

Small Business Real-Time Energy Manager Agreement



CUSTOMER INFORMATION

Company Name			
Company Mailing Address	City:	State:	Zip:
Contact Name	Title		
Contact Telephone Number	Contact Fax Number	E-Mail	
Tax Identification Type (Select Only One) <input type="checkbox"/> Federal Tax ID: _____ <input type="checkbox"/> SSN _____		Tax Status (Select Only One) <input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Non-Corp <input type="checkbox"/> Exempt Exempt Reason _____	

PROJECT SITE INFORMATION (Site of Retrofit/Project)

Project Name			
Site Address	City	State:	Zip:
Contact Name at Project Site	Contact Phone Number	Contact Email Address	
Electric Account Number	Electric Account Number	Electric Account Number	Electric Account Number
Electric Account Number	Electric Account Number	Electric Account Number	Electric Account Number
Total Sq. Ft of Facility: _____	Years since built or last major renovation: _____		

CONTRACTED MEASURES, LOAD DROP, AND POTENTIAL INCENTIVE

Measure No.	Demand Response Measure (Technology)	Estimated Curtailable Load (kW)	Estimated Total Cost
1			\$
2			\$
3			\$
4			\$
5			\$
6			\$
7			\$
8			\$
9			\$
10			\$

Total Estimated Dispatchable Load Reduction: _____ Estimated Total Project Cost: \$ _____
 Maximum SCBEP Incentive (based on load reduction): \$ _____ Reduction in incentive due to Cost Cap: \$ _____
 SCBEP Incentive Rate _____ x \$200/kW _____ Maximum SCBEP Incentive available under this Agreement: \$ _____

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TERMS AND CONDITIONS:

This Small Business Real-Time Energy Manager Agreement (“Agreement”) is entered into by San Diego Gas & Electric Company (“SDG&E”) and _____ (“Customer”). SDG&E and Customer may be individually referred to as a “Party” and collectively as the “Parties.”

1. PROJECT DESCRIPTION:

This Agreement governs the provision of incentives to that 2017 Small Business Real-Time Energy Manager (“Project(s)”) described above and on the 2017 Small Business Real-Time Energy Manager Application executed by Customer and all forms attached thereto (“Application”). SDG&E shall only pay Customer incentives in accordance with the terms and conditions of this Agreement.

2. DOCUMENTS INCORPORATED BY REFERENCE:

The following documents are hereby incorporated by reference and made part of this Agreement:

- 1) The Application and any forms attached thereto, and
- 2) SDG&E’s acceptance letter(s) regarding the Project.

3. ELIGIBILITY:

Pilot funding is limited and is available on a first-come, first-served basis until Pilot funds are no longer available, or December 31, 2018, whichever comes first. Funds will be reserved only upon SDG&E’s approval of an Application for the Project. Projects must meet the following requirements to be eligible for payment of Pilot Incentive(s):

- 1) Project Site must be a nonresidential facility located within SDG&E’s service territory;
- 2) Customer must pay the Public Purpose Program (“PPP”) surcharge, or the Public Goods Charge (“PGC”) surcharge, as applicable, on the SDG&E accounts listed above for which incentives have been requested;
- 3) Customer must not receive any funds from any other demand side management incentive program funded by the PPP surcharge, the PGC surcharge, the Demand Side Management surcharge, or energy management incentive programs funded by the California Energy Commission or the California Public Utilities Commission (“CPUC”) for the Project or any measure applied for herein. Customer represents and warrants that Customer has not and will not apply for funds from any such programs for the Project or any measure applied for herein;
- 4) The Customer-owned facilities described above for which the Customer is requesting incentives must be receiving bundled or direct access electric service from SDG&E, must have an Interval Data Recorder (IDR) electrical meter receiving 15-minute interval data, and must be billed on a SDG&E commercial, industrial or agricultural, Time of Use (TOU) rate schedule;
- 5) The demand response measure(s) must:
 - a) Be a commercially available technology; and
 - b) Enable fully automated, dispatchable, load reduction at the Customer-owned facility (the SBCP will not provide incentives for manual or semi-automated equipment or for load reduction enabled by customer behavior changes).
- 6) Projects must meet all other Pilot requirements, terms and conditions.

4. SUBMITTAL REQUIREMENTS FOR PAYMENT:

Customer shall submit to SDG&E the documents described below prior to being eligible for payment of any Incentives.

Required documents include the following:

- 1) This completed and executed Agreement;
- 2) Complete engineering calculations to demonstrate potential load reduction (kW) and documentation, if applicable (including archival files, if applicable);
- 3) Schematic drawings and/or manufacturer specification sheets, if applicable;
- 4) Invoices and/or documentation to support measure costs. Such documents must comply with SDG&E’s SBCP Invoicing Guidelines;
- 5) Project Installation Report; and
- 6) Any other documents related to the Project, Project Site, measures, load reduction (kW) or otherwise requested by SDG&E.

5. INSPECTIONS:

Customer is solely responsible for ensuring that SDG&E has reasonable access for all inspections and load shed tests required under the Pilot, including, but not limited to, the following: (1) pre-installation equipment inspection to examine the existing/baseline equipment and to check the accuracy of Customer’s equipment survey; (2) post-installation equipment inspection to check installed equipment and to verify accuracy of Customer’s equipment survey; (3) load shed test; and (4) inspection of the Project for any other reason that SDG&E deems necessary.

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6. REVIEW AND DISCLAIMER:

SDG&E'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT OR DEMAND RESPONSE MEASURES ("DRMs") DOES NOT CONSTITUTE ANY WARRANTY OR REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT OR DRMs, NOR SHALL CUSTOMER MAKE SUCH REPRESENTATION TO ANY THIRD PARTY. CUSTOMER IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, CONSTRUCTION, OPERATIONAL CAPABILITY AND RELIABILITY OF CUSTOMER'S PROJECT AND EEMS. SDG&E MAKES NO WARRANTY, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, USE OR APPLICATION CONCERNING THE PROJECT.

7. PAYMENTS:

Payments of Incentives will be made only after all Pilot requirements are met by Customer to SDG&E's satisfaction. All authorized payments of Incentives must be payable to the Customer.

- 7.1 SDG&E retains sole discretion to determine the appropriate baseline values and methodology/calculations used to verify the actual dispatchable load reduction enabled by the installed qualifying technology. Incentives shall only be paid on projects that result in verifiable load shed due to the approved technology. SDG&E reserves the right to modify or cancel the Incentive amount if the actual measure installed differs from the measure described in Customer's approved Application(s).
- 7.2 The total Incentive payment shall not exceed the total incentive amount listed in the Final Approved Savings Amount table in this Agreement, which will be limited to 50% of the total project cost or \$10,000.00, whichever is lower.
- 7.3 The total Incentive payment is based on the calculated demand reduction derived from the actual use of electricity provided by SDG&E. Electricity provided by any party other than SDG&E, including, but not limited to, cogeneration or deliveries from another commodity supplier, do not qualify (with the exception of Direct Access Customers or Customers paying departing load fees for which SDG&E collects the PPP surcharge, the PGC surcharge and/or the DSM surcharge).
- 7.4 SDG&E will make the applicable Incentive payment to Customer only after all required and/or requested documents have been submitted to and approved by SDG&E and the appropriate inspection(s) of the Project or Project Site have been completed to SDG&E's satisfaction.
- 7.5 All Projects and/or measures must be installed and fully operational within six (6) months of the signed agreement to be eligible for Incentive payments. SDG&E reserves the right to cease making Incentive payments, require the return of Incentive payments and/or terminate this Agreement if the Project(s) is not installed and fully operational within six (6) months of the approval date, unless an extension is granted by SDG&E, at its sole discretion.

8. PAYMENT DISQUALIFICATION:

Any Incentives received by Customer shall be repaid to SDG&E, in whole or in part, as follows:

- 8.1 If Customer fails to pay the PPP surcharge, the PGC surcharge or the DSM surcharge at any time during the Term of this Agreement, Customer shall refund to SDG&E the prorated amount of the Incentive dollars that SDG&E determines must be repaid based on the energy savings that occurred during the payment of the PPP surcharge, the PGC surcharge or the DSM surcharge.
- 8.2 If Customer does not provide SDG&E with 100% of the related benefits specified in the Application for a period of two (2) years from the Project Installation Report approval date, or the energy benefit to SDG&E ceases in any way during the three (3) year period from the Project Installation Report approval date, including, but not limited to, Customer and/or the Project Site ceasing to receive electricity service from SDG&E, the measure, equipment and/or Project ceasing to function, Customer opts out of an eligible Demand Response Program, or Customer ceasing the use of the equipment, measure or Project Site, Customer shall refund to SDG&E any prorated amount of the Incentive dollars that SDG&E determines must be repaid based on the actual period of time Customer provided the energy benefit.
- 8.3 Customer shall repay any amounts due to SDG&E within thirty (30) calendar days of notification by SDG&E that repayment is required in accordance with Sections 8.1 and 8.2 above. SDG&E shall be entitled to offset against payments owed to Customer any amount due to SDG&E that remains unpaid forty (40) calendar days after SDG&E'S written demand for payment.

9. TERM AND TERMINATION:

The term of this Agreement shall commence on the last date that a Party executes this Agreement and shall terminate five (5) years from the Project Installation Report approval date, unless terminated earlier pursuant to this Agreement ("Term").

10. ASSIGNMENT:

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

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11. PERMITS AND LICENSES:

Customer and its contractors and/or subcontractors are responsible for obtaining and maintaining any licenses and permits required by federal, state, local, or other relevant governing or regulatory bodies to perform its work. Any failure by Customer or its contractors and/or subcontractors to maintain necessary licenses and permits constitutes a material breach of Customer's obligations under this Agreement.

12. ADVERTISING, MARKETING AND USE OF SDG&E'S NAME:

Customer shall not use SDG&E's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers to participate in the Pilot, without SDG&E's prior written consent. Customer shall make no representations to its customers on behalf of SDG&E.

13. INDEMNIFICATION:

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

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

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

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

14. LIMITATION OF LIABILITY:

SDG&E shall not be liable for any special, incidental, indirect, or consequential damages, including without limitation, loss of profits or commitments to subcontractors, and any special, incidental, indirect or consequential damages incurred by Customer or its contractors.

15. WRITTEN NOTICE:

Any written notice, demand or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person or sent by facsimile, email, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by SDG&E. Notices shall be deemed received (a) if personally or hand-delivered, upon the date of delivery to the address of the person to receive such notice if delivered before 5:00p.m., or otherwise on the Business Day following personal delivery; (b) if mailed, three (3) Business Days after the date the notice is postmarked; (c) if by facsimile or email, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; or (d) if by overnight courier, on the Business Day following delivery to the overnight courier within the time limits set by that courier for next-day delivery.

Small Business Real-Time Energy Manager Agreement



SDG&E		
Program Manager		
Utility		
Address		
City	State	Zip
Fax Number	Phone Number	
CUSTOMER		
Name		
Company		
Address		
City	State	Zip
Fax Number	Phone Number	

16. CONFLICTS BETWEEN TERMS:

Should a conflict exist between this Agreement and the documents incorporated by reference, this Agreement shall control. Should a conflict exist in the documents incorporated by reference, the documents shall control in the following order: SDG&E acceptance letter(s) and incentive estimate(s) based on DRMs as approved in the Application(s); and Customer's approved Application(s). Should a conflict exist between an applicable federal, state, or local law, rule, regulation, order or code and this Agreement, the law, rule, regulation, order or code shall control. Each Party shall notify the other immediately upon the identification of any conflict or inconsistency concerning this Agreement.

17. MISCELLANEOUS:

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

18. PAYMENT METHODOLOGY:

Small Business Real-Time Energy Manager Incentive projects will be paid as follows:

INCENTIVE PAYMENT: A one-time incentive payment of \$200 per kW of verified dispatchable load reduction and capped at no more than 50% of the actual project cost (including the purchase price and any costs associated with installation by a third-party) or \$10,000.00 whichever is lower. Any in-house costs associated with installation will not be considered part of the cost of the installed measure(s). Incentive payments can only be distributed to the Customer named on the Pilot Agreement.

18.1 **DR Program Enrollment:** Customer must establish enrollment in a DR program or rate by submitting a copy of the enrollment confirmation provided by SDG&E. Prior to issuing the SCBEP incentive, Customer must receive authorization from SDG&E which will occur upon acceptance and verification of DR program enrollment.

19. RELEASE OF INFORMATION:

If the CPUC requests review of this project, SDG&E will provide the CPUC with all the information requested without further notification to you. If you refuse to allow the CPUC, its staff or its contractors and/or consultants to have access to the project data, this project will be excluded from this Pilot and ineligible to receive incentives.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

UTILITY	CUSTOMER
By:	By:
Title:	Title:
Name Printed:	Name Printed:
Date:	Date:
Signature:	Signature:

Agreement is to be reviewed and signed by an authorized representative of the Customer. The Agreement should then be returned to SDG&E. Upon receipt, SDG&E will send an email authorizing work on the project (No work is to be performed prior to receipt of the Work Authorization Email.). SDG&E will then execute the Agreement and send a copy to the Customer.