponding to all the PTR events which occur within the regularly scheduled billing period.

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(Continued)

**Lee Schavrien**  
Senior Vice President  
Regulatory Affairs



**SCHEDULE PTR**  
**PEAK TIME REBATE**

SPECIAL CONDITIONS (Continued)

5. (Continued)

a. Residential CRL for Weekday events:

The CRL for a weekday event is defined as the total consumption for the hours of 11 a.m.- 6 p.m. averaged over the three (3) highest days from within the immediately preceding five (5) similar non-holiday week days prior to the event. The highest days are defined to be the days with the highest total consumption between 11 a.m. and 6 p.m. The similar days will exclude weekends, holidays, other PTR event days, and will exclude other demand response program event days for customers participating in multiple demand response programs.

b. Residential CRL for Weekend and Holiday events:

The CRL for a weekend or holiday event is defined as the total consumption for the hours of 11 a.m. - 6 p.m. for the highest day from within the immediately preceding three (3) weekend days.

c. Small Commercial CRL for Weekday events

The CRL for a weekday event is defined as the total consumption for the hours of 11 a.m. – 6 p.m. averaged over the three (3) highest days from within the immediately preceding ten (10) similar non-holiday week days prior to the event. The highest days are defined to be the days with the highest total consumption between 11 a.m. and 6 p.m. The similar days will exclude weekends, holidays, other PTR event days, and will exclude other demand response program event days for customers participating in multiple demand response programs.

d. Small Commercial CRL for Weekend and Holiday events

The CRL for a weekend or holiday event is defined as the total consumption for the hours of 11 a.m. – 6 p.m. for the highest day from within the immediate preceding three (3) weekend days.

6. Actual Reduction in Consumption: The actual reduction in consumption will be calculated as the difference between the customer's total usage during PTR event periods and the CRL for the regularly scheduled billing period. The actual reduction in consumption will be rounded to the nearest whole kWh.

7. Event Triggers:

- a) Every time a CPP event is triggered a PTR event may also be triggered.
- b) A PTR event may be triggered the day before an event when the event day falls on a holiday, Sunday, winter day, or any other day in which CPP events are not eligible to be called.
- c) A PTR event may also be triggered the day of an event if warranted by temperature and system load conditions.
- d) A PTR event may also be triggered as warranted by extreme system conditions such as special alerts issued by the California Independent System Operator, SDG&E system emergencies related to grid operations, or under conditions of high forecasted California spot market prices or for testing/evaluation purposes.

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**SCHEDULE PTR**  
**PEAK TIME REBATE**

SPECIAL CONDITIONS (Continued)

7. Event Triggers (Continued)

The Utility will evaluate and consider all relevant information, including temperature and system load conditions, as well as other system operating conditions, energy market conditions and other emergency conditions in determining whether to initiate a PTR event.

8. Program Availability: A PTR event may be called on any day of the year. There is no limit to the number of PTR events that may be called.

9. Enabling Technology: Enabling technology is defined to be technology which can be initiated via a signal from the Utility that will reduce electric energy end-use for specific electric equipment or appliances, is included in a designated Utility demand response program, and has been registered with the Utility by the customer (e.g., programmable communicating thermostats (PCTs), AC cycling, pool pump cycling, etc.)

10. Event Notification/Communication: The Utility will notify the customers of PTR events by mass media, e-mail notifications, and will post notifications on the Utility's website. Other communication methods may be offered as they become available. The customer shall be responsible for the cost and maintenance to receive such communications. The Utility does not guarantee the reliability of the mass media announcements, internet site or e-mail system used for such communications.

11. Event Cancellation: Once a PTR event has been initiated by SDG&E, there are no conditions that would warrant the event day to be cancelled.

12. Multiple Program Participation: A customer may participate simultaneously in the PTR and other demand response programs such as the Summer Saver program. However, under no circumstances will a customer taking service under the above listed rate schedules and this schedule receive more than one incentive payment for the same interrupted/curtailed load.

13. Termination of Schedule: The PTR program is in effect until modified or terminated in the rate design of the Utility's next general rate case or similar proceeding.

14. Metering Requirement: A Smart Meter (Interval Data Recorder) with communications capability is required. The Smart Meter must be installed, verified and validated according to SDG&E's procedures for the customer to be eligible for the PTR. Customers without a Smart Meter installed are not eligible for the PTR.

15. Meter Reads: The Utility will normally read meters using a communications system. If due to unusual conditions or reasons beyond the Utility's control, all or part of the customer's data cannot be obtained, or if for any reason accurate meter data is not available, the Utility will make estimates in a manner consistent with its applicable tariff rules.

16. Utility Testing: A maximum of two program tests may be called for testing and/or evaluation purposes. Bill credits for test events will be calculated in the same manner as bill credits for ordinary events.

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San Diego, California

Original Cal. P.U.C. Sheet No. 20553-E

Canceling Cal. P.U.C. Sheet No.

**SCHEDULE PTR**  
**PEAK TIME REBATE**

Sheet 4

SPECIAL CONDITIONS (Continued)

- 17. Utility Reporting: During the months when PTR events are initiated, the Utility will provide the Commission with a monthly report on the economics of this rate schedule. Customers on this tariff may be asked by the Utility, the California Energy Commission (CEC) or its contracting agent to conduct a site visit for measurement and evaluation, and may be asked to complete surveys needed to evaluate the PTR program. Furthermore, customers shall provide all load data and background information, under appropriate confidentiality protection needed to complete this evaluation. The data will also be made available to academic researchers, under appropriate confidentiality protections, to facilitate the understanding of demand response.
- 18. Failure to Reduce Energy: No bill credit will be granted if the actual reduction in consumption is less than or equal to zero.
- 19. Dispute Resolution: Any disputes arising from the provision of service under this schedule or other aspects of the PTR will be deemed disputes over amounts billed for electricity and will be handled as provided for in the Utility's Rule 10, Disputed Bills.

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**SCHEDULE CBP**

**CAPACITY BIDDING PROGRAM**

APPLICABILITY

The Capacity Bidding Program ("Program") is a voluntary demand response program that offers customers various product options by which participants can earn incentive payments in exchange for reducing energy consumption when requested by the Utility. This schedule is available to commercial and industrial Utility customers, greater than 20 kW, receiving Bundled Utility service, Direct Access ("DA") service or Community Choice Aggregation ("CCA") service, and being billed on a Utility commercial, industrial or agricultural rate schedule. Service on this rate schedule must be taken in combination with the customer's otherwise applicable rate schedule. This schedule is also available to "Aggregators", defined herein as a third party entity that combines the loads or one or more Utility customer service accounts for the purpose of participating under this schedule. "Participant" as used in this schedule shall mean Utility customers participating in the Program or Aggregators participating in the Program.

TERRITORY

Within the entire territory served by the Utility.

RATES

All charges and provisions of a participating customer's otherwise applicable rate schedule shall apply. All charges and provisions of a customer participating through an Aggregator shall apply. Customers who elect to sign up directly with the Utility for participation in the CBP will be paid at a maximum of 80% of the available capacity payment. Aggregators will receive 100% of the capacity payment for the amount of load reduction received in any given month. The tables below set forth the rates that will be paid to Participants under this schedule for each Product type and will be fixed for a period of two years—2007 and 2008:

1. Load Reduction Incentive Payment, Day-Ahead Program Option (\$/kW-month):

Product	May	Jun	Jul	Aug	Sep	Oct
1 to 4 hours	5.37	7.35	13.54	15.11	9.77	4.71
2 to 6 hours	5.51	7.54	14.07	15.63	10.06	4.81
4 to 8 hours	5.65	7.76	14.71	16.23	10.49	4.94

2. Load Reduction Incentive Payment, Day-Of Program Option (\$/kW-month):

Product	May	Jun	Jul	Aug	Sep	Oct
1 to 4 hours	6.44	8.82	16.25	18.13	11.72	5.65
2 to 6 hours	6.61	9.04	16.89	18.75	12.07	5.78
4 to 8 hours	6.79	9.31	17.66	19.48	12.59	5.93

3. Energy Usage Reduction Incentive Payment, All Program Options (cents/kWh):

The applicable rate to be applied in calculating the Energy Usage Reduction Incentive Payment is generally the daily Utility city gate natural gas price multiplied by the Program dispatch heat rate of 15,000 Btu/kWh for each kilowatt hour of energy reduction during Events. See Energy Usage Reduction Incentive Payment Special Condition 6.b., for a further description of the calculation of the Energy Usage Reduction Incentive Payment, the development of the payment amount, and any payment amount adjustments.

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**SCHEDULE CBP**

**CAPACITY BIDDING PROGRAM**

**SPECIAL CONDITIONS**

1. **Definitions:** The Definitions of terms used in this schedule are found either herein or in Rule 1, Definitions.
2. **Qualifying Customer:** Service under this schedule is available to all non-residential time-of-use metered customers with demand in excess of 20 kW who elect to participate. Customers electing to participate in the Program must meet and comply with all of the requirements for such participation as set forth in this Schedule. Participating customers must have the required metering and operable communications equipment installed prior to and while participating in the Program. See Metering Requirement Special Condition 13, for additional details. Participating customers must have the required notification equipment in place prior to participation in the Program. See Event Notification/Communication Special Condition 8, for additional details.
  - a. **Aggregators:** In the event customers elect to participate in the Program via an Aggregator, such participation, and such Aggregator's participation in the Program, are subject to the terms and conditions of this schedule and Rule 30, Aggregators for the Capacity Bidding Program (CBP). Customers participating in the Program may designate only one Aggregator at a time for each participating meter and may change such designation only after the expiration of the Minimum Term in respect of such participating meter (unless terminated earlier, as set forth in Term, Special Condition 19). Prior to any changes in the designation or any termination of an Aggregator, a customer shall deliver to the Utility a "Notice to Add, Change or Terminate an Aggregator for Capacity Bidding Program" (Form 142-05302) notifying the Utility of such change or termination.
  - b. **Direct Access and Community Choice Aggregation Customers:** DA and CCA customers enrolling in the Program must enroll through an Aggregator and must first make the necessary arrangements with their Energy Service Provider ("ESP"). DA and CCA customers must arrange for a Scheduling Coordinator to Scheduling Coordinator ("SC-to-SC") trade with the Utility's Scheduling Coordinator ("SC") in order to facilitate the delivery of nominated capacity amounts and the provision of load reductions during Events. DA and CCA customers are responsible for the following:
    - i. The SC-to-SC trade must be submitted in a timeframe that complies with the California independent System Operator's ("CAISO") requirements.
    - ii. All additional costs incurred by the Utility if the DA or CCA customer's SC fails to submit an SC-to-SC trade, or if the SC-to-SC trade is not accepted by the CAISO because of an action or inaction of the DA or CCA customer's SC.

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**SCHEDULE CBP**

**CAPACITY BIDDING PROGRAM**

SPECIAL CONDITIONS (Continued)

3. Program Operation: Participants may nominate from among the following product types ("Products") under the Program:

<u>Day-Ahead Products</u>	<u>Minimum Duration per Event</u>	<u>Maximum Duration per Event</u>	<u>Maximum Cumulative Event Duration Per Operational Month</u>	<u>Maximum Events Per Day</u>
1-4 Hour	1 hour	4 hours	24	1
2-6 Hour	2 hours	6 hours	24	1
4-8 Hour	4 hours	8 hours	24	1

<u>Day-Of Products</u>	<u>Minimum Duration per Event</u>	<u>Maximum Duration per Event</u>	<u>Maximum Cumulative Event Duration Per Operational Month</u>	<u>Maximum Events Per Day</u>
1-4 Hour	1 hour	4 hours	24	1
2-6 Hour	2 hours	6 hours	24	1
4-8 Hour	4 hours	8 hours	24	1

Participants may nominate a different Product for each month of the Program's operational season (as set forth below), and any combination of Products for each such operational month in respect of the Nominated Load Reduction for such operational month. Each nominated Product must specify the portion of Nominated Load Reduction associated thereto without overlap between nominated Products for such operational month.

The Program's operational season is from May 1 through October 31.

Each operational month of the Program begins and ends at the beginning and ending of such calendar month.

The Program's operational days are Monday through Friday during the Program's operational season, excluding Utility holidays, as defined in Rule 1.

The Program's operational hours are from 11:00 a.m. to 7:00 p.m. during each of the Program's operational days.

(Continued)

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**SCHEDULE CBP**

CAPACITY BIDDING PROGRAM

SPECIAL CONDITIONS (Continued)

3. Program Operation: (Continued)

a. Interruptible Period: Each interruptible period ("Event") shall be the period of time during which the Utility has informed the Participant to curtail energy consumption by use of a communications process utilizing equipment described in the Event Notification/Communication Special Condition 8.

b. Interruptible Period Termination: An Event will terminate upon notification by the Utility that the Event has ended, provided that an Event shall not continue longer than the duration prescribed therefore for the Product nominated by the Participant as described in the table above.

c. Load Reduction Nominations:

i. Generally: Participants must submit monthly nominations for the reduction of load ("Load Reduction Nominations") to the Utility not later than 5 calendar days prior to each Program operational month. If the 5<sup>th</sup> calendar day prior to the operating month falls on a weekend or holiday, the nomination must be submitted by the preceding Friday. All Load Reduction Nominations must allocate the amount of load reduction nominated among each Product nominated for such operational month (such nominated amount, the "Nominated Load Reduction"), without overlap of such Nominated Load Reduction among any such selected Product during such operational month. All Load Reduction Nominations are fixed for their associated operational month, but may change from operational month to operational month. Participants may not submit Load Reduction Nominations unless all requirements specified in this schedule have been met.

ii. Additional Aggregation Requirements: Load Reduction Nominations submitted by Aggregators must differentiate the amount of Nominated Load Reduction for each nominated Product therein between Bundled customers and DA/CCA customers. A participating customer may be included in only one Aggregator's aggregated customers for a given operational month. No later than five (5) calendar days prior to the first day of the operational month, each Aggregator must specify which participating customers are to be included in each Product set forth in such Aggregator's Load Reduction Nomination for that operational month. The aggregated group of participating customers for each nominated Product will be used to determine the Baseline (see Customer-Specific Baseline Special Condition 5) and associated Program performance during that operational month.

d. Cancellation of Nominations: Any changes or cancellations of Load Reduction Nominations for an operating month must be submitted by the Participant to the Utility not later than five (5) calendar days prior to such operating month. If such fifth (5<sup>th</sup>) calendar day prior to such operating month falls on a weekend or holiday, such change or cancellation must be submitted by the preceding Friday. If a Participant fails to nominate a load reduction for a Product for a particular operational month, then the default Nominated Load Reduction therefore shall be zero (0).

(Continued)

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**SCHEDULE CBP**

CAPACITY BIDDING PROGRAM

SPECIAL CONDITIONS (Continued)

3. Program Operation: (Continued)

- e. Third-Party Coordinators: Utility may contract with one or more third parties ("Coordinators") to assist Utility in the administering, coordination and/or scheduling of the Program and may designate such Coordinators as the sole point of contact in respect of such services by notifying the applicable Participants of such designation.
- f. Program Triggers: The Utility may call an Event whenever the Utility's electric system supply portfolio reaches a resource dispatch equivalence of 15,000 Btu/kWh heat rate, or as Utility system conditions warrant.

4. Program Availability: An Event may be called during the Program's operational season, operational days and operational hours as defined above. The Program shall be limited as to its availability to Participants based on any limitations that the Utility has in getting communications systems in place. The Utility will staff as quickly as practical to provide this service to as many Participants as quickly as practical so long as communications are in place before service commences.

a. Limitation of Interruptible Periods: Events shall be limited as follows:

- i. Day Ahead: For Participants selecting Day-Ahead Products, Events shall be called by the Utility with notice to such Participants not later than 3:00 p.m. on the day prior to the Event day. Notices will be issued by 3:00 p.m. on the business day immediately prior to a holiday or weekend if a CBP Event is planned for the first business day following the holiday or weekend. The Events shall not exceed the maximum duration (in hours) corresponding with the Product nominated by the Participant as set forth in the table above. The maximum cumulative duration of an Event during any operational month shall not exceed 24 hours.
- ii. Day Of: For Participants selecting Day-Of Products, Events shall be called by the Utility with notice to such Participants by 9:00 a.m. but not later than two (2) hours prior to the commencement of the Event. The Events shall not exceed the maximum duration (in hours) corresponding with the Product nominated by the Participant as set forth in the table above. The maximum cumulative duration of an Event during any operational month shall not exceed 24 hours.

5. Customer Specific Baseline: In order to participate in the Program, Participants must have a valid baseline ("Baseline") for each Product nominated each day of an operational month, which Baseline must be established not later than 5 calendar days prior to the first day of such operational month of the Program. Baselines shall be established as follows:

- a. Participating Customers: For customers enrolled in the Program directly with the Utility, the Baseline for any given operational day is defined as the average consumption for the hours of 11 a.m. to 7:00 p.m. for the three (3) highest days from within the immediately preceding ten (10) similar non-holiday week days prior to the Event. The baseline will exclude weekends, holidays, and days when a customer was paid to reduce load, when load reductions were requested or when rotating outages are called.

(Continued)

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**SCHEDULE CBP**

CAPACITY BIDDING PROGRAM

SPECIAL CONDITIONS (Continued)

5. Customer Specific Baseline: (Continued)

b. Aggregators: For Aggregators, the Baseline for each Product nominated for any given operational day is based on such Product's associated aggregated group of customers on such operational day, and is determined as follows: The hourly load profile for such aggregated group on such day is determined by summing the hour by hour interval metering data for each customer of such group (other than customers who have nominated (whether by election or by default) no (or zero) load reduction for such Product on such operational day), and the Baseline for such aggregated group in respect of such Product is the hourly average of the three (3) highest energy usages in the immediate past ten (10) similar days for such calculated load profile. The three (3) highest energy usage days are those days with the highest kilowatt hour (kWh) usages for such aggregated group between the hours of 11:00 a.m. and 7:00 p.m. The past ten (10) similar days will include Monday through Friday, excluding Utility holidays, and will additionally exclude days when a customer in such aggregated group was paid an incentive to reduce load on an interruptible or other curtailment program, or days when rotating outages were called.

6. Incentive/Energy Payment and Non-Performance Penalties:

a. Load Reduction Incentive Payment:

- i. If the Utility does not call an Event during an operational month, the amount of the Load Reduction Incentive Payment for such operational month is calculated by summing, for each Product nominated in such operational month, the product of the Nominated Load Reduction for such nominated Product and the Load Reduction Incentive Payment rate as set forth in the table above for such nominated Product.
- ii. If the Utility calls one or more Events during an operational month, the amount of the Load Reduction Incentive Payment for such operational month is calculated by summing the Adjusted Event Capacity Payment Amounts for each Product nominated in such operational month, which is calculated as follows: The "Unadjusted Hourly Event Capacity Payment Amount" for each Product nominated in such operational month is equal to the product of the Nominated Load Reduction for such nominated Product and the Load Reduction Incentive Payment rate as set forth in the table above for such nominated Product, divided by the number of Event hours called during such operational month, and the "Adjusted Event Capacity Payment Amount" for each such Product nominated in such operational month is calculated based on the Actual Load Reduction (as defined in the Actual Load Reduction Special Condition 7) for such Product in such operational month:

(Continued)

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**SCHEDULE CBP**

**CAPACITY BIDDING PROGRAM**

**SPECIAL CONDITIONS (Continued)**

**6. Incentive/Energy Payment and Non-Performance Penalties: (Continued)**

<u>Actual Load Reduction for such Product</u>	<u>Adjusted Event Capacity Payment Amount for such Product</u>
More than 100 percent of Nominated Load Reduction for such Product	Payment equal to 100 percent of Unadjusted Event Capacity Payment Amount for such Product
90 – 100 percent of Nominated Load Reduction for such Product	Payment calculated by prorating between 90 and 100 percent of Unadjusted Event Capacity Payment Amount for such Product
75 – 89.99 percent of Nominated Load Reduction for such Product	Payment equal to 50 percent of Unadjusted Event Capacity Payment Amount for such Product.
50 – 74.99 percent of Nominated Load Reduction for such Product	0
Less than 50 percent of Nominated Load Reduction for such Product	Penalty (i.e. negative amount) equal to 50 percent of Unadjusted Event Capacity Payment Amount for such Product

If the Load Reduction Incentive Payment amount as calculated above yields an amount less than zero (i.e. a penalty amount), then such penalty amount shall be payable by Participant to the Utility in accordance with the Disbursement of Payments Special Condition 6.c. below.

**b. Energy Usage Reduction Incentive Payment:**

- i. If the Utility does not call an Event in respect of a Product during an operational month, no monthly Energy Usage Reduction Incentive Payment in respect of such Product is payable for such operational month.
- ii. If the Utility calls one or more Events during an operational month in respect of a Product, the amount of monthly Energy Usage Reduction Incentive Payment for such Product is equal to the Actual Load Reduction for such Product times a 15,000 Btu/kWh heat rate times the Utility's delivered natural gas price ("Delivered Natural Gas Price") for each operational day of each such Event (which Delivered Natural Gas Price is determined by the posted California Border Natural Gas Index Price plus the cost of applicable transportation to the Utility's service territory, and adjusted as follows:

(Continued)

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**SCHEDULE CBP**

**CAPACITY BIDDING PROGRAM**

SPECIAL CONDITIONS (Continued)

6. Incentive/Energy Payment and Non-Performance Penalties: (Continued)

b. Energy Usage Reduction Incentive Payment: (Continued)

ii. (Continued)

(a) Shortfall Energy Amount: In the event of a Shortfall Energy Amount (as defined in the Actual Load Reduction Special Condition 8) in respect of such Product for such operational month, the monthly Energy Usage Reduction Incentive Payment amount for such Product will be reduced by an amount equal to the product of such Shortfall Energy Amount and the greater of (i) the Energy Usage Reduction Incentive Payment Price or (ii) the CAISO hourly SP15 ex-post energy price for each Event hour. If such calculation of Energy Usage Reduction Incentive Payment amount for such Product yields an amount less than zero (i.e. a penalty amount), then such penalty amount shall be payable by Participant to the Utility in accordance with the Disbursement of Payments Special Condition 6c.

(i) the Utility's Delivered Natural Gas Price is not in the right units. EURP price and ISO ex-post are both in \$/MWh.

(b) Excess Energy: In the event that the Actual Load Reduction for such Product during an Event in such operational month exceeds the Nominated Load Reduction for such Product in such operational month (such excess amount, "Excess Energy Amount"), then the Energy Usage Reduction Incentive Payment amount for such Product will be increased by an amount equal to the product of such Excess Energy Amount and the Utility's Delivered Natural Gas Price during the Event; provided, however, that, for purposes of calculating the Energy Usage Reduction Incentive Payment amount, the Excess Energy Amount for a Product cannot exceed 50 percent of the Nominated Load Reduction for such Product.

c. Disbursement of Payments:

i. Customers: For customers participating directly with the Utility, the CBP incentive will be calculated based on the customer's Actual Load Reduction. In no case will a customer receive a credit payment for a given hour if it does not meet the minimum energy reduction threshold, as nominated in the monthly Load Reduction Nomination. The billing and payment of Load Reduction Incentive Payments and Energy Usage Reduction Incentive Payments, as well as all other amounts, charges, penalties and fees due and payable in respect of this Program, to or from customers participating in the Program will be paid by the Utility within 30 days after the end of the event operating month, but no more than 60 days after the end of the event operating month will be made in the course of customer's normal billing for services with the Utility consistent with Utility's tariffs.

ii. Aggregators: The billing and payment of Load Reduction Incentive Payments and Energy Usage Reduction Incentive Payments, as well as all other amounts, charges, penalties and fees due and payable under this schedule, Rule 30 or the Aggregator Contract, to or from Aggregators are set forth in Rule 30.

(Continued)



**SCHEDULE CBP**

**CAPACITY BIDDING PROGRAM**

**SPECIAL CONDITIONS** (Continued)

6. **Incentive/Energy Payment and Non-Performance Penalties:** (Continued)

- d. **Failure to Pay:** In the event a participating customer fails to pay any amounts to the Utility as and when due, the rules governing such failure to pay, and the Utility's and such customer's rights and obligations therewith, as set forth in the Utility's tariff will apply. The Aggregator Contract will set forth the rights and obligations of the Utility and the Aggregator party thereto in respect of any failure to pay amounts as and when due to the Utility.
- e. **Customer Liability for Aggregator Failure to Pay.** If, due to a Shortfall Energy Amount which results in a penalty to be paid by an Aggregator to Utility in respect of Load Reduction Incentive Payments and/or Energy Usage Reduction Incentive Payments, such Aggregator fails (or is deemed to have failed) to fully pay to Utility such penalty amounts, and any security provided by such Aggregator is insufficient to cover such outstanding penalty amounts, then each customer represented by such Aggregator under the applicable Aggregator Contract will be liable for its pro rata share of such outstanding penalty amounts, which pro rata share will be based upon such customer's contribution to such Shortfall Energy Amount.

7. **Actual Load Reduction:** A Participant's "Actual Load Reduction" during an Event for each Product nominated by such Participant is equal to:

- a. In the case that such Participant is a customer participating directly with the Utility, the extent that the actual energy usage of such customer during such Event for such Product is less than such customer's Baseline for such Product.
- b. In the case that such Participant is an Aggregator, the extent that the actual energy usage of the aggregated group of customers during such Event for such Product is less than such aggregated group of customer's Baseline for such Product.

In the event the Actual Load Reduction for such Product during an Event in such operational month is less than the Nominated Load Reduction for such Product in such operational month, such deficient amount is the "Shortfall Energy Amount" for such Product in such operational month.

8. **Event Notification/Communication:** Participants must, at their own expense, have access to the Internet and an e-mail address to receive Event notifications via the Internet. In addition, Participants must have, at their own expense, an alphanumeric pager that is capable of receiving a text message sent via the Internet. Participants will be notified via the Utility's designated Internet website. As a courtesy, notification may also be given via pager, e-mail, or cellular telephone; however, the official notification shall be posted to the Utility's designated Internet website in accordance with the time parameters set forth herein. No Participant may participate in the program until all of these requirements have been met.

9. **Event Cancellation:** Once an Event has been initiated in accordance with the provisions herein, the Event will not be cancelled; however, the Event may be terminated as provided in the Interruptible Period Termination Special Condition 3.b.

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**SCHEDULE CBP**

Sheet 10

CAPACITY BIDDING PROGRAM

SPECIAL CONDITIONS (Continued)

- 10. Contract Requirement: Participating customers and Aggregators must execute all applicable agreements prescribed by the Utility prior to participation under this schedule. Necessary agreements may include the following:
  - a. For Utility customers, a Capacity Bidding Program Customer Contract (Form 142-05300) ("Customer Contract");
  - b. For Aggregators, an Aggregator Agreement for Capacity Bidding Program (CBP) (Form 142-05301) ("Aggregator Contract").
  
- 11. Multiple Program Participation: Customers receiving service under Schedule EECC-CPP-D are eligible to concurrently participate in the Day-Of option of the Capacity Bidding Program. If a Day-Of CBP event is called on the same day a Schedule EECC-CPP-D event is active or is scheduled to be active, CPP-D customers participating in CBP shall not be eligible to receive the Energy Usage Reduction Incentive Payment under this schedule. Additionally, to the extent usage reduction occurring on a Day-Of CBP event has been provided by customers receiving service under Schedule CPP-D, individual customers and Aggregators shall not be eligible for the Energy Usage Reduction Incentive Payment for such usage reduction. Customers or Aggregators with customers who have this dual program combination shall be subject to the same Capacity Performance Incentives and Non-Performance Penalties, described above.
  
- 12. Termination of Schedule: This schedule is in effect until modified or terminated through the Utility's Demand Response Programs portfolio Application proceeding, or through the annual program evaluation and modification process most recently adopted by the Commission in D. 06-03-024.
  
- 13. Metering Requirement: Each participating customer must have an approved interval meter and approved meter communications equipment installed and read by SDG&E. The Utility must have access to the customer's meter data on a daily basis for a period of no less than ten (10) calendar days to establish a valid customer specific baseline.
 

An approved interval meter is capable of recording usage in 15-minute intervals and being read remotely by the Utility.

For customers with billed maximum demand of 20 kW or greater during one of the past 12 billing months, the Utility will, if required, provide and install the metering and communication equipment at no cost to the customer.
  
- 14. Utility Testing: At the Utility's discretion, up to two (2) Events may be called during each operational season for the purpose of testing of the Program ("Test Events"). All notification protocols, as well as all applicable payments and penalties, will apply during Test Events. The only difference between a Test Event and an actual Event is the absence of the prerequisite trigger condition of 15,000 Btu/kWh heat rate criteria. A Test Event may be scheduled on a day-ahead or a day-of basis on any applicable weekday, within the operational parameters contained herein.

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**SCHEDULE CBP**

CAPACITY BIDDING PROGRAM

SPECIAL CONDITIONS (Continued)

15. Utility Reporting: The Utility will provide the Commission with a periodic report on the performance results of this schedule. The report may contain information on individual Participant performance, which will be provided to the Commission under applicable confidentiality protections. Participants must agree to allow the Utility, the California Energy Commission ("CEC") and their respective agents, employees, contractors, representatives and designees to conduct a site visit for measurement and evaluation, and agree to complete any surveys needed to evaluate the Program. Furthermore, Participants shall provide all load data and background information, under appropriate confidentiality protections needed to complete this evaluation. The data may also be made available to academic researchers, under appropriate confidentiality protections, to facilitate the understanding of demand response.

16. Failure to Reduce Energy: A failure to comply with an Event will result in the applicable penalty provisions (including the payment therefore by the Participant incurring such penalty) being applied as described herein.

17. Emergency Generation Limitations: Participating customers may achieve energy reductions by operating backup or onsite standby generation. The customer will be solely responsible for meeting all environmental, legal and other regulatory requirements for the operation of such generation. Notwithstanding all other applicable Utility Rules and Tariffs, such customer may synchronize and operate its own standby generation in parallel with the electric system up to 60 cycles to minimize service interruption during the transfer of electric service between the Utility electric system and the customer's back-up or standby generation. Such operation shall only occur during the period starting 15 minutes prior to and ending 15 minutes after an Event defined in this Schedule. Such customer must receive approval of their interconnection plans from Utility prior to operation of their generator in parallel with Utility's system. In no event shall such customer operate its own standby generation in parallel with the Utility electric system during Utility service interruptions.

Upon termination or expiration of the term of this schedule or associated Customer Contract, such customer agrees to either (i) dismantle all equipment necessary for customer's own standby generation to synchronize and operate in parallel with the Utility electric system for the purpose of electric service transfer from the Utility electric system to such customer's own standby generation, or (ii) purchase and install a generator output meter meeting Utility's standards and either comply with applicable tariffs or take service under a contract.

18. Dispute Resolution: Any dispute arising from the provision of service under this schedule or other aspects of the Program will be handled as provided for in the Utility's Rule 10, Disputes.

(Continued)

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**SCHEDULE CBP**

CAPACITY BIDDING PROGRAM

SPECIAL CONDITIONS (Continued)

19. Term: Except as set forth below, each Participant must remain in the Program for a minimum of 12 calendar months ("Minimum Term") unless (a) the Program expires earlier, or (b) such Participant's Program contract with the Utility (that is, the Customer Contracts in the case of customers and Aggregator Contracts in the case of Aggregators) expires or terminates earlier. After the expiration of the Minimum Term, Participants may terminate its Program contract with the Utility and its participation in the Program by submitting to the Utility written notification of such termination, which termination shall be effective on the date that is the later of (i) the beginning of the calendar month that is immediately after the expiration of the Minimum Term, and (ii) the beginning of the calendar month that is closest to but at least thirty (30) calendar days after the Utility receives such notification.

In the event of termination of an Aggregator Contract between an Aggregator and Utility, the customers whom such Aggregator represented under such Aggregator Contract will have fourteen (14) days from the date of receipt of notice of such termination by Utility in which to continue their participation in the Program in respect to the represented service meters through another Aggregator or directly with Utility without the designation of an Aggregator. Customers electing the foregoing must submit a "Notice to Add, Change or Terminate an Aggregator" (Form 142-05302) setting forth their election. If such customer does not submit such form by such 14-day period, such customer will be deemed to have elected to continue its participation in the Program with respect to such service meters directly with the Utility without being represented by an Aggregator.

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**SCHEDULE BIP**

Sheet 1

BASE INTERRUPTIBLE PROGRAM

APPLICABILITY

The Base Interruptible Program (BIP) offers a monthly capacity payment to non-residential customers who can commit to curtail at least 15% of Monthly Average Peak Demand, with a minimum load drop of 100 kW and who request service on this schedule.

TERRITORY

Within the entire territory served by the Utility.

RATES

Option A: Committed Load Incentive: \$7/kW/Mo  
Excess Energy Usage Charge: \$4.50/kWh

Option B: Committed Load Incentive: \$3/kW/Mo  
Excess Energy Usage Charge: \$1.88/kWh

SPECIAL CONDITIONS

1. Definitions: The Definitions of terms used in this schedule are found either herein or in Rule 1, Definitions.
2. Qualifying Customer: Applicable to all non-residential time-of-use metered customers who can commit to curtail at least 15% of Monthly Average Peak Demand, with a minimum load reduction of 100 kW and who request service on this schedule and comply with Special Condition 3. This tariff is available to bundled, Direct Access, and Community Choice Aggregation (CCA) customers. Qualifying customers are required to complete a Base Interruptible Program Contract with SDG&E in order to participate in this Schedule BIP.
  - a. Third-Party Marketers: Customers can participate in this Schedule BIP directly with SDG&E or via a Third-Party Marketer. Customer participation in this Schedule BIP via a Third-Party Marketer shall be subject to the terms and conditions of this Schedule BIP and Rule No. 29, Third-Party Marketers for BIP.
3. Program Operation:
  - a. Interruptible Period: Shall be the period of time during which the Utility has informed the customer to interrupt load by use of a communications process utilizing equipment as described in Special Condition 14. The Utility will coordinate with the customer the manner of communications and provision of the interruption notice to the customer. Customer is responsible for assuring that any communications process is not interfered with in any manner. Customer is responsible to respond to the communications in a manner consistent with this tariff. If the Utility initiates communications indicating that an interruption period is occurring and other customers have received the communications then the customer shall be deemed to have received the communications if the Utility can verify that it initiated the communications to the customer.

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**SCHEDULE BIP**

Sheet 2

**BASE INTERRUPTIBLE PROGRAM**

**SPECIAL CONDITIONS** (Continued)

3. **Program Operation** (Continued)

- b. **Interruptible Period Termination.** An interruptible period will terminate upon notification that the Stage 2 or other emergency has ended.
- c. **Committed Load:** Is the difference between the customer's or aggregator's group recorded Monthly Average Peak Demand less the customer's selected Firm Service Level, as shown in the Customer's Base Interruptible Program Contract (Form 142-05207). T
- d. **Excess Energy Usage:** Is the amount of energy used by the customer or aggregator's group during any 15 minute interval of an Interruptible Period that is in excess of the customer's or aggregator's group selected Firm Service Level. T  
T  
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- e. **Monthly Average Peak Demand:** Solely for the purpose of this tariff, Monthly Average Peak Demand is the average hourly demand recorded between the hours of 11:00 a.m. and 6:00 p.m. Monday through Friday, excluding holidays, or when BIP events were called during a calendar month. The Monthly Average Peak Demand is recalculated on a monthly basis, using historical demand.
- f. **Firm Service Level:** Customer's or aggregator's group maximum expected level of demand, as specified by the customer in the Base Interruptible Program Contract (Form 142-05207), during any 15 minute interval of an Interruptible Period. T  
T
- g. **Additional Group Aggregation Requirements:** To calculate the aggregate Monthly Average Peak Demand, the Utility will sum the Monthly Average Peak Demand for each participating meter. The Monthly Average Peak Demand is recalculated on a monthly basis, using historical demand. N  
N  
N  
N

4. **Program Triggers:** A BIP Event can occur by one or more of the following:

- i. CAISO Stage 2 Alerts. N
- ii. CAISO calls for Interruptible Load. The Utility may call for an Interruptible Period provided the Interruptible Period commences within 30 minutes (Option A) or 3 hours (Option B) after the Utility initiates communications to the customer.
- iii. Extreme temperature conditions impacting system demand.
- iv. SDG&E discretionary events for test purposes, program evaluation or system contingencies. N

5. **Program Availability.** BIP is available to be called year round. BIP shall be limited as to its availability to customers based on any limitations the Utility has in getting communications systems in place. The Utility will staff up as quickly as practical to provide this service to as many customers as quickly as practical so long as communications are in place before service commences.

a. **Limitation of Interruptible Periods:**

- i. Option A. The Interruptible Periods shall not exceed four (4) hours for any calendar day, nor 10 Interruption Periods per calendar month, nor 120 hours during any calendar year.
- ii. Option B. Interruptible Periods shall not exceed three (3) hours for any calendar day, nor ten (10) events during a calendar month, or ninety (90) hours per calendar year.

6. **Customer Specific Baseline:** As written, Customer Specific Baseline does not apply to the Base Interruptible Program tariff.

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**SCHEDULE BIP**

Sheet 3

**BASE INTERRUPTIBLE PROGRAM**

**SPECIAL CONDITIONS** (Continued)

7. **Incentive/Energy Payment:**

a. **Committed Load Incentive Payment:** Is determined by multiplying Committed Load by Committed Load Incentive. This credit will be applied to the bill of the customer on their otherwise applicable rate within 90 days of the Interruptible Period. The customer's total bill for service, including the Committed Load Incentive Payment, shall always be a positive value, or zero. Committed Load Incentive shall be zero if the Committed Load is less than 100kW or less than 15% of the customer's recorded Monthly Average Peak Demand.

b. **Excess Energy Usage Charge:** Customer shall pay a charge multiplied by Excess Energy Usage. This charge will be applied to the bill of the customer on their otherwise applicable rate within 90 days of the Interruptible Period.

8. **Actual Demand Reduction:** Actual Demand Reduction equals the difference between the customers Monthly Average Peak Demand and the Firm Service Level.

9. **Event Notification/Communication:** Customers, at their expense, must have access to the Internet and an e-mail address to receive notification via the Internet. In addition, all customers must have, at their expense, an alphanumeric pager that is capable of receiving a text message sent via the Internet. A customer cannot participate in the Program until all of these requirements have been satisfied. Customers participating in BIP with a third party marketer will be notified by the Marketer using the agreed upon notification method.

In the event of a Program curtailment operation, customers on the Program will be notified using one or more of the above-mentioned systems. Receipt of such notice is the responsibility of the participant. Once notified, the customer is expected to log into the Program's Internet web site within 30 minutes of event notification and acknowledge participation in the curtailment. Failure to acknowledge a curtailment notice does not release the customer from its obligation to participate. The Utility does not guarantee the reliability of the pager system, e-mail system or Internet site by which the customer received notification.

a. **Advance Notification:** Event notification will be sent as follows:

- i. Customers who choose Option A will be notified 30 minutes in advance of the Base Interruptible Program Event.
- ii. Customers who choose Option B will receive notification 3-hours in advance of the Base Interruptible Program Event.

10. **Event Cancellation:** Once a BIP event has been initiated, the subsequent event will not be cancelled, however, the event can be terminated based on termination of the emergency situation.

11. **Contract Requirement:** A customer must complete a Base Interruptible Program Contract (Form 142-05207) in order to receive service on this Rate Schedule.

a. **Insurance:** Insurance may not be used to pay Excess Energy Usage Charge for willful failure to comply. Each customer must provide the utility with an executed declaration that states "I do not have, and will not obtain, insurance to compensate me in any way for any portion of the bills associated with the Excess Energy Usage Charge." Such declaration (Form 142-05209) must be on file with the Utility within 30 days of the effective date of the tariffs or the customer will immediately be terminated from service under Schedule BIP.

(Continued)

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**SCHEDULE BIP**

BASE INTERRUPTIBLE PROGRAM

SPECIAL CONDITIONS (Continued)

- 11. Contract Requirement: (Continued)
  - a. Contract Termination. Customers may change their Firm Service Level or discontinue participation in the Program only once per year, by written notification to the Utility, and during the month of November. Such changes will become effective the following program month.
- 12. Multiple Program Participation: A customer may participate simultaneously in Schedule BIP, Schedule DBP, or EECC-CPP-D. However, under no circumstance will a customer taking service under the above listed rate schedules and this schedule receive more than one incentive payment for the same interrupted/curtailed load. If a BIP and CPP-D event is called the same day, the rate incentive would take precedence over the program incentive
- 13. Termination of Schedule: This Schedule is in effect until modified or terminated in the rate design phase of SDG&E's next general rate case or similar proceeding.
- 14. Metering Requirement: Customer's electric meter must be an interval data recorder with related telecommunications capability, compatible with the Utility's meter reading and telecommunications systems. Metering and telephone equipment must be in operation for at least a full calendar month prior to participating in the program to establish a Monthly Average Peak Demand. If required, the Utility will provide and install the metering equipment at no cost to the customer.
  - a. Metering equipment must be in operation for at least a full calendar month prior to participating in the program to establish a Monthly Average Peak Demand.
  - b. For Direct Access and CCA customers, BIP compliance shall be determined from a telephone accessible electric revenue interval meter that can be read remotely by the Utility, and/or from alternative metering and telecommunications acceptable to the Utility. Direct Access and CCA customers are required to allow the Utility telecommunication access to its electric revenue meter for the purposes of determining BIP compliance.
- 15. Utility Testing: At the Utility's discretion, BIP participants may be requested to participate in up to two program tests demonstrating their ability to reduce load to their contracted Firm Service Level. During a BIP program test, penalties will apply. The Utility may request the customer demonstrate to Utility's satisfaction that the customer has the capability to reduce load to their Firm Service Level during a BIP event.
- 16. Utility Reporting: Utility will provide the Commission with a monthly report on the economics of this Rate Schedule. The monthly report may contain information on individual customer performance. Customers on this tariff must agree to allow the Utility, the California Energy Commission (CEC) or its contracting agent to conduct a site visit for measurement and evaluation, and agree to complete any surveys needed to evaluate the BIP program. Furthermore, customer shall provide all load data and background information, under appropriate confidentiality protections needed to complete this evaluation. The data will also be made available to academic researchers, under appropriate confidentiality protections, to facilitate the understanding of demand response.
- 17. Failure to Reduce Energy: As per the BIP tariff, Special Condition 7 (b), failure to comply with a BIP load reduction event will result in the applicable rate being applied to all excess energy used above the Firm Service Level.

(Continued)

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**SCHEDULE BIP**

BASE INTERRUPTIBLE PROGRAM

SPECIAL CONDITIONS (Continued)

18. Emergency Generation Limitations: Customers may achieve energy reductions by operating backup or onsite generation. The customer will be solely responsible for meeting all environmental and other regulatory requirements for the operation of such generation. Notwithstanding all other applicable Utility Rules and Tariffs, customer may synchronize and operate its own standby generation in parallel with the electric system up to 60 cycles to minimize service interruption during the transfer of electric service between the Utility electric system and the customer's Emergency Standby Generation, such operation shall only occur during the period starting 15 minutes prior to and ending 15 minutes after an interruptible period defined in this Schedule. Customer must receive approval of their interconnection plans from Utility prior to operation of their generator in parallel with Utility's system. In no Event shall the customer operate its own standby generation in parallel with the Utility electric system during Utility service interruptions.

Upon termination or expiration of the term of this Schedule or associated Form Contract, customer agrees to either 1) dismantle all equipment necessary for customer's own standby generation to synchronize and operate in parallel with the Utility electric system for the purpose of electric service transfer from the Utility electric system to the customer's own standby generation, or 2) purchase and install a generator output meter meeting Utility's standards and either comply with applicable tariffs or take service under a contract.

19. Dispute Resolution: Any dispute arising from the provision of service under this schedule or other aspects of the Base Interruptible Program will be handled as provided for in the Utility's Rule 10, Disputes.

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**SCHEDULE OBMC**

Sheet 1

OPTIONAL BINDING MANDATORY CURTAILMENT PLAN

APPLICABILITY

The Optional Binding Mandatory Curtailment Program (OBMC) provides exemption from rotating outages for certain eligible customers who can reduce electric load on their entire electric circuit by as much as 15%.

TERRITORY

Within the entire territory served by the Utility.

RATES

Non Compliance Penalty: The average total load on the applicable circuit less the required Maximum Load Level (MLL), times \$6.00/kWh, as measured during each half-hour of the Rotating Outage (RO).

SPECIAL CONDITIONS

1. Definition: The Definition of terms used in this Schedule are found either herein or in Rule 1, Definitions.

2. Qualifying Customer: This schedule is available in combination with a customer's otherwise applicable tariff(s), on a voluntary basis, to non-residential customers who are able to reduce electric load such that the entire load on the SDG&E circuit, that provides service to the customer, is reduced by 15% or to or below the required MLLs for the entire duration of each and every OBMC event.

If the circuit is shared with other SDG&E customers, customer applying for OBMC must coordinate with other customers on the circuit to ensure that load reductions meet program requirements.

To participate in OBMC, the customer must file an OBMC Plan with the Utility. A customer is eligible to file an OBMC Plan provided the customer can demonstrate to SDG&E's satisfaction all of the following items:

- a. The customer must be able to reduce its electric load such that the entire load on the SDG&E circuit, that provides service to the customer, is reduced to or below the required MLLs (as defined in Special Condition 3.e for the entire duration of each and every RO operation.
- b. The customer must be able to reduce circuit load by 15%. The baseline used to determine if this 15% reduction can be met is the "Previous Year Baseline" as described in Special Condition 6.
- c. The customer must also be able to reduce circuit load by 10%, based on the Customer Specific Baseline described in Special Condition 6. However, if the customer can reduce circuit load by 15% based on the Customer Specific Baseline, that customer is not subject to the eligibility requirement in 2.b. above.
- d. The customer must sign the Optional Binding Mandatory Curtailment Plan Contract (142-05205) whereby the customer agrees to all terms and conditions set forth in this tariff and in said Contract.

(Continued)

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**SCHEDULE OBMC**

OPTIONAL BINDING MANDATORY CURTAILMENT PLAN

SPECIAL CONDITIONS (Continued)

2. Qualifying Customer (Continued)

e. Maximum Load Level (MLL). Maximum Load Level (MLL) is established by SDG&E corresponding to each of the 5, 10, and 15% load reduction level on the applicable circuit. The MLL for the 5% load reduction level is equal to the product of the Customer Specific Baseline times .95. The MLL for the 10% load reduction level is equal to the product of the Customer Specific Baseline times .90. The MLL for the 15% load reduction level is equal to the product of the Customer Specific Baseline times .85. The percentage load reduction will be determined by SDG&E based on the MW load reduction called for by the CAISO divided by SDG&E average peak load. The CAISO may call for load reductions on a required MW level, but SDG&E will require the OBMC customers to reduce their load to the next highest 5% increment. For each operation, SDG&E will notify the customer of the required percent reduction, along with the start and end times for the OBMC operation. SDG&E may extend the end time or increase the percentage reduction of any ongoing OBMC operation as necessary to correspond with CAISO directives.

f. Customer Aggregation. SDG&E will facilitate joint OBMC plans by notifying customers of the program and coordinating communication among customers on the circuit when any one customer expresses its intent to participate. All customers involved in a particular OBMC Plan must be served from the same circuit unless expressly agreed to by SDG&E.

i. SDG&E would consider an OBMC Plan which involves the aggregation of two circuits for the purposes of participating in the OBMC, provided that the OBMC customer has a single taxpayer identification and they meet the following criteria:

- (a) they are the lead customer for both circuits;
- (b) they have the ability to achieve required load reductions on the total load for the circuits;
- (c) they agree to achieve required load reductions on individual circuits, subject to the aggregation as required by SDG&E or the CAISO in response geographic area constraints; and
- (d) the customer commits in the OBMC Agreement that it has not, and will not, receive any payment from any customer on any OBMC circuit for any action related to the OBMC Plan.

All provisions of this Schedule applicable to individual OBMC Plans shall apply to the aggregated OBMC Plan.

ii. A single OBMC Plan shall be required for a group of customers on a particular circuit that are undertaking the load reductions. For a group of customers, the group shall choose a single customer to be the lead customer for the OBMC. This lead customer shall be the signing party of the OBMC Agreement and shall guarantee the load reductions and pay for all non-compliance penalties. This lead customer is responsible to work and coordinate with the other non-lead customers on its circuit. For a group of customers, the lead customer is representing the non-lead customers.

(Continued)

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**SCHEDULE OBMC**

Sheet 3

OPTIONAL BINDING MANDATORY CURTAILMENT PLAN

SPECIAL CONDITIONS (Continued)

- 3. Program Operation: SDG&E will call an event and notify the customers to reduce load on the circuits to the Maximum Load Level (MLL) as required by the California Independent System Operator (CAISO). Customer will reduce circuit load to the specified MLL within 15 minutes of notification. Customer shall maintain the circuit reduction until notified by SDG&E that the event has been terminated. SDG&E will monitor the circuit reduction to ensure the customers are meeting or exceeding the required MLL.
- 4. Program Triggers: SDG&E shall require a customer to reduce load by the required amount upon each and every notice from the California Independent System Operator (CAISO) that a firm load curtailment is required within the SDG&E service territory, and maintain the load reduction for the full duration of each outage.
  - a. SDG&E reserves the right to require a customer to reduce load when SDG&E or the CAISO has initiated or is planning to initiate firm load curtailments in a local geographic area within the SDG&E service territory.
- 5. Program Availability: The OBMC program is available year round. There is no limit to the number of Optional Binding Mandatory Curtailment events per month or year.
- 6. Customer Specific Baseline: For the purpose of evaluating the ability of an OBMC Plan to achieve a reduction in circuit load of 15%, the baseline used to calculate eligibility requirement in Special Condition 2b. is the prior year's, same month, average peak period usage, adjusted for major changes in facilities that resulted in permanent circuit load changes. Customers desiring adjustment to the prior year demands must submit an affidavit signed and stamped by a California registered professional engineer attesting to the facility changes, providing detail of the source of kilowatt load changes, and the total permanent change in maximum demand. SDG&E will, at the customer's expense, have the facility changes verified by an independent California registered professional engineer, unless otherwise waived by SDG&E. Customers submitting an affidavit under this section for a reduction from the Previous Year Baseline demands must be able to achieve a minimum of a 10% circuit load reduction from the Customer Specific Baseline described in Special Condition 2 upon notice to curtail.
  - a. The load measurements for the circuit shall be taken at SDG&E's distribution substation.
  - b. An OBMC participant may exclude the following periods from the Customer Specific Baseline:
    - i. A period of 15 calendar days designated in advance both for ramp-up and ramp-down of operations during which period the baseline will be the hourly average circuit load for the most recent prior day; with a minimum of 10 calendar days prior notice to SDG&E.
    - ii. Up to 10 days as determined by the customer and designated in advance to accommodate conditions in the customer's operations that affect the Customer Specific Baseline; with a minimum of 7 calendar days prior notice to SDG&E.
    - iii. Up to two days as determined by the customer where unplanned outages or other events cause the circuit load to deviate substantially from normal conditions, with notice to SDG&E within one calendar day after the outage or event.

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**SCHEDULE OBMC**

Sheet 4

OPTIONAL BINDING MANDATORY CURTAILMENT PLAN

SPECIAL CONDITIONS (Continued)

6. Customer Specific Baseline: (Continued)

b. (Continued)

- iv. Customer requests for the above exclusions must be received by SDG&E in written or e-mail format within the specified time frames or the requested exclusion will not be allowed. Customers requesting an operation ramp-up period under option (i) above must also specify a commensurate operation ramp-down period occurring within one year of the ramp-up period.
- v. The Customer Specific Baseline following the ramp-down period must be reduced by a minimum of 25% from the baseline immediately prior to the ramp-down period.
- vi. Customers failing to achieve a 25% reduction in the baseline following a ramp-down period will not be allowed future operation ramp-up periods for two years following the ramp-up period.

7. Incentive/Energy Payments:

- a. Exclusion from Rotating Outages. An OBMC Plan is applicable to only electrical emergencies requiring a RO as a part of SDG&E's load curtailment block progression plan and is not a guarantee against a customer being subject to a RO due to other emergencies. The customer may not receive advance notice from SDG&E of such a RO.

8. Actual Demand Reduction: Actual Demand Reduction is measured by comparing the MLL for a specific event to demand reduction on the circuit.

9. Event Notification/Communication:

- a. Form of Notification. Customers will be notified of an OBMC Event by notice on SDG&E's website, e-mail message, or text message sent via the Internet to customer's alphanumeric pager or cell phone. Customer shall be responsible for the cost and maintenance to receive such communications. The Utility does not guarantee the reliability of the Internet site, pager system or e-mail system used for such communications.
- b. Response Time. Required load reductions must be achieved as quickly as possible but no later than 15 minutes after the primary customer receives notification from SDG&E. OBMC customers who fail to curtail to or below the required MLL of their circuit within the specific amount of time or who fail to maintain the MLL for the entire duration of the OBMC operation shall be subject to the non-compliance penalties specified in Special Condition 17.

10. Event Cancellation: Once an OBMC event has been initiated, the subsequent event will not be canceled, however, the event can be terminated based on the CAISO or the Utility situation.

11. Contract Requirement/Request for Service: Each customer is required to sign an OBMC Contract (Form 142-05205) and submit an OBMC Load Reduction Plan.

- a. The OBMC Plan may be an alternative to a RO for certain eligible customers. Under an OBMC Plan, SDG&E may authorize a customer to reduce their demand to an agreed upon level in lieu of being included in SDG&E's RO block progression. An eligible customer should submit its OBMC Plan to SDG&E for review and acceptance. If the plan is approved by SDG&E, SDG&E will send such approval to the customer in writing. The written approval letter will specify the effective start date of the plan.

(Continued)

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**SCHEDULE OBMC**

Sheet 6

OPTIONAL BINDING MANDATORY CURTAILMENT PLAN

SPECIAL CONDITIONS (Continued)

14. Metering Requirements.

a. Measuring Equipment To Verify Compliance: Where the OBMC customer is on a dedicated circuit, compliance shall be determined from a telephone-accessible electric revenue interval meter. Direct Access and Community Choice Aggregation (CCA) customers are required to allow SDG&E telephone access to its electric revenue meter for the purposes of determining OBMC operation compliance. Where the existing meter is non-interval or is not compatible with SDG&E's current telephone-based meter reading systems, the customer is required to pay for the installation of an interval meter as Special Facilities pursuant to Electric Rule 2. Where a meter is not currently being read via telephone, the customer shall coordinate and pay for the installation, and pay all ongoing costs of such necessary telephone equipment and service. The OBMC Plan shall not be approved by SDG&E until such metering has been installed and the data is able to be collected via telephone or until SDG&E is able to access the customer-owned meter. Where the OBMC customer is not on a dedicated circuit or if the OBMC Plan includes a group of customers, compliance for the circuit shall be determined from electronic recording equipment located in the SDG&E substation. Where the circuit does not have electronic recording equipment to monitor its loads, the customer shall pay for the installation of the equipment as Special Facilities pursuant to Electric Rule 2. The OBMC Plan shall not be approved by SDG&E until such electronic recording equipment has been installed and is operational.

15. Utility Testing: Customers are required to participate in no more than two (2) tests per year of the communications and responsiveness of customers to a Optional Binding Mandatory Curtailment Program Request. During such a test the customer shall be responsible to curtail load consistent with the rest of the terms of this Rate Schedule. Test events shall be no longer than 4 hours.

16. Utility Reporting: Utility will provide the Commission with a monthly report on the economics of this Rate Schedule. The monthly report may contain information on individual customer performance. Customers on this tariff must agree to allow the Utility, the California Energy Commission (CEC) or its contracting agent to conduct a site visit for measurement and evaluation, and agree to complete any surveys needed to evaluate the OBMC program. Furthermore, customer shall provide all load data and background information, under appropriate confidentiality protections needed to complete this evaluation. The data will also be made available to academic researchers, under appropriate confidentiality protections, to facilitate the understanding of demand response.

17. Failure to Reduce Energy: Failure to meet the load relief criteria established by an OBMC Plan shall result in a non-compliance penalty for the OBMC customer. The non-compliance penalty shall be equal to the average total load on the applicable circuit less the required MLL, times \$6.00/kWh, as measured during each half-hour of the RO. Failure to pay these penalties may result in termination of electric service pursuant to Electric Rule 11.

If participant fails to reduce circuit load to within 5% of the required amount of the entire duration of the RO on two occasions in any one year, SDG&E shall, without liability, terminate OBMC participation immediately and the customer shall be prohibited from participating in an OBMC program for 5 years. Such termination shall occur if SDG&E determines that the terms and conditions of the OBMC Plan have not been met.

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**SCHEDULE OBMC**

OPTIONAL BINDING MANDATORY CURTAILMENT PLAN

SPECIAL CONDITIONS (Continued)

18. Emergency Generation Limitations: Notwithstanding all other applicable SDG&E Rules and Tariffs, Customer may synchronize and operate its own generation in parallel with the electric system for up to 60 cycles to minimize service interruption during the transfer of electric service between the Utility electric system and the Customer's Emergency Generation. Such operation shall only occur during the period starting 15 minutes prior to and ending 15 minutes after a curtailment event defined in this Tariff. Customer must review their interconnection plans with SDG&E prior to operation of their generator in parallel with SDG&E's system. In no event shall the customer operate its own generation in parallel with the Utility electric system during Utility service interruptions.

Upon termination or expiration of the term of this Tariff or Contract, customer agrees to either (1) dismantle all equipment necessary for customer's own generation to synchronize and operate in parallel with the Utility electric system for the purpose of electric service transfer from the Utility electric system to the customer's own generation, or (2) purchase and install a generator output meter meeting SDG&E's standards and either comply with applicable tariffs or take service under a contract.

19. Dispute Resolution: Any dispute arising from the provision of service under this schedule or other aspects of the Optional Binding Mandatory Curtailment Program will be handled as provided for in the Utility's Rule 10, Disputes.

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**SCHEDULE SLRP**

Sheet 1

SCHEDULED LOAD REDUCTION PROGRAM

APPLICABILITY

The Scheduled Load Reduction Program (SLRP) offers bill credits to business that commit to reducing their power by a set amount on pre-determined days from June 1 through September 30 regardless of whether there is an electricity shortage.

TERRITORY

Within the entire territory served by the Utility.

RATES

SLRP Event Incentive Rate: \$0.10 per kWh of Reduced Load for each SLRP Event

SPECIAL CONDITIONS

1. Definitions: The Definitions of terms used in this schedule are found either herein or in Rule 1, Definitions.
2. Qualifying Customer: To participate in Schedule Load Reduction Program, non-residential customers must be served under a time-of-use (TOU) rate and have a monthly maximum demand of 100 kW or greater and be able to reduce a minimum fifteen percent (15%) of the Customer Specific Baseline Usage, with a minimum load reduction of 100kW.
  - a. Average Annual Demand: Is equal to the Customer's total kWh consumption for the previous 12 months, divided by 8760.
  - b. Essential Use Customers: Customers who are deemed essential under the Emergency Load Curtailment Plan as adopted in Decision 01-04-006 and Rulemaking 00-10-002, must submit a written declaration to the Utility that states that the customer is, to the best of that customer's understanding, an essential customer under CPUC rules and exempt from rotating outages. It must also state that the customer voluntarily elects to participate in the SLRP for part of its load based on adequate backup generation or other means to interrupt load upon request by the respondent Utility, while continuing to meet its essential needs. In addition, an essential customer may commit no more than 50% of its average peak load to interruptible programs.
3. Program Operation:
  - a. Interruptible Period: SLRP participants will select, on the Scheduled Load Reduction Program Contract, up to three specific SLRP Events. Each SLRP Event(s) corresponds with the day of the week and the time the customer agrees to reduce load (e.g., Tuesday Noon to 4:00 p.m., which is SLRP Event 2B, and Friday 4:00 p.m. to 8:00 p.m., which is SLRP Event 5C). Participants in SLRP will only be required to reduce load during the summer season (June 1 through September 30) during the time period that corresponds with the customer's elected SLRP Event(s) as stated on the Scheduled Load Reduction Program Contract. Participants must make an election of up to three time periods from among the following options per week, with no more than two of the same time periods, as limited by Special Condition 3b:

(Continued)

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**SCHEDULE SLRP**

Sheet 2

SCHEDULED LOAD REDUCTION PROGRAM

SPECIAL CONDITIONS (Continued)

3. Program Operation: (Continued)

a. Interruptible Period: (Continued)

SLRP Events

<u>Day of Week</u>	<u>Time Period A 8:00 a.m. to Noon</u>	<u>Time Period B Noon to 4:00 P.M.</u>	<u>Time Period C 4:00 P.M. to 8:00 P.M.</u>
1 - Mondays	1A	1B	1C
2 - Tuesdays	2A	2B	2C
3 - Wednesdays	3A	3B	3C
4 - Thursdays	4A	4B	4C
5 - Fridays	5A	5B	5C

b. Interruptible Period Limitation: SLRP is limited to a maximum total of 30 megawatts (MW) of estimated contracted SLRP Event Reduction Amount for any given day, on a first-come, first-serve basis.

c. Committed Load Reduction: The amount of load the customer commits to reduce during all hours of each selected SLRP Event, as designated on the customer's Scheduled Load Reduction Program Contract (Form 142-00012). The Committed Load Reduction amount must be at least fifteen percent (15%) of the Customer Specific Baseline usage, with a minimum load reduction of 100kW during the time period that corresponds with the customer's elected SLRP Event(s) as stated on the Scheduled Load Reduction Program Contract. For the duration of the Contract, participants are required to comply and reduce load each and every time their elected SLRP Event(s) (day of the week and corresponding elected time) occurs. The customer will not receive any type of notification to reduce load under the SLRP, but it is the customer's responsibility to take the appropriate actions necessary to comply with the load reduction when their elected SLRP Event(s) (day of the week and corresponding elected time) transpires.

4. Program Triggers: No trigger. Specific time selected by customer.

5. Program Availability: SLRP is available during the summer season (June 1 through September 30).

a. Limitation of Interruptible Periods: The Interruptible Period shall not exceed fifteen times per week, three each day, Monday through Friday, excluding Holidays.

b. Events are either from 8:00 a.m. to 12:00 noon, 12:00 noon to 4:00 p.m., or from 4:00 p.m. to 8:00 p.m. on a specific day of the week, as shown in Special Condition 3a (SLRP Events).

6. Customer Specific Baseline: The Customer Specific Baseline is defined as the average consumption for the hours of 8 a.m. to 8p.m. from within the immediately preceding ten similar days prior to the event. The Customer Specific Baseline will exclude days when the customer was paid on Schedule DBP, DBP-E, C&I Peak Day 20/20 and RBRP to reduce load, days subject to rotating outages, or days of the customer's SLRP events.

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**SCHEDULE SLRP**

Sheet 3

SCHEDULED LOAD REDUCTION PROGRAM

SPECIAL CONDITIONS (Continued)

- 7. Incentive/Energy Payment: Incentive payments, subject to SLRP Non-Compliance, will be calculated by multiplying the kilowatt-hour (kWh) SLRP Event Reduction Amount during each hour of the SLRP Event by an incentive level of \$0.10 per kWh for each SLRP Event. This credit will be applied to the bill of the customer on their otherwise applicable rate within 90 days of the SLRP Event.
- 8. Actual Demand Reduction: The Actual Demand Reduction equals the difference between the Customer Specific Baseline and the recorded hourly kWh consumption during each hour that corresponds with the customer's elected SLRP Event(s) as stated on the Scheduled Load Reduction Program Contract, and the customer's actual energy usage during those same hours. Note, if this difference does not meet the Committed Load Reduction stated in Special Condition 3c, no incentive payment will be made.
- 9. Event Notification/Communication: The customer will not receive any type of notification to reduce load under the SLRP, but it is the customer's responsibility to take the appropriate actions necessary to comply with the load reduction when their elected SLRP Event(s) (day of the week and corresponding elected time) transpires.
- 10. Event Cancellation: Once a SLRP Event has been initiated, compliance to curtailment is mandatory under SLRP and the customer must reduce at least its Committed Load Reduction during its selected SLRP Event. SLRP may be closed by the Utility without notice when the interruptible program subscription limits set forth by the CPUC have been fully subscribed.
- 11. Contract Requirement/Request for Service: As a condition precedent to commencing service on this Schedule, customer shall submit to the Utility a completed and signed Scheduled Load Reduction Program Contract (Form 142-00012) and, if acceptable to Utility, the Utility shall sign and return the Contract to customer. A customer may not commence service on this Schedule until the Utility has signed and returned the Form Contract to the customer. The Contract shall expire on December 31 each year.
  - a. Contract Termination. Customers will remain on SLRP unless the participant discontinues participation in the Program. Customers shall provide written notification of such changes to the Utility during the November Review Period. Cancellation of contracts will take effect January 1 of the following year.
    - i. The Utility reserves the right to terminate Schedule SLRP, with CPUC approval and thirty days written notice to participants.
- 12. Multiple Program Participation: SLRP participants are precluded from participating in the CAISO Ancillary Services Load Program or the Utility's AL-TOU-CP, CPP, CPP-E, BIP, Summer A/C Saver, Celerity, OBMC and CPA-DRP programs. A customer may participate simultaneously in Schedule DBP, DBP-E, C&I Peak Day 20/20 and RBRP. However, under no circumstance will a customer taking service under the above listed rate schedules and this Schedule receive more than one incentive payment for the same interrupted/curtailed load.
- 13. Termination of Schedule: This Schedule is in effect until modified or terminated in the rate design phase of SDG&E's next general rate case or similar proceeding.

(Continued)

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Advice Ltr. No. 1783-E

Decision No. 06-03-024

Issued by  
**Lee Schavrien**  
Vice President  
Regulatory Affairs

Date Filed Mar 27, 2006

Effective Apr 30, 2006

Resolution No. \_\_\_\_\_





**SCHEDULE SLRP**

Sheet 4

SCHEDULED LOAD REDUCTION PROGRAM

SPECIAL CONDITIONS (Continued)

- 14. Metering Requirement: Customer's electric meter must be an interval data recorder with related telecommunications capability, compatible with the Utility's meter reading and telecommunications systems. If a customer meets the requirements of this tariff and does not have the correct metering equipment, the Utility will provide.
  - a. Metering equipment must be in operation for at least 10 days prior to participating in the program to establish a Customer Specific Baseline.
  - b. The communications equipment must be in place prior to the commencement of service under this Schedule.
  - c. Customers receiving an interval meter from the Utility through this Program will be able to continue to use it at no additional cost even after the Program is terminated, provided that the customer remains in the Program continuously for a minimum period of one year, and achieves its Committed Load Reduction in at least 10 SLRP events.
  - d. A customer who receives an interval meter through this Program, but later elects to leave the Program or who is terminated from SLRP for non-compliance prior to the one-year anniversary date, will reimburse the Utility for all expenses associated with the cost, installation and maintenance of the meter. Pursuant to Electric Rule 2, Section I, such charges will be collected as a one-time payment, and any failure to pay such charges will subject the customer to service termination pursuant to Electric Rule 11.E.
- 15. Utility Testing: Customers are not required to participate in tests.
- 16. Utility Reporting: Utility will provide the Commission with a monthly report on the economics of this Rate Schedule. The monthly report may contain information on individual customer performance. Customers on this tariff must agree to allow the Utility, the California Energy Commission (CEC) or its contracting agent to conduct a site visit for measurement and evaluation, and agree to complete any surveys needed to evaluate the SLRP program. Furthermore, customer shall provide all load data and background information, under appropriate confidentiality protections needed to complete this evaluation. The data will also be made available to academic researchers, under appropriate confidentiality protections, to facilitate the understanding of demand response.
- 17. Failure to Reduce Energy: There are two possible types of non-compliance within SLRP, both of which will result in non-payment of incentives available under SLRP:
  - a. Failure to Reduce Load. A participating customer who does not reduce its load by the Committed Load Reduction during each hour of their elected SLRP Event Time Period, will not receive an incentive payment for any load reduction that they may have achieved during that SLRP Event. Failure to successfully comply in five (5) SLRP Events in a rolling 12-month period will result in the removal of the participant from SLRP.
  - b. Load Shifting. The intent of SLRP is to achieve load reduction, not on-peak load shifting. Load shifting to the On-Peak period (12:00 p.m. to 6:00 p.m.) is considered non-compliance. Load shifting will be determined as follows:

(Continued)

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Advice Ltr. No. 1783-E  
Decision No. 06-03-024

Issued by  
**Lee Schavrien**  
Vice President  
Regulatory Affairs

Date Filed Mar 27, 2006  
Effective Apr 30, 2006  
Resolution No. \_\_\_\_\_

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**SCHEDULE SLRP**

SCHEDULED LOAD REDUCTION PROGRAM

SPECIAL CONDITIONS (Continued)

17. Failure to Reduce Energy (Continued)

b. Load Shifting: (Continued)

- i. To determine if Load Shifting has occurred for customers with existing interval meters in operation for at least 12 months, and who do not meet the criteria specified in Section 2 below, the customer's average kWh consumption in the monthly On-Peak period from the same month of the previous year will be compared to the average monthly On-Peak kWh consumption of the Event(s). Energy consumption (kWh) in excess of 15% of the Committed Load Reduction above the kWh consumption during the same month of the previous year's On-Peak kWh consumption will cause that month's SLRP Event Reduction Payment to be reduced to zero.
- ii. For customers with less than 12 months of interval meter data, or for those customers with interval meters whose current year's same month average usage varies by more than five percent (5%) of the previous year's same month average usage, the participant's energy usage (kWh) during the on-peak period for the following four weekdays after a curtailment, unaffected by program operations and excluding holidays, will be evaluated and cannot be greater than the customer's posted baseline amount by more than 15%. In addition, for customers who have elected a morning SLRP Option (Time Period A), the energy usage during the on-peak period for the day of the curtailment will also be evaluated and cannot exceed the customer's posted baseline amount by more than 15%. Failure to meet this limitation in any of the review days will cause the respective SLRP Event Reduction Payment for that event to be reduced to zero.

18. Emergency Generation Limitations: Notwithstanding all other applicable Utility rules and rate schedules, customer may synchronize and operate its own generation in parallel with the Utility electric system up to 60 cycles to minimize service interruption during the transfer of electric service between the Utility electric system and the customer's Emergency Generation, such operation shall only occur during the period starting 15 minutes prior to and ending 15 minutes after a SLRP Event defined in this Schedule. The customer must review its interconnection plans with the Utility prior to operation of its generator in parallel with the Utility's system. In no event shall the customer operate its own generation in parallel with the Utility electric system during Utility service interruptions.

Upon termination or expiration of the term of this Schedule or Contract, customer agrees to either (1) dismantle all equipment necessary for customer's own generation to synchronize and operate in parallel with the Utility electric system for the purpose of electric service transfer from the Utility electric system to the customer's own generation, or (2) purchase and install a generator output meter meeting the Utility's standards and either comply with applicable tariffs or take service under a contract.

19. Dispute Resolution: Any dispute arising from the provision of service under this schedule or other aspects of the Schedule Load Reduction Program will be handled as provided for in the Utility's Rule 10, Disputes.

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**Lee Schavrien**  
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## **APPENDIX D**

### **Multiple Program Participation Matrix**





## **APPENDIX E**

### **Permanent Load Shifting (PLS) Contracts**



A Sempra Energy utility

EXECUTED COPY

COPY

San Diego Gas & Electric Company Standard Service Agreement for Labor and/or Services

<b>PROJECT:</b>	<b>Energy and Power Solutions, Inc. - Permanent Load Shifting</b>	
<b>CONTRACTOR:</b>	<b>ENERGY &amp; POWER SOLUTIONS INC</b> 150 PAULARINO AVE STE A 120 COSTA MESA, CA 92626	<i>MAIL ORIGINAL AND DUPLICATE INVOICE TO</i> <b>San Diego Gas &amp; Electric Company</b> <b>ACCOUNTS PAYABLE</b> <b>P.O. BOX 129007</b> <b>San Diego, CA - 92112</b>

4/1/2008  
9x  
This Standard Service Agreement ("Agreement") is made effective as of ~~1/1/2008~~ between San Diego Gas & Electric Company ("Company") and ENERGY & POWER SOLUTIONS INC ("Contractor").

The Parties hereby agree as follows:

SCOPE

Contractor shall perform, at its own proper cost and expense, in the most substantial and skillful manner, to the satisfaction of Company, the services ("Services"), including the scope of work, specifications, schedule of milestones and deliverables, and performance standards, described in this Agreement (including the Payment and Milestone Schedule set forth in the Compensation Article) and **SCHEDULE B - SCOPE OF WORK/PERMANENT LOAD SHIFTING**.

PROJECT LOCATION

8315 Century Park Ct.  
San Diego, CA 92123

AUTHORIZED REPRESENTATIVES

Company designates the individual or individuals named below as Company Representatives for all matters relating to the performance of the Services. The actions taken by the Company Representatives shall be deemed acts of the Company. Company may at any time upon written notice to Contractor change the designated Company Representative.

Company Representative: Shea Dibble

Contractor designates the individual or individuals named below as Contractor Representative for all matters relating to the performance of Services. The actions taken by Contractor Representative shall be deemed acts of Supplier. Contractor Representative or



designated superintendent shall be at the jobsite at all times during the Services. Contractor may at any time upon written notice to Company change the designated Contractor Representative.

Contractor Representative: Shiva Subramanya

**COMPENSATION**

Contractor shall be compensated for the Services at the rates set forth in the Payment and Milestone Schedule below in an amount Not-To-Exceed ("NTE Price") \$908,100.00. Contractor shall notify Company in writing when the costs incurred under this Agreement based upon this Compensation Article equal ninety percent (90%) of the NTE Price. Company will not be required to pay Contractor for the Services more than the NTE Price unless and until, at Company's sole option, Company elects in writing to increase the NTE Price of the Agreement.

Company will be billed and invoices shall be submitted not later than the day of the month in the Payment and Milestone Schedule below. Payments for units installed shall be based upon the actual project completion and verification of each 90 kW of PLS units installed as verified by Company Representative. Each 90 kW unit installed will be billed at a rate of \$50,156 per unit.

**Payment and Milestone Schedule**

June 30, 2008 – 2 units installed – Company billed \$100,312.  
September 30, 2008 – 3 units installed – Company billed \$150,468.  
December 31, 2008 – 4 units installed – Company billed \$200,624.  
March 31, 2009 – 2 units installed – Company billed \$100,312.  
June 30, 2009 – 3 units installed – Company billed \$150,468.

During the years 2009-2011: Monthly billing for M&V and program Administration shall be \$5719.89 per month.

**COMMENCEMENT AND COMPLETION OF SERVICES**

This Agreement shall commence as of 1/1/2008 and shall be in full force and effect through 12/31/2011, unless terminated earlier by Company in accordance with the terms of this Agreement. Contractor agrees to commence and perform the Services in accordance with the requests of Company Representative identified herein. The nature of the Services is such that timely performance is critical to the orderly progress of related work and to the operating schedule of Company.

**INVOICING AND PAYMENT**

Contractor shall invoice Company in accordance with the Compensation Article above. All invoices submitted shall reference the Standard Service Agreement Number and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.

Subject to the retention below, Company shall make payment Net 30 days after receipt and approval of an undisputed invoice to the following address or to the address on each Release, if applicable:

150 PAULARINO AVE SUITE A 120  
COSTA MESA, CA 92626

Company shall have the right to retain percent (10%) ("Retention") of each invoice, which Retention related to any particular task shall be paid thirty (30) days after Final Acceptance of such task. "Final Acceptance" of any tasks shall be conditioned upon the following:

- A written statement requesting final acceptance of the task submitted to the Company Representative by Contractor, with a request for acknowledgment.
- Company shall conduct a final inspection and issue a report to Contractor that identifies any deficient or non-complying work relative to the standards of the Agreement, any outstanding tasks and customer incentive measures included in Contractor's scope, and any outstanding deliverables required by the Agreement.
- Execution of the acknowledgment shall constitute "Final Acceptance," but shall not waive Contractor's responsibility to correct defects in any Services upon discovery by Company.

**COMPLETE AGREEMENT**

This Agreement, including all Schedules attached hereto and which are incorporated by reference, constitutes the complete and entire Agreement between the parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein. **THE PARTIES HEREBY AGREE THAT NO TRADE USAGE; PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.** The following Schedules are attached hereto and incorporated herein by this reference:

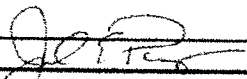
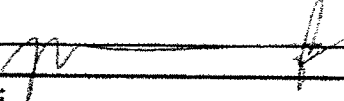
**SCHEDULE A - GENERAL TERMS AND CONDITIONS**

IN WITNESS WHEREOF, the parties have executed this Agreement as of <sup>g</sup>1/1/2008.

4/11/2008

San Diego Gas & Electric Company

ENERGY & POWER SOLUTIONS INC

By: 	By: 
Name: Joe Plevzina	Name: SHIVA SUBRAMANYA
Title: Manager	Title: COO

## SCHEDULE A - GENERAL TERMS AND CONDITIONS

- 1 **PARTIES.** This Standard Service Agreement ("Agreement") is entered into between Company and Contractor. Contractor is the firm, person, corporation, or business entity performing the work specified in this Agreement.
- 2 **CONTRACT FORMATION.** By this Agreement, Company offers to contract with Contractor solely upon the terms and conditions stated herein. Any additional or different terms and conditions proposed by Contractor prior to the execution of this Agreement are not agreed to, and hereby expressly rejected. Any additional or different terms and conditions proposed by Contractor after the date of this Agreement shall be of no force and effect unless expressly agreed to in writing by Company. Contractor accepts and shall be bound by the terms and conditions of this Agreement upon the earlier of (a) the date on which it executes and returns the acknowledgment copy or (b) when it commences performance. No other form of acceptance shall be binding on Company.
- 3 **CHANGE ORDERS.** Company may at any time, in writing, direct or authorize Contractor to make changes or modifications to the work within the general scope of this Agreement. If such changes or modifications necessitate (a) an increase, or (b) decrease in the amount due, or (c) the nature or quantity of the goods and services or (d) in the time required for performance, or (e) otherwise, such matters shall be agreed upon in writing prior to proceeding with the change. No payment shall be required from Company for any change or modification which is not authorized in writing.
- 4 **INVOICING.** If Contractor's invoice price does not match the Agreement price, Company shall pay Contractor the lesser of the amount payable under the Order or the Invoice. Contractor will be notified of the reason for the adjustment. When Contractor is considered to be a retailer, Contractor's invoices shall properly identify California sales or use tax as a sales or use tax, and separately state the amount of such tax and any freight, installation, technical service or other charge which is excludable from such tax.
- 5 **PERFORMANCE.** Contractor shall perform the Services in accordance with established professional business standards and ethics and in conformity with each and every term of this Agreement. Contractor shall remedy any and all deficiencies in its Services that result from Contractor's failure to adhere to the Scope of Work.
- 6 **WARRANTIES.** Contractor expressly represents and warrants that all the Services performed hereunder shall be in compliance with the performance standards, drawings, specifications and any other description of services set forth in the Scope of Work, and the terms and conditions of this Agreement. Company may reject any Services furnished hereunder failing to meet such standards, and require Contractor to promptly repeat, correct or replace such defective Services, at NO charge to Company\* or, at Company's election, Company may hire a third party to complete the Services at Contractor's expense. Contractor further warrants and agrees that none of the material to be furnished by Contractor and its subcontractors, if any, in the performance of the Scope of Work shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available.
- 7 **INSPECTION.** All Services performed by Contractor shall be subject to the inspection and approval of Company at all times, but such right of inspection of the Services shall not relieve Contractor of responsibility for the proper performance of the Services, nor shall such inspection waive Company's right to reject the Services at a later date. Contractor shall provide Company access to Contractor's facility or facilities where the Services are being performed and sufficient, safe and proper work conditions for such inspection. Contractor shall furnish Company such information concerning its operations and/or the performance of the Services as Company may request.
- 8 **ADHERENCE TO COMPANY'S RULES.** Contractor shall conduct its operations in strict observation of access routes, entrance gates or doors, parking and temporary storage areas as designated by Company. Under no circumstances shall any of Contractor's personnel, vehicles or equipment enter, move or be stored upon any area not authorized in writing by Company.
- 9 **COMPANY SECURITY PROCEDURES.** Contractor shall abide by all Company Security procedures, rules and regulations and shall cooperate with Company Security personnel whenever on Company's property whether owned or leased.
- 10 **ANTI-CONDUIT RULES** Contractor understands that the California Public Utilities Commission ("CPUC") and the Federal Energy Regulatory Commission ("FERC") have issued certain Affiliate Transaction Rules including, without limitation, the anti-conduit procedures contained in CPUC Decisions ("D") 97-12-088 as modified by D.98-08-035 (go to: <http://www.cpuc.ca.gov/static/energy/electric/electric+markets/affiliate.htm>) and FERC Order No. 2004 (go to: <http://www.ferc.gov/legal/maj-ord-reg/land-docs/order2004.asp>) (the "Rules"). Company's affiliates include Southern California Gas Company and San Diego Gas & Electric Company and Contractor understands and agrees that Contractor shall not be a conduit under the Rules and will refrain, and cause its permitted subcontractors to refrain, from taking any action that could reasonably constitute a conduit to circumvent the Rules. The term "conduit" means doing indirectly what the Rules forbid being done directly and includes actions that could provide a means for the transfer of confidential information from San Diego Gas & Electric Company or Southern California Gas Company to other Sempra Energy subsidiaries, including Company, or vice versa.
- 11 **INDEPENDENT CONTRACTOR.** It is agreed that Contractor shall perform the Services under this Agreement as an independent contractor and no principal-agent or employer-employee relationship or joint-venture or partnership shall be created with Company. Contractor represents to Company that Contractor and its subcontractors and agents are properly licensed, fully experienced and qualified (including having all necessary authorizations) to perform the class and type of the Services as specified in this Agreement, in addition to being properly insured, equipped, organized, staffed and financed to handle such Services. Contractor shall perform the Services in an orderly and professional manner in accordance with industry standards. Contractor shall not employ for the Services any personnel or subcontractor unskilled in the work assigned. Contractor shall use prudent business practices in its relationships with subcontractors, suppliers and agents.
- 12 **OWNERSHIP OF INTELLECTUAL PROPERTY.** Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, enhancement, modification, development or discovery (hereinafter, collectively, "Invention"), whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that Contractor may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Services shall be owned by Company and shall be delivered to Company upon completion of the Services. Contractor agrees that any copyrightable Invention, including without limitation, Contractor's preliminary formulations and other work on which the copyrightable Invention is based on or derived from, shall constitute a "work made for hire". Contractor hereby assigns and grants to Company, without royalty or any further consideration, Contractor's entire right, title and interest in and to any such Inventions, including any work made for hire. At Company's request, Contractor shall execute an assignment or other document confirming such transfer upon the completion of any work made for hire.
- 12.1 Contractor hereby grants to Company an irrevocable, assignable, nonexclusive royalty-free unrestricted license to use, copy, distribute and make derivatives of any proprietary rights or specialized knowledge of Contractor that are part of any "Work Product" (defined below) furnished by Contractor to Company under this Agreement.
- 12.2 If requested by Company, Contractor agrees to take all actions necessary, at Company's sole cost and expense, to obtain, maintain or enforce patents, copyrights, trade secrets and other proprietary rights in connection with any Invention, and Contractor agrees that its obligations under this Article shall survive termination or expiration of this Agreement.
- 12.3 Any and all material and tangibly expressed information prepared, accumulated or developed by Contractor, any subcontractor or their respective employees or representatives, including, without limitation, documents, drawings, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith (hereinafter, collectively "Work Product"), shall become the sole property of Company without any further consideration to be provided therefore when (i) prepared or in process, in connection with the Services and (ii) whether or not delivered by Contractor. Contractor shall deliver the Work Product, or any portion thereof, to the Company on request, together with any other requested materials and/or equipment furnished to Contractor by Company hereunder, and, in any event, upon termination or expiration of this Agreement.
- 13 **INDEMNITY.**
- 13.1 As between Company and Contractor, Contractor shall be solely responsible for and Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever resulting from: (a) injuries to or death of any and all individuals, including, without limitation, members of

the general public, or any employee, agent, independent contractor or consultant or affiliate of either Company or Contractor, arising out of or connected in any manner with Contractor's performance of Services, (b) damage to, loss, and/or destruction of property, including, without limitation, to, property of Company or Contractor arising out of or connected in any manner with Contractor's performance of Services, or (c) third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any manner to Contractor's or any of its subcontractor's acts or omissions in breach of this Agreement. This indemnification obligation shall not apply to the extent that injuries, death, loss, damage or destruction is caused by either the willful misconduct of Company or Company's sole negligence.

13.2 Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including reasonable attorneys' fees (including fees and disbursements of in-house and outside counsel), of any kind whatsoever arising from or in connection with: (a) actual or alleged infringement or misappropriation by Contractor or any subcontractor or other representative of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the Services, including without limitation, any deliverable or related "work product"; and (b) Contractor's violation of any third party license to use intellectual property in connection with the Services, including, without limitation, any deliverable or related "work product."

13.3 If any claim or action is brought against Company arising out of or related to this Agreement or the Services provided hereunder, then Contractor shall assume the defense of such claim or action, with counsel reasonably acceptable to Company, unless in the opinion of counsel for Company a conflict of interest between Company and Contractor may exist with respect to such claim or action. If a conflict precludes Contractor from assuming the defense, then Contractor shall reimburse Company on a monthly basis for Company's defense costs through separate counsel of Company's choice. If Contractor assumes the defense of Company with acceptable counsel, Company, at its sole option and expense, may participate in the defense with counsel of Company's own choice without relieving Contractor of any of its obligations hereunder.

13.4 Contractor's obligation to indemnify Company under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, penalty or benefits payable by or for Contractor under any statutory scheme, including without limitation, any Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

**14. INSURANCE.**

**GENERAL REQUIREMENTS.** Insurance requirements are set forth as follows, but shall not in any way limit the amount or scope of liability of Contractor under this Agreement. This Article 14. constitutes the minimum insurance and requirements relating thereto.

14.1 **EFFECTIVENESS, CERTIFICATES, NOTICE OF CANCELLATION.** On or before the effective date of this Agreement, and thereafter during its term, Contractor shall provide Company with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Article. Contractor shall not commence Services until Contractor has obtained all insurance required by this Article and has provided acceptable certificates of insurance. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to Company, ten (10) days for non-payment of premium. Contractor shall provide Company with renewal certificates of insurance or binders within five (5) business days prior to or after such expiration. Insurance shall be maintained without lapse in coverage during the term of this Agreement. Company shall also be given certified copies of Contractor's policies of insurance, upon request.

14.2 **AS CONTRIBUTION FROM COMPANY.** The required policies, and any of Contractor's policies providing coverage excess of the required policies, shall provide that the coverage is primary for all purposes and Contractor shall not seek any contribution from any insurance or self-insurance maintained by Company.

14.3 **RATING.** All required policies of insurance shall be written by companies having an A. M. Best rating of "A - VII" or better, or equivalent.

14.4 **DEDUCTIBLE.** Contractor shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.

14.5 **ADDITIONAL INSURED.** San Diego Gas & Electric Company and its parent company, and its subsidiaries, affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns shall be named as an additional insured for all policies listed below in 14.7.1 and 14.7.4. Commercial General Liability insurance listed in 14.6.1 shall provide a severability of interest or cross-liability clause.

14.6 **Waiver of Subrogation.** Each policy of insurance maintained by Contractor below in sections 14.7.1, 14.7.3 and 14.7.4 shall contain a waiver of subrogation in favor of San Diego Gas & Electric Company.

14.7 **Types of insurance required to be provided by Contractor:**

14.7.1 **Commercial General Liability Insurance.** Contractor shall carry and maintain an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Contractor for Work performed under this Agreement. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$1,000,000.00 per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

14.7.2 **Commercial Automobile Liability Insurance.** Contractor shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property, (including loss of use thereof), and occurring in any way related to the use by or on behalf of Contractor, in pursuit of the Services, including loading or unloading of any of Contractor's automobiles (including owned, non-owned, leased, rented/or hired vehicles). Such coverage shall be in an amount of not less than \$1,000,000.00 combined single limit.

14.7.3 **Workers' Compensation & Employers' Liability Insurance.** In accordance with the laws of the State(s) in which the Work shall be performed, Contractor shall maintain in force workers' compensation insurance for all of its employees. If applicable, Contractor shall obtain U.S. Longshoremen's and Harbor Workers compensation insurance, separately, or as an endorsement to workers' compensation insurance. Contractor shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 per accident and per employee for disease. In lieu of such insurance, Contractor may maintain a self-insurance program meeting the requirements of the State(s) in which the Services shall be performed along with the required Employer's Liability insurance.

14.7.4 **Pollution Liability Insurance.** If applicable to scope of work under this Agreement, Contractor shall maintain pollution liability insurance or insurance policies insuring against liability arising out of activities contemplated under this Agreement or as might be required by federal, state, regional, municipal and local laws, in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.7.5 **Professional Liability Insurance.** If the Contractor is providing professional design, engineering or other professional services (including Design-Build), Contractor shall maintain Professional Liability insurance covering liability arising out of error, omission, or negligent act in the performance, or lack thereof, of professional services contemplated under this Agreement in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.8 **Contractor's Subcontractors.** In accordance with the Article of this Agreement entitled "SUBCONTRACTORS", Contractor shall accept total responsibility to require all other persons, firms and corporations engaged or employed by Contractor in connection with the performance of the Scope of Work to carry and maintain coverage with limits not less than those required in this Article. Contractor shall incorporate insurance requirement by reference within any contract executed by Contractor and its subcontractors, sub-subcontractors, suppliers, and agents shall cause each subcontractor, sub-subcontractor, supplier, and agent to comply with the terms of this Agreement. Contractor will obtain and verify accuracy in their entirety of certificates of insurance evidencing required coverage prior to permitting its subcontractors, sub-subcontractors, suppliers, and agents from performing work or services on the property of Company. Contractor will furnish original certificates of insurance with additional insured endorsements from all of its subcontractors, sub-subcontractors, suppliers, and agents as evidence thereof as Company may reasonably request.

14.9 **Reports.** Contractor shall immediately report to Company, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Contractor or its consultants, subcontractors, sub-subcontractors, suppliers, agents or Contractor's receipt of notice or knowledge of any claim by a third party of any occurrence that might give rise to such a claim over \$100,000. Upon completion of Contractor's Services, Contractor shall submit to Company a written summary of all such injuries, losses, damage, notices or third party claims and occurrences that might give rise to such claims. Nil reports are required.

15 **SUPPLIER DIVERSITY.** It is the policy of Company to provide maximum opportunity for women; minority and service disabled veteran business enterprises, hereinafter referred to as DBE (Diverse Business Enterprises), to participate in the performance of contracts. Company expects as satisfactory performance to this Agreement, Contractor to utilize DBE subcontractors and suppliers and to use good faith efforts to set and attain goals in parity with Company goals when contracting for work with Company. Contractor shall submit on a timely basis any documentation required by Company to report Contractor's DBE expenditures in connection with this Agreement.

16 **ASSIGNMENT.** Contractor shall give personal attention to the execution of the Services herein provided for, and shall not permit this Agreement to be assigned voluntarily, involuntarily or by operation of law; nor employ any subcontractor for the execution of the same or any part thereof, without the express prior written authorization of Company. No such written authorization, however, shall be construed as discharging or releasing Contractor in any way from the performance of the Services or the fulfillment of any obligation specified in this Agreement. Contractor shall remain jointly and severally liable with any permitted assignee for any failure to comply fully with all applicable obligations hereunder this Agreement. Company may assign in whole or in part its rights and obligations under this Agreement at any time without the consent of Contractor.

17 **TIME.** Time is expressly agreed to be of the essence in any performance related to this Agreement and each, every and all of the terms, conditions and provisions herein.

18 **GOVERNING LAW.** The formation, interpretation, performance and enforcement of this Agreement shall be governed by and enforced under the laws of the State of California, without reference to principles of conflicts of laws.

19 **COMPLIANCE WITH LAWS.** Contractor and its subcontractors at all times during performance of the Services shall comply with and observe, all applicable federal, state, regional, municipal and local laws, ordinances, rules, codes, regulations, executive orders, applicable employment, safety and environmental orders and any applicable orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor, Company or the Services furnished under this Agreement, as in effect from time to time, including, but not limited to, the Immigration Control Act of 1968 and the Foreign Corrupt Practices Act (15 USC §§ 78A and 78m et seq).

20 **TERMINATION.** It is also expressly agreed that Company shall have the right to terminate this Agreement, or any part thereof, at any time for its sole convenience upon two (2) business days written notice to Contractor. Contractor shall fully justify and document to Company in writing any termination charges claimed by Contractor (which shall not exceed 110% of the reasonable and actual cost already incurred of direct labor, materials and overhead). In no event shall Contractor be entitled to payment for any Services which has not been authorized by Company, or is not yet performed, or any anticipated profits for any Services that have not been authorized or performed. Any payment of termination charges shall occur within thirty (30) days of receipt of Contractor's written submittal of charges and justification to Company's satisfaction. Company shall have the right to review and verify by independent audit, any termination charges claimed by Contractor prior to payment.

21 **LIENS.** Without limiting the generality of any other provisions herein, Contractor shall indemnify, defend, and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any mechanics lien or stop notice claim against Company by Contractor, subcontractors, employees or agents pertaining to the Services specified in this Agreement. If Contractor fails to remove or discharge by bond, payment or otherwise any lien or claim within five (5) business days after Company's written demand to do so, Company may offset the compensation otherwise payable to Contractor under this Agreement or any other agreement in order to pay such liens directly.

22 **RETENTION.** Company shall have the right to withhold a retention from payments due Contractor. The amount of the retention shall be paid within 45 days after completion as defined by California Civil Code Section 3260. Provided, however, the Company may require Contractor to provide conditional or unconditional lien releases, as a condition to withhold the retention and such additional amounts due Contractor as necessary until such liens have been satisfied by Contractor. In addition, Company may use the retention to satisfy directly the claim of any lienor.

23 **AUDIT.** Company reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any Services performed under this Agreement. Any such audit or examination may be undertaken by Company or its contracted representative at reasonable times during normal business hours and in conformance with generally accepted auditing standards. Contractor agrees to fully cooperate with any such audit(s).

23.1 Contractor shall include a similar clause in its arrangements with its subcontractors reserving the right to designate Contractor's own employee representative(s), its contracted representative(s) from a certified public accounting firm, and/or representative(s) from Company, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item related to the Services.

23.2 Contractor shall be notified in writing of any exception taken as a result of an audit of Contractor or a subcontractor. Contractor shall refund the amount of any exception to Company within ten (10) days. If Contractor fails to make such payment, Contractor shall pay interest on any unpaid portion of such payment, accruing monthly, at a rate equal to the lesser of ten percent (10%) per annum or the maximum lawful rate. Interest shall be computed from the date of written notification of exception(s) to the date Contractor reimburses Company in full for any exception(s). In the event an audit in accordance with this Article discloses an overcharge of five percent (5%) or greater, then Contractor shall reimburse Company for the cost for the performance of such audit.

23.3 Company's right to audit shall extend for a period of five (5) years following the date of final payment under this Agreement. Contractor and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

24 **TAXES.** Contractor assumes exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by the equipment, materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with, the performance of the Services. Provided that the conditions of indemnification as set forth in this Agreement are satisfied, Contractor shall indemnify, defend and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any claim, liability, penalty, interest and expense arising by reason of Contractor's failure to pay such taxes, charges or contributions.

24.1 Without limiting the generality of this Article, Contractor agrees to treat all individuals performing the Services under this Agreement as employees of Contractor for purposes of federal and state income taxes, Social Security and Medicare taxes, unemployment and disability insurance premiums. No exceptions shall be permitted under this Article without a written Amendment to this Agreement prior to any individual performing any required Services under this Agreement. Contractor agrees that, at any time during the performance of this Agreement, Company shall have the right to audit Contractor's compliance with this provision in accordance with the Article entitled "**AUDIT**".

24.2 To the extent any portion of the Services are performed in the State of California, either (a) Contractor represents that Contractor is a California resident and shall provide Company with an original and a copy of Form 590, Certificate of Residence, in accordance with California Revenue and Taxation Code Section 18662 and regulations thereunder; or (b) seven percent (7%) of all compensation payable to Contractor for Services performed in California shall be withheld in accordance with applicable California Franchise Tax Board ("FTB") or successor regulations, unless Company has been notified in writing by FTB that withholding is waived or a lower rate or withholding is authorized.

24.3 Contractor and Company shall make commercially reasonable efforts to cooperate with each other to minimize the tax liability of both parties to the extent legally permissible (and with no duty to increase either parties tax liability), including separately stating taxable charges on Contractor's invoices and supplying resale and exemption certificates, if applicable, and any other information as reasonably requested.

24.4 Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, the Parties acknowledge and agree that: (i) any obligations of confidentiality contained herein and therein do not apply and have not applied from the commencement of discussions between the Parties to the tax treatment and tax structure of any transaction related to the Services or any other transactions or arrangements; and (ii) each Party (and each of its employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4, provided, however, that the foregoing is not intended to affect any privileges that each Party is entitled, in its sole discretion, to maintain, including with respect to any confidential communications with its attorney or any confidential communications with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code.

25 **VALIDITY.** The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.

26 **DISPUTES.** Any dispute that cannot be resolved between Contractor Representative and Company Representative shall be referred to Company Director – Supply Management and an officer of Contractor for resolution. If Company and Contractor cannot reach an agreement within a reasonable period of time, Company and Contractor shall have the right to pursue litigation as provided for herein. In no event shall the litigation of any controversy or the settlement thereof delay the performance of this Agreement.

26.1 In the event of any litigation to enforce or interpret any terms of this Agreement, unless the parties agree in writing otherwise, such action shall be brought in any Superior Court of California having jurisdiction (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Southern District of California), and the parties hereby submit to the exclusive jurisdiction of said court.

26.2 In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, (including expert testimony) and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing party.

27 **CONFIDENTIALITY.** For purposes of this Agreement, the term "Confidential Information" means proprietary information concerning the business, operations and assets of Company its parent company(ies), subsidiaries and/or affiliates, including, without limitation, the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of Services under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information shall not include: (a) information known to Contractor prior to obtaining the same from Company; (b) information in the public domain at the time of disclosure by Contractor; (c) information obtained by Contractor from a third party who did not receive same, directly or indirectly, from Company; or (d) information approved for release by express prior written consent of an authorized officer of Company. Contractor shall have the burden of proof in establishing that its use of Company information is permitted by (a), (b), (c) and/or (d) of this provision.

27.1 Contractor hereby agrees that it shall use the Confidential Information solely for the purpose of performing Services under this Agreement and not in any way detrimental to Company, its parent company(ies), subsidiaries and/or affiliates. Neither Contractor nor its directors, officers, employees, agents or representatives shall use the Confidential Information for their own benefit.

27.2 Contractor agrees to use at least the same degree of care Contractor uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Contractor shall keep confidential and not disclose the Confidential Information. Contractor shall cause each of its directors, officers, employees, agents, representatives, subcontractors and suppliers to become familiar with, and abide by, the terms of this Agreement.

27.3 Notwithstanding any other provisions of this Article, Contractor may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Contractor is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency or regulatory authority. Prior to making or permitting any such disclosure, Contractor shall provide Company with prompt written notice of any such requirement so that Company (with Contractor's assistance if requested by Company) may seek a protective order or other appropriate remedy.

27.4 Subject to Section 27.2, Contractor shall not, without the prior written consent of Company, disclose to any third party the fact that such Confidential Information has been made available to Contractor.

27.5 At any time upon the request of Company, Contractor shall promptly deliver to Company or destroy if so directed by Company (with such destruction to be certified to Company) all documents (and all copies thereof, however stored) furnished to or prepared by Contractor that contain Confidential Information and all other documents in Contractor's possession that contain or that are based on or derived from Confidential Information.

27.6 Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is five (5) years after the date of disclosure of such Confidential information.

27.7 The parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Contractor are specifically enforceable. Accordingly, the parties agree that in the event of a breach or threatened breach of this Agreement by Contractor, Company, its parent company(ies), subsidiaries and/or affiliates, who shall be third party beneficiaries of this Agreement, shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to Company, its direct and indirect parent company(ies), subsidiaries or affiliates.

## 28. ENVIRONMENTAL TERMS

28.1 **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

28.2. "**Hazardous Materials**" means any chemical, substance, material, controlled substance, object, product, by-product, residual, condition, solid, gas or waste or combination thereof which is hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or effects. Hazardous Materials include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, and substances defined as "hazardous substances," "hazardous material," "hazardous wastes," or "toxic substances" in, under or pursuant to any Environmental Law (as that term is defined below). "Hazardous Materials" shall also include oil or petroleum and petroleum products, asbestos, and any asbestos containing materials, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which now are, or become in the future, listed, defined or regulated in any manner by any Environmental Law (as that term is defined below). For purposes of this Agreement, the terms "encumbrance" and "encroachment" shall not be deemed to include the presence of any Hazardous Material contamination on, in or under the Property or its underlying groundwater.

28.3. "**Environmental Law**" means applicable federal, state, regional, county or local law, regulation, decision of the courts, ordinance, rule, code, order, directive, guideline, permit, or permit conditions which, now or in the future, relate in any way to worker or workplace safety, environmental conditions, environmental quality or policy, or health and safety issues or concerns (including product safety). Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 USC, §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC, §§6901 et seq.), the Federal Water Pollution Control Act (33 USC §§ 1251 et seq.), the Safe Drinking Water Act (42 USC §§300 et seq.), the Hazardous Materials Transportation Act (49 USC §§ 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code, §§25300 et seq.), the Toxic Substance Control Act (15 USC §§2601, et seq.), the California Hazardous Waste Control Law (California Health & Safety Code, §§25100 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), the Safe Drinking Water and Toxic Enforcement Act (California Health & Safety Code §§25249.5, et seq.), the California Occupational Safety and Health Act (California Labor Code §§6300 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), and applicable regulations or rules promulgated thereunder.

28.4. "**Governmental Agency**" shall mean any federal, state regional, municipal or local governmental agency or other public or political body having the jurisdiction, mandate, authority or power to regulate, implement, coordinate, administer or enforce any Environmental Law.

28.5. "**Materials and Licenses**" Supplier agrees that all materials and equipment to be supplied or used by Supplier, its subcontractors, if any, in the performance of its obligations under this Agreement, including, but not limited to vehicles, loading equipment, and containers, shall be in good condition and fit for the use(s) for which they are employed by Supplier or its subcontractor, if any. Supplier further agrees that none of the materials to be supplied or used by Supplier and its subcontractors, if any, in the performance of its obligations under this Agreement shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available. The materials, equipment and Services shall comply with all applicable Environmental Laws as of its delivery and installation and Supplier shall comply with applicable provisions of Environmental Laws, including, but not limited to, providing any Proposition 65 warnings and Material Safety Data Sheets. All materials and equipment used in the Services (including any warranty re-installation) shall at all times be maintained, inspected and operated as required by applicable Environmental Law. Supplier further agrees that all licenses, permits, registrations

and certificates or other approvals required by any Environmental Law or Governmental Agency shall be procured and maintained for such materials and equipment at all times during the use of the same by Supplier or its subcontractors, if any, in the performance of any of Supplier's obligations under this Agreement.

28.6. **"Duty to Comply with Laws"** Supplier specifically agrees that in the performance of its obligations under this Agreement, Supplier shall at all times fully comply with and cause each of its subcontractors, if any, to fully comply with all applicable Environmental Laws. Supplier further agrees that Supplier shall have and cause its subcontractors, if any, to have and keep in effect all licenses, permits, registrations, certificates, training, and approvals required by any Environmental Law or by any Governmental Agency for the Services undertaken by Supplier or its subcontractors, if any, in the performance of Supplier's obligations under this Agreement.

28.7. **"Indemnification"** Supplier hereby specifically agrees to indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, demands, causes of action, costs and expenses including, but not limited to, all reasonable consulting, engineering, attorneys (in-house and outside counsel) or other professional fees including disbursements, which Indemnitees, or any of them, may incur or suffer by reason of:

- (1) any unauthorized release of a Hazardous Material;
  - (2) any enforcement or compliance proceeding commenced by or in the name of any Governmental Agency because of an alleged, threatened or actual violation of any Environmental Law;
  - (3) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Environmental Law; and/or
  - (4) any other cause of whatsoever nature;
- arising out of or in any way connected with Supplier's performance under this Agreement, except to the extent the same were caused by the willful misconduct or sole negligence of the Indemnitees.

28.8. **"Release"** In the event of any unauthorized release of a Hazardous Material, Supplier shall perform the following actions:

- (1) Take all reasonable steps necessary to stop and contain said release;
- (2) Make any report of such release as required under Environmental Law;
- (3) Clean up such release as required by the applicable Governmental Agency.

28.9. **"Notification"** Supplier shall immediately notify Company Representative of the following upon the occurrence of any unauthorized release of Hazardous Material in connection with the Services:

- (1) A description of the release;
- (2) The identification of the Hazardous Material and the volume released;
- (3) Death of any person;
- (4) Property damage;
- (5) Any communication from any Governmental Agency that alleges that Supplier is not acting in compliance with Environmental Law.
- (6) Any communication from any Governmental Agency that affects any of Company's Supplier's, or any subcontractor's permits or licenses.

28.10. **"Reports"** Supplier shall submit within 36 hours of the unauthorized release to Company Representative a written report, in a format required by Company describing in detail any event of any unauthorized release of a Hazardous Material which shall include the following information:

- (1) Name and address of Supplier and any subcontractor(s) involved.
- (2) Name and address of Supplier's commercial and environmental liability insurance carrier.
- (3) Name and address of any injured or deceased persons, if applicable.
- (4) Name and address of any property damage, if applicable.
- (5) A detailed description of the release including the identification of the Hazardous Material, the date and time of the release, the volume released, and the nature of the any environmental contamination.
- (6) A determination of whether any of Company's personnel, equipment, tools or materials were involved.
- (7) A detailed description of all reports made to any Governmental Agency, and a description of the actions taken to respond to the release.

28.11. **No Transportation of Company's Hazardous Material.** Supplier shall NOT (a) transport any Hazardous Material that Company generated for purposes of treatment, storage, recycling and/or disposal; or (b) conduct any treatment, storage, recycling and/or disposal of any Company generated Hazardous Material unless specifically authorized by Company to perform such activities in writing. If Supplier is authorized by Company to perform such activities then the following terms and conditions shall apply:

28.12. **Authorized Treatment Facility.** Supplier shall not transport any Company generated Hazardous Material to any treatment, storage, recycling and/or disposal facility (hereinafter called "TSDF") not authorized by Company in writing. Prior to transporting Company generated Hazardous Material in each case, Supplier shall confirm that the TSDF has procured and maintained in effect all licenses, permits, registrations, certificates or other authorizations required by any Environmental Law or Governmental Agency to lawfully receive, handle, transport, store, treat, recycle, incinerate, dispose of, or otherwise manage or use such Hazardous Material. Supplier shall not transport any Company generated Hazardous Material to any TSDF which is unable or fails to provide such confirmation and Supplier shall immediately notify Company. Company reserves the right at any time, in Company's sole discretion, to cancel its authorization of any TSDF by written notice to Supplier.

28.13. **Hazardous Waste Manifest.** Company shall, when required by Environmental Law, provide Supplier with a complete and executed Hazardous Waste Manifest or other shipping documentation for Company generated Hazardous Material to be transported for treatment, storage, recycling and/or disposal. Supplier's transportation, recycling, treatment, storage, and/or disposal of any such Hazardous Material in accordance with this Agreement shall be documented by Supplier utilizing, among other things, the Hazardous Waste Manifest tracking system or other records as required by Environmental Law, copies of which shall be provided to Company within ten (10) days of shipment.

28.14. No Asbestos or Asbestos-Containing Materials (ACM). Supplier shall not supply, sell, deliver or furnish to Company any Products or Goods, pursuant to this Agreement, that contain asbestos or ACM in any concentration or amount whatsoever, unless otherwise consented to in writing by Company, on the basis that no feasible replacement Products or Goods (that do not contain asbestos or ACM) are available.

#### 29. HAZARDOUS MATERIALS

29.1. **Hazardous Materials and Toxic Chemicals.** Supplier shall provide the following to Company for each material which Supplier furnishes under this Agreement: (a) a completed Material Safety Data Sheet (MSDS) for each material which contains a *hazardous material* as defined above; and (b) a written statement for each material that is a Mixture or Trade Name Product which contains a *Toxic Chemical* subject to the reporting requirements of Section 313 or EPCRA (40 CFR Section 372 et seq.) including: (1) the name and associated CAS (Chemical Abstract Services Registry) number of the *Toxic Chemical*; (2) the specific concentration at which each such *Toxic Chemical* is present in each such Mixture or Trade Name Product; and (3) the weight of each such *Toxic Chemical* in each such Mixture or Trade Name Product. Supplier shall indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, administrative actions, judgments, costs or expenses including expert witness, consulting and attorneys' fees (including fees and disbursements of in-house and outside counsel) that Company suffers as a result of Supplier's failure to comply with these requirements.

29.2. **Proposition 65.** If any part of the Services would require that a warning pursuant to Proposition 65 (California Health & Safety Code sections 25249.5, et seq.), be provided to exposed individuals, then Supplier shall provide such warning to those individuals, including but not limited to members of the public, Company's employees, Supplier's employees, and any subcontractor's employees.

#### 30. Use of Company Equipment

In the event Company loans Contractor any equipment for use under this Agreement, title to said property shall remain in Company. Notwithstanding the foregoing, Contractor shall be responsible for loss, damage, destruction, theft, maintenance, and repair of said property while in the possession of Contractor. Prior to use, Contractor shall have inspected said property and have satisfied Contractor that the property is in good repair and working condition. Contractor shall only allow qualified personnel to operate said equipment. Contractor shall surrender possession of said equipment upon demand by Company.

31. **REMEDIES.** Contractor agrees that if: (a) Contractor abandons the Services, or (b) Contractor shall become bankrupt or insolvent, or shall assign this Agreement, or sublet any part thereof, without the express prior written authorization of Company, or (c) Contractor, in the sole opinion of Company Representative, violates any of the provisions of this Agreement, or (d) Contractor executes this Agreement in bad faith, or (e) Contractor, in the sole opinion of the Company Representative is not performing the Services in accordance with the terms of this Agreement, Company may notify Contractor, to discontinue all or any part of the Services and Contractor shall thereupon discontinue the Services or such parts thereof. Company shall thereupon have the right to continue and complete the Services or any part thereof, by contract or otherwise, and

Contractor shall be liable to Company for any and all loss, penalties, fines, excess cost and consequential, special, incidental and indirect damages incurred by Company in completing the Services caused by Contractor's failure to execute the requirements of this Agreement. The remedies herein shall be inclusive and additional to any other rights or remedies in law or equity, and no action by Company shall constitute a waiver of any such other rights or remedies. If it is determined for any reason by a tribunal of competent jurisdiction that Contractor was not in default, the parties rights and obligations shall be the same as if notice of termination had been issued pursuant to the Article entitled

**"TERMINATION."**

32. **OFFSET.** Company may upon written notice to Contractor, setoff any amount due from Contractor, whether or not under this Agreement, against any amount due Contractor or claimed to be due by Contractor under this Agreement. In addition, Company may withhold from Contractor any amount sufficient to reimburse Company for any loss, damage, expense or liability for Contractor's actual, alleged or reasonably probable failure, based on factual evidence, to comply with the terms and conditions of this Agreement.

33. **SURVIVAL.** The obligations imposed on Contractor pursuant to each Article of this Agreement, which by its terms contains subject matter which relates to time periods subsequent to the term of this Agreement, including without limitation the following Articles, Warranty, Indemnity, Disputes, Confidentiality, and this Survival provision, shall survive completion of the Services or termination of the Agreement. 34. **EQUAL OPPORTUNITY.** This Agreement incorporates Executive Orders No. 11246, 11625, 11701, 11738 and 12138, the Vietnam Era Veterans Readjustment Act of 1974, the Vocational Rehabilitation Act of 1973, and the regulations thereunder, as amended from time to time, to the extent applicable. Contractor agrees not to discriminate in employment opportunities on the basis of race, color, religion, sex or national origin. Contractor further agrees to comply with applicable laws regarding environmental protection and with respect to affirmative action for qualified veterans and for qualified handicapped persons.

35. **NO PUBLICITY.** Supplier shall not, without Company's prior written consent, engage in advertising, promotion or publicity related to this Agreement, or make public use of any Company identification in any circumstances related to this Agreement or otherwise. "Identification" means any corporate name, trade name, trademark, service mark, insignia, symbol, logo or any other product, service or organization designation, or any specification or drawing owned by Company or its affiliates or any representation thereof.

36. **EXCUSABLE DELAYS.** Contractor shall notify Company in writing immediately of any delay or anticipated delay in Contractor's performance of this Agreement due to causes or circumstances beyond the reasonable control of Contractor. Notice shall include the reason for and anticipated length of the delay. Company may determine, in its sole judgment, to extend the date of performance for a period equal to the time lost by reason of the delay. Contractor shall not be eligible under any circumstances for additional compensation due to any such extension of time. Any extension of time pursuant to this Article shall be documented by a written amendment to this Agreement signed by both Parties. Examples of such possibly excusable delays are natural calamities, strikes and boycotts, war or civil unrest or governmental actions and other events that are commonly deemed Force Majeure. None of the foregoing, however, shall require Company to grant any extension of time for completing the Services.

37. **REPORTS.** Contractor shall provide periodic status reports as requested by Company Representative. The status reports shall make periodic comparisons of the Services rendered to date against the Scope of Work including, any milestones and costs. Such reports shall include an explanation of any significant variations, an identification of any potential or known developments that may impact Company or the Services and any corrective actions implemented.

38. **SUBCONTRACTORS.** Contractor must obtain Company's written consent prior to retaining subcontractor(s) to perform any of the Services. If Company authorizes Contractor to utilize any subcontractors under this Agreement, Contractor shall at all times be responsible for the acts and omissions of subcontractors and agents employed directly or indirectly by Contractor. Contractor shall be responsible for performance of all the Services, whether performed by Contractor or its subcontractors or agents. This Agreement shall not give rise to any contractual relationship between Company and any subcontractor or agent of Contractor. Company shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor or agent of Contractor. Upon request of Company, Contractor shall furnish to Company copies of any executed subcontracts entered into between Contractor and any subcontractor or agent.

39. **SUSPENSION OF SERVICES.** Company may, at any time, by written notice, require Contractor to stop all, or any portion, of the Services for a period of up to ninety (90) days ("Suspension Period") and any further period to which the Parties agree. Upon receipt of notice, Contractor shall immediately cease performance under this Agreement for the entire Suspension Period. Prior to the expiration of the Suspension Period, Company shall either: (a) cancel the Suspension Period; (b) permit the Suspension Period to expire whereupon Contractor shall resume its performance of the Services; or (c) terminate this Agreement pursuant to the provisions of the Article entitled "TERMINATION". If the suspension is canceled or permitted to expire, Contractor shall be granted a corresponding adjustment to all time periods and completion dates. Company shall not be liable for any payments to Contractor for expenses incurred during the Suspension Period.

40. **NO WAIVER.** The failure of Company to insist upon or enforce, in any instance, strict performance by Contractor of any of the terms or conditions of this Agreement, or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert, or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in a written notice issued pursuant to this Agreement.

41. **GOVERNMENT CONTRACT CLAUSES INCORPORATED BY REFERENCE.** Contractor shall comply with all applicable requirements set forth in the Federal Acquisition Regulations (or any successor thereto) in effect on the date of this Agreement, which are incorporated herein by reference, with the same force and effect as if they were given in full text. The terms and conditions thereof shall be controlling over any conflicting terms and conditions set forth in this Agreement or any written amendment hereto.

42. **NO ORAL MODIFICATIONS.** No modification of any provisions of this Agreement shall be valid unless in writing and signed by duly authorized representatives of both Parties. Company Representative is not the duly authorized representative for amendments to this Agreement. Representatives of both Parties internally authorized to execute such documents pursuant to its corporate policies shall sign any amendments to this Agreement.

43. **CAPTIONS.** The captions in this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

44. **COUNTERPARTS.** This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

45. **AUTHORITY.** Each individual executing this Agreement on behalf of the Parties represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of their Party and that this Agreement is binding upon their Party in accordance with its terms and conditions.

46. **CONSTRUCTION OF AGREEMENT.** Both Parties have participated in the negotiating and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either Party as the drafting party.

47. **NOTICES.** All notices to be given under this Agreement shall be in writing and either sent by: (1) pre-paid U.S. first-class mail, in which case notice will be deemed delivered as of two business days after mailing; (2) a nationally recognized pre-paid overnight courier service, in which case notice shall be deemed delivered as of the date shown on the courier's delivery receipt; or (3) teletype sent during business hours of the recipient, in which case notice shall be deemed delivered when transmitted provided that a transmission report is generated reflecting the accurate transmission of the notice. All correspondence shall reference the Agreement number. Notices shall be directed to the addresses of the parties on the front page of this Agreement.

48. **SEVERAL LIABILITY.** In the event that more than one legal entity acquires goods and Services hereunder from Contractor and is a party to this Agreement, compensation payable or other obligations owed by each such entity with respect to any goods and/or Services provided by Contractor under this Agreement shall be exclusively the obligation of the entity that acquires such goods and/or Services. No such entity shall have any liability whatsoever (whether by direct payment, offset or otherwise) in connection with goods and/or Services acquired by any other such entity. Each such entity is severally and not jointly liable to Contractor hereunder, and each such entity disclaims any and all financial or other responsibility, except with respect to goods and/or services that are furnished and invoiced to such entity.

**49. DOUBLE DIPPING.**

49.1 The Parties shall take reasonable steps to minimize or avoid the provision of incentives or services for the same measures provided under this Program from another program or other funding source.

49.2 Contractor represents and warrants that it has not received incentives or services for the measures provided under the Program from another utility, state, or local program.

49.3 Contractor shall not apply for or take incentives or services for the measures provided under this Program from another utility, state, or local



program.

49.4 Contractor agrees that the Program shall receive one hundred percent (100%) of the related energy benefits specified in the Program Proposal for the life of the each measure provided under the Program.

49.5 Company shall not knowingly provide an incentive or service for a measure to Contractor for the same measure through another Public Goods Charge- or Gas Surcharge- funded program or any other funding source.

**SCHEDULE B - SCOPE OF WORK/PERMANENT LOAD SHIFTING**

Contractor shall perform the following A through D and Phase I-Program Finalization Plan and Phase II-Program Implementation services for the Permanent Load Shift Requisites:

A) Total kW shifted for each program year as follows:

<b>kW</b>	<b>Before August 31, 2008</b>	<b>Before July 31, 2009</b>	<b>Each YR for useful life of equipment</b>
Incremental kW Shifted	810	450	0
Total kW of Permanent Load Shifting from 11:00 am - 6:00 pm between May 1 through October 31 each weekday (Monday – Friday).	810	1,260	1,260

B) Company Payments to Contractor shall not exceed (NTE) \$1,596,100.00.

C) Indication of the target markets for the Refrigerated Zone Control Module Permanent Load Shifting (PLS) Program

*Potential Customer Markets include but are not limited to:*

Public cold storage, Food Processing, Agriculture, Grocery, etc.

D) Phased Task Outline and Billing Schedule

The scope of work is based on two phases.

Phase I – Program Finalization Plan (see detail below)

Phase II – Program Implementation (see detail below)

The program finalization step is characterized as a plan for action or agreed upon description of key program elements that would provide a much more detailed road map for program implementation. The deliverable in the program finalization is a plan and discussions with the COMPANY project manager that covers all key program aspects. The deliverables in the program implementation section are the actual field labor, programming labor, marketing labor, etc. that lead to the delivery of the target KW load shift. The schedule of billing covers up-front planning, marketing and support in order to achieve the customer participation in the first part of the program.

Company reserves the right to approve all deliverables and marketing materials.

**Phase I Program Finalization Plan**

**Task 1: Program Administration Duties**

**Deliverable 1:** Conduct program start up meeting(s) with COMPANY staff and review and finalize goals and strategies for the Refrigerated Zone Control Module PLS program.

**Due Date for Deliverable 1:** Within 1 month of notice to proceed/signed contract

**Deliverable 2:** Provide written agreed upon plan of program administration duties that includes:

- COMPANY requirements, frequency of communications, typical report content & topics
- Reporting expectations, frequency
- Billing processes for tasks, supporting docs and rebates

**Due Date for Deliverable 2:** Within 1 month of notice to proceed/signed contract

Task 2: Utility Approval Requirements

**Deliverable 1:** Identify specific items that require utility approval and document the approval process

**Due Date for Deliverable 1:** Within 1 month of notice to proceed/signed contract

**Deliverable 2:** Contractor to build processes and communications to ensure approval processes are included in program implementation tasks.

**Due Date for Deliverable 2:** Within 1 month of notice to proceed/signed contract

Task 3: Reports and Communication

**Deliverable 1:** Identify number and type of report, content, key metrics, typical audience for reported information, communication method (email, online, paper). Determine internal program key contacts, key success metrics (aside from Permanent Load Shift requisite), and access to customer data.

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

Task 4: Fine Tune Customer Incentive Calculations for Existing Facilities and New Construction Markets

**Deliverable 1:** Written summary to determine:

- Specific target incentive dollar amount per kW
- Most effective target for incentive

- Estimated kW shift for Refrigerated Zone Control Module to be installed at a customer site

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

Task 5: Monitoring/Metering Requirements for - M&V

**Deliverable 1:** Summary of methodology to determine:

- Monitoring requirements and implementation detail

Sampling:

Complete M&V shall be carried out on at least 10% of the installations. The sites for which M&V is selected shall be the larger installations. These installations shall account for at least 25% of the total savings associated with the measure. At the remainder of the sites, monitoring shall be provided to confirm that the refrigeration modules are operating in a correct manner.

Preconstruction data collection:

The existing mechanical refrigeration systems will be identified as follows:

- Location
- Site owner
- COMPANY meter #
- Service area within location
- Manufacturer
- Compressor Nameplate Data including motor amps, volts, power consumption
- Pump Nameplate Data including motor amps, volts, power consumption
- Cooling Tower Nameplate Data including motor amps, volts, power consumption

Baseline data collection:

A metering and monitoring plan will be provided to COMPANY for approval for each individual sampled site. As a part of that plan for existing refrigeration systems, at a minimum, the following measurements are to be taken and data collected prior to construction:

Utilize a portable data acquisition system or existing EMS to record kW, supply air and ambient outdoors temperature every 15 minutes for a period of at least two weeks during cooling demand period.

The data will be plotted and a relationship between kW against outdoors ambient temperature will be arrived at. In lieu of onsite temperature measurement the nearest airport

weather data may be substituted. The data will be submitted to third party and COMPANY for review.

Post construction data collection:

The newly installed refrigeration module will be equipped with the following:

- Data acquisition system (EMS)
- Supply air temperature
- Outdoor ambient temperature (or utilize nearest airport weather data)

The data will be collected and stored every 15 minutes for duration of at least two weeks during cooling season.

Following the initial M&V period, the electrical energy (kWh) readings will be examined to insure power is not being consumed during the 11 a.m. – 6 p.m. period

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

Task 6: Marketing Plan

**Deliverable 1:** Deliver a summary market plan for the retrofit & new construction market segments including:

- Key market segment analysis—identify potential opportunity for installations in the segments
- Target Customer & Site Identification—identify potential program participants through external means and by Account Representative referral .
- Other Market Plan elements—
  - Specific customer value proposition development
  - Prioritization / ranking of customers
  - Marketing strategies needed with COMPANY assistance
- The plan anticipates leveraging traditional COMPANY energy efficiency and demand response program marketing services (web pages, bill stuffers, push e-mail marketing, energy center). The marketing plan may include the following activities:
  - Informative presentations to COMPANY account reps

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

Task 7: Quality Assurance & Inspection

Contractor shall develop quality control procedures to ensure high quality workmanship practices in the installation of Program Measures and to ensure quality educational Services have been provided to the Customer. Company reserves the right, after notification to the Contractor, to modify procedures to ensure effectiveness and quality of the Program. Company will conduct up to 100% random sample inspections at its discretion.

Task 8: Technologies and Products to be Deployed

**Deliverable 1:** Submit detailed description of the technology to be deployed in the target markets to COMPANY.

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

Task 9: Feasibility Study Requirements, Including Design Intent

**Deliverable 1:** Describe the feasibility study protocol, tools, customer process and typical outcome. Document containing process and checklist for completing controls design and/or site feasibility and analysis and approval process.

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

Task 10: Contractor and or Channel-to-Market Identification and Training

**Deliverable 1:** Describe the contractor/channel training needed for the Refrigeration module program. Provide a plan to ensure that the channel installing or promoting refrigeration module units for the program comply with Contractor, manufacturer, local and COMPANY requirements.

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

Task 11: Customer Support and Basic Process

**Deliverable 1:** Provide a customer support plan that includes the following:

- Method to provide reasonable assurance of proper maintenance and technical support of the equipment during the contract term.

- Customer issue and complaint resolution process utilizing the Contractor's customer service center
  - Customer rebate application & payment process
  - Timing, responsibilities, communication pathways, resolution procedures, specific 800 number and online methods.
  - Customer Service Representative scripts and training

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

**Task 13: Marketing and Customer Acquisition**

**Deliverable 1:** Contractor will execute a targeted customer awareness campaign to educate applicable customers within the COMPANY service territory of the availability and procedures of the Refrigeration Module PLS program. This will include:

- Marketing materials such as web, brochures, presentations
- The customer service center, application tracking and follow up, feasibility reports and customer education
- Coordinate outreach efforts with any potential community partnership programs

**Due Date for Deliverable 1:** Duration of task is 10 months and billed monthly. Marketing and Customer acquisition will be concentrated in 2008 and will be ongoing until program is fully subscribed.

Contractor shall include accessing the Contractor's customer database and Contractor contacts in Company territory. It shall also include contacting the customer base of COMPANY through their account representatives. Contractor shall conduct a meeting with applicable account representatives of COMPANY to promote the Permanent Load Shifting program.

Contractor shall approach the identified customers with Company approved marketing collateral and incentives and sign-up the customers for a four year PLS goal.

**Deliverable 1:** Contractor shall provide Company a signed contract for participation in the Permanent Load Shifting program

**Due Date for Deliverable 1:** Contractor shall deliver signed customer contracts equal to 810 kW of participation by August 31, 2008 and an additional 450 kW by July 31, 2009.

Task 14: Marketing Messages

**Deliverable 1:** With input from the target market segments, create program communication messages and basic value propositions. Determine potential web site copy and brochure/incentive application copy. Review all market messages with the COMPANY Refrigeration Module PLS Program Manager. Additional market message elements should be included for new construction:

- Design Flexibility
- Cost effectiveness

**Due Date for Deliverable 1:** Within 4 months of notice to proceed/signed contract

Task 15: Marketing Materials

**Deliverable 1:** Create custom made program web site, software based brochure and presentations based upon COMPANY approved copy and COMPANY approved market communications design standards. The scope will include periodic updates to the materials based upon program changes and directives from the program manager.

**Due Date for Deliverable 1:** Within 4 months of notice to proceed/signed contract

**Deliverable 2:** Produce marketing collateral materials in conjunction with COMPANY marketing and communications staff, which may include the following:

- PowerPoint presentations
- Web blasts
- Marketing collateral
- Applications collateral

**Due Date for Deliverable 2:** Within 4 months of notice to proceed/signed contract

Task 16: Standard Customer Applications and Agreements



**Deliverable 1:** Create custom-made program incentive application based upon approved copy and approved market communications design standards. The scope will include periodic updates to the materials based upon program changes and directives from the program manager. Applications will be made available via web, mail and fax and all data gathered from the applications will be maintained in the Contractor's Customer Service Center (CSC) database. Application will provide for all needed program information requirements including:

- All relevant customer information including but not limited to: name, address, kW usage, and hours of usage
- Specific equipment information
- Program participation guidelines
- Incentive amount(s)
- General terms & conditions for participation as approved by COMPANY

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

Task 17: Customer and Site Qualification

**Deliverable 1:** Work closely with target customers or channels to specify the best fit for loads targeted for the Refrigeration Module PLS program and establish qualification guidelines. Emphasis will include a requirement that all installed units be in place for at least the duration of the PLS program or longer. Ten Year pro-forma customer potential payback will be reviewed with each customer. Hours operation, climate zone, maintenance practices, accessibility for inspections and other requirements determined to support the PLS program goals will be utilized in a qualification screen for each proposed installation. Record of the site qualifications including rejected sites will be maintained by the Contractor's CSC database.

**Due Date for Deliverable 1:** Customer identification will be concentrated in 2008 and early 2009 and will be ongoing until program is fully subscribed.

Task 18: Direct Customer Marketing

**Deliverable 1:** Conduct sales activities by meeting with customer management, channels and facilities teams. Establish specific feasibility meetings for the top candidates for Refrigeration Module installations. Specific direction will be

maintained to help ensure placement of units that will optimize COMPANY PLS program goals. The results of the sales activity will be included in monthly reports to COMPANY. This may include:

- "Face to Face" meetings
- Internet marketing techniques

All marketing material will be submitted to COMPANY for approval prior to release.

**Due Date for Deliverable 1:** Duration of task is 10 months and billed monthly. Marketing will continue until program is fully subscribed.

#### Task 19: Tracking and Reporting

##### **Deliverable 1:** Creation of software and dashboard templates

The Reports and Communications plan (Task 3) listed above as part of the Program Development set of tasks will provide key input on the final deliverables under this task. Provide the software database creation and modifications needed to record all needed program information and results and deliver defined reports. Information will be input into the database both manually and through the Internet.

##### **Deliverable 2:** Ongoing Tracking and Reporting of program parameters

Besides reports provided in-person at regular program update meetings additional reports will be accessible to COMPANY and will be designed specifically to meet the needs of Company program managers. Reports will meet Company reporting requirements to insure reporting accuracy and timeliness. Frequency and access will be determined under The Reports and Communications plan (Task 3) listed above as part of the Program Development set of tasks.

Provide ongoing status reports and detailed analysis, including:

- Participation in all staff meetings as a program manager
- Frequent reports and detailed correspondence, as required and requested by COMPANY
- Ongoing support in relation to CPUC filings, internal documentation, or other documentation issues, as requested by COMPANY.

**Due Date for Deliverable 2:** Ongoing – billed over 12 months

**Task 20: Task Implementation**

Contractor shall provide installation of PLC based controller that enables permanent load shift by Shutting off the evaporator fans in the freezer

- Shutting off the liquid solenoid feeding the evaporator fans in the freezer
- Providing set point control for the freezer space such that during off peak periods the freezer is cooled by a few additional degrees
- Providing electrical wiring between the points described above and the control panel.
- Providing data logging capability remotely at Contractor offices

The Contractor Zone Control Module will shut off the freezer zones (fan and liquid solenoid feeding the evaporator) from 11 am to 6 pm everyday and this data will be logged at the Contractor server (or COMPANY server if required). This data can be viewed remotely using any browser.

**Deliverable:** Contractor shall provide a completed project sign off documentation

**Due Date for Deliverable 1:** Within 45 days of signed contract with customer.

**Deliverable 1:** With the guidance of Task 1, develop comprehensive processes and procedures to manage customer applications and the facilitation of incentive payments with the following considerations:

- The Contractor will collect a rebate application signed by the customer that will include an invoice specifying the quantity and type of installed equipment, and in some cases an incentive release form if the customer chooses to release said incentive to a third-party.
- Contractor will check all rebate applications against invoices for make and model numbers, installed count, and installation date to verify and ensure accuracy.
- Contractor will work directly with customers to correct errors.
- On a regular basis, completed applications for projects with completed installations will be provided to COMPANY from Contractor.
- After successful inspection by COMPANY staff, and once all

terms and conditions are found to have been met by the program administrators and its participants, incentives COMPANY will be paid directly to the customer or the customer's designee.

- An incentive release form must be received from the end use customer for payment distribution to third-parties
- The total incentive will paid at rate of \$150/kW.
- Considerations will be made for changes to the incentive amounts at the sole discretion of COMPANY and will require written documentation as to the need for alternate incentive rates. COMPANY will provide written approval the Contractor.
- All documentation is retained by the Contractor for a period of 7 years, and made available upon request to program administrators and auditors.

**Due Date for Deliverable 1:** Within 1 month of notice to proceed/signed contract.

**Task 21: Measurement and Verification ("M&V")**

Contractor shall provide Measurement and Verification ("M&V") in the following manner:

The third party M&V Contractor for this program shall be AESC Inc located at 5927 Balfour Court, Suite 213, Carlsbad, CA 92008.

M&V data shall include 15 minute avg. kW, compressors on/off status, temperature, date and time stamp.

The measured kW will be totalized for the hours of 11 AM to 6 PM Monday to Friday. This sum shall be subtracted from the base load profile to arrive at the net load shift.

Existing load profile shall be recorded as above for 2 weeks and adjusted for seasonal temperature profile.

The M&V data shall include all refrigeration equipment associated with the specific cold storage area irrespective of some machines being tied to the control system.

The data shall include description of the cold storage facility, address, ownership, specific unit number, manufacturer, model and serial numbers of all refrigeration machines associated with the cold storage unit.

**Deliverable 1:** Contractor will visit the customer site, utilize onsite data collection equipment installed by Contractor and provide an M&V report to verify the actual kW reduction was achieved.

**Due Date for Deliverable 1:** Within 7 days of completion of Task 3.

**Deliverable 2:** Contractor shall submit an annual verification report on the actual load reduction at the customer site due to fly wheeling the freezers.

**Due Date for Deliverable 2:** Annually every year before Feb 1<sup>st</sup> of the year.

Task 22: Reporting

Contractor shall send quarterly status reports to COMPANY. This and live reduction will be available on the Contractor website concurrently.

**Deliverable 1:** Quarterly report of customers signed up for PLS

**Due Date for Deliverable 1:** End of every quarter.

**Deliverable 2:** Quarterly report of implementation activities

**Due Date for Deliverable 2:** End of every quarter.

**Deliverable 3:** Quarterly report of permanent load shifting achieved

**Due Date for Deliverable 3:** End of every quarter.

Task 23: Respond to miscellaneous utility/CPUC data requests

**Deliverable 1:** Contractor shall respond to any COMPANY data request and deliver information per COMPANY deadline. In cases where a more detailed explanation is required, Contractor will draft a narrative and shall be provided to accompany the data. If requested by COMPANY, Contractor will also provide the response directly to the CPUC staff. If approved by COMPANY, responses to follow-up requests made directly to the implementer by CPUC staff or the program evaluator may be sent simultaneously to COMPANY and the requestor. Otherwise, the implementer should direct all requests to the COMPANY program manager and provide all responses to the COMPANY program manager.

**Due Date for Deliverable 2:** Ongoing – billed in 1 annual payment

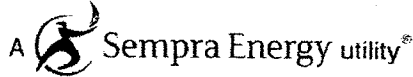
Task 24: Customer Support

**Deliverable 1:** The Customer Service Center (CSC) provides 24/7 support services to support the Refrigeration Module PLS Program. Pending completion of the final customer service implementation plan services would include:

- Customer enrollment & support calls/transactions for the PLS program participants
- Receive program inquires and potential customer complaints (phone, mail, fax, e-mail, web)
- Explain program parameters & advise market channel participants of information available on PLS website
- Enter relevant program, customer, feasibility study information into the Contractor Customer Relationship Management database
- Record contractor and unit installation information in the database
- Advise of available training and assisting in scheduling training
- Inform relevant parties of customer concerns, unit performance problems etc.
- Track feasibility, installation, commissioning and going performance

**Annual Cost**

<b>Cost</b>	<b>Year 2008</b>	<b>Year 2009</b>	<b>Year 2010</b>	<b>Year 2011</b>
Equipment	\$189,000	\$105,000	\$0	\$0
Installation	\$171,000	\$95,000	\$0	\$0
M&V (Third Party)	\$22,500	\$35,000	\$35,000	\$35,000
Program Administration	\$47,400	\$50,400	\$50,400	\$50,400
Incentive	\$121,500	\$189,000	\$189,000	\$189,000
Other (Marketing Collateral)	\$21,500	\$0	\$0	\$0
<b>Total Cost per Year</b>	<b>\$572,900</b>	<b>\$474,400</b>	<b>\$274,400</b>	<b>\$274,400</b>



EXECUTED COPY

COPY

**San Diego Gas & Electric Company Standard Service Agreement for Labor and/or Services**

<b>PROJECT:</b>	<b>Cypress - Permanent Load Shifting (2008 - 2011)</b>	
<b>CONTRACTOR:</b>	<b>CYPRESS LTD</b> 7 RUE DELACROIX COTO DE CAZA, CA 92679	<i>MAIL ORIGINAL AND DUPLICATE INVOICE TO</i> <b>San Diego Gas &amp; Electric Company</b> <b>ACCOUNTS PAYABLE</b> <b>P.O. BOX 129007</b> <b>San Diego, CA - 92112</b>

This Standard Service Agreement ("Agreement") is made effective as of 1/1/2008 between San Diego Gas & Electric Company ("Company") and CYPRESS LTD ("Contractor").

The Parties hereby agree as follows:

**SCOPE**

Contractor shall perform, at its own proper cost and expense, in the most substantial and skillful manner, to the satisfaction of Company, the following generally described services ("Services"):

**1.1 Work**

Contractor shall perform, at its own proper cost and expense, in the most substantial and skillful manner, to the satisfaction of Company, the services or work (collectively, "Services" or "Work"), including the scope of work, specifications, schedule of milestones and deliverables, and performance standards as described in SCHEDULE B-SCOPE OF WORK/PERMANENT LOAD SHIFTING (hereinafter, the "Scope of Work").

**1.2 Non-Exclusive Work**

It is mutually understood that this Agreement does not preclude Company from awarding any Work covered by this Agreement to any other contractor nor performing such Work itself, and Company shall not be obligated to give Contractor any specific volume of Work hereunder.

**PROJECT LOCATION**

8315 Century Park Ct.  
San Diego, CA 92123

**AUTHORIZED REPRESENTATIVES**

Company designates the individual or individuals named below as Company Representatives

for all matters relating to the performance of the Services. The actions taken by the Company Representatives shall be deemed acts of the Company. Company may at any time upon written notice to Contractor change the designated Company Representative.

Company Representative: Shea Dibble

Contractor designates the individual or individuals named below as Contractor Representative for all matters relating to the performance of Services. The actions taken by Contractor Representative shall be deemed acts of Supplier. Contractor Representative or designated superintendent shall be at the jobsite at all times during the Services. Contractor may at any time upon written notice to Company change the designated Contractor Representative.

Contractor Representative: Tom Smolarek

**COMPENSATION**

In accordance with the Compensation Article, Contractor shall be compensated for a not-to-exceed ("NTE") price of \$2,000,000.00 for performance of the Services in accordance with this Agreement, comprised as follows: (a) a fixed price of \$752,000.00 will be paid for administrative and marketing duties and (b) reimbursement of customer incentives at an average price of \$730.78 per kW (and not to exceed \$1,248,000 in the aggregate), all as further described as follows:

	2008												2009												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
Program Finalization																									
Tasks 1 - 12	[Gantt chart bars]																								\$75,200
13 Customer acquisition	[Gantt chart bars]																								\$159,540
14 Messages	[Gantt chart bars]																								\$22,560
15 Materials	[Gantt chart bars]																								\$37,600
16 Applications and agreements	[Gantt chart bars]																								\$15,040
17 Customer & Site Qualification	[Gantt chart bars]																								\$30,080
18 Direct Customer Marketing	[Gantt chart bars]																								\$75,200
19 Feasibility Analysis	[Gantt chart bars]																								\$26,320
20 Tracking & Reporting	[Gantt chart bars]																								\$195,520
21 Task not use																									\$0
22 Incentive Admin	[Gantt chart bars]																								\$11,280
23 M&V	[Gantt chart bars]																								\$43,500
24 Data Requests	[Gantt chart bars]																								\$7,520
25 Customer Services	[Gantt chart bars]																								\$52,640

Task	Description	Billing Duration Months	One-Time Cost
1-12	Program Finalization Plan	3	\$75,200.00
1	Program administration duties		
2	Utility approval requirements		
3	Reports and Communication		
4	Fine tune incentive calcs		
5	M&V		
6	Feasibility requirements		
7	Marketing plan		
8	Quality Assurance & Inspection		
9	Products to be deployed		
10	Feasibility study requirements		



- 11 Channel to market and training
- 12 Customer Support

**Program Implementation**

13	Customer acquisition	10	\$159,540
14	Messages	4	\$22,560
15	Materials	4	\$37,600
16	Customer applications and agreements	3	\$15,040
17	Customer & Site Qualification	18	\$30,080
18	Direct Customer Marketing	18	\$75,200
19	Feasibility Analysis	10	\$26,320
20	Tracking & Reporting	5	\$195,520
21	Task not use		\$0
22	Incentive Admin	24	\$11,280
23	M&V		\$43,500
24	Data Requests	1	\$7,520
25	Customer Services	24	\$52,640
		Total Admin	<b>\$752,000</b>
		Customer Incentives (\$730.68/kW)	<b>\$1,248,000</b>
		Total Project	<b>\$2,000,000</b>

**COMMENCEMENT AND COMPLETION OF SERVICES**

This Agreement shall commence as of 1/1/2008 and shall be in full force and effect through 12/31/2011, unless terminated earlier by Company in accordance with the terms of this Agreement. Contractor agrees to commence and perform the Services in accordance with the requests of Company Representative identified herein. The nature of the Services is such that timely performance is critical to the orderly progress of related work and to the operating schedule of Company.

**INVOICING AND PAYMENT**

Contractor shall invoice Company on a monthly basis in accordance with the Compensation Article and completion of tasks in **SCHEDULE B - SCOPE OF WORK/PERMANENT LOAD SHIFTING**. All invoices submitted shall reference the Standard Service Agreement Number and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.

Monthly invoices shall be submitted not later than the twentieth (20th) day of each month, which shall be based upon (a) the percentage completion of administrative, marketing and implementation tasks performed during the previous month (as reviewed and approved by Company) and (b) customer incentive paid to Company customers as mutually agreed upon by Contractor Representative and Company Representative.

Subject to the retention below, Company shall make payment Net 30 days after receipt and approval of an undisputed invoice to the following address or to the address on each Release, if applicable:

7 RUE DELACROIX  
COTO DE CAZA, CA 92679

Company shall have the right to retain percent (10%) ("Retention") of each invoice, which Retention related to any particular task shall be paid thirty (30) days after Final Acceptance

- of such task. "Final Acceptance" of any tasks shall be conditioned upon the following:
- A written statement requesting final acceptance of the task submitted to the Company Representative by Contractor, with a request for acknowledgment.
  - Company shall conduct a final inspection and issue a report to Contractor that identifies any deficient or non-complying work relative to the standards of the Agreement, any outstanding tasks and customer incentive measures included in Contractor's scope, and any outstanding deliverables required by the Agreement.
  - Execution of the acknowledgment shall constitute "Final Acceptance," but shall not waive Contractor's responsibility to correct defects in the tasks upon discovery by Company.

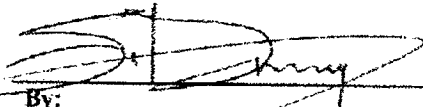
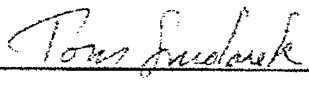
**COMPLETE AGREEMENT**

This Agreement, including all Schedules attached hereto and which are incorporated by reference, constitutes the complete and entire Agreement between the parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein. **THE PARTIES HEREBY AGREE THAT NO TRADE USAGE; PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.** The following Schedules are attached hereto and incorporated herein by this reference:

**SCHEDULE A - GENERAL TERMS AND CONDITIONS**

**SCHEDULE B - SCOPE OF WORK/PERMANENT LOAD SHIFTING**

IN WITNESS WHEREOF, the parties have executed this Agreement as of ~~1/1~~ 2008. 3/26/08

San Diego Gas & Electric Company	CYPRESS LTD
	
By:	By:
Name: SCOTT GRAY	Name: Tom Smolarek
Title: DIRECTOR	Title: President

## SCHEDULE A - GENERAL TERMS AND CONDITIONS

- 1 **PARTIES.** This Standard Service Agreement ("Agreement") is entered into between Company and Contractor. Contractor is the firm, person, corporation, or business entity performing the work specified in this Agreement.
- 2 **CONTRACT FORMATION.** By this Agreement, Company offers to contract with Contractor solely upon the terms and conditions stated herein. Any additional or different terms and conditions proposed by Contractor prior to the execution of this Agreement are not agreed to, and hereby expressly rejected. Any additional or different terms and conditions proposed by Contractor after the date of this Agreement shall be of no force and effect unless expressly agreed to in writing by Company. Contractor accepts and shall be bound by the terms and conditions of this Agreement upon the earlier of (a) the date on which it executes and returns the acknowledgment copy or (b) when it commences performance. No other form of acceptance shall be binding on Company.
- 3 **CHANGE ORDERS.** Company may at any time, in writing, direct or authorize Contractor to make changes or modifications to the work within the general scope of this Agreement. If such changes or modifications necessitate (a) an increase, or (b) decrease in the amount due, or (c) the nature or quantity of the goods and services or (d) in the time required for performance, or (e) otherwise, such matters shall be agreed upon in writing prior to proceeding with the change. No payment shall be required from Company for any change or modification which is not authorized in writing.
- 4 **INVOICING.** If Contractor's invoice price does not match the Agreement price, Company shall pay Contractor the lesser of the amount payable under the Order or the Invoice. Contractor will be notified of the reason for the adjustment. When Contractor is considered to be a retailer, Contractor's invoices shall properly identify California sales or use tax as a sales or use tax, and separately state the amount of such tax and any freight, installation, technical service or other charge which is excludable from such tax.
- 5 **PERFORMANCE.** Contractor shall perform the Services in accordance with established professional business standards and ethics and in conformity with each and every term of this Agreement. Contractor shall remedy any and all deficiencies in its Services that result from Contractor's failure to adhere to the Scope of Work.
- 6 **WARRANTIES.** Contractor expressly represents and warrants that all the Services performed hereunder shall be in compliance with the performance standards, drawings, specifications and any other description of services set forth in the Scope of Work, and the terms and conditions of this Agreement. Company may reject any Services furnished hereunder failing to meet such standards, and require Contractor to promptly repeat, correct or replace such defective Services, at NO charge to Company\* or, at Company's election, Company may hire a third party to complete the Services at Contractor's expense. Contractor further warrants and agrees that none of the material to be furnished by Contractor and its subcontractors, if any, in the performance of the Scope of Work shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available.
- 7 **INSPECTION.** All Services performed by Contractor shall be subject to the inspection and approval of Company at all times, but such right of inspection of the Services shall not relieve Contractor of responsibility for the proper performance of the Services, nor shall such inspection waive Company's right to reject the Services at a later date. Contractor shall provide Company access to Contractor's facility or facilities where the Services are being performed and sufficient, safe and proper work conditions for such inspection. Contractor shall furnish Company such information concerning its operations and/or the performance of the Services as Company may request.
- 8 **ADHERENCE TO COMPANY'S RULES.** Contractor shall conduct its operations in strict observation of access routes, entrance gates or doors, parking and temporary storage areas as designated by Company. Under no circumstances shall any of Contractor's personnel, vehicles or equipment enter, move or be stored upon any area not authorized in writing by Company.
- 9 **COMPANY SECURITY PROCEDURES.** Contractor shall abide by all Company Security procedures, rules and regulations and shall cooperate with Company Security personnel whenever on Company's property whether owned or leased.
- 10 **ANTI-CONDUIT RULES.** Contractor understands that the California Public Utilities Commission ("CPUC") and the Federal Energy Regulatory Commission ("FERC") have issued certain Affiliate Transaction Rules including, without limitation, the anti-conduit procedures contained in CPUC Decisions ("D") 97-12-088 as modified by D.98-08-035 (go to: <http://www.cpuc.ca.gov/static/energy/electric/electric+markets/affiliate.htm>) and FERC Order No. 2004 (go to: <http://www.ferc.gov/legal/mai-ord-reg/land-docs/order2004.asp>) (the "Rules"). Company's affiliates include Southern California Gas Company and San Diego Gas & Electric Company and Contractor understands and agrees that Contractor shall not be a conduit under the Rules and will refrain, and cause its permitted subcontractors to refrain, from taking any action that could reasonably constitute a conduit to circumvent the Rules. The term "conduit" means doing indirectly what the Rules forbid being done directly and includes actions that could provide a means for the transfer of confidential information from San Diego Gas & Electric Company or Southern California Gas Company to other Sempra Energy subsidiaries, including Company, or vice versa.
- 11 **INDEPENDENT CONTRACTOR.** It is agreed that Contractor shall perform the Services under this Agreement as an independent contractor and no principal-agent or employer-employee relationship or joint-venture or partnership shall be created with Company. Contractor represents to Company that Contractor and its subcontractors and agents are properly licensed, fully experienced and qualified (including having all necessary authorizations) to perform the class and type of the Services as specified in this Agreement, in addition to being properly insured, equipped, organized, staffed and financed to handle such Services. Contractor shall perform the Services in an orderly and professional manner in accordance with industry standards. Contractor shall not employ for the Services any personnel or subcontractor unskilled in the work assigned. Contractor shall use prudent business practices in its relationships with subcontractors, suppliers and agents.
- 12 **OWNERSHIP OF INTELLECTUAL PROPERTY.** Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, enhancement, modification, development or discovery (hereinafter, collectively, "invention"), whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that Contractor may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Services shall be owned by Company and shall be delivered to Company upon completion of the Services. Contractor agrees that any copyrightable invention, including without limitation, Contractor's preliminary formulations and other work on which the copyrightable invention is based on or derived from, shall constitute a "work made for hire". Contractor hereby assigns and grants to Company, without royalty or any further consideration, Contractor's entire right, title and interest in and to any such inventions, including any work made for hire. At Company's request, Contractor shall execute an assignment or other document confirming such transfer upon the completion of any work made for hire.
- 12.1 Contractor hereby grants to Company an irrevocable, assignable, nonexclusive royalty-free unrestricted license to use, copy, distribute and make derivatives of any proprietary rights or specialized knowledge of Contractor that are part of any "Work Product" (defined below) furnished by Contractor to Company under this Agreement.
- 12.2 If requested by Company, Contractor agrees to take all actions necessary, at Company's sole cost and expense, to obtain, maintain or enforce patents, copyrights, trade secrets and other proprietary rights in connection with any invention, and Contractor agrees that its obligations under this Article shall survive termination or expiration of this Agreement.
- 12.3 Any and all material and tangibly expressed information prepared, accumulated or developed by Contractor, any subcontractor or their respective employees or representatives, including, without limitation, documents, drawings, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith (hereinafter, collectively "Work Product"), shall become the sole property of Company without any further consideration to be provided therefore when (i) prepared or in process, in connection with the Services and (ii) whether or not delivered by Contractor. Contractor shall deliver the Work Product, or any portion thereof, to the Company on request, together with any other requested materials and/or equipment furnished to Contractor by Company hereunder, and, in any event, upon termination or expiration of this Agreement.
- 13 **INDEMNITY.**
- 13.1 As between Company and Contractor, Contractor shall be solely responsible for and Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever resulting from: (a) injuries to or death of any and all individuals, including, without limitation, members of

the general public, or any employee, agent, independent contractor or consultant or affiliate of either Company or Contractor, arising out of or connected in any manner with Contractor's performance of Services, (b) damage to, loss, and/or destruction of property, including, without limitation, to, property of Company or Contractor arising out of or connected in any manner with Contractor's performance of Services, or (c) third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any manner to Contractor's or any of its subcontractor's acts or omissions in breach of this Agreement. This indemnification obligation shall not apply to the extent that injuries, death, loss, damage or destruction is caused by either the willful misconduct of Company or Company's sole negligence.

13.2 Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including reasonable attorneys' fees (including fees and disbursements of in-house and outside counsel), of any kind whatsoever arising from or in connection with: (a) actual or alleged infringement or misappropriation by Contractor or any subcontractor or other representative of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the Services, including without limitation, any deliverable or related "work product"; and (b) Contractor's violation of any third party license to use intellectual property in connection with the Services, including, without limitation, any deliverable or related "work product."

13.3 If any claim or action is brought against Company arising out of or related to this Agreement or the Services provided hereunder, then Contractor shall assume the defense of such claim or action, with counsel reasonably acceptable to Company, unless in the opinion of counsel for Company a conflict of interest between Company and Contractor may exist with respect to such claim or action. If a conflict precludes Contractor from assuming the defense, then Contractor shall reimburse Company on a monthly basis for Company's defense costs through separate counsel of Company's choice. If Contractor assumes the defense of Company with acceptable counsel, Company, at its sole option and expense, may participate in the defense with counsel of Company's own choice without relieving Contractor of any of its obligations hereunder.

13.4 Contractor's obligation to indemnify Company under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, penalty or benefits payable by or for Contractor under any statutory scheme, including without limitation, any Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

**14. INSURANCE.**

**GENERAL REQUIREMENTS.** Insurance requirements are set forth as follows, but shall not in any way limit the amount or scope of liability of Contractor under this Agreement. This Article 14. constitutes the minimum insurance and requirements relating thereto.

14.1 **EFFECTIVENESS, CERTIFICATES, NOTICE OF CANCELLATION.** On or before the effective date of this Agreement, and thereafter during its term, Contractor shall provide Company with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Article. Contractor shall not commence Services until Contractor has obtained all insurance required by this Article and has provided acceptable certificates of insurance. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to Company, ten (10) days for non-payment of premium. Contractor shall provide Company with renewal certificates of insurance or binders within five (5) business days prior to or after such expiration. Insurance shall be maintained without lapse in coverage during the term of this Agreement. Company shall also be given certified copies of Contractor's policies of insurance, upon request.

14.2 **AS CONTRIBUTION FROM COMPANY.** The required policies, and any of Contractor's policies providing coverage excess of the required policies, shall provide that the coverage is primary for all purposes and Contractor shall not seek any contribution from any insurance or self-insurance maintained by Company.

14.3 **RATING.** All required policies of insurance shall be written by companies having an A. M. Best rating of "A - VII" or better, or equivalent.

14.4 **DEDUCTIBLE.** Contractor shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.

14.5 **ADDITIONAL INSURED.** San Diego Gas & Electric Company and its parent company, and its subsidiaries, affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns shall be named as an additional insured for all policies listed below in 14.7.1 and 14.7.4. Commercial General Liability Insurance listed in 14.6.1 shall provide a severability of interest or cross-liability clause.

14.6 **Waiver of Subrogation.** Each policy of insurance maintained by Contractor below in sections 14.7.1, 14.7.3 and 14.7.4 shall contain a waiver of subrogation in favor of San Diego Gas & Electric Company.

14.7 Types of insurance required to be provided by Contractor:

14.7.1 **Commercial General Liability Insurance.** Contractor shall carry and maintain an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Contractor for Work performed under this Agreement. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$1,000,000.00 per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

14.7.2 **Commercial Automobile Liability Insurance.** Contractor shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property, (including loss of use thereof), and occurring in any way related to the use by or on behalf of Contractor, in pursuit of the Services, including loading or unloading of any of Contractor's automobiles (including owned, non-owned, leased, rented/or hired vehicles). Such coverage shall be in an amount of not less than \$1,000,000.00 combined single limit.

14.7.3 **Workers' Compensation & Employers' Liability Insurance.** In accordance with the laws of the State(s) in which the Work shall be performed, Contractor shall maintain in force workers' compensation insurance for all of its employees. If applicable, Contractor shall obtain U.S. Longshoremen's and Harbor Workers compensation insurance, separately, or as an endorsement to workers' compensation insurance. Contractor shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 per accident and per employee for disease. In lieu of such insurance, Contractor may maintain a self-insurance program meeting the requirements of the State(s) in which the Services shall be performed along with the required Employer's Liability insurance.

14.7.4 **Pollution Liability Insurance.** If applicable to scope of work under this Agreement, Contractor shall maintain pollution liability insurance or insurance policies insuring against liability arising out of activities contemplated under this Agreement or as might be required by federal, state, regional, municipal and local laws, in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.7.5 **Professional Liability Insurance.** If the Contractor is providing professional design, engineering or other professional services (including Design-Build), Contractor shall maintain Professional Liability insurance covering liability arising out of error, omission, or negligent act in the performance, or lack thereof, of professional services contemplated under this Agreement in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.8 **Contractor's Subcontractors.** In accordance with the Article of this Agreement entitled "SUBCONTRACTORS", Contractor shall accept total responsibility to require all other persons, firms and corporations engaged or employed by Contractor in connection with the performance of the Scope of Work to carry and maintain coverage with limits not less than those required in this Article. Contractor shall incorporate insurance requirement by reference within any contract executed by Contractor and its subcontractors, sub-subcontractors, suppliers, and agents shall cause each subcontractor, sub-subcontractor, supplier, and agent to comply with the terms of this Agreement. Contractor will obtain and verify accuracy in their entirety of certificates of insurance evidencing required coverage prior to permitting its subcontractors, sub-subcontractors, suppliers, and agents from performing work or services on the property of Company. Contractor will furnish original certificates of insurance with additional insured endorsements from all of its subcontractors, sub-subcontractors, suppliers, and agents as evidence thereof as Company may reasonably request.

14.9 **Reports.** Contractor shall immediately report to Company, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Contractor or its consultants, subcontractors, sub-subcontractors, suppliers, agents or Contractor's receipt of notice or knowledge of any claim by a third party of any occurrence that might give rise to such a claim over \$100,000. Upon completion of Contractor's Services, Contractor shall submit to Company a written summary of all such injuries, losses, damage, notices or third party claims and occurrences that might give rise to such claims. Nil reports are required.

15 **SUPPLIER DIVERSITY.** It is the policy of Company to provide maximum opportunity for women; minority and service disabled veteran business enterprises, hereinafter referred to as DBE (Diverse Business Enterprises), to participate in the performance of contracts. Company expects as satisfactory performance to this Agreement, Contractor to utilize DBE subcontractors and suppliers and to use good faith efforts to set and attain goals in parity with Company goals when contracting for work with Company. Contractor shall submit on a timely basis any documentation required by Company to report Contractor's DBE expenditures in connection with this Agreement.

16 **ASSIGNMENT.** Contractor shall give personal attention to the execution of the Services herein provided for, and shall not permit this Agreement to be assigned voluntarily, involuntarily or by operation of law; nor employ any subcontractor for the execution of the same or any part thereof, without the express prior written authorization of Company. No such written authorization, however, shall be construed as discharging or releasing Contractor in any way from the performance of the Services or the fulfillment of any obligation specified in this Agreement. Contractor shall remain jointly and severally liable with any permitted assignee for any failure to comply fully with all applicable obligations hereunder this Agreement. Company may assign in whole or in part its rights and obligations under this Agreement at any time without the consent of Contractor.

17 **TIME.** Time is expressly agreed to be of the essence in any performance related to this Agreement and each, every and all of the terms, conditions and provisions herein.

18 **GOVERNING LAW.** The formation, interpretation, performance and enforcement of this Agreement shall be governed by and enforced under the laws of the State of California, without reference to principles of conflicts of laws.

19 **COMPLIANCE WITH LAWS.** Contractor and its subcontractors at all times during performance of the Services shall comply with and observe, all applicable federal, state, regional, municipal and local laws, ordinances, rules, codes, regulations, executive orders, applicable employment, safety and environmental orders and any applicable orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor, Company or the Services furnished under this Agreement, as in effect from time to time, including, but not limited to, the Immigration Control Act of 1968 and the Foreign Corrupt Practices Act (15 USCS §§ 78A and 78m et seq).

20 **TERMINATION.** It is also expressly agreed that Company shall have the right to terminate this Agreement, or any part thereof, at any time for its sole convenience upon two (2) business days written notice to Contractor. Contractor shall fully justify and document to Company in writing any termination charges claimed by Contractor (which shall not exceed 110% of the reasonable and actual cost already incurred of direct labor, materials and overhead). In no event shall Contractor be entitled to payment for any Services which has not been authorized by Company, or is not yet performed, or any anticipated profits for any Services that have not been authorized or performed. Any payment of termination charges shall occur within thirty (30) days of receipt of Contractor's written submittal of charges and justification to Company's satisfaction. Company shall have the right to review and verify by independent audit, any termination charges claimed by Contractor prior to payment.

21 **LIENS.** Without limiting the generality of any other provisions herein, Contractor shall indemnify, defend, and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any mechanics lien or stop notice claim against Company by Contractor, subcontractors, employees or agents pertaining to the Services specified in this Agreement. If Contractor fails to remove or discharge by bond, payment or otherwise any lien or claim within five (5) business days after Company's written demand to do so, Company may offset the compensation otherwise payable to Contractor under this Agreement or any other agreement in order to pay such liens directly.

22 **RETENTION.** Company shall have the right to withhold a retention from payments due Contractor. The amount of the retention shall be paid within 45 days after completion as defined by California Civil Code Section 3260. Provided, however, the Company may require Contractor to provide conditional or unconditional lien releases, as a condition to withhold the retention and such additional amounts due Contractor as necessary until such liens have been satisfied by Contractor. In addition, Company may use the retention to satisfy directly the claim of any lienor.

23 **AUDIT.** Company reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any Services performed under this Agreement. Any such audit or examination may be undertaken by Company or its contracted representative at reasonable times during normal business hours and in conformance with generally accepted auditing standards. Contractor agrees to fully cooperate with any such audit(s).

23.1 Contractor shall include a similar clause in its arrangements with its subcontractors reserving the right to designate Contractor's own employee representative(s), its contracted representative(s) from a certified public accounting firm, and/or representative(s) from Company, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item related to the Services.

23.2 Contractor shall be notified in writing of any exception taken as a result of an audit of Contractor or a subcontractor. Contractor shall refund the amount of any exception to Company within ten (10) days. If Contractor fails to make such payment, Contractor shall pay interest on any unpaid portion of such payment, accruing monthly, at a rate equal to the lesser of ten percent (10%) per annum or the maximum lawful rate. Interest shall be computed from the date of written notification of exception(s) to the date Contractor reimburses Company in full for any exception(s). In the event an audit in accordance with this Article discloses an overcharge of five percent (5%) or greater, then Contractor shall reimburse Company for the cost for the performance of such audit.

23.3 Company's right to audit shall extend for a period of five (5) years following the date of final payment under this Agreement. Contractor and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

24 **TAXES.** Contractor assumes exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by the equipment, materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with, the performance of the Services. Provided that the conditions of indemnification as set forth in this Agreement are satisfied, Contractor shall indemnify, defend and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any claim, liability, penalty, interest and expense arising by reason of Contractor's failure to pay such taxes, charges or contributions.

24.1 Without limiting the generality of this Article, Contractor agrees to treat all individuals performing the Services under this Agreement as employees of Contractor for purposes of federal and state income taxes, Social Security and Medicare taxes, unemployment and disability insurance premiums. No exceptions shall be permitted under this Article without a written Amendment to this Agreement prior to any individual performing any required Services under this Agreement. Contractor agrees that, at any time during the performance of this Agreement, Company shall have the right to audit Contractor's compliance with this provision in accordance with the Article entitled "AUDIT".

24.2 To the extent any portion of the Services are performed in the State of California, either (a) Contractor represents that Contractor is a California resident and shall provide Company with an original and a copy of Form 590, Certificate of Residence, in accordance with California Revenue and Taxation Code Section 18662 and regulations thereunder; or (b) seven percent (7%) of all compensation payable to Contractor for Services performed in California shall be withheld in accordance with applicable California Franchise Tax Board ("FTB") or successor regulations, unless Company has been notified in writing by FTB that withholding is waived or a lower rate or withholding is authorized.

24.3 Contractor and Company shall make commercially reasonable efforts to cooperate with each other to minimize the tax liability of both parties to the extent legally permissible (and with no duty to increase either parties tax liability), including separately stating taxable charges on Contractor's invoices and supplying resale and exemption certificates, if applicable, and any other information as reasonably requested.

24.4 Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, the Parties acknowledge and agree that: (i) any obligations of confidentiality contained herein and therein do not apply and have not applied from the commencement of discussions between the Parties to the tax treatment and tax structure of any transaction related to the Services or any other transactions or arrangements; and (ii) each Party (and each of its employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that the foregoing is not intended to affect any privileges that each Party is entitled, in its sole discretion, to maintain, including with respect to any confidential communications with its attorney or any confidential communications with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code.

25 **VALIDITY.** The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.

26 **DISPUTES.** Any dispute that cannot be resolved between Contractor Representative and Company Representative shall be referred to Company Director – Supply Management and an officer of Contractor for resolution. If Company and Contractor cannot reach an agreement within a reasonable period of time, Company and Contractor shall have the right to pursue litigation as provided for herein. In no event shall the litigation of any controversy or the settlement thereof delay the performance of this Agreement.

26.1 In the event of any litigation to enforce or interpret any terms of this Agreement, unless the parties agree in writing otherwise, such action shall be brought in any Superior Court of California having jurisdiction (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Southern District of California), and the parties hereby submit to the exclusive jurisdiction of said court.

26.2 In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, (including expert testimony) and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing party.

27 **CONFIDENTIALITY.** For purposes of this Agreement, the term "Confidential Information" means proprietary information concerning the business, operations and assets of Company its parent company(ies), subsidiaries and/or affiliates, including, without limitation, the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of Services under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information shall not include: (a) information known to Contractor prior to obtaining the same from Company; (b) information in the public domain at the time of disclosure by Contractor; (c) information obtained by Contractor from a third party who did not receive same, directly or indirectly, from Company; or (d) information approved for release by express prior written consent of an authorized officer of Company. Contractor shall have the burden of proof in establishing that its use of Company information is permitted by (a), (b), (c) and/or (d) of this provision.

27.1 Contractor hereby agrees that it shall use the Confidential Information solely for the purpose of performing Services under this Agreement and not in any way detrimental to Company, its parent company(ies), subsidiaries and/or affiliates. Neither Contractor nor its directors, officers, employees, agents or representatives shall use the Confidential Information for their own benefit.

27.2 Contractor agrees to use at least the same degree of care Contractor uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Contractor shall keep confidential and not disclose the Confidential Information. Contractor shall cause each of its directors, officers, employees, agents, representatives, subcontractors and suppliers to become familiar with, and abide by, the terms of this Agreement.

27.3 Notwithstanding any other provisions of this Article, Contractor may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Contractor is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency or regulatory authority. Prior to making or permitting any such disclosure, Contractor shall provide Company with prompt written notice of any such requirement so that Company (with Contractor's assistance if requested by Company) may seek a protective order or other appropriate remedy.

27.4 Subject to Section 27.2, Contractor shall not, without the prior written consent of Company, disclose to any third party the fact that such Confidential Information has been made available to Contractor.

27.5 At any time upon the request of Company, Contractor shall promptly deliver to Company or destroy if so directed by Company (with such destruction to be certified to Company) all documents (and all copies thereof, however stored) furnished to or prepared by Contractor that contain Confidential Information and all other documents in Contractor's possession that contain or that are based on or derived from Confidential Information.

27.6 Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is five (5) years after the date of disclosure of such Confidential Information.

27.7 The parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Contractor are specifically enforceable. Accordingly, the parties agree that in the event of a breach or threatened breach of this Agreement by Contractor, Company, its parent company(ies), subsidiaries and/or affiliates, who shall be third party beneficiaries of this Agreement, shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to Company, its direct and indirect parent company(ies), subsidiaries or affiliates.

28. ENVIRONMENTAL TERMS

28.1 **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

28.2 **"Hazardous Materials"** means any chemical, substance, material, controlled substance, object, product, by-product, residual, condition, solid, gas or waste or combination thereof which is hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or effects. Hazardous Materials include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, and substances defined as "hazardous substances," "hazardous material," "hazardous wastes," or "toxic substances" in, under or pursuant to any Environmental Law (as that term is defined below). "Hazardous Materials" shall also include oil or petroleum and petroleum products, asbestos, and any asbestos containing materials, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which now are, or become in the future, listed, defined or regulated in any manner by any Environmental Law (as that term is defined below). For purposes of this Agreement, the terms "encumbrance" and "encroachment" shall not be deemed to include the presence of any Hazardous Material contamination on, in or under the Property or its underlying groundwater.

28.3 **"Environmental Law"** means applicable federal, state, regional, county or local law, regulation, decision of the courts, ordinance, rule, code, order, directive, guideline, permit, or permit conditions which, now or in the future, relate in any way to worker or workplace safety, environmental conditions, environmental quality or policy, or health and safety issues or concerns (including product safety). Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 USC, §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC, §§6901 et seq.), the Federal Water Pollution Control Act (33 USC §§ 1251 et seq.), the Safe Drinking Water Act (42 USC §§300 et seq.), the Hazardous Materials Transportation Act (49 USC §§ 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code, §§25300 et seq.), the Toxic Substance Control Act (15 USC §§2601, et seq.), the California Hazardous Waste Control Law (California Health & Safety Code, §§25100 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), the Safe Drinking Water and Toxic Enforcement Act (California Health & Safety Code §§25249.5, et seq.), the California Occupational Safety and Health Act (California Labor Code §§6300 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), and applicable regulations or rules promulgated thereunder.

28.4 **"Governmental Agency"** shall mean any federal, state regional, municipal or local governmental agency or other public or political body having the jurisdiction, mandate, authority or power to regulate, implement, coordinate, administer or enforce any Environmental Law.

28.5 **"Materials and Licenses"** Supplier agrees that all materials and equipment to be supplied or used by Supplier, its subcontractors, if any, in the performance of its obligations under this Agreement, including, but not limited to vehicles, loading equipment, and containers, shall be in good condition and fit for the use(s) for which they are employed by Supplier or its subcontractor, if any. Supplier further agrees that none of the materials to be supplied or used by Supplier and its subcontractors, if any, in the performance of its obligations under this Agreement shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available. The materials, equipment and Services shall comply with all applicable Environmental Laws as of its delivery and installation and Supplier shall comply with applicable provisions of Environmental Laws, including, but not limited to, providing any Proposition 65 warnings and Material Safety Data Sheets. All materials and equipment used in the Services (including any warranty re-installation) shall at all times be maintained, inspected and operated as required by applicable Environmental Law. Supplier further agrees that all licenses, permits, registrations

and certificates or other approvals required by any Environmental Law or Governmental Agency shall be procured and maintained for such materials and equipment at all times during the use of the same by Supplier or its subcontractors, if any, in the performance of any of Supplier's obligations under this Agreement.

28.6. **"Duty to Comply with Laws"** Supplier specifically agrees that in the performance of its obligations under this Agreement, Supplier shall at all times fully comply with and cause each of its subcontractors, if any, to fully comply with all applicable Environmental Laws. Supplier further agrees that Supplier shall have and cause its subcontractors, if any, to have and keep in effect all licenses, permits, registrations, certificates, training, and approvals required by any Environmental Law or by any Governmental Agency for the Services undertaken by Supplier or its subcontractors, if any, in the performance of Supplier's obligations under this Agreement.

28.7. **"Indemnification"** Supplier hereby specifically agrees to indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, demands, causes of action, costs and expenses including, but not limited to, all reasonable consulting, engineering, attorneys (in-house and outside counsel) or other professional fees including disbursements, which Indemnitees, or any of them, may incur or suffer by reason of:

- (1) any unauthorized release of a Hazardous Material;
  - (2) any enforcement or compliance proceeding commenced by or in the name of any Governmental Agency because of an alleged, threatened or actual violation of any Environmental Law;
  - (3) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Environmental Law; and/or
  - (4) any other cause of whatsoever nature;
- arising out of or in any way connected with Supplier's performance under this Agreement, except to the extent the same were caused by the willful misconduct or sole negligence of the Indemnitees.

28.8. **"Release"** In the event of any unauthorized release of a Hazardous Material, Supplier shall perform the following actions:

- (1) Take all reasonable steps necessary to stop and contain said release;
- (2) Make any report of such release as required under Environmental Law;
- (3) Clean up such release as required by the applicable Governmental Agency.

28.9. **"Notification"** Supplier shall immediately notify Company Representative of the following upon the occurrence of any unauthorized release of Hazardous Material in connection with the Services:

- (1) A description of the release;
- (2) The identification of the Hazardous Material and the volume released;
- (3) Death of any person;
- (4) Property damage;
- (5) Any communication from any Governmental Agency that alleges that Supplier is not acting in compliance with Environmental Law.
- (6) Any communication from any Governmental Agency that affects any of Company's Supplier's, or any subcontractor's permits or licenses.

28.10. **"Reports"** Supplier shall submit within 36 hours of the unauthorized release to Company Representative a written report, in a format required by Company describing in detail any event of any unauthorized release of a Hazardous Material which shall include the following information:

- (1) Name and address of Supplier and any subcontractor(s) involved.
- (2) Name and address of Supplier's commercial and environmental liability insurance carrier.
- (3) Name and address of any injured or deceased persons, if applicable.
- (4) Name and address of any property damage, if applicable.
- (5) A detailed description of the release including the identification of the Hazardous Material, the date and time of the release, the volume released, and the nature of the any environmental contamination.
- (6) A determination of whether any of Company's personnel, equipment, tools or materials were involved.
- (7) A detailed description of all reports made to any Governmental Agency, and a description of the actions taken to respond to the release.

28.11. **"No Transportation of Company's Hazardous Material"** Supplier shall NOT (a) transport any Hazardous Material that Company generated for purposes of treatment, storage, recycling and/or disposal; or (b) conduct any treatment, storage, recycling and/or disposal of any Company generated Hazardous Material unless specifically authorized by Company to perform such activities in writing. If Supplier is authorized by Company to perform such activities then the following terms and conditions shall apply:

28.12. **"Authorized Treatment Facility"** Supplier shall not transport any Company generated Hazardous Material to any treatment, storage, recycling and/or disposal facility (hereinafter called "TSDF") not authorized by Company in writing. Prior to transporting Company generated Hazardous Material in each case, Supplier shall confirm that the TSDF has procured and maintained in effect all licenses, permits, registrations, certificates or other authorizations required by any Environmental Law or Governmental Agency to lawfully receive, handle, transport, store, treat, recycle, incinerate, dispose of, or otherwise manage or use such Hazardous Material. Supplier shall not transport any Company generated Hazardous Material to any TSDF which is unable or fails to provide such confirmation and Supplier shall immediately notify Company. Company reserves the right at any time, in Company's sole discretion, to cancel its authorization of any TSDF by written notice to Supplier.

28.13. **"Hazardous Waste Manifest"** Company shall, when required by Environmental Law, provide Supplier with a complete and executed Hazardous Waste Manifest or other shipping documentation for Company generated Hazardous Material to be transported for treatment, storage, recycling and/or disposal. Supplier's transportation, recycling, treatment, storage, and/or disposal of any such Hazardous Material in accordance with this Agreement shall be documented by Supplier utilizing, among other things, the Hazardous Waste Manifest tracking system or other records as required by Environmental Law, copies of which shall be provided to Company within ten (10) days of shipment.

28.14. **"No Asbestos or Asbestos-Containing Materials (ACM)"** Supplier shall not supply, sell, deliver or furnish to Company any Products or Goods, pursuant to this Agreement, that contain asbestos or ACM in any concentration or amount whatsoever, unless otherwise consented to in writing by Company, on the basis that no feasible replacement Products or Goods (that do not contain asbestos or ACM) are available.

**29. HAZARDOUS MATERIALS**

29.1. **"Hazardous Materials and Toxic Chemicals"** Supplier shall provide the following to Company for each material which Supplier furnishes under this Agreement: (a) a completed Material Safety Data Sheet (MSDS) for each material which contains a *hazardous material* as defined above; and (b) a written statement for each material that is a Mixture or Trade Name Product which contains a *Toxic Chemical* subject to the reporting requirements of Section 313 or EPCRA (40 CFR Section 372 et seq.) including: (1) the name and associated CAS (Chemical Abstract Services Registry) number of the *Toxic Chemical*; (2) the specific concentration at which each such *Toxic Chemical* is present in each such Mixture or Trade Name Product; and (3) the weight of each such *Toxic Chemical* in each such Mixture or Trade Name Product. Supplier shall indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, administrative actions, judgments, costs or expenses including expert witness, consulting and attorneys' fees (including fees and disbursements of in-house and outside counsel) that Company suffers as a result of Supplier's failure to comply with these requirements.

29.2. **"Proposition 65"** If any part of the Services would require that a warning pursuant to Proposition 65 (California Health & Safety Code sections 25249.5, et seq.), be provided to exposed individuals, then Supplier shall provide such warning to those individuals, including but not limited to members of the public, Company's employees, Supplier's employees, and any subcontractor's employees.

**30. Use of Company Equipment**

In the event Company loans Contractor any equipment for use under this Agreement, title to said property shall remain in Company. Notwithstanding the foregoing, Contractor shall be responsible for loss, damage, destruction, theft, maintenance, and repair of said property while in the possession of Contractor. Prior to use, Contractor shall have inspected said property and have satisfied Contractor that the property is in good repair and working condition. Contractor shall only allow qualified personnel to operate said equipment. Contractor shall surrender possession of said equipment upon demand by Company.

31. **"REMEDIES"** Contractor agrees that if: (a) Contractor abandons the Services, or (b) Contractor shall become bankrupt or insolvent, or shall assign this Agreement, or sublet any part thereof, without the express prior written authorization of Company, or (c) Contractor, in the sole opinion of Company Representative, violates any of the provisions of this Agreement, or (d) Contractor executes this Agreement in bad faith, or (e) Contractor, in the sole opinion of the Company Representative is not performing the Services in accordance with the terms of this Agreement, Company may notify Contractor, to discontinue all or any part of the Services and Contractor shall thereupon discontinue the Services or such parts thereof. Company shall thereupon have the right to continue and complete the Services or any part thereof, by contract or otherwise, and

Contractor shall be liable to Company for any and all loss, penalties, fines, excess cost and consequential, special, incidental and indirect damages incurred by Company in completing the Services caused by Contractor's failure to execute the requirements of this Agreement. The remedies herein shall be inclusive and additional to any other rights or remedies in law or equity, and no action by Company shall constitute a waiver of any such other rights or remedies. If it is determined for any reason by a tribunal of competent jurisdiction that Contractor was not in default, the parties rights and obligations shall be the same as if notice of termination had been issued pursuant to the Article entitled

**"TERMINATION."**

32. **OFFSET.** Company may upon written notice to Contractor, setoff any amount due from Contractor, whether or not under this Agreement, against any amount due Contractor or claimed to be due by Contractor under this Agreement. In addition, Company may withhold from Contractor any amount sufficient to reimburse Company for any loss, damage, expense or liability for Contractor's actual, alleged or reasonably probable failure, based on factual evidence, to comply with the terms and conditions of this Agreement.

33. **SURVIVAL.** The obligations imposed on Contractor pursuant to each Article of this Agreement, which by its terms contains subject matter which relates to time periods subsequent to the term of this Agreement, including without limitation the following Articles, Warranty, Indemnity, Disputes, Confidentiality, and this Survival provision, shall survive completion of the Services or termination of the Agreement. 34. **EQUAL OPPORTUNITY.** This Agreement incorporates Executive Orders No. 11246, 11625, 11701, 11738 and 12138, the Vietnam Era Veterans Readjustment Act of 1974, the Vocational Rehabilitation Act of 1973, and the regulations thereunder, as amended from time to time, to the extent applicable. Contractor agrees not to discriminate in employment opportunities on the basis of race, color, religion, sex or national origin. Contractor further agrees to comply with applicable laws regarding environmental protection and with respect to affirmative action for qualified veterans and for qualified handicapped persons.

35. **NO PUBLICITY.** Supplier shall not, without Company's prior written consent, engage in advertising, promotion or publicity related to this Agreement, or make public use of any Company identification in any circumstances related to this Agreement or otherwise. "Identification" means any corporate name, trade name, trademark, service mark, insignia, symbol, logo or any other product, service or organization designation, or any specification or drawing owned by Company or its affiliates or any representation thereof.

36. **EXCUSABLE DELAYS.** Contractor shall notify Company in writing immediately of any delay or anticipated delay in Contractor's performance of this Agreement due to causes or circumstances beyond the reasonable control of Contractor. Notice shall include the reason for and anticipated length of the delay. Company may determine, in its sole judgment, to extend the date of performance for a period equal to the time lost by reason of the delay. Contractor shall not be eligible under any circumstances for additional compensation due to any such extension of time. Any extension of time pursuant to this Article shall be documented by a written amendment to this Agreement signed by both Parties. Examples of such possibly excusable delays are natural calamities, strikes and boycotts, war or civil unrest or governmental actions and other events that are commonly deemed Force Majeure. None of the foregoing, however, shall require Company to grant any extension of time for completing the Services.

37. **REPORTS.** Contractor shall provide periodic status reports as requested by Company Representative. The status reports shall make periodic comparisons of the Services rendered to date against the Scope of Work including, any milestones and costs. Such reports shall include an explanation of any significant variations, an identification of any potential or known developments that may impact Company or the Services and any corrective actions implemented.

38. **SUBCONTRACTORS.** Contractor must obtain Company's written consent prior to retaining subcontractor(s) to perform any of the Services. If Company authorizes Contractor to utilize any subcontractors under this Agreement, Contractor shall at all times be responsible for the acts and omissions of subcontractors and agents employed directly or indirectly by Contractor. Contractor shall be responsible for performance of all the Services, whether performed by Contractor or its subcontractors or agents. This Agreement shall not give rise to any contractual relationship between Company and any subcontractor or agent of Contractor. Company shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor or agent of Contractor. Upon request of Company, Contractor shall furnish to Company copies of any executed subcontracts entered into between Contractor and any subcontractor or agent.

39. **SUSPENSION OF SERVICES.** Company may, at any time, by written notice, require Contractor to stop all, or any portion, of the Services for a period of up to ninety (90) days ("Suspension Period") and any further period to which the Parties agree. Upon receipt of notice, Contractor shall immediately cease performance under this Agreement for the entire Suspension Period. Prior to the expiration of the Suspension Period, Company shall either: (a) cancel the Suspension Period; (b) permit the Suspension Period to expire whereupon Contractor shall resume its performance of the Services; or (c) terminate this Agreement pursuant to the provisions of the Article entitled "**TERMINATION**". If the suspension is canceled or permitted to expire, Contractor shall be granted a corresponding adjustment to all time periods and completion dates. Company shall not be liable for any payments to Contractor for expenses incurred during the Suspension Period.

40. **NO WAIVER.** The failure of Company to insist upon or enforce, in any instance, strict performance by Contractor of any of the terms or conditions of this Agreement, or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert, or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in a written notice issued pursuant to this Agreement.

41. **GOVERNMENT CONTRACT CLAUSES INCORPORATED BY REFERENCE.** Contractor shall comply with all applicable requirements set forth in the Federal Acquisition Regulations (or any successor thereto) in effect on the date of this Agreement, which are incorporated herein by reference, with the same force and effect as if they were given in full text. The terms and conditions thereof shall be controlling over any conflicting terms and conditions set forth in this Agreement or any written amendment hereto.

42. **NO ORAL MODIFICATIONS.** No modification of any provisions of this Agreement shall be valid unless in writing and signed by duly authorized representatives of both Parties. Company Representative is not the duly authorized representative for amendments to this Agreement. Representatives of both Parties internally authorized to execute such documents pursuant to its corporate policies shall sign any amendments to this Agreement.

43. **CAPTIONS.** The captions in this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

44. **COUNTERPARTS.** This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

45. **AUTHORITY.** Each individual executing this Agreement on behalf of the Parties represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of their Party and that this Agreement is binding upon their Party in accordance with its terms and conditions.

46. **CONSTRUCTION OF AGREEMENT.** Both Parties have participated in the negotiating and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either Party as the drafting party.

47. **NOTICES.** All notices to be given under this Agreement shall be in writing and either sent by: (1) pre-paid U.S. first-class mail, in which case notice will be deemed delivered as of two business days after mailing; (2) a nationally recognized pre-paid overnight courier service, in which case notice shall be deemed delivered as of the date shown on the courier's delivery receipt; or (3) teletype sent during business hours of the recipient, in which case notice shall be deemed delivered when transmitted provided that a transmission report is generated reflecting the accurate transmission of the notice. All correspondence shall reference the Agreement number. Notices shall be directed to the addresses of the parties on the front page of this Agreement.

48. **SEVERAL LIABILITY.** In the event that more than one legal entity acquires goods and Services hereunder from Contractor and is a party to this Agreement, compensation payable or other obligations owed by each such entity with respect to any goods and/or Services provided by Contractor under this Agreement shall be exclusively the obligation of the entity that acquires such goods and/or Services. No such entity shall have any liability whatsoever (whether by direct payment, offset or otherwise) in connection with goods and/or Services acquired by any other such entity. Each such entity is severally and not jointly liable to Contractor hereunder, and each such entity disclaims any and all financial or other responsibility, except with respect to goods and/or services that are furnished and invoiced to such entity.

49. **DOUBLE DIPPING.**

49.1 The Parties shall take reasonable steps to minimize or avoid the provision of incentives or services for the same measures provided under this Program from another program or other funding source.

49.2 Contractor represents and warrants that it has not received incentives or services for the measures provided under the Program from another utility, state, or local program.

49.3 Contractor shall not apply for or take incentives or services for the measures provided under this Program from another utility, state, or local



program.

49.4 Contractor agrees that the Program shall receive one hundred percent (100%) of the related energy benefits specified in the Program Proposal for the life of the each measure provided under the Program.

49.5 Company shall not knowingly provide an incentive or service for a measure to Contractor for the same measure through another Public Goods Charge- or Gas Surcharge- funded program or any other funding source.

**SCHEDULE B - SCOPE OF WORK/PERMANENT LOAD SHIFTING**

A) Price

For pricing please refer to the Compensation section listed on page 2 of Agreement # 5660011060.

B) Permanent Load Shift Requisite

Total kW shifted for each program year as follows:

<b>kW</b>	<b>Before August 31, 2008</b>	<b>Before May 31, 2009</b>	<b>Before November 1, 2009</b>	<b>Each YR for useful life of equipment</b>
Incremental kW Shifted	402	904	402	0
Total kW of Permanent Load Shifting from 11:00 am - 6:00 pm between May 1 through October 31 each weekday (Monday – Friday).	402	1306	1,708	1,708

\*\* Note - Company Payments to Contractor shall not exceed \$2,000,000.

C) Indication of the target markets for the Gas AC Permanent Load Shifting (PLS) Program

*Potential Customer Markets include but are not limited to:*

Commercial, Industrial, Institutional, Local Government, Military, Education (k-12 and higher Ed), Health Care, Large Retail, etc.

D) Phased Task Outline and Billing Schedule

The scope of work is based on two phases.

Phase I – Program Finalization Plan (see detail below)

Phase II – Program Implementation (see detail below)

The program finalization step is characterized as a plan for action or agreed upon description of key program elements that would provide a much more detailed road map for program implementation. The deliverable in the program finalization is a plan and discussions with the SDG&E project manager that covers all key program aspects. The deliverables in the program implementation section are the actual field labor, programming labor, marketing labor, etc. that lead to the delivery of the target KW load shift. The schedule of billing covers up-front planning, marketing and support in order to achieve the customer participation in the first part of the program.

SDG&E reserves the right to approve all deliverables and marketing materials.

## Phase I Program Finalization Plan

### Task 1: Program Administration Duties

**Deliverable 1:** Conduct program start up meeting(s) with SDG&E staff and review and finalize goals and strategies for the Gas AC PLS program.

**Due Date for Deliverable 1:** Within 1 month of notice to proceed/signed contract

**Deliverable 2:** Provide written agreed upon plan of program administration duties that includes:

- SDG&E requirements, frequency of communications, typical report content & topics
- Reporting expectations, frequency
- Billing processes for tasks, supporting docs and rebates

**Due Date for Deliverable 2:** Within 1 month of notice to proceed/signed contract

### Task 2: Utility Approval Requirements

**Deliverable 1:** Identify specific items that require utility approval and document the approval process

**Due Date for Deliverable 1:** Within 1 month of notice to proceed/signed contract

**Deliverable 2:** Contractor to build processes and communications to ensure approval processes are included in program implementation tasks.

**Due Date for Deliverable 2:** Within 1 month of notice to proceed/signed contract

### Task 3: Reports and Communication

**Deliverable 1:** Identify number and type of report, content, key metrics, typical audience for reported information, communication method (email, online, paper). Determine internal program key contacts, key success metrics (aside from Permanent Load Shift requisite), and access to customer data.

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

### Task 4: Fine Tune Customer Incentive Calculations for Existing Facilities and New Construction Markets

**Deliverable 1:** Written summary to determine:

- Specific target incentive dollar amount per kW

- Most effective target for incentive
- Estimated kW shift for gas AC systems to be installed at a customer site

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

Task 5: Monitoring/Metering Requirements for - M&V

**Deliverable 1:** Summary of methodology to determine:

- Monitoring requirements and implementation detail

Sampling:

Complete M&V shall be carried out on at least 10% of the installations. The sites for which M&V is selected shall be the larger installations. These installations shall account for at least 25% of the total savings associated with the measure. At the remainder of the sites, monitoring shall be provided to confirm that the gas driven chillers are operating during peak period.

Preconstruction data collection:

The existing mechanical HVAC systems will be identified as follows:

- Location
- Site owner
- SDG&E meter #
- Service area within location
- Manufacturer
- Nameplate capacity in Tons
- SEER/EER/COP rating

Baseline data collection:

A metering and monitoring plan will be provided to SDG&E for approval for each individual sampled site. As a part of that plan for existing air-conditioning systems to be replaced, at a minimum, the following measurements are to be taken and data collected prior to construction:

Utilize a portable data acquisition system or existing EMS to record kW, supply air and ambient outdoors temperature every 15 minutes for a period of at least two weeks during cooling demand period.

The data will be plotted and a relationship between kW against outdoors ambient temperature will be arrived at. In lieu of onsite temperature measurement the nearest airport weather data may be substituted. The data will be submitted to third party and SDG&E for review.

For new construction absorption applications, equivalent electric vapor compression Title 24 HVAC shall be used to calculate kW and kW vs. ambient temperature.

Post construction data collection:

The newly installed gas fired chiller will be equipped with the following:

- Data acquisition system (EMS)
- Natural Gas flow meter (corrected for standard condition)
- Power meter for gas chiller auxiliary electric motors and controls.
- Supply air temperature (assuming no other chiller is in parallel or in series with the gas unit)
- Outdoor ambient temperature (or utilize nearest airport weather data)

The data will be collected and stored every 15 minutes for duration of at least two weeks during cooling season.

A correlation between ambient outdoor temperature and gas input (BTU/Hr) will be arrived at.

Based on pre-project kW per ambient temperature relation and based on post project BTU/Hr per ambient temperature, a new relation among electric power kW and BTU/Hr will be calculated per ambient temperature.

Following the initial M&V period, the gas readings in Therms will be converted to electrical energy (kWh) (after adjusting for ambient temperature) from which the auxiliary power will be subtracted to arrive at peak demand load reduction.

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

Task 6: Site Feasibility Requirements

**Deliverable 1:** Procedure to properly identify and determine feasible Gas AC applications at the customer site including acceptable to SDG&E. Outline report requirements to establish that adequate feasibility analysis was properly done.

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

Task 7: Marketing Plan

**Deliverable 1:** Deliver a summary market plan for the retrofit & new construction market segments including:

- Key market segment analysis—identify potential opportunity for installations in the segments
- Target Customer & Site Identification—identify potential program participants through external means and by Account Representative referral .
- Other Market Plan elements—
  - Specific customer value proposition development
  - Prioritization / ranking of customers
  - Marketing strategies needed with SDG&E assistance
- The plan anticipates leveraging traditional SDG&E energy efficiency and demand response program marketing services (web pages, bill stuffers, push e-mail marketing, energy center), trained SDG&E account managers, plus host a series of lunch-and-learn training classes throughout the SDG&E service territory. The marketing plan may include the following activities:
  - Informative presentations to SDG&E account reps

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

**Task 8: Quality Assurance & Inspection**

Contractor shall develop quality control procedures to ensure high quality workmanship practices in the installation of Program Measures and to ensure quality educational Services have been provided to the Customer. Company reserves the right, after notification to the Contractor, to modify procedures to ensure effectiveness and quality of the Program. Company will conduct up to 100% random sample inspections at its discretion.

**Task 9: Technologies and Products to be Deployed**

**Deliverable 1:** Submit detailed description of the technologies (including specific brands and models of gas air conditioners) to be deployed in the target markets to SDG&E. The program will deploy Gas Air Conditioning in both new construction and retrofit markets.

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

**Task 10: Feasibility Study Requirements, Including Design Intent**

**Deliverable 1:** Describe the feasibility study protocol, tools, customer process and typical outcome. Document containing process and checklist for completing building design and/or site feasibility and analysis and approval process.

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

**Task 11: Contractor and or Channel-to-Market Identification and Training**

**Deliverable 1:** Describe the contractor/channel training needed for the Gas AC program. Provide a plan to ensure that the channel installing or promoting Gas AC units for the program comply with Contractor, manufacturer, local and SDG&E requirements.

**Due Date for Deliverable 1:** Within 2 months of notice to proceed/signed contract

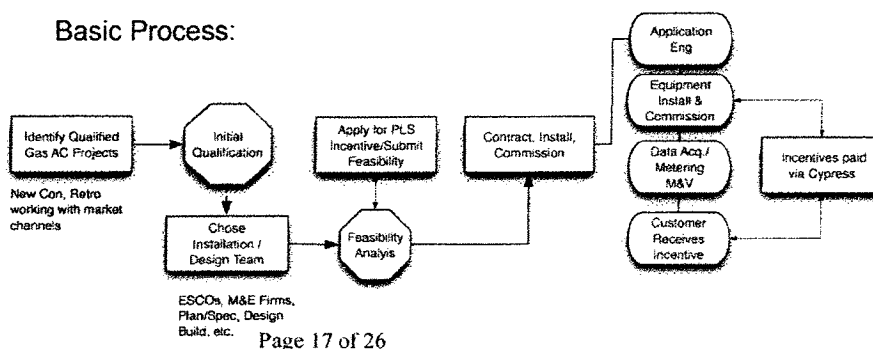
**Task 12: Customer Support and Basic Process**

**Deliverable 1:** Provide a customer support plan that includes the following:

- Method to provide reasonable assurance of proper maintenance and technical support of the equipment during the contract term.
- Customer issue and complaint resolution process utilizing the Contractor's customer service center
  - Customer rebate application & payment process
  - Timing, responsibilities, communication pathways, resolution procedures, specific 800 number and online methods.
  - Customer Service Representative scripts and training

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

**Basic Process:**



## Phase II Program Implementation

All marketing material will be submitted to SDG&E for approval prior to release.

### Task 13: Marketing and Customer Acquisition

**Deliverable 1:** Contractor will execute a targeted customer awareness campaign to educate applicable customers within the SDG&E service territory of the availability and procedures of the Gas AC PLS program. This will include:

- Marketing materials such as web, brochures, presentations
- The customer service center, application tracking and follow up, feasibility reports and customer education
- Coordinate outreach efforts with any potential community partnership programs

**Due Date for Deliverable 1:** Duration of task is 10 months and billed monthly. Marketing and Customer acquisition will be concentrated in 2008 and will be ongoing until program is fully subscribed.

### Task 14: Marketing Messages

**Deliverable 1:** With input from the target market segments, create program communication messages and basic value propositions. Determine potential web site copy and brochure/incentive application copy. Review all market messages with the SDG&E Gas AC PLS Program Manager. Additional market message elements should be included for new construction:

- Title 24 conformance and above code minimum opportunity
- Design Flexibility
- Cost effectiveness



- Any potential LEED points generated for above code minimum performance

**Due Date for Deliverable 1:** Within 4 months of notice to proceed/signed contract

**Task 15: Marketing Materials**

**Deliverable 1:** Create custom made program web site, software based brochure and presentations based upon SDG&E approved copy and SDG&E approved market communications design standards. The scope will include periodic updates to the materials based upon program changes and directives from the program manager.

**Due Date for Deliverable 1:** Within 4 months of notice to proceed/signed contract

**Deliverable 2:** Produce marketing collateral materials in conjunction with SDG&E marketing and communications staff, which may include the following:

- PowerPoint presentations
- Web blasts
- Marketing collateral
- Applications collateral

**Due Date for Deliverable 2:** Within 4 months of notice to proceed/signed contract

**Task 16: Standard Customer Applications and Agreements**

**Deliverable 1:** Create custom-made program incentive application based upon approved copy and approved market communications design standards. The scope will include periodic updates to the materials based upon program changes and directives from the program manager. Applications will be made available via web, mail and fax and all data gathered from the applications will be maintained in the Contractor's Customer Service Center (CSC) database. Application will provide for all needed program information requirements including:

- All relevant customer information including but not limited to: name, address, kW usage, and hours of usage
- Specific equipment information

- Program participation guidelines
- Incentive amount(s)
- General terms & conditions for participation as approved by SDG&E

**Due Date for Deliverable 1:** Within 3 months of notice to proceed/signed contract

**Task 17: Customer and Site Qualification**

**Deliverable 1:** Work closely with target customers or channels to specify the best fit for loads targeted for the Gas AC PLS program and establish qualification guidelines. Emphasis will include a requirement that all installed units be in place for at least the duration of the PLS program or longer. Ten Year pro-forma customer potential payback will be reviewed with each customer. Hours operation, climate zone, occupancy, maintenance practices, accessibility for inspections and other requirements determined to support the PLS program goals will be utilized in a qualification screen for each proposed installation. Record of the site qualifications including rejected sites will be maintained by the Contractor's CSC database.

**Due Date for Deliverable 1:** Customer identification will be concentrated in 2008 and early 2009 and will be ongoing until program is fully subscribed.

**Task 18: Direct Customer Marketing**

**Deliverable 1:** Conduct sales activities by meeting with customer management, channels and facilities teams. Establish specific feasibility meetings for the top candidates for Gas AC installations. Specific direction will be maintained to help ensure placement of units that will optimize SDG&E PLS program goals. The results of the sales activity will be included in monthly reports to SDG&E. This may include:

- "Face to Face" meetings
- Internet marketing techniques
- Promotions and presentations to organizations will include but are not limited to the California Association of Building Energy Consultants (CABEC), The California Building Industry Association (CBIA), the California chapter of the American Institute of Architects (AIA); targeted developers, builders, mechanical design firms; and local building permit

offices, national account organizations such as the Edison Electric Institute, and ACEEE.

All marketing material will be submitted to SDG&E for approval prior to release.

**Due Date for Deliverable 1:** Duration of task is 10 months and billed monthly. Marketing will continue until program is fully subscribed.

Task 19: Feasibility Analysis

**Deliverable 1:** A feasibility analysis will be conducted on proposed installation sites to determine the applicability of the Gas AC equipment to the specific load and use. Emphasis will be placed on sites where the customer can affirm at least a five year use in order to participate in the program and also target a long term (10 -15 year target) use of the buildings/units and proper Gas AC maintenance. As part of the criteria for site participation we will detail to the customer the need for installations that have the proper occupancy type, long term building use and proper maintenance of the units installed.

As part of the feasibility process we will provide a ten-year pro-forma economic analysis to the customer that clearly states the customer benefit of using the units for the full equipment life. The up-front kW amount attributed to each unit used for the incentive amount will be determined using the feasibility report and approved by SDG&E.

**Due Date for Deliverable 1:** Duration of task is 10 months and billed monthly

***For New Construction/Remodel/Tenant Improvement***

**Deliverable 2:** Feasibility analysis will be done by the consulting designers, engineers, estimators and building energy consultants employed by the new construction, remodel, and tenant improvement project owners.

Title 24 compliance will be validated by EnergyPro, or MICROPAS.

The documents for a specific project will be submitted to and tracked by the Contractor Customer Service Center as part of the project registration and incentive reservation process.

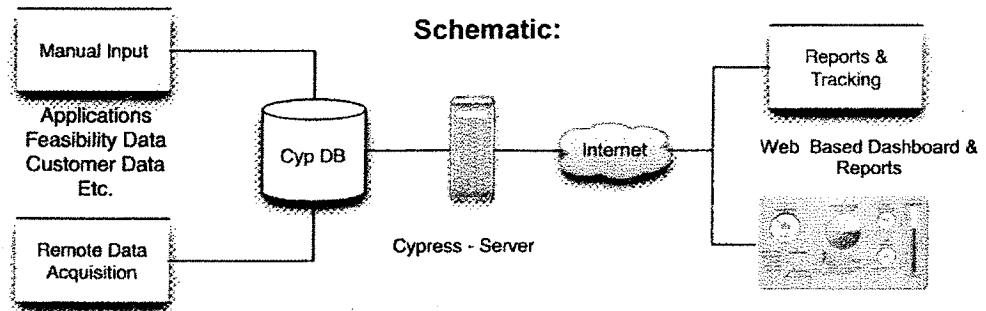
**Due Date for Deliverable 2:** Identification and training of these consultants will be ongoing throughout 2008-2009 until the

program is fully subscribed and will be heavily concentrated in 2008.

**Task 20: Tracking and Reporting**

**Deliverable 1: Creation of software and dashboard templates**

The Reports and Communications plan (Task 3) listed above as part of the Program Development set of tasks will provide key input on the final deliverables under this task. Provide the software database creation and modifications needed to record all needed program information and results and deliver defined reports. Information will be input into the database both manually and through the Internet. This task will include the gathering of Title 24 documentation and feasibility documentation to support the New Construction and Retrofit Gas AC PLS program.



- Deliver the relevant customer site data to a secure server utilizing Contractor infrastructure, database and the web and represent the information in a custom dashboard
- Install the additional necessary hardware to connect to the proposed data acquisition server
- Work with SDG&E and team to develop a set of meaningful reporting components for display
- Create database tables and user interface and web access to database for acquired data
- Create customer data visualization and needed dashboard elements to represent acquired data
- Train on SDG&E's SMART reporting system and upload required monthly data including measures installed and monthly reporting narrative

**Due Date for Deliverable 1:** Within 5 months of notice to proceed/signed contract

**Deliverable 2:** Ongoing Tracking and Reporting of program parameters

Besides reports provided in-person at regular program update meetings additional reports will be accessible to SDG&E and will be designed specifically to meet the needs of Company program managers. Reports will meet Company reporting requirements to insure reporting accuracy and timeliness. Frequency and access will be determined under The Reports and Communications plan (Task 3) listed above as part of the Program Development set of tasks.

Provide ongoing status reports and detailed analysis, including:

- Participation in all staff meetings as a program manager
- Frequent reports and detailed correspondence, as required and requested by SDG&E
- Ongoing support in relation to CPUC filings, internal documentation, or other documentation issues, as requested by SDG&E and relating to the Gas AC PLS program.

**Due Date for Deliverable 2:** Ongoing – billed over 12 months

Task 21: Task not used

Task 22: Application Administration

**Deliverable 1:** With the guidance of Task 1, develop comprehensive processes and procedures to manage customer applications and the facilitation of incentive payments with the following considerations:

- The Contractor will collect a rebate application signed by the customer that will include an invoice specifying the quantity and type of installed equipment, and in some cases an incentive release form if the customer chooses to release said incentive to a third-party.
- Contractor will check all rebate applications against invoices for make and model numbers, installed count, and installation date to verify and ensure accuracy.
- Contractor will work directly with customers to correct errors.
- On a regular basis, completed applications for projects with completed installations will be provided to SDG&E from Contractor.
- After successful inspection by SDG&E staff, and once all

terms and conditions are found to have been met by the program administrators and its participants, incentives SDG&E will be paid directly to the customer or the customer's designee.

- An incentive release form must be received from the end use customer for payment distribution to third-parties
- The total incentive will be paid at rate of \$500 per kW for systems greater than 33 tons and an incentive rate of \$700 per kW for systems equal to or less than 33 tons.
- Considerations will be made for changes to the incentive amounts at the sole discretion of SDG&E and will require written documentation as to the need for alternate incentive rates. SDG&E will provide written approval the Contractor.
- All documentation is retained by the Contractor for a period of 7 years, and made available upon request to program administrators and auditors.

**Due Date for Deliverable 1:** Within 1 month of notice to proceed/signed contract.

Task 23: EM&V – 25%

**Deliverable 1:**

- Development of EM&V Plan – The plan will detail the performance monitoring of the Gas AC units. Narratives will be provided for the data acquisition system (DAS) including data points, sampling and averaging rates, data retrieval and uploading via internet, operational modes for the Gas AC unit during the on-peak periods, etc. Performance time line and cost breakdown of DAS per test site will be provided.
- The goals are to achieve plus-minus 10% accuracies for the cooling load profiles and plus-minus 5% for the electric power with DAS.
- Instrumentation Diagrams – The DAS sensors and data logger locations will be shown on the Gas AC M&V schematics for each site. Details of sensor installation and wiring diagram will also be provided.
- Procurement of DAS Components – Orders will be placed for the DAS parts to be delivered to each test site.
- DAS Installation – The DAS installation will be concurrent with the unit installation. Contractor will engage the installing contractor or DAS subcontractor to place the DAS sensors

and data logger in accordance with the instrumentation diagram. Initial DAS sensor and data logger programming will be checked out after completion of each DAS installation.

- Data Uploading and DAS maintenance – Contractor will be responsible for the uploading or the recorded data on the logger to its data center for retrieval, reduction and analysis. Periodical DAS site visits will be necessary to calibrate and/or maintaining the accuracies of the sensors.
- Reporting – The retrieved data will be reduced and analyzed for weekly and seasonal (on-peak period) reports to be submitted to SDG&E.
- Meetings – Contractor will attend the required meetings by SDG&E for technical discussion of EM&V status and other related issues. The meetings may be held at the SDG&E offices or on the test sites.

**Due Date for Deliverable 1:** Billed T&M based on approved not to exceed amount on a per site or similar SDG&E approved basis.

Task 24: Respond to miscellaneous utility/CPUC data requests

**Deliverable 1:** Contractor shall respond to any SDG&E data request and deliver information per SDG&E deadline. In cases where a more detailed explanation is required, Contractor will draft a narrative and shall be provided to accompany the data. If requested by SDG&E, Contractor will also provide the response directly to the CPUC staff. If approved by SDG&E, responses to follow-up requests made directly to the implementer by CPUC staff or the program evaluator may be sent simultaneously to SDG&E and the requestor. Otherwise, the implementer should direct all requests to the SDG&E program manager and provide all responses to the SDG&E program manager.

**Due Date for Deliverable 2:** Ongoing – billed in 1 annual payment

Task 25: Customer Support

**Deliverable 1:** The Customer Service Center (CSC) provides 24/7 support services to support the Gas AC PLS Program. Pending completion of the final customer service implementation plan services would include:

- Customer enrollment & support calls/transactions for the PLS program participants

- Receive program inquiries and potential customer complaints (phone, mail, fax, e-mail, web)
- Explain program parameters & advise market channel participants of information available on PLS website
- Enter relevant program, customer, feasibility study information into the Contractor Customer Relationship Management database
- Record contractor and unit installation information in the database
- Advise of available training and assisting in scheduling training
- Inform relevant parties of customer concerns, unit performance problems etc.
- Track feasibility, installation, commissioning and going performance