



## **SDG&E® Energy Upgrade California™ Home Upgrade Program Contractor Participation Agreement**

### **Program Description**

The Energy Upgrade California™ Home Upgrade Program (“Program”) is an energy efficiency program funded by California ratepayers and administered by San Diego Gas & Electric® (“SDG&E”) under the auspices of the California Public Utilities Commission. The Program provides incentives for the installation of certain energy efficiency measures in single-family residential homes by an approved Participating Contractor, in accordance with the following Program requirements. This Contractor Participation Agreement (“Agreement”) describes the Program and contains the terms and conditions all Participating Contractors must comply with in order to participate in the Program.

The Program has two options to qualify for an incentive: 1) Home Upgrade, and 2) Advanced Home Upgrade

### **Home Upgrade**

Contractors will perform a walk-through of the existing home, provide a scope-of-work specifying each measure to be installed for the homeowner, explain the required energy and safety measures, and install the applicable energy efficiency measures.

### **Advanced Home Upgrade**

Contractors will perform a comprehensive whole house diagnostic assessment of the existing home in accordance with BPI Standards. The Contractor will develop a pre-retrofit test-in energy modeling assessment based on the existing conditions using Program approved modeling software. The Contractor will provide a scope-of-work specifying each measure to be installed for the homeowner, complete installation of selected energy efficiency measures and perform a detailed post-retrofit test-out energy modeling assessment verifying the required percentage energy reduction of the retrofit. At least a 10% pre-retrofit modeled energy reduction assessment is required to qualify for an Advanced Home Upgrade. Most Advanced Home Upgrades will include the measures described in the Home Upgrade option.

## Terms, Definitions, and Conditions of Participation in the Program

### 1.0 DEFINITIONS

- 1.1 **Building Performance Institute, Inc. (“BPI”)** is a building performance credentialing, quality assurance and standards setting organization. BPI develops technical standards using an open, transparent, consensus-based process built on sound building science. BPI is approved by the American National Standards Institute, Inc. (“ANSI”) as an accredited developer of American National Standards.
- 1.2 **Energy Upgrade California™ Home Upgrade Program (“Program”)** is the statewide program of the four California investor owned utilities (Southern California Edison, Southern California Gas Company, Pacific Gas & Electric, and SDG&E), and the two California Regional Energy Networks (RENs) (SoCalREN and BAYREN) designed to improve the energy efficiency of existing residential single family homes and multifamily buildings. This Agreement refers to the single-family home component of the Program.
- 1.3 **EPA** means the U.S. Environmental Protection Agency.
- 1.4 **Home Performance with ENERGY STAR® or HPwES®** refers to the national program developed by the EPA and the U.S. Department of Energy, offering a comprehensive, whole-house approach to improving energy efficiency and comfort of homes, while maintaining or improving safety.
- 1.5 **Contractor** means a person or firm that provides home improvement services that increase the energy efficiency, comfort, energy savings, health or safety of residential homes, who is fully licensed under all applicable federal, state and local laws and regulations to perform such work. .
- 1.6 **Intellectual Property** means all marketing pieces, explanatory materials, websites, signs, and any and all documentation developed by SDG&E and its subcontractors in connection with the Program.
- 1.7 **San Diego Gas & Electric® (“SDG&E®”)** means the investor owned electric utility implementing the Energy Upgrade California™ Home Upgrade Program in their service territory.

### 2.0 PARTICIPATING CONTRACTOR (CONTRACTOR) QUALIFICATION, CERTIFICATION, AND STEPS TO PARTICIPATE

Contractors who successfully complete the required training and certification will gain two advantages that can be used to differentiate their services in the marketplace:

- 2.1 **Qualification** means a Contractor is qualified by SDG&E to submit Program projects in accordance with the requirements of the Program and as described here, and is therefore allowed to align its business services with the Program within the SDG&E service territory. All qualified Contractors will be listed as Participating Contractors on the SDG&E web site for the purpose of homeowner interest and affiliated Contractor networking.
- 2.2 **Certification** as a Building Analyst Professional by BPI means a certified individual will be allowed to align their business services with the BPI logo and brand.

BPI is a national standards development and credentialing organization for residential energy efficiency retrofit work. They provide training through a network of training affiliate organizations, individual certifications, company accreditations and quality assurance programs that supports the development of a highly professional building performance industry. Several certifications are available through BPI, including Building Analyst Professional, Envelope Professional, Heating Professional, Air Conditioning and Heat Pump Professional, and others. Contractors are encouraged to visit the BPI website at [www.bpi.org](http://www.bpi.org) for more information about the opportunities and related technical standards. Contractors should note that BPI requires recertification every three years. Recertification can be completed in three different ways. See <http://www.bpi.org/Contractor/recert2.htm> to further understand recertification requirements.

**2.3 Contractor Participation Requirements** – In order to become qualified as a Participating Contractor as described in Section 2.1 above, a Contractor must a) be certified and licensed according to all applicable federal, state and local laws, b) must meet all of the following requirements and c) must provide sufficient evidence and supporting documentation of same as required by SDG&E:

- Contractor State Licensing Board (CSLB) license in the appropriate specialty.
- Be appropriately bonded and in good standing with the California Secretary of State.
- Carry insurance coverage to SDG&E minimums.
- Execution of this Contractor Participation Agreement.
- 
- Ensure building permits are obtained and finalized on all work as required by the applicable local jurisdiction.
- BPI Building Analyst (BA) certification and company BPI Accreditation is strongly encouraged.

**2.4 Subcontractors** — A Participating Contractor shall ensure that all contractors and subcontractors working on Contractor's behalf comply with all of the applicable terms and conditions of this Agreement; have a current license in the specialty for the work being performed by them under the Program; and do not perform work for which they are not licensed. The Participating Contractor shall remain responsible for all work performed by such Contractor's hired contractors and subcontractors and shall ensure that such work is completed to the quality standards imposed herein.

### **3.0 QUALITY ASSURANCE PROTOCOLS AND CONTRACTOR REPORTING REQUIREMENTS**

In addition to the above qualification and certification requirements, Contractor must be familiar with and be responsible for compliance with all Program requirements for measure installation and quality assurance processes in accordance with all current versions of the *San Diego Gas & Electric Energy Upgrade California™ Home Upgrade Policies and Procedures* and the *Energy Upgrade California Installation Specifications for customers served by San Diego Gas & Electric Company*.

### **4.0 CONFIDENTIALITY OF INFORMATION AND DATA**

- a. In performance of Contractor's work under this Agreement, Contractor will receive certain personal information and consumption and energy use data from SDG&E customers

("Customer Confidential Information"). Contractor agrees that the Customer Confidential Information shall be deemed strictly confidential.

- b. Contractors shall use commercially reasonable physical, operational, and technical safeguards to preserve the confidentiality, integrity, and security of the information and data while in its possession and control.
- c. Contractor shall not use any Customer Confidential Information received from SDG&E customers for any purpose, commercial or non-commercial, other than to perform its obligations to its customers under the Program and pursuant to the requirements of this Agreement.
- d. No information, including but not limited to Customer Confidential Information, obtained by Contractor through the performance of their obligations under this Program or this Agreement shall be disclosed to ANY third party except upon written authorization from such SDG&E customers to allow third-party access to the information and data.
- e. Notwithstanding the return or destruction of all or any part of the Customer Confidential Information to SDG&E or the applicable customer, the terms of this Section shall remain in full force and effect in perpetuity.
- f. The parties acknowledge that the Customer Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Contractor and its representatives are specifically enforceable. Accordingly, the parties agree that in the event of a breach or threatened breach of this Agreement by Contractor, SDG&E 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, money damages or any other legal or equitable remedy available.

## 5.0 MARKETING

5.1 All marketing, advertising or promotional materials which reference SDG&E or the Program shall include a disclaimer which shall state:

\_\_\_\_\_ (**Insert name of Contractor**) is not an agent or affiliate of SDG&E and/or CONTRACTOR RECRUITMENT AND MENTORING VENDOR.

- I. In the case of television marketing, advertising or promotional spots which reference the Program, the disclaimer requirement may be satisfied by either (i) verbally announcing the disclaimer as part of the television spot, or (ii) displaying the disclaimer in a format equal to or greater than four percent of the vertical picture height, for a period of not less than four seconds, excluding fade in and fade out.
- II. In the case of radio marketing, advertising or promotional spots, which reference SDG&E or the Program, the disclaimer shall be verbally announced as part of the radio spot.
- III. In the case of telemarketing efforts that reference SDG&E or the Program, the disclaimer shall be included as part of the text read by the telemarketing representatives and in contacting or responding to SDG&E customers.
- IV. In the case of printed marketing, advertising, or promotional materials, which reference SDG&E or the Program, the disclaimer shall appear in the text of such materials and shall be printed in bold type.

- 5.2** Contractor shall not use the SDG&E or CONTRACTOR RECRUITMENT AND MENTORING VENDOR logo/trademarks in any of its marketing, advertising, or promotional materials without express written approval from SDG&E or CONTRACTOR RECRUITMENT AND MENTORING VENDOR as appropriate.
- 5.3** Contractor must use up-to-date Program marketing program materials.
- 5.4** All marketing and advertising materials shall comply with the California Business and Professions Code and must include the Contractor's CSLB license number.
- 5.5** SDG&E reserves the right to review and approve any and all advertising, marketing, or promotional copy or materials developed or used by the Contractor which references the Contractor's participation in this Agreement or the Program, financing and other SDG&E programs. At its sole discretion, SDG&E may require the Contractor to submit such copy and materials for pre-approval. SDG&E will respond within ten (10) working days of receipt if such review is required.
- 5.6** Approval shall be granted, unless SDG&E, in its sole discretion, determines that the copy or materials are misleading, in error, or fails to meet the requirements of this section. The Contractor agrees to remove from circulation or otherwise discontinue the use of any copy or materials as requested by SDG&E.

**5.7 HOME PERFORMANCE WITH ENERGY STAR® LOGO USE GUIDELINES**

Contractor agrees to use the HPwES® names and related marks for the Advanced Path of Energy Upgrade California only as long as Contractor is a party to the terms of this Agreement, participating in the SDG&E Advanced Path of the Program and using SDG&E approved marketing materials. Moreover, Contractor agrees that it will abide by all of the terms and conditions regarding the use of HPwES® marks as specified by the EPA through either printed documentation the EPA issues or verbal or written directions provided by EPA employees. For more information on the EPA logo use guidelines, see [https://www.energystar.gov/index.cfm?c=logos.pt\\_guidelines](https://www.energystar.gov/index.cfm?c=logos.pt_guidelines).

**6.0 REPRESENTATION**

- 6.1** Contractor, its representatives and agents shall not represent themselves as an agent, representative or employee of SDG&E, the CONTRACTOR RECRUITMENT AND MENTORING VENDOR, the CPUC or the CEC or claim association or affiliation with SDG&E, the CONTRACTOR RECRUITMENT AND MENTORING VENDOR, the CPUC or the CEC in any capacity other than as an independent Contractor. Further, the Contractor shall not make false claims about any part of the Program or their performance therein, including performance or savings, nor engage in fraudulent or deceitful conduct in the sale or installation of measures.
- 6.2** Contractor, its employees and representatives shall be solely responsible for all representations made to customers regarding the Program or work performed for a customer under the Program, and shall be responsible for all sales, installations, warranties, maintenance and service for all products and systems installed under this Agreement.

**7.0 WARRANTY**

- 7.1** Contractor shall warrant to all SDG&E customers it serves under this Agreement that any materials and equipment installed as part of this Program shall be free from original defects in

material, workmanship, design and installation for a minimum period of at least two (2) years from the date of completion of the work and Contractor shall remedy any such defect, at its sole expense and cost, during the warranty period.

- 7.2** Contractor shall maintain the manufacturer's warranty and the two (2)-year program warranty on all materials and equipment installed as part of this Program at no charge to the customer or SDG&E.
- 7.3** If Contractor offers warranties beyond the required two (2) years, Contractor shall clearly indicate whether this extended warranty is through the Contractor, factory, or third party in its contract with the customer.
- 7.4** Contractor shall instruct all of its customers under this Program on system or product operations and maintenance, and provide customers with all owner's manuals and warranty documents.

## **8.0 CONTRACTOR STATUS**

- 8.1** Accepted – Upon acceptance, Contractors will be placed on the proper Participating Contractor List. All Contractors must meet the minimum qualifications for participation in the Program as described above and establish a satisfactory work record with SDG&E.
- 8.2** Probation – Contractors that are required to satisfy special conditions will be placed on probation. Project approval and/or incentive payments may be contingent upon passing pre-inspection and/or quality assurance requirements by SDG&E's quality assurance team or its certified representatives.
- 8.3** Removed – Contractors who fail to meet the Terms and Conditions of this Agreement will be removed from the list of approved Participating Contractors. Contractors who have been removed from program participation are not eligible to sell additional jobs utilizing the Program. The suspension shall be in effect for a minimum of thirty (30) calendar days and until the Contractor satisfies the following minimum conditions:
  - 8.3.1** All jobs submitted to the Program with outstanding deficiencies are completed.
  - 8.3.2** Outstanding Customer / Contractor complaints are resolved.
  - 8.3.3** Outstanding issues concerning eligibility requirements such as insurance, bond, or licensing are resolved.
  - 8.3.4** Outstanding issues concerning fraudulent documents are resolved.Contractors reapplying after being removed may be required to:
  - 8.3.5** Provide proof of meeting the requirements of this Agreement;
  - 8.3.6** Meet additional requirements related to ineligibility infraction(s).
- 8.4** .
- 8.5** SDG&E by or through its designated representatives reserves the right at all times to request, inspect and verify Contractor continuing eligibility and minimum qualifications for participation in the Program.

## **9.0 CUSTOMER SATISFACTION**

With the signing of this Agreement, Contractor commits to the following:

- 9.1** Train internal staff to field customer inquiries about the Program;
- 9.2** Immediately report to SDG&E, or its designated representatives, all customer conflicts not resolved to customer's full satisfaction.
- 9.3** Participate in good faith in a reconciliation conference when there is a dispute involving the Contractor, initiated by a customer. Options for unresolved disputes include filing a complaint with CSLB or filing legal actions to gain restitution or recover damages.

## **10.0 CONTRACTOR CODE OF ETHICS**

By signing this Agreement, Contractor commits to:

- 10.1** Be open and transparent with the homeowner/customer through the course of each project;
- 10.2** Address all homeowner/customer questions and concerns in a fair and prompt manner;
- 10.3** List all subcontractors participating in the Program and provide their contact information to SDG&E, SDG&E designated representatives and the homeowner/customer;
- 10.4** Provide updates to the homeowner/customer during installation to enable them to monitor progress;
- 10.5** Respect the property and leave it in a clean and orderly condition, including fixing or replacing anything damaged during installation;
- 10.6** Ensure the homeowner/customer is in possession of warranties for all new equipment and materials installed;
- 10.7** Ensure the homeowner/customer understands that a final payment is not required until all work has been completed;
- 10.8** Ensure the homeowner/customer understands the rebate process; and
- 10.9** Provide the homeowner/customer with contact information for the program administrator at SDG&E or their designated representative should there be a question or dispute that cannot be resolved by the Contractor.

## **11.0 TERMINATION**

- 11.1** SDG&E may terminate this Agreement as to Contractor at its sole convenience and discretion, upon written notice to Contractor. In the event of termination, Contractor shall immediately cease all work being performed for any SDG&E customer under the terms of this Agreement. Contractor shall not be eligible for any termination charges or any payments, damages, losses, or claims arising out of or in connection with such termination for any reason under any theory of law.

- 11.2** SDG&E may terminate this Agreement for any violation or failure of Contractor to comply with the terms of this Agreement, upon written notice to the Contractor. Contractor shall not be eligible for any termination charges or any payments, damages, losses, or claims arising out of or in connection with such termination for any reason under any theory of law.

While it is impossible to note every type of violation or unacceptable conduct that could lead to termination, such violations would include:

- 11.2.1** Installing equipment or materials which endangers the safety of customers;
  - 11.2.2** Failure to comply with any of the terms and conditions of this Agreement or the Program processes;
  - 11.2.3** Misrepresenting Contractor's relationship with SDG&E or SDG&E's rebate program, either directly or through erroneous or misleading advertising, marketing or other promotional materials;
  - 11.2.4** Providing false information and/or engaging in acts of intimidation, harassment, or retaliation against any customer, SDG&E employee, or person who cooperates in any investigation;
  - 11.2.5** Violating any part of the Business and Professions Code;
  - 11.2.6** Failing to correct, without charge, any inspection notification within ten (10) working days; and
  - 11.2.7** Failing to repair damage to a customer's property resulting from an installation or other Contractor action or inaction arising under or related to the Program.
- 11.3** Contractor may discontinue participation in this Program by providing thirty (30) days' written notice to SDG&E or its designated representatives.

## **12.0 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 Section 13 constitutes the minimum insurance and requirements relating thereto.

- 12.1** EFFECTIVENESS, CERTIFICATES, NOTICE OF CANCELLATION. On or before the effective date of this Agreement, and thereafter during its term, Contractor shall provide SDG&E 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, along with all Additional Insured endorsements required herein. Contractor shall not commence work under this Agreement until Contractor has obtained all insurance required by this Section 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 SDG&E, ten (10) days for non-payment of premium. Contractor shall notify Company of any material revision to any term or condition of any insurance policy subject to this agreement, within thirty (30) days of Contractor becoming aware of such change. Contractor shall provide SDG&E 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.



- 12.2** AS CONTRIBUTION FROM SDG&E. 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 SDG&E.
- 12.3** RATING. All required policies of insurance shall be written by companies having an A. M. Best rating of "A -, VII" or better, or equivalent.
- 13.4** DEDUCTIBLE. Contractor shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.
- 13.5** 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 13.7. Commercial General Liability insurance listed in 13.7 shall provide a severability of interest or cross-liability clause.
- 13.6** Waiver of Subrogation. Each policy of insurance maintained by Contractor below in sections 13.7.1 and 13.7.4 shall contain a waiver of subrogation in favor of San Diego Gas & Electric Company.
- 13.7** Types of insurance required to be provided by Contractor:
- 13.7.1** 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.
- 13.7.2** Commercial & Personal 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 work under this Agreement, 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.
- 13.7.3** Workers' Compensation & Employers' Liability Insurance. In accordance with the laws of the State(s) in which the work under this Agreement 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.
- 13.7.4** 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.

**13.8** Contractor's 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 work under this Agreement 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 Contractors and Subcontractors, suppliers, and agents shall cause each Contractor and 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 Contractors and Subcontractors, suppliers, and agents from performing work or services on the property of SDG&E or customers. Contractor will furnish original certificates of insurance with additional insured endorsements from all of its Contractors and Subcontractors, suppliers, and agents as evidence thereof as SDG&E may reasonably request.

**13.9** Reports. Contractor shall immediately report to SDG&E, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Contractor or its consultants, Contractors and 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 work under this Agreement, Contractor shall submit to SDG&E 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.

### **13.0 FAIR TRADE**

Contractor agrees to abide by principles of fair trade and conduct as specified by state and federal laws. Contractor specifically agrees not to participate in any price fixing with any other firm or organization taking part in the Program.

### **14.0 FRAUD AND DISHONESTY; COMPLIANCE WITH LAWS**

Contractor expressly warrants and represents that it shall conduct its business activities without perpetrating any fraud or dishonesty on customers it serves through the Program. Contractor shall make best efforts to avoid doing any harm to SDG&E, its contractors or subcontractors, sponsors of the Program, the SDG&E brand or goodwill, or the EPA. Contractor shall comply with all applicable federal, state, and local statutes, rules, regulations, laws, orders and decisions that relate to or govern their participation in the Program and/or their interactions with customers, including but not limited to the CAN-SPAM Act.

### **15.0 CRIMINAL RECORD OF EMPLOYEES**

Contractor shall not allow any of its employees, or the employees, representatives or agents of its contractors or subcontractor, to perform work in customer homes if such person has been convicted of a felony under state or federal law.

### **17.0 EFFECTIVE DATE AND TERM**

The effective date of this Agreement is the date of Contractor's authorized representative's signature at the end of this Agreement. The term of this Agreement shall commence on the

effective date and shall continue until the end of the calendar year of the effective date of this Agreement. This Agreement shall be automatically renewed for additional one-year terms each subsequent calendar year, unless either party notifies the other in writing not less than thirty (30) calendar days' prior to the expiration of the current term.

## **18.0 INDEMNIFICATION**

At its sole cost and expense, Contractor shall indemnify, defend and hold harmless SDG&E, its current and future parent company, its affiliates and its designated representatives and their respective directors, officers, agents, assigns, successors-in-interest and employees against any and all claims, losses, damages, expenses, actions, suits, costs, including attorney's fees (which shall include, but are not limited to, allocable costs of in-house counsel) and liabilities, asserted or incurred by any other parties, including, but not limited to, SDG&E employees and/or Contractor's employees, arising out of or in any way connected with (i) any act or omission of Contractor, its agents, employees, contractors, subcontractors and/or suppliers, in the performance of the work under this Agreement or the Program, whether intentional or negligent, active or passive, or (ii) Contractor's breach of any provision of this Agreement.

Under no circumstances shall SDG&E, its current and future parent company, its affiliates and its designated representatives and their respective directors, officers, agents, assigns, successors-in-interest and employees be liable to any party for any damages, payments, losses, or claims arising out of or in connection with this Agreement, including but not limited to any direct, indirect, special, consequential, incidental or punitive damages, arising under any theory of law.

## **19.0 INTELLECTUAL PROPERTY**

All Intellectual Property provided by SDG&E or its respective representatives to Contractor shall remain the sole and exclusive property of SDG&E. In no event shall Contractor reproduce, distribute, copy, make derivative works of or use any items developed by SDG&E or its subcontractors without the permission of SDG&E or as established herein.

## **20.0 LEGAL AUTHORITY**

Contractor's signatory to this Agreement hereby certifies possession of the legal authority to execute this Agreement.

## **21.0 WAIVER**

No provision of this Agreement may be waived unless agreed to by SDG&E in writing. SDG&E's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Agreement.

## **22.0 DISPUTE RESOLUTION**

In the event of any conflict or potential conflict between a participating Contractor and SDG&E, the parties shall raise the conflict to the appropriate executives of Contractor and SDG&E, and in consultation with the program funding entities; such individuals shall resolve the conflict or potential conflict and attempt to reach a consensual agreement.

## **23.0 GOVERNING LAW and VENUE**

This Agreement is made and entered into in the State of California and shall be governed by the laws of the State of California. In the event of any litigation to enforce or interpret any terms of

this Agreement, the parties agree that such action will be brought in the Superior Court of the County of San Diego, California (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 such courts.

#### **24.0 EQUAL OPPORTUNITY**

Contractor agrees to operate its business in compliance with all state and federal laws regarding employment and the fair provision of its services. Contractor expressly agrees not to discriminate in the course or conduct of its business based on race, creed, ethnicity, religion, national origin, gender, or age.

#### **25.0 SEVERABILITY**

If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of lawful jurisdiction, this invalidity does not affect other provisions of the Agreement which can be given effect without the invalid provision.

#### **26.0 PARTICIPANT AGREEMENT CLAUSE**

By executing this Contractor Participation Agreement, Contractor commits to the following:

- a. Assure that all work is performed in a safe manner;
- b. Abide by SDG&E's quality assurance procedures including reporting and sampling protocols;
- c. Train internal staff to field customer inquiries about the Program;
- d. For a Contractor providing Advanced Home Upgrades, adherence to the EPA logo use guidelines;
- e. Provide excellent customer service to any customer requesting home improvement services;
- f. Comply with all legally-required building permits, Contractor licensing requirements, and applicable building codes;
- g. Comply fully with the Program's Contractor Licensing and Certifications Policy;
- h. Immediately report to SDG&E or its representatives, all customer conflicts that are not resolved to customer's full satisfaction.

Contractor certifies the information submitted in this Application or otherwise for this Program is true and correct.

Contractor agrees to cooperate with all verifications by SDG&E and its quality assurance team and shall provide information about its installation practices for confidential use in measurement and evaluation activities.

Contractor has read and understood the Program requirements as set forth in this Contractor Participant Agreement and agrees to abide by those requirements. Contractor understands payment of rebates to its customers is contingent upon Contractor's compliance with all Program requirements and providing all necessary documentation to SDG&E.

**CONTRACTOR**

Company Name: \_\_\_\_\_

Signature of  
Authorized Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_