

**San diego Gas & Electric Company**

**Schedule A1**

**Part A: Standard Contract Terms**

**Part B: Required modifiable contract terms AND CONDITIONS**

**<Insert Contract name here>**

**2020**

**Schedule A1 – Standard and Modifiable Contract Terms and Conditions**

The Standard Contract Terms and Conditions (“Part A”) and Required Modifiable Contract Terms and Conditions (“Part B”), provided herein collectively become “Schedule A1”, and are as set forth and approved in D.18-10-008 and D. 19-01-003 and D.19-07-016.

**Part A**

**Standard Contract Terms and Conditions**

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

1. Licensing. At all times during the performance of the Services, Implementer 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 Schedule A – Additional Terms and Conditions.

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.

1. **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:

(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.

1. **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 the Director of Supply Management 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 San Diego County (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.

1. **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:

1. With respect to either Party:
2. 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.

1. 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 Schedule A – Additional Terms and Conditions;

(vi) Implementer fails to maintain the insurance coverage required of it in accordance with Schedule A – Additional Terms and Conditions;

(vii) Implementer fails to satisfy the collateral requirements set forth in Schedule A – Additional Terms and Conditions, if any, 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 Schedule A – Additional Terms and Conditions; or

(ix) Implementer fails to achieve the minimum performance standards set forth in Schedule B – Scope of Work, 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:

1. 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”);
2. withhold any payments due to the Defaulting Party under this Agreement;
3. Suspend performance of Services under this Agreement (but excluding, for the avoidance of doubt, the obligation to post and maintain performance security] in accordance with Schedule A – Additional Terms and Conditions, if applicable, and the obligation to obtain and maintain the insurance requirements in accordance with Schedule A – Additional Terms and Conditions; and
4. 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.

1. 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.
2. Notwithstanding anything contained in this Section D.3, 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 cancelation 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 D.3 Also as a condition precedent to the payment of any cancellation or termination charges by Company under this Section D.3, 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.
3. 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.

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

1. **Workforce Standards and Quality Installation Procedures**
2. Workforce Standards.

At all times during the term of the Agreement, Implementer shall comply with, and shall cause its employees, agents, representatives, subcontractors, independent contractors, and all other persons performing the Services on Implementer’s behalf (“Implementer Party”) to comply with, the workforce qualifications, certifications, standards and requirements set forth in Schedule B – Scope of Work (“Workforce Standards”). The Workforce Standards shall be included in their entirety in Implementer’s Final Implementation Plan. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by Company, Implementer shall provide all documentation necessary to demonstrate to Company’s reasonable satisfaction that Implementer has complied with the Workforce Standards.

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

For all Program HVAC projects and for each Program HVAC measure 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.

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

For all Program lighting control projects and for each Program lighting control 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.

2. Quality Assurance Procedures.

Implementer shall comply with the requirements as described in Attachment 6 (Quality Assurance Plan) of Schedule B – Scope of Work.

1. **Progress and Evaluation Metrics**

1. Final Implementation Plan.

Contractor shall have completed a final Implementation Plan (“Final Implementation Plan”) which must be approved by Company and presented before stakeholders (in accordance with D18-05-041, OP2 and OP3) in accordance with Schedule G – Implementation Plan.

2. Key Performance Indicators.

Implementer shall use commercially reasonable efforts to meet the Key Performance Indicators ("KPIs”)[[1]](#footnote-2) for the Program in accordance with Attachment 7 (KPIs, Performance Monitoring & Corrective Actions) of Schedule B – Scope of Work. 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, Attachment 7, or as reasonably requested by Company. Company shall review Implementer’s performance in achieving each KPI once per calendar quarter or as otherwise set forth in Attachment 7 or 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 and Attachment 7, 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, as set forth in this Agreement and Attachment 7.

3. Other Program Metrics.

Implementer shall provide to Company all documentation and data needed to calculate all Program metrics set forth in Schedule B – Scope of Work, Schedule C – Compensation, and the Final Implementation Plan, at the frequency stipulated therein. Such data includes, but is not limited to, data in support of sector‐level and portfolio‐level metrics, as approved by the CPUC.

1. **Contract Term/Length**

1. Term.

The Term of this Agreement is specified in the Section entitled “Term”.

1. **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.

*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.

*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.

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.

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.

1. **Payment Schedule and Terms, Including Pay‐for‐Performance Payment Provisions**

The payment terms associated with this Agreement are set forth in Section entitled “Invoicing”, the Section entitled “Payment”, Schedule A –Additional Terms and Conditions, and Schedule C – Compensation.

1. **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 to Company as requested by Company;

(d) Work with Company’s evaluation team to define Program‐specific data collection and evaluability requirements, and in the case of Normalized Meter Energy Consumption (NMEC, as used and defined by the CPUC), which independent variables shall be normalized.

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. 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 based on such new values in its sole discretion.

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.

1. **Coordination with Other Program Administrators**

Implementer shall coordinate with other Utility Participant administering energy efficiency programs in the same geographic area as Company.

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

1. **Data Collection and Ownership Requirements**
2. “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 Schedule A2 – Information Security Requirements (“Security Measures”) and pursuant to Company’s Confidentiality provisions in the Section entitled “Confidentiality” in Schedule A – Additional Terms and Conditions. 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.

1. Ownership and Use Rights.
2. Company Data. Unless otherwise expressly agreed to by the Parties, Company shall retain all of its rights, title and interest in Company’s Data.
3. 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, but excluding Implementer’s Pre-Existing Materials and Implementer Software, shall be jointly owned by the Company and Utility Participants, if any, 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.

c. Implementer’s Pre‐Existing Materials. Implementer shall retain all ownership and intellectual property rights in (a) any material used to create, develop, and prepare the Program Intellectual Property (“Implementer’s Pre‐Existing Materials”), and (b) any software (and software enhancements) developed by Implementer in connection with the Program (“Implementer Software”). Implementer hereby grants Company and the Utility Participants on behalf of their respective customers and the CPUC for governmental and regulatory purposes an irrevocablenon‐exclusive, perpetual, royalty‐free license to use such Implementer’s Pre-Existing Materials and Implementer Software for purposes related to this Agreement. 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.

1. 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).

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.

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.

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.

1. “KPIs” will be the primary means by which Company will assess Program performance on an ongoing basis. [↑](#footnote-ref-2)