

**Attachment A**  
**Standard Contract Terms and Conditions**

**A. Eligibility (Type of Business, License Requirements, Insurance and Bonding Requirements, Etc.)**

1. Licensing. At all times during the performance of the Services, Implementer<sup>1</sup> represents, warrants and covenants that it has and shall, and shall cause each of its employees, agents, representatives, and subcontractors and all other persons performing the Services on behalf of the Implementer (“Implementer Party”) to, obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of the Services. Implementer shall promptly provide copies of such licenses and registrations to Company at the request of Company.
2. Performance Assurance; Bonding. At all times during the performance of the Services, Implementer providing any direct installation services represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to, obtain and maintain, at its sole cost and expense, all bonding requirements of the California State License Board, as may be applicable. Regardless of the specific Services provided, Implementer shall also maintain any payment and/or performance assurances as may be requested by Company during the performance of the Services.
3. Insurance. At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to, obtain and maintain, at its sole cost and expense, the insurance coverage requirements specified in [*Insert IOU-specific Appendix containing insurance requirements to be developed by the parties based on the Scope of Work*].
4. Good Standing. Implementer represents and warrants that (a) it is a [*corporation/limited liability company/partnership*] duly organized, validly existing and in good standing under the laws of the State of [*Insert State of organization*], and (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.
5. Financial Statements. Implementer shall deliver financial statements on an annual basis or as may be reasonably requested by Company from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles. Company shall keep such information confidential if requested by Implementer, except provision to the Commission may be required from time to time under confidentiality procedures, where applicable.

**B. Safety Requirements**

1. Safety. During the term of this Agreement, Implementer represents, warrants and covenants that it shall, and shall cause each Implementer Party to:

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<sup>1</sup> “Implementer” will be defined in the Agreement as the Third-Party Program implementer who is party to the Agreement.

- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- (b) abide by all applicable Company security procedures, rules and regulations and cooperate with Company security personnel whenever on Company's property;
- (c) abide by Company's standard safety program contract requirements as may be provided by Company to Implementer from time to time;
- (d) provide all necessary training to its employees, and require subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement; and
- (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code.

Additional safety requirements (including Company's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in Company's safety handbooks as may be provided by Company to Implementer from time to time.

2. Background Checks.

- (a) Implementer hereby represents, warrants and certifies that any personnel of Implementer or Implementer Party, and their representatives and agents, having or requiring access to Company's assets, premises, or customer property, ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven year period immediately preceding the individuals' date of assignment to the project.
- (b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Implementer permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to the project, or at any time after the individual's date of, assignment to the project, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations (RICO) Statute (18 U.S.C. Sections 1961-1968)).
- (c) To the maximum extent permitted by applicable law, Implementer shall maintain documentation related to such background and drug screening for all Covered Personnel

and make it available to Company for audit if required pursuant to the audit provisions of this Agreement.

(d) To the extent permitted by applicable law, Implementer shall notify Company if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer will also immediately prevent that employee, representative, or agent from performing any Services.

3. Fitness for Duty. Implementer shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform their work properly and safely. Implementer shall, and shall cause its subcontractors to, have policies in place that require their employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

### C. Dispute Resolution Process

1. Disputes. Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Implementer's contract representative and Company's contract representative by good faith negotiation efforts shall be referred to a [Insert IOU-specific level of authority] of Company and an officer of Implementer for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If Company and Implementer cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), Company and Implementer shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Implementer shall have right to request arbitration or mediation to resolve the dispute and Company shall be required to participate in arbitration or mediation in good faith. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

2. Governing Law. This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles.

3. Venue. In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in [Insert IOU-specific County] (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the [Northern/Central/Southern] District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.

### D. Termination Process

1. Event of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any one or more of the following:

(a) With respect to either Party:

(i) the failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of

Default), including without limitation the failure to make, when due, any undisputed payment required to be made by such Party, if such failure is not remedied within thirty (30) calendar days of Notice of such breach by the Non-Defaulting Party;

- (ii) such Party becomes insolvent, generally does not pay its debts as they become due, makes a general assignment for the benefit of creditors, or commences any action seeking reorganization or receivership under any bankruptcy, insolvency, reorganization or similar law for the relief of creditors or affecting the rights or remedies of creditors generally; or
- (iii) such Party disaffirms, disclaims, rejects (in whole or in part), or challenges the validity of this Agreement.

(b) With respect to Implementer:

- (i) any representation or warranty made by Implementer or Implementer Party to any person or entity (including, without limitation, a member of the public, a customer of Company, or a governmental authority) or in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
- (ii) any legal action is made or commenced against Implementer or Implementer Party which, in Company's opinion, may interfere with the performance of the Services;
- (iii) Implementer or any Implementer Party commits any material act of dishonesty, fraud, misuse of funds, or misrepresentation of Company's administration of this Agreement;
- (iv) Company becomes aware of a public safety issue arising out of or related to Implementer's or Implementer Party's administration or performance of this Agreement;
- (v) Implementer assigns, subcontracts, or transfers this Agreement or any right or interest herein except in accordance with Section [ ];
- (vi) Implementer fails to maintain the insurance coverage required of it in accordance with Appendix [ ];
- (vii) Implementer fails to satisfy the collateral requirements set forth in Section [ ], including failure to post and maintain the performance assurance requirements set forth in this Agreement;
- (viii) Implementer breaches any obligation of confidentiality or its obligations under Section [*Insert Section Reference to Security Measures*]; or
- (ix) Implementer fails to achieve [*Insert Minimum Performance Requirements*] provided that such failure continues for sixty (60) days following receipt of written notice of such failure.

2. Termination for Cause. If an Event of Default shall have occurred with respect to a Party, the other Party (the "Non-Defaulting Party") shall have one or more of the following rights:

- (a) To designate by Notice, which will be effective no later than twenty (20) calendar days after the Notice is received, the early termination of this Agreement (an "Early Termination Date");
- (b) Withhold any payments due to the Defaulting Party under this Agreement;
- (c) Suspend performance of Services under this Agreement (but excluding, for the avoidance of doubt, the obligation to post and maintain [Security] in accordance with Section [ ] and the obligation to obtain and maintain the insurance requirements in accordance with Section [ ]); and
- (d) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.

3. Termination/Modification by CPUC Order. This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission ("CPUC"). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case Company shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive.

- (a) Company shall be liable to Implementer for the compensation earned on services satisfactorily performed prior to the effective date of termination, plus documented and verifiable costs (such as demobilization costs) reasonably incurred by Implementer in terminating the services. Implementer shall mitigate its damages to minimize its claim, if any, against Company.
- (b) Notwithstanding anything contained in this Section [ ], in no event shall Company be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of Company, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by Company under this Section [ ]. Also as a condition precedent to the payment of any cancellation or termination charges by Company under this Section [ ], Implementer shall have delivered to Company any and all reports, drawings, documents and deliverables prepared for Company before the effective date of such cancellation or termination.
- (c) Implementer shall have right to request arbitration or mediation to resolve particulars of the above provisions should they not result in reasonable compensation based on terms of original Agreement and Company shall be required to engage in mediation or arbitration in good faith upon such a request (See Section C).

4. Conclusion of Work. Upon Company's termination of this Agreement for any reason, Implementer shall, and shall cause each Implementer Party to, bring the Services to an orderly conclusion as directed by Company. Implementer and each Implementer Party shall vacate the

worksite but shall not remove any material, plant or equipment thereon without the approval of Company. Company, at its option, may take possession of any portion of the Services paid for by Company.

**Attachment B**  
**Required Modifiable Contract Terms**  
**and Conditions**



## A. Workforce Standards and Quality Installation Procedures

### 1. Workforce Standards.

At all times during the term of the Agreement, Implementer<sup>1</sup> shall comply with, and shall cause its employees, agents, representatives, subcontractors, independent contractors, and all other persons performing the Services<sup>2</sup> on Implementer's behalf ("Implementer Party") to comply with, the workforce qualifications, certifications, standards and requirements set forth in Section [ ] ("Workforce Standards"). The Workforce Standards shall be included in their entirety in Implementer's Final Implementation Plan.<sup>3</sup> Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by Company<sup>4</sup>, Implementer shall provide all documentation necessary to demonstrate to Company's reasonable satisfaction that Implementer has complied with the Workforce Standards. *{Comment: Term is subject to modification and may be negotiated by Company and Bidder<sup>5</sup>}*

[A Draft Implementation Plan<sup>6</sup> will be negotiated as part of the Agreement and will include Workforce Standards. In its Proposal,<sup>7</sup> Bidder will be required to include a section identifying all relevant workforce standards that Bidder deems applicable to the Proposed Program<sup>8</sup>, including any specific skills certification and/or broader occupational training and experience that would reduce the risk of lost net lifecycle energy savings from poor installation, modification, or maintenance of the energy efficiency measures that Bidder proposes to be included in the Agreement<sup>9</sup> (the "Proposed Workforce Standards"). Bidder's Proposed Workforce Standards will be reviewed by the Company as part of the Proposal, and if Bidder is selected to participate in the RFP by Company, Company and Bidder will negotiate the final Workforce Standards for each Proposed Program that will be included in any Agreement, if Bidder and Company execute a final Agreement. The Commission has specifically required Workforce Standards for non-residential heating, ventilation, and air-conditioning projects and lighting controls projects, as set forth below. *{Comment: modifiable RFP Instructions}*

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<sup>1</sup> "Implementer" will be defined in the Agreement as the Third-Party Program implementer who is party to the Agreement that will implement the contracted-for EE program ("Program").

<sup>2</sup> "Services" will be defined in the Agreement as all of the services, and any other work, performed by Implementer pursuant to the Agreement and any related purchase orders.

<sup>3</sup> "Final Implementation Plan" will be defined in the Agreement and will identify milestones and deliverables Implementer is required to comply with.

<sup>4</sup> "Company" will be defined in the Agreement as the Investor Owned Utility entering into the Agreement with Implementer.

<sup>5</sup> "Bidder" will be defined in the Solicitations Instructions of the IOUs Request for Abstract (RFA) and/or Request for Proposal (RFP), as an entity submitting a program proposal in response to the IOU's RFA and/or RFP pursuant to solicitation process and requirements.

<sup>6</sup> "Draft Implementation Plan" will be defined in the Agreement.

<sup>7</sup> "Proposal" will be defined in the Company's request for proposals ("RFP") instructions ("Instructions") for the Proposed Program.

<sup>8</sup> "Proposed Program" means that certain energy efficiency program that Company seeks Offers for pursuant to Company's RFP Instructions.

<sup>9</sup> "Agreement" will be defined in the RFP Instructions and will be the agreement executed by Bidder and Company as a result of an RFP for a Proposed Program upon Company's final selection of Offers, and pursuant to the RFP process and requirements of the Proposed Program.

**a. For Heating, Ventilation, and Air Conditioning (HVAC) Energy Efficiency Programs or Projects**

For all Program Projects<sup>10</sup> and for each Measure,<sup>11</sup> installed, modified, or maintained in a non-residential setting where the project is seeking an energy efficiency incentive of \$3,000 or more, Implementer shall ensure that each worker or technician involved in the project meets at least one of the following criteria:

- (1) Completed an accredited HVAC apprenticeship.
- (2) Is enrolled in an accredited HVAC apprenticeship.
- (3) Completed at least five years of work experience at the journey level according to the Department of Industrial Relations definition, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed.
- (4) Has a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.

This standard shall not apply where the incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment.

*{Comment: Further relevant standards beyond these requirements may be negotiated by Company and Bidder and Bidder will propose any further standards based on Program design, etc.}*

**b. For Advanced Lighting Control Programs or Projects:**

For all Program Projects and for each Measure, installed in a non-residential setting where the project is seeking an energy efficiency incentive of \$2,000 or more, Implementer shall ensure that all workers or technicians involved in the project are certified by the California Advanced Lighting Controls Training Program (CALCTP). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment.

*{Comment: Further relevant standards beyond these requirements may be negotiated by Company and Bidder and Bidder will propose any further standards based on Program design, etc.}*

**2. Quality Assurance Procedures.**

Implementer shall comply with the following requirements (the "Quality Assurance Procedures"): *{Comment: Quality Assurance Procedures to be negotiated after Proposal received.}* *{Comment: Term is subject to modification and may be negotiated by Company and Bidder}*

[In its Proposal, Bidder will be required to identify Quality Assurance Procedures that ensure that the Program Projects and Measures that are installed perform to minimum standards appropriate to the program proposed in the Proposal ("Minimum Qualifications")]. The Quality Assurance Procedures must be sufficiently robust to ensure that each Program Project, each Measure, and the Proposed Program complies with Applicable Law.<sup>12</sup> Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices;

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<sup>10</sup> "Program Projects" will be defined in the Agreement.

<sup>11</sup> "Measure" will be defined in the Agreement.

<sup>12</sup> “Applicable Law” will be defined in the Agreement and will include all regulatory and legal requirements.

and (ii) procedures that ensure Measure functionality, customer satisfaction, and that the Minimum Qualifications are satisfied.] *{Comment: modifiable RFP Instructions}*

## **B. Progress and Evaluation Metrics**

### **1. Final Implementation Plan.**

The Parties shall finalize a Final Implementation Plan in accordance with the Draft Implementation Plan. The Final Implementation Plan will be posted to the relevant CPUC website by Company no later than sixty (60) days following the Effective Date of this Agreement. The Final Implementation Plan shall be consistent with the terms and conditions of the Agreement. *{Comment: Term is subject to modification and may be negotiated by Company and Bidder}*

### **2. Key Performance Indicators.**

Implementer shall use commercially reasonable efforts to meet the Key Performance Indicators ("KPIs")<sup>13</sup> for the Program attached hereto as Schedule *{Comment: Schedule to be inserted based on the Proposal and negotiations between Implementer and Company}*. Implementer shall provide to Company all documentation and accurate data needed to demonstrate compliance with each KPI and to calculate satisfaction of each KPI, at the frequency stipulated in the Final Implementation Plan or as reasonably requested by Company. Company shall review Implementer's performance in achieving each KPI once per calendar quarter or as otherwise deemed necessary by Company. If Company determines that Implementer does not meet one or more of its KPIs, then, in addition to and without limiting any and all remedies available to Company as provided in this Agreement, Implementer shall provide Company with an action plan detailing the reasons why the KPI(s) were not achieved and the steps (and timeline for those steps) Implementer will take to remediate and achieve its KPI(s) in a timely manner. *{Comment: Term is subject to modification and may be negotiated by Company and Implementer, and will include a remediation timeframe for each KPI based on specific KPIs and contract type}*

[In its Proposal, Bidder will be required to include a table of KPIs, which will be the primary means by which Company will assess Program performance on an ongoing basis. KPIs will be individually negotiated based on the specific Proposed Program features. Table 1 outlines a set of foundational KPIs applicable to all programs of several major contract types. The KPIs are subject to modification by Company and will be negotiated by Company and Bidder. Additional Implementer performance requirements to ensure KPIs are met may be negotiated between the Bidder and Company depending on the Program, including, but not limited to, true-up payments for not meeting savings KPIs or completing projects, right of Company to reduce or eliminate funding for program and payments, or in cases of material underperformance, right of Company to declare an event of default. *{Comment: modifiable RFP Instructions}*

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<sup>13</sup> "KPIs" will be the primary means by which Company will assess Program performance on an ongoing basis.

Schedule [TBD]: Key Performance Indicators *{Comment: Schedule to be included in Bidder's Proposal and included in the Agreement, subject to modification and may be negotiated by Company and Bidder}*

**Table 1: Examples of Foundational KPIs**

Category / Program Type		KPI	KPI Definition
Program Performance	For Resource Programs	<b>Energy Savings</b> (kWh, kW, Therms)	A comparison of net lifecycle energy savings achieved vs. net lifecycle energy savings required under the Agreement
		<b>Project Pipeline Target</b> (kWh, kW, Therms)	A comparison of net life cycle energy savings associated with future project pipeline in relation to the net life cycle energy savings required under the Agreement
		<b>Schedule Adherence</b> (committed/installed)	Actual number of [committed/installed] projects compared to the projected number of [committed/installed] projects as required under the Agreement
		<b>Cost Management</b> (TRC ratio) (Levelized cost)	The Total Resource Cost Test measures the net costs of a demand-side management program based on the total costs of the program, including both the participants and the utilities costs
		<b>Cost Management</b> (incentive/non-incentive)	[Incentive/non-incentive] spend based on paid [incentive/non-incentive] spend vs forecasted [incentive/non-incentive] spend
		<b>Customer Satisfaction Rating</b>	Measurement of Implementer's ability to respond to customer needs,

			number of complaints, resolution of complaints, flexibility, reporting accuracy and timeliness
	<b>For Non-Resource Codes and Standards Programs</b>	TBD	TBD
	<b>For Workforce Education &amp; Training Programs</b>	TBD	TBD
	<b>For Emerging Technology Programs</b>	TBD	TBD
<b>Implementer Administrative Performance</b>	<b>For all Programs</b>	<b>Invoicing and Billing Accuracy</b>	TBD
		<b>Program Data Quality</b>	TBD
		<b>Contract Compliance</b>	TBD
<b>Marketing Performance (as applicable)</b>	<b>Co-Branding</b>	<b>Brand Review Time</b>	The total hours spent reviewing marketing materials submitted by Implementer or Implementer Parties
	<b>Email</b>	<b>Unsubscribes or opt outs</b>	The average unsubscribe rate across all email campaigns
		<b>Spam (Complaints)</b>	The average spam or complaint rate across all email campaigns
	<b>Direct Mail</b>	<b>Unsubscribes or opt outs</b>	[TBD]
	<b>Telemarketing</b>	<b>Unsubscribes or opt outs</b>	[TBD]
	<b>SMS</b>	<b>Unsubscribes or opt outs</b>	The average unsubscribe rate across all SMS campaigns

	<b>Door-to-Door</b>	<b>Unsubscribes or opt outs</b>	[TBD]
	<b>Digital Media</b>	TBD	TBD
	<b>Social Media</b>	TBD	TBD
	<b>Website</b>	TBD	TBD
<b>Supply Chain Responsibility</b>	<b>All Programs</b>	<b>Safety Ratings</b>	An evaluation of the Implementer's overall approach to safety and the quality of the Implementer's safety program
		<b>Diverse Business Enterprises Spend</b>	Measures spend performance with Diverse Business Enterprises
		<b>Disadvantaged Worker Spend</b>	TBD
		<b>Hard to Reach and Disadvantaged Communities</b>	TBD
		<b>Sustainability Ratings</b>	Evaluates the Implementer against environmental and sustainability practices and metrics.

3. Other Program Metrics.

Implementer shall provide to Company all documentation and data needed to calculate all Program Metrics<sup>14</sup> set forth in the Final Implementation Plan, at the frequency stipulated in the Final Implementation Plan. Such data includes, but is not limited to, data in support of sector-level and portfolio-level metrics, as approved by the CPUC. *{Comment: Term is subject to modification and may be negotiated by Company and Bidder}*

**C. Contract Term/Length**

1. Term.

The “Term” of this Agreement shall commence upon the [Execution Date]<sup>15</sup> and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until [XX] *[For Agreements requiring CPUC Approval: [XX] years after the date upon which CPUC Approval occurs]. {Comment: Placeholder term for Agreement, subject to modification and may be negotiated by Company and Bidder}*

<sup>14</sup> “Program Metrics” will be defined in the Agreement.

<sup>15</sup> “Execution Date” to be defined as the date both parties have executed the Agreement.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to Company in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Implementer under the Agreement; (ii) does not contain conditions or modifications unacceptable to Company, in Company’s sole discretion; and (iii) finds that the Agreement satisfies the requirements in [Decision xx-xxx]. *{Comment: Placeholder term for Agreement, subject to modification and may be negotiated by Company and Bidder}*

**D. Diverse and Disadvantaged Business and Employee Terms, Including Small Businesses, if Applicable**

a. Definitions

- i. “SBE” means a “small business enterprise” as defined in Title 2, Section 1896.12, of the California Code of Regulations. *{Comment: placeholder for Agreement term}*
- ii. “Diverse Business Enterprise” means a diverse business enterprise, which shall consist of SBEs and women, minority, disabled veteran, lesbian, gay, bisexual, or transgender business enterprises, as more particularly set forth in CPUC General Order 156. *{Comment: placeholder for Agreement term}*
- iii. “Disadvantaged Worker” “Disadvantaged Worker” means a worker that meets at least one of the following criteria: lives in a household where total income is below 50 percent of Area Median Income; is a recipient of public assistance; lacks a high school diploma or GED; has previous history of incarceration lasting one year or more following a conviction under the criminal justice system; is a custodial single parent; is chronically unemployed; has been aged out or emancipated from the foster care system; has limited English proficiency; or lives in a high unemployment ZIP code that is in the top 25 percent of only the unemployment indicator of the CalEnviroScreen Tool. *{Comment: placeholder for Agreement term}*

b. Diverse Business Enterprises

Implementer agrees to comply, and to require all Implementer Parties to comply, with Company’s DBE policy as may be provided by Company from time to time. Implementer shall provide a copy of such policy to each Implementer Party and report any DBE information to Company at the interval specified in the policy. *{Comment: placeholder for Agreement term}*

[In its Proposal, each Bidder will be required to describe how it will comply with Company’s DBE policies, and the Parties may negotiate additional terms, as appropriate, for further compliance obligations.] *{Comment: modifiable RFP Instructions}*

c. Disadvantaged Workers

Implementer agrees to comply, and to require all Implementer Parties to comply, with the Disadvantaged Worker requirements set forth in the Final Implementation Plan. Implementer shall provide a copy of such requirements to each Implementer Party and report any Disadvantaged Worker information to Company at the interval specified in the Agreement. *{Comment: placeholder for Agreement term}*



[In its Proposal, Bidder shall include a section describing the manner by which their proposed program will provide Disadvantaged Workers with improved access to career opportunities in the energy efficiency industry for programs that directly involve the installation, modification, repair, or maintenance of EE equipment. If Bidder is selected to engage in further contract negotiations with the Company, Company and Bidder will negotiate the requirements necessary to support improved access to career opportunities in the energy efficiency industry by Disadvantaged Workers for each applicable Proposed Program that will be included in the Agreement, if Bidder and Company execute an Agreement.] *{Comment: modifiable RFP Instructions}*

**E. Payment Schedule and Terms, Including Pay-for-Performance Payment Provisions**

**1. Payment Terms.**

[Payment terms will vary based on the Program proposed, and the Company will evaluate bids, in part, on creative proposals that spread the risk of non-performance and deliver a quality and cost-effective program at a reasonable cost to ratepayers. Table 2 outlines some potential contract categories with potential associated payment schedules and payment terms, if applicable; however, the Company will evaluate payment terms based on the bid and the nature of the Program. Table 2 is not intended to be exhaustive, and additional or modified payment categories may be proposed in the filing and/or in specific agreements, as negotiated.]

Company prefers Program Proposals that include a “pay for performance” fee structure component that conditions payments from Company to Implementer based on specific savings or other metrics that advance energy efficiency portfolio goals (i.e. Meter Based). These pay-for-performance models may include performance security in a form of cash or line (or letter) of credit to ensure that implementers are meeting key performance metrics such as net lifecycle energy savings and cost-effectiveness and that permit Company to draw against such performance security if certain performance conditions and/or KPIs are not met. Percentages of performance security and metrics will be negotiated between the Implementer and Company.

Program proposals with greater proportions of funds tied to the delivery of net lifecycle energy savings measured and verified post-installation will be preferred over program proposals that correlate performance to program activities (installations) associated with pre-installation savings estimates (deemed), or proposals with large proportions of funds dedicated to Program Implementation activities that are not directly tied to net lifecycle energy savings, respectively.]

*{Comment: modifiable RFP Instructions}*

**Table 2: Payment Terms**

Contract Payment Category	Description	Proportion of Total Contract Value (%)	Contract Value by Category (\$)	Performance Security Rate (%)	Performance Security Amount (\$)
Program Implementation (A)	Funds paid to Implementers through monthly Time and Material invoicing for marketing, communications, and	A% [Implementer to Designate]	\$A = [Total Contract Value x A%]	AX% [IOU to Designate]	\$AX = [\$A x AX%]

	program administration activities				
Deemed Savings (B)	Payments in this category are dispersed to Implementers upon the successful completion and verification of program measure installations.	B% [Implementer to Designate]	\$B = [Total Contract Value x B%]	BX% [IOU to Designate]	\$BX = [\$B x BX%]
Custom Savings (C)	Payments to Implementers are tied to specific project installations and split between pre-installation customer commitment milestones and a post-installation measurement and verification (M&V) true-up of delivered net lifecycle energy savings. True-up provisions may include performance security to be posted by the Implementer.	C% [Implementer to Designate]	\$C = [Total Contract Value x C%]	CX% [IOU to Designate]	\$CX = [\$C x CX%]
Meter-Based Savings (D)	Payments to Implementers are tied to post installation measurement and verification of delivered net lifecycle energy savings at pre-determined measurement intervals. May include true-up provisions, as applicable, along with performance security to be posted by the Implementer.	D% [Implementer to Designate]	\$D = [Total Contract Value x D%]	DX% [IOU to Designate]	\$DX = [\$D x DX%]
		(A%+B%+C%+D%)=100	SUM(\$A+\$B+\$C+\$D)		
				Performance Security Deposit (E)	SUM(\$AX+\$BX+\$CX+\$DX)

## **F. Measurement and Verification Requirements, including Guidelines about Normalized Metered Energy Consumption (NMEC) Design Requirements**

Implementer shall:

- (a) Only enroll customers that qualify for Program services.
- (b) Comply with current policies, procedures, and other required documentation as required by Company;
- (c) Report Customer Participation Information<sup>16</sup> to Company;
- (d) Work with Company's evaluation team to define Program-specific data collection and evaluability requirements, and in the case of NMEC,<sup>17</sup> which independent variables shall be normalized. *{Comment: placeholder for Agreement term, subject to modification and may be negotiated by Company and Bidder}*

Throughout the Term, Company may identify new net lifecycle energy savings estimates, net-to-gross ratios, effective useful lives, or other values that may alter Program net lifecycle Energy Savings<sup>18</sup>. Implementer shall use modified values upon Company's request, provided Company modifies Implementer's Program budget and/or overall Program net lifecycle Energy Savings consistent with the requested change. Company will determine any budget increases or decreases in its sole discretion. *{Comment: placeholder for Agreement term, subject to modification and may be negotiated by Company and Bidder}*

For Programs claiming to-code savings:

Implementer shall comply with Applicable Law and work with Company to address elements in its Program designs and Implementation Plans, such as:

- (a) Identifying where to-code savings potential resides;
- (b) Specifying which equipment types, building types, geographical locations, and/or customer segments promise cost-effective to-code savings;
- (c) Describing the barriers that prevent code-compliant equipment replacements;
- (d) Explaining why natural turnover is not occurring within certain markets or for certain technologies; and
- (e) Detailing the program interventions that would effectively accelerate equipment turnover. *{Comment: placeholder for Agreement term}*

## **G. Coordination with Other Program Administrators**

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<sup>16</sup> "Customer Participation Information" will be defined in the Agreement.

<sup>17</sup> "NMEC" will be defined in the Agreement.

<sup>18</sup> "Program Net Lifecycle Energy Savings" will be defined in the Agreement.

Implementer shall coordinate with other Program Administrators<sup>19</sup> [ to be defined in the Agreement] administering energy efficiency programs in the same geographic area as Company. These other Program Administrators include:

[list PAs and geographic and program are overlaps]

The California Public Utilities Commission may develop further rules related to coordination between Program Administrators in the same geographic area, and any Implementer is required to comply with such rules.

#### H. Data Collection and Ownership Requirements

1. “Company Data” shall mean all data or information provided by or on behalf of Company, including but not limited to, customer personally identifiable information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manual’s, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of Company to Implementer as Company may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Implementer. Company Data shall also include all data and materials provided by or made available to Implementer by Company’s licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between Company and their licensors.

Prior to Implementer receiving any Company Data, Implementer shall comply, and at all times thereafter continue to comply, in compliance with Company’s Data security policies set forth on Exhibit\_\_\_\_(“Security Measures”) and pursuant to Company’s Confidentiality provisions in Section [ ]. Company’s Data Security Measures and Confidentiality provisions require Implementer to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the Company’s Data from unauthorized handling, access, destruction, use, modification or disclosure.] *{Comment: placeholder for Agreement term, each Company to add their own set of internal requirements}*

#### 2. Ownership and Use Rights.

- a. Company Data. Unless otherwise expressly agreed to by the Parties, Company shall retain all of its rights, title and interest in Company’s Data. *{Comment: placeholder for Agreement term, each Company to add their own set of internal requirements}*
- b. Program Intellectual Property. Unless otherwise expressly agreed to by the Parties, any and all materials, information, or other work product created, prepared, accumulated or developed by Implementer or any Implementer Party under this Agreement with Program funds (“Program Intellectual Property”), including, , inventions, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be jointly owned by the Company and Program Participants<sup>20</sup>, if any and

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<sup>19</sup> “Program Administrators” will be defined in the Agreement.

<sup>20</sup> “Program Participants” is defined as any other entity (including, without limitation, any other utility) providing funding under the Program.

without further consideration, on behalf and for the benefit of their respective customers. Program Intellectual Property will be owned by Company upon its creation. Implementer agrees to execute any such other documents or take other actions as Company may reasonably request to perfect Company's ownership in the Program Intellectual Property.

*{Comment: placeholder for Agreement term, each Company to add their own set of internal requirements}*

- c. Implementer's Pre-Existing Materials. If, and to the extent Implementer retains any preexisting ownership rights ("Implementer's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Implementer hereby grants Company and the Program Participants on behalf of their respective customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Implementer or any Implementer Party for the sole purpose of using such Program Intellectual Property for the conduct of Company's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Implementer shall retain all of its rights, title and interest in Implementer's Pre-Existing Materials. Any and all claims to Implementer's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to Company prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement may not automatically be claimed as owned by Company. *{Comment: placeholder for Agreement term, each Company to add their own requirements. Subject to negotiation between Company and Bidder.}*

**3. Billing, Energy Use, and Program Tracking Data.**

Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification (EM&V).

*{Comment: placeholder for Agreement term, each Company to add their own requirements}*

Implementer shall make available to Company upon demand, detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts. *{Comment: placeholder for Agreement term, each Company to add their own requirements}*

Implementer shall make available to Company any revisions to Implementer's program theory and logic model (PTLM) and results from its quality assurance procedures, and comply with all Company EM&V requirements, including reporting of progress and evaluation metrics.]

*{Comment: placeholder for Agreement term, each Company to add their own requirements}*

4. Access to Customer Sites.

Implementer shall be responsible for obtaining any and all access rights from customers and other third parties to the extent necessary to perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, Customers and other third parties in order for Company and CPUC employees, representatives, designees and contractors to inspect the Services.

*{Comment: placeholder for Agreement term, each Company to add their own requirement}*

