

**2002 AGREEMENT FOR THIRD PARTY ENERGY EFFICIENCY
IMPLEMENTERS**

July __, 2002

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The Utilities will use all or some of the following Attachments

Attachment A

- Deliverable Schedule for Quarterly Reports dated June __, 2002
- Implementation Report dated __, 2002
- Implementer's Program Implementation Plan filed with the CPUC on May __, 2002 and approved on _____, 2002
- Implementer's Proposals with attachments, as approved by the CPUC on May 16, 2002

Attachment B

CPUC Reporting Requirements dated May 17, 2002, as modified from time to time by the CPUC's Energy Division; Program Specific Deliverables; Quarterly deliverables; Monthly deliverables; Documents to keep on file

Attachment C

Implementer's Evaluation and Measurement plan (if applicable)
to be developed/due 30 days after the Implementer selects a contractor from the Commission-approved list of EM&V contractors, but not later than 60 days after the Commission issues an approved list.

Attachment D

Specific Contract Conditions, for use consistent with specific projects and IOU business practices

THIS AGREEMENT ("Agreement") is made and entered into as of the ____th day of July ____, 2002, by and between _____, a _____ corporation ("Implementer"), and IOU _____, a California corporation ("Utility" or "IOU"). Utility and Implementer are also each individually referred to herein as "Party" and collectively as "Parties."

RECITALS

WHEREAS, Decision (D.) 01-11-066 adopted policy rules and procedures to be followed for energy efficiency programs in 2002 in the text of the decision and in the Energy Efficiency Policy Manual (Version 1) dated November 29, 2001 ("Policy Manual") attached to the decision;

WHEREAS, pursuant to D.01-11-066, the California Public Utility Commission ("CPUC"), requested proposals from parties interested in performing energy efficiency work in the service territories of Pacific Gas & Electric ("PG&E"), Southern California Edison Company ("SCE"), Southern California Gas Company ("SoCalGas") and/or San Diego Gas & Electric Company ("SDG&E");

WHEREAS, in response to this request, Implementer submitted a proposal to the CPUC to provide energy efficiency;

WHEREAS, on May 16 or June 6, 2002 the CPUC selected and approved (or approved with modifications), Implementer's proposed scope of work (hereafter "Proposal");

WHEREAS, pursuant to D.01-11-066, D.02-03-056 and D.02-05-046, the CPUC has directed PG&E, SCE, SoCalGas, and SDG&E to develop a standard agreement and to enter into contracts with such parties to memorialize the terms and conditions for payment for the authorized work to be performed in their respective service territories;

WHEREAS, on July __, 2002, the assigned Administrative Law Judge ("ALJ") in OIR 01-08-028 approved the use of this standard form agreement by IOU and Implementer as a mechanism for payment of the approved services to be rendered by Implementer in 2002, 2003 and 2004.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, the mutual covenants contained herein, the Parties agree as follows:

1. DEFINITIONS

The following terms shall have the following meanings, whether capitalized or not, singular or plural:

“Agreement” or “Contract”: This agreement between IOU and Implementer, including the Appendices.

Information-Only Programs: Programs with no demonstrable energy savings.

Hard-to-Reach Customers: The term “hard-to-reach” can apply to either residential or non-residential customers. Residential hard-to-reach customers are those customers who do not have easy access to program information or generally do not participate in energy-efficiency programs due to a language, income, housing type, geographic, or home ownership (split incentives) barrier. These barriers are defined as:

- Language – Primary language spoken is other than English, and/or
- Income – Those customers who fall into the moderate income level (income levels less than 400% of the federal poverty guidelines), and/or
- Housing Type – Multi-Family and Mobile Home Tenants, and/or
- Geographic – Residents of areas other than the San Francisco Bay Area, San Diego area, Los Angeles Basin or Sacramento, and/or
- Homeownership – Renters

Non-residential hard-to-reach customers are those customers who do not have easy access to program information or generally do not participate in energy efficiency programs due to language, business size, geographic, or lease (split incentives) barrier. These barriers are defined as:

- Language – Primary language spoken is other than English, and/or
- Business size – Less than ten employees and/or classified as Very Small (customers whose annual electric demand is less than 20 kW, or whose annual gas consumption is less than 10,000 therms, or both), and/or
- Geographic – Businesses in areas other than the San Francisco Bay Area, San Diego area, Los Angeles Basin or Sacramento, and/or
- Lease – Investments in improvements to the building benefit the business only during the lease period; landlords benefit longer.

Savings Programs: Programs with demonstrable energy savings.

Direct Implementation Costs are defined by the CPUC's Reporting Requirements Manual as financial incentives/rebates, installation costs, hardware/materials costs, activity costs, and rebate processing/inspection costs. These costs do not include other cost category such as Administration, Marketing/Advertising/Outreach, Evaluation, Measurement and Verification, and Other as defined by the CPUC's Reporting Requirements Manual

Administrative Costs have the same meaning as defined in the Budget for Implementer's Program Implementation Plan

Days means calendar days, unless otherwise specified

2. APPENDICES INCORPORATED BY REFERENCE

The following Appendices are made part of this Agreement:

(see list in Table of Contents)

Attachment A
Attachment B
Attachment C
Attachment D

3. IMPLEMENTER'S OBLIGATIONS

Implementer shall perform the work described in **Attachment A**, which is attached hereto incorporated herein by this reference, in accordance with the requirements of the CPUC decisions described in the recitals above ("Authorized Work").

Implementer hereby acknowledges that time is of the essence in performing the Authorized Work. Failure to comply with stated deadlines or milestones may result in termination of this Agreement, payments being withheld, or program modifications as directed by the assigned ALJ.

Implementer may request that the assigned ALJ or CPUC Agreement Representative approve modifications to the Authorized Work.

Implementer shall communicate regularly with the assigned IOU Agreement Representative and shall advise the IOU Agreement Representative of significant problems. Implementer will strive to address minor issues or problems on its own.

3.1 Professional Standards

Implementer shall perform the Authorized Work, and shall furnish required labor, equipment and material with the degree of skill and care that is required by current professional standards.

3.2 Required Reports

Implementer shall submit Quarterly Reports to the IOU and CPUC Agreement Representatives. The reports shall contain all information and be in format set forth in **Attachment B**: In addition to the Quarterly Reports, Implementer shall also submit Monthly Reports no later than the 21st calendar day of the month following performance of Authorized Work. The reports shall contain all information and be in format set forth in **Attachment B**. The first report shall be due on the 21st day of the first month after Contract execution.

Report Schedule

Implementer shall submit the Required Reports listed below according to the following schedule:

Report	Due Date
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<p>Program Specific Report For Direct Installation Programs (Programs where Implementer provides energy efficiency measures, including maintenance, repair, or optimization services at no charge to the Customer)</p> <ol style="list-style-type: none"> 1. Installation Standards 2. Implementer must conform to product specifications (e.g. Energy Star ®) and installation standards (e.g. WIS Manual, RCP duct testing and sealing, AC tune-up standards) of the IOUs. 3. Quality Assurance Procedures 4. Current installation schedule (and made available on request during program implementation) <p>Program Specific Report For Rebate, Loan, or other Financial Assistance Programs (Programs where Implementer provides rebate, loan, co-funding, or other financial assistance for the installation of energy efficiency measures, including maintenance, repair, or optimization services)</p> <ol style="list-style-type: none"> 1. Quality Assurance Procedures 2. Implementer’s internal Policy and Procedures if requested by IOU or CPUC 3. External Policy and Procedures Manual describing <ul style="list-style-type: none"> o Program dates o Eligibility requirements o Incentive payment process o IRS 1099 reporting procedures o Dispute resolution procedures o Eligible product specification (e.g. Energy Star) 	<p>7 Days following execution of this Agreement</p>
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<p>Implementation Report Addressing Following Issues (as set forth in D.02-05-056):¹</p> <ul style="list-style-type: none"> • Coordination with Other Energy Efficiency Programs • Coordination With LIEE Programs (<i>IOU programs and Implementer's own programs</i>) • Responding to and tracking customer complaints • Customer Disclosure text 	<p>10 days following execution of this Agreement</p>
<p>Q-3 2002: Quarterly Report covering third quarter of 2002 and any second quarter activities (July – September)</p>	<p>On or before November 1, 2002</p>
<p>Q-4 2002: Quarterly Report covering fourth quarter of 2002 (October – December)</p>	<p>On or before February 1, 2003</p>
<p>Q-1 2003: Quarterly Report covering first quarter of 2003 (Jan – Mar)</p>	<p>On or before May 1, 2003</p>
<p>Q-2 2003: Quarterly Report covering second quarter of 2003 (April – June)</p>	<p>On or before August 1, 2003</p>
<p>Q-3 2003: Quarterly Report covering third quarter of 2003 (July – September)</p>	<p>On or before November 1, 2003</p>
<p>Q-4 2003: Report covering fourth quarter of 2003 (October – December)</p>	<p>On or before February 1, 2004</p>
<p>Final Reports (Program Evaluation)</p>	<p>On or before May 1, 2004</p>

All reports shall be submitted no later than the due date listed above to the IOU and CPUC Agreement Representatives for their review, comment and approval. Implementer shall provide additional information to the IOU or CPUC Agreement Representative if requested.

Implementer hereby agrees that providing the information and reports described in this section is a prerequisite to receiving the payments referred to in Section 6.

3.3 Stop Work Procedures

The IOU Agreement Representative may suspend the Authorized Work for good cause, such as safety concerns, fraud, or excessive customer complaints. IOU may suspend the Authorized Work by orally notifying the Implementer's Agreement Representative to suspend the Authorized Work. The Implementer shall stop work immediately except as described below. The IOU Agreement

¹The Implementation Report need only address applicable issues that were not adequately covered in the Program Implementation Plan.

Representative shall follow its oral notification with written notice pursuant to Section 25 below and shall obtain the concurrence of the CPUC Agreement Representative to the stop work order as soon as practicable. If the IOU Agreement Representative suspends the Authorized Work, Implementer may complete Authorized Work that it has started at a customer site, but may not begin any new Authorized Work at any new customer sites. Implementer may resume Authorized Work after receiving written notice from IOU that it may resume the Authorized Work.

3.4 Coordination With Other Programs

Implementers shall coordinate with other existing or selected programs, including programs targeting low-income customers, to enhance consistency in rebates and other program details, minimize duplicative administrative costs, and enhance the possibility that programs can be marketed together to avoid duplicative marketing budgets. The IOU shall give Implementer the list of all programs in its service territory no later than the date it signs the contract, and for Implementers that operate in the service territories of other IOUs, the IOU shall provide a list of programs in the other service territories.

In its Implementation Report, Implementer shall list programs with which it could coordinate, and describe proposed coordination activities including a time line for each activity. IOU shall review the list of programs and proposed coordination activities, and either approve or suggest reasonable changes. Implementer shall incorporate all changes required by the CPUC Agreement Representative. Implementers shall describe in each quarterly report all coordination activities with other energy efficiency programs.

3.5 Coordination With Low Income Programs

This Section shall only apply to Authorized Work that includes an energy efficiency measure that is included in the IOU Low-Income Energy Efficiency program.

Implementers whose Authorized Work that includes an energy efficiency measure that is included in the IOU Low-Income Energy Efficiency program shall inform all customers about the Low-Income Energy-Efficiency ("LIEE") and California Alternate Rates for Energy (CARE) programs, including eligibility requirements. Implementer shall then ask customers if they believe they are LIEE or CARE-eligible customers, and shall provide written information about the LIEE and CARE programs, including how the customer may participate in the programs and whom they need to contact to participate in LIEE or CARE, before attempting to sell any programs or measures with a cost to any such customers.

No later than the date it signs the contract, IOU shall provide Implementer with a written description of its CARE and LIEE programs, including information for distribution to customers about CARE and LIEE requirements, benefits and whom the customer must contact to participate in the program.

In the Implementation Report, Implementer shall submit to IOU a list of measures that require coordination with low-income programs, and its plan for ensuring compliance with this Section. The IOU shall review this information and either approve it or suggest reasonable changes. Implementer shall make any changes required by the CPUC Agreement Representative.

3.6 Prevention of Double-Dipping

Implementer shall implement the following mechanism to minimize double-dipping:

3.6.1. IOU shall provide Implementer with a list of IOU programs and third party programs in its service territories which offer services or incentives for the same measures offered by Implementer's program. The IOU shall give Implementer the list of its programs no later than the date it signs the contract.

3.6.2. Prior to providing incentives or services to an eligible customer ("Customer") for an energy efficiency measure(s), Implementer shall inform the Customer of other available programs, including the free IOU LIEE program, which offer incentives or services for the same measure(s).

3.6.3. Prior to providing incentives or services to Customer for an energy efficiency measure, Implementer shall obtain a signed form from Customer stating the following:

- 1) Customer has not received incentives or services for the same measure from another utility, state, or local program;
- 2) Customer agrees not to apply for or receive incentives or services for the same measure from another utility, state, or local program; and
- 3) Customer acknowledges that he or she has received information about other available program(s), including the free LIEE program, which offer incentives or services for the same measure(s) that the customer may be eligible for.

3.6.4 Implementer shall keep the Customer-signed forms for at least three years after the end of the contract term. In addition, Implementer shall submit the Customer-signed forms to the CPUC or IOU upon request.

3.7 Responding to and Tracking Customer Complaints

In its Implementation Report, Implementer shall submit a description of how it will address and track customer complaints. The IOU shall review this information and either review or suggest reasonable changes. Implementer shall incorporate all changes required by the CPUC Agreement Representative. At a minimum, Implementer's program materials shall contain a description of how a customer can complain first to the Implementer, then to the IOU, and finally to a contact person at the CPUC's Energy Division. Implementer shall track all customer complaints that it receives through the mechanism that it describes in the program materials, and shall report on all complaints in its Quarterly Reports. Implementer shall maintain a log of all customer complaints it receives, and shall retain that log for at least three years after the end of the contract term.

3.8 Customer Disclosure Obligations

Implementers shall prominently disclose to customers, orally and in writing, that customers are not obligated to purchase any full fee service or other service beyond that which is funded through the Public Goods Charge funds. The text of the disclosure must be in both English and Spanish.

All providers shall provide the text of their disclosure in English and Spanish in their Implementation Report. Implementers shall make any changes to the oral or written disclosure requested by the CPUC Agreement Representative.

3.9 Committing Funds

Implementer shall be required to "commit" all funds no later than December 31, 2003. Funds are considered "committed" if the program implementer has executed a written agreement and/or reserved funds for Authorized Work, including administrative costs, but has not yet made payment.

3.10 End Date For Program Activities

Unless this Agreement is terminated pursuant to Section 17 below, Implementer shall complete all program activities by no later than March 31, 2004, including final installations, evaluation, measurement and verification, and preparation for final reports.

3.11 Cost Reporting and Review

3.11.1 Actual Cost Reporting Requirements

Implementer's actual costs for the Authorized Work must be reported to the IOU Agreement Representative in each Quarterly Report. See **Attachment B** for the specific reporting requirements.

3.11.2 Cost Reasonableness

All costs, including subcontractor costs, shall be objectively reasonable, ordinary and necessary and shall be reported at actual cost with no mark-up, i.e. profit, administrative or other indirect costs. Using the Implementer's approved budget, the IOU Agreement Representative may review all reported costs. The IOU reserves the right to reduce costs, with the concurrence of the CPUC Agreement Representative if the costs are in excess of the same costs in Implementer's approved budget, and if there is a reasonable basis for the conclusion that the costs are excessive, unreasonable, not ordinary or necessary. Any reduced costs shall be used when calculating actual costs expended, below.

3.11.3 Cost Allocation Methodology.

Implementer shall respond to questions or requests from IOU or CPUC Agreement Representative on how it has calculated or allocated costs listed in **Attachment B**, and shall make any changes, consistent with the budget format and definitions approved by the CPUC, requested by the IOU with the concurrence of the CPUC Agreement Representative.

3.11.4 Subcontractor Costs/Activities

Implementer shall report amounts paid to each subcontractor during the applicable reporting period, plus total amount paid to all subcontractors during that period. Implementer shall report name of subcontractor plus brief description of services subcontractor provided during the applicable reporting period. Subcontractor costs shall be reported at cost with no mark-up (i.e. profit, or administrative or other indirect costs). Subcontractor costs shall be reported according to format contained in **Attachment B**.

3.11.5 Supporting Documentation

For each expense item over \$500, supporting data and documentation shall be furnished with the invoice. Copies of detailed expense reports to support travel costs shall be attached to the invoice. Although travel receipts need not be attached, Implementer shall retain them for three years after the end of the contract. Each invoice shall be assembled such that attached supporting documentation shall be placed in the order listed in the invoice.

3.11.6 Quarterly Payments – Payments Compared to Costs

If (total payments received + payments claimed) minus total expenditures and commitments as defined in Section 3.9 as reported according to **Attachment B** exceed 15% of the total contract amount, then the IOU will not authorize any further payments until the IOU receives written permission from the ALJ to

authorize payment. In the event that payment is withheld, the amount withheld shall be available in the future, provided that the Implementer meets the requirements for payments.

3.11.7 Final Payment – Total Payments Compared to Total Costs

For final payment, Implementer agrees that if its actual costs expended for the Authorized Work are less than the Total Authorized Amount stated in Section 6, excluding profit:

1. With the concurrence of the CPUC Agreement Representative and the IOU Agreement Representative, Implementer shall perform additional tasks not specified in Attachment A that are consistent with the purpose and nature of the Authorized Work described in Attachment A. For example, Implementers could install additional measures of the same type described in Attachment A. The additional tasks shall be described with specificity in writing, and shall be approved in writing by the Implementer, the CPUC Agreement Representative, and the IOU Agreement Representative or,
2. The IOU may, under the written direction of the ALJ, make reductions in Implementer's final payment.

3.12 Responding To Requests for Information

During the term of this Agreement, Parties shall respond to all requests for information from the other Party and/or the CPUC Agreement Representative in a timely fashion, but no later than five days after the date the information is requested, unless the Party asks for an extension of time and such extension of time is granted by the requesting party(ies). Parties are expected to request only such information that is relevant and necessary for the performance of obligations of this Agreement and to meet and confer in an effort to resolve disagreements about requests for information before seeking guidance from the CPUC Agreement Representative and/or the assigned ALJ.

4. UTILITY OBLIGATIONS

4.1 Summary of IOU Administrative Duties

IOU is executing this Agreement as the designated administrator for the CPUC for the limited purpose of administering this agreement. IOU shall oversee the administration of Implementer's Authorized Work as set forth in D.02-03-056, D.02-05-046 and other applicable CPUC decisions and rulings.

IOU's primary administrative responsibilities are to oversee Implementer's work, receive and complete a timely review of all required documents and other pertinent program information, serve as a liaison between the CPUC and

Implementer, and timely transfer PGC payments to Implementer for Authorized Work in accordance with the applicable CPUC-approved payment schedule(s) as set forth herein.

4.2. IOU Review of Required Reports

The IOU shall review all reports required under this Agreement to determine whether they (a) contain the information required by this Agreement, including, but not limited to **Attachment A** and **Attachment B**, and that the information is in the format specified herein; (b) comply with the Authorized Work as set forth in **Attachment A**; (c) comply with CPUC requirements (e.g., CPUC's Policy Manual, Chapter 6, Reporting Requirements), and (d) include all information reasonably necessary to allow the IOU and the CPUC to monitor the progress of the Authorized Work. IOU shall complete its review of the reports and any accompanying invoices within 30 days of submission.

4.2.1 Required Reports Deemed Incomplete

If the information contained in a required report and/or invoice is incomplete or not in the proper format, the IOU shall return report to the Implementer who may make corrections and resubmit the report and/or invoice. IOU shall have 10 days to review the resubmitted report and/or invoice.

If Implementer has not completed tasks or achieved goals set forth in Attachment A, IOU will identify deficiencies in Implementer's progress to the CPUC Agreement Representative with recommendation on how to proceed. After IOU consults with the CPUC Agreement Representative, IOU will notify Implementer of the deficiency in writing. IOU will not authorize payment to Implementer until the IOU has received permission from the CPUC Agreement Representative to make a payment. The IOU shall make payment within 21 days of payment authorization. If payment is withheld any amount withheld shall be available for future payment in the event that the Implementer cures the identified deficiencies.

If the IOU identifies deficiencies in Implementer's progress, the IOU will work with the CPUC Agreement Representative and Implementer Agreement Representatives to determine what further actions Implementer must take to receive the next quarterly payment.

4.2.2 Required Reports Deemed Complete

If, Implementer has completed tasks or achieved the goals as set forth in **Attachments A and B**, IOU will authorize payment and will notify the Implementer Agreement representative that payment is authorized. The IOU shall make payment within 21 days of payment authorization.

4.3 Review of Implementer’s Final Report

Once the IOU determines that the final report is correct and complete, it shall notify the CPUC Agreement Representative. The assigned ALJ for OIR 01-08-028, in consultation with the CPUC’s Energy Division, will review program performance and approve final program payments to Implementer. IOU will not authorize payment to Implementer until the IOU has received written permission from the ALJ to make the final payment.

Release of the final payment is contingent on program performance as determined by the ALJ. The ALJ may make proportionate reductions in the final payment amounts for programs that do not meet program goals. The proportionate reduction to the final payment will be determined by the ALJ.

4.4 Payment Reductions

Implementer agrees that the CPUC reserves the right to make reductions in Implementer’s final payment in the event of (a) defective performance; (b) program failure; and/or (c) Implementer’s actual costs for performing the Authorized Work are less than the Total Authorized Amount stated in Section 6 excluding profit, and Implementer performs no additional measures as discussed in Section 3.11.1. The difference between the Total Authorized Amount excluding profit and actual costs must be material in order for the CPUC to withhold payment or require additional measures.

4.5 Payment Schedule

IOU shall transmit payments to Implementer as follows:

PAYMENT AMOUNTS²

#	Program Type	% Payment
Information-only programs		
1	CPUC acceptance of final program implementation plan	35% of total budget (less final payment, which varies)

² The payment schedule must be tailored to individual contracts and will depend on following: total contract amount, whether contract is information-only or savings, and whether Implementer claims profit or not. Per Policy Manual Table 5.3 Payment Schedules, Information-only programs get 35% of payments upon CPUC (ALJ) acceptance of final program implementation plans; savings programs get 25% on CPUC acceptance of final PIP. Per D.02-05-046, mimeo page 28, final program payment amounts will be set for each program individually, based on the amount of profit embedded in each program budget. For programs where no profit is built into the budget, the final payment amount will be set at 20% of the program’s administrative budget.

2		65% (less final payment which varies) divided by number of quarterly reports
3	6 equal payments, (assuming program activities occur in 6 quarters) less the amount of Direct Implementation Costs paid on a monthly basis and any reductions pursuant to Section 3.11	
	Q3-2002 report submitted on or before November 1, 2002	
	Q4-2002 report submitted on or before February 1, 2003	
	Q1-2003 report submitted on or before May 1, 2003	
	Q2-2003 report submitted on or before August 1, 2003	
	Q3-2003 report submitted on or before November 1, 2003	
	Q4-2003 report submitted on or before February 1, 2004	
	Final Report (EM&V) due on or before May 1, 2004.	
	Final Payment (profit included)	Amount of profit
	Final Payment (no profit included)	20% of administrative expenses

Non-information programs		
1	CPUC acceptance of final Program Implementation Plan	25% of total budget (less final payment, which varies)
2	CPUC acceptance of evaluation, measurement, and verification plan	10%
3	6 equal payments (assuming that program activities occur in 6 quarters) less the amount of Direct Implementation Costs paid on a monthly basis and any reductions pursuant to Section 3.11	65% (less final payment, which varies) divided by number of quarterly reports
	Q2 – report submitted on or before November 1, 2002	
	Q3- report submitted on or before February 1, 2003	
	Q4- report submitted on or before May 1, 2003	
	Q5- report submitted on or before August 1, 2003	
	Q6- report submitted on or before November 1, 2003	
	Q7 – report submitted on or before February 1, 2004	
	Final Report (EM&V) due on or before May 1, 2004.	
4	Final Payment – (profit included)	amount of profit
	Final Payment – (if no profit included)	20% of administrative expenses

The Utility shall transmit the initial payment to Implementer within seven days after the contract is signed. For all other payments, Utility shall transmit payment to Implementer as specified above in Section 4.3 within thirty (30) days of payment authorization, but is not obligated to pay sooner than dates listed in table above, even if Implementer has completed tasks or achieved the goals as set forth in **Attachment A**.

4.5.1 Monthly Payment Payment Schedule for Direct Implementation Costs: Implementer may invoice monthly for Direct Implementation expenditures. Each monthly invoice must include backup documentation for the claimed costs, and will be submitted along with the Monthly Report. The Implementer may opt to invoice the Direct Implementation Costs on a quarterly basis consistent with the Quarterly Payment Schedule shown herein.

4.5.2 Quarterly Payment

Quarterly Payments will be consistent with the Payment Schedule shown herein less any payment reductions (pursuant to Section 3.11) and any monthly payments made to Implementer during that quarter.

4.6 Withholding Payment for Deficient Performance

As set forth above in Section 2.2 and Section 2.3, the IOU with the concurrence of the assigned ALJ may, upon written notice to Implementer, withhold from Implementer, all or part of a payment if a report submitted by the Implementer demonstrates that a program failure has occurred and that such failure significantly compromises the purpose and goals of the program. If the IOU has withheld payment for program failure, the IOU shall authorize payment within five (5) business days of the implementation of measures by Implementer to cure the program failure and as specified by the IOU.

4.7 Refund of Overpayment of PGC Funds

With respect to any amount subject to refund to the CPUC pursuant to D.02-03-056, or any subsequent CPUC decision or ruling, should the CPUC determine that a refund is due and seeks to recover such refund, Implementer shall return the amount due to IOU within thirty (30) calendar days of the date Implementer receives written notice that the payment is owed.

5. AGREEMENT REPRESENTATIVES

The CPUC’s Agreement Representative, as designated by the CPUC, for all matters related to performance of the Authorized Work under this Agreement is _____ (name).

Implementer designates _____ (name) as Implementer’s Agreement Representative for all matters relating to performance of the Authorized Work under this Agreement.

IOU designates _____ (name) as [Utility’s] Agreement Representative for all matters relating to payment of money for the Authorized Work pursuant to this Agreement.

The CPUC, the Implementer or the Utility may change their respective Agreement Representative at any time by providing written notice of the change to the other parties.

6. COMPENSATION AND PROFIT

Implementer agrees to accept the fees set forth herein as full compensation for all of Implementer’s expenses incurred in the performance of the Authorized Work, including profit and applicable taxes, unless otherwise expressly so provided.

APPROVED TOTAL AMOUNT FOR AUTHORIZED WORK:

\$ _____

CPUC APPROVED PROFIT PERCENTAGE: \$ _____ (if applicable)

7. TIME IS OF THE ESSENCE

The Parties hereby acknowledge that time is of the essence in performing the duties under this Agreement. Failure to comply with stated deadlines or milestones may result in termination of this Agreement, payments being withheld, or other program modifications as directed by the assigned ALJ.

8. EFFECTIVE DATE

This Agreement shall become effective on the later of the date that is signed by both the IOU and Implementer and/or the fifth business day following CPUC approval as set forth below in Section 32.2.

9. RESTRICTIONS ON MARKETING

9.1 Use Of CPUC's Name

Implementer may use the name of the CPUC on marketing materials for its program with the prior written approval from the CPUC Energy Division. In order to obtain this written approval, Implementer must send a copy of the planned materials to the Energy Division requesting approval to use the CPUC name and/or logo. A copy of the materials should also be sent to the IOU. Notwithstanding the above, the Implementer shall disclose its source of funding by stating prominently that its program is "funded by California ratepayers under the auspices of the California Public Utilities Commission" in all materials distributed.

9.2 Use of IOU's Name

Implementer may not use IOU's name or logo on marketing materials for its program. Implementer further agrees not to state or imply to third parties that IOU has endorsed or approved Implementer or its work.

10. COMPLIANCE WITH APPLICABLE LAWS

Each Party shall comply with all applicable federal, state and local laws, rules and regulations, and shall obtain all applicable licenses and permits for the conduct of the Authorized Work.

11. WARRANTY

Implementer warrants to the CPUC that the Authorized Work shall be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally

accepted professional standards prevailing at the time the Work is performed so as to ensure that the services performed are correct and appropriate for the purposes contemplated in this Agreement.

12. SAFETY PRECAUTIONS AND PROTECTION OF PROPERTY

Implementer shall plan and conduct the Authorized Work to safeguard persons and property from injury. Implementer shall direct performance of the Authorized Work in compliance with reasonable safety and work practices and applicable federal, state and local laws, rules and regulations, including but not limited to, "Occupational Safety and Health Standards" promulgated by the U.S. Secretary of Labor and the California Division of Occupational Safety and Health.

13. INSURANCE

Implementer shall maintain the following insurance coverage or self insurance coverage at all times during the term of this Agreement. Implementer is also responsible for its subcontractors maintaining the insurance coverage listed in this Agreement. Failure to maintain the required insurance shall be grounds for termination of this Agreement.

Workers' Compensation and Employers' Liability: **statutory minimum.**

Commercial General Liability: **\$1 million minimum.**

Coverage shall: a) By "Additional Insured" endorsement add as insureds Utility, their affiliates, subsidiaries, and parent companies, and Utility' directors, officers, agents and employees with respect to liability arising out of or connected with the Work performed by or for the Implementer. (ISO Form CG2010 or equivalent is preferred.) In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Utility' additional insured requirement: "Utility, their affiliates, subsidiaries, and parent companies, and Utility's directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Implementer are additional insureds under a blanket endorsement."; b) Be endorsed to specify that the Implementer's insurance is primary and that any insurance or self-insurance maintained by Utility shall not contribute with it.

Business Auto (if applicable): **\$1 million minimum.**

Professional Liability Insurance (if applicable): **\$1 million minimum.**

Upon request, Implementer shall furnish IOU and the CPUC Agreement Representative with certificates of insurance and endorsements of all required insurance for Implementer and subcontractors. The documentation shall state that coverage shall not be canceled except after thirty (30) days prior written

notice has been given to Utility. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf.

13.1 Self Insurance.

If Implementer is self-insured, Implementer must forward documentation to the IOU that demonstrates to the IOU's satisfaction that Implementer self-insures as a matter of normal business practice before commencing the Authorized Work. The IOU will accept reasonable proof of self-insurance comparable to the above requirements.

14. INDEMNIFICATION

Implementer shall indemnify, hold harmless and defend the CPUC and IOU, its affiliates, subsidiaries, parent companies, officers, managers, 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 this agreement, including :

(a) injury to or death of persons, including but not limited to employees of IOU or Implementer;

(b) injury to property or other interests of the CPUC, IOU, Implementer, or any third party;

(c) violation of a local, state or federal common law, statute or regulation, including but not limited to, environmental laws or regulations; or

(d) strict liability imposed by any law or regulation; so long as such injury, violation, or strict liability (as set forth in (a) – (c) above) arises from or is in any way connected with Implementer's performance of, or failure to perform, this Agreement, however caused, regardless of any strict liability or negligence of the CPUC or IOU, 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 the CPUC or IOU, its officers, managers, or employees.

Implementer shall, on the CPUC or IOU's request, defend any action, claim, or suit asserting a claim which might be covered by this indemnity. Implementer shall pay all costs and expenses that may be incurred by the CPUC or IOU in enforcing this indemnity, including reasonable attorney's fees.

15. SUBCONTRACTS

Implementer shall contractually require each subcontractor retained to perform the Authorized Work, to be bound by the terms and conditions in this Agreement protecting IOU and the CPUC which are substantially equivalent to the terms and conditions of this Agreement.

Implementer shall, at all times, be responsible for the work, and acts and omissions, of subcontractors and persons directly or indirectly employed by them in connection with the Authorized Work. This Agreement shall not constitute a contractual relationship between any subcontractor and the CPUC or IOU nor any obligation for payment to any subcontractor.

16. DISPUTE RESOLUTION

Implementer shall try to resolve disagreements relating to this Agreement first with the IOU, and if that fails, then with the CPUC Agreement Representative. If that fails, the Implementer, the CPUC and IOU shall deal in good faith and attempt to informally resolve potential and actual disputes arising out of or relating to this Agreement promptly by negotiations between a duly-appointed representative of the CPUC, a vice president of IOU or his or her designated representative and an executive of similar authority of Implementer, as applicable. Either Party or the CPUC may give the other entities written notice of any dispute within ten (10) days from the date that the dispute arose. Within twenty (20) days after delivery of said notice, the executives 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, which if the Parties agree, shall include non-binding mediation by a neutral third party. If the matter has not been resolved within thirty (30) days of the first meeting through one of the foregoing methods, either Party may initiate a binding arbitration of the controversy utilizing the American Arbitration Association.

All negotiations, mediation and/or arbitration conducted pursuant to this clause 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.

Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage or to preserve the status quo.

Each Party is required to continue to perform their obligations under this Agreement that are not related to the dispute, pending final resolution of a dispute arising out of or relating to this Agreement.

If the dispute is resolved in favor of Implementer, in whole or in part, at any stage of the dispute resolution process, the CPUC will authorize payment of all or a portion of the withheld amounts within five (5) business days of such resolution. Once the CPUC Agreement Representative authorizes payment, IOU shall transmit payment to Implementer within 14 days of receipt of written notice of CPUC authorization.

17. TERMINATION

Implementer may terminate this Agreement for any reason by providing 30 days advance written notice to the CPUC Agreement Representative and IOU. In the event the Agreement is terminated by Implementer, IOU shall, upon receipt of CPUC approval, pay Implementer all amounts owed under the Agreement for undisputed work performed prior to the effective date of the termination notice. If Implementer's actual costs are materially less than payments Implementer received before effective date of termination notice, Implementer shall refund unspent dollars to the IOU for deposit in the balancing accounts that tracks the gas and/or electric Public Goods Charge fund. The CPUC shall be responsible for determining disposition of unspent or refunded dollars.

The CPUC may direct the IOU to terminate this Agreement for cause, or upon depletion of the amount of funding authorized by the CPUC for this Agreement. In the event the Agreement is terminated by IOU upon CPUC direction, IOU shall, upon ALJ approval, pay Implementer all amounts owed under the Agreement for undisputed work performed prior to the effective date of the termination notice and reasonable shutdown costs not to exceed the total CPUC approved amount of 2002-03 local energy efficiency funding for the Implementer's program. If Implementer's actual costs are materially less than payments implementer received before effective date of termination notice, Implementer shall refund unspent dollars to the IOU for deposit in the balancing accounts that tracks the gas and/or electric Public Goods Charge fund,

In all cases, termination shall become effective on the last day of the 30-day notice period.

17.1 Termination For Cause

If Implementer fails to perform a material term or condition of this Agreement, and fails to cure such default within 30 business days after receipt of written Notice of Default and Termination from IOU, the ALJ or IOU may declare this Agreement terminated, effective on the last day of said notice period ("Termination Date"). Subject to ALJ approval, Implementer shall be paid for all undisputed work performed prior to the Termination Date, which payment shall not be unreasonably withheld.

Grounds for termination for cause include, but are not limited, to the following situations:

- (1) the failure, refusal or inability of the Implementer to perform any material aspect of the Authorized Work in accordance with the Plan (except as specified in Section 18, "Force Majeure"); or

- (2) Implementer has become insolvent, has exhibited a pattern of failure to pay its bills, or has had checks for payment of its bills returned from suppliers and subcontractors due to insufficient funds; or
- (3) a court of law has enjoined Implementer from performing the Authorized Work; or
- (4) In the ALJ or IOU's reasonable judgment, the Authorized Work will not be completed in the specified time and the IOU has reasonably requested Implementer to take steps necessary to accomplish the required progress and completion, and Implementer has failed to do so; or
- (5) misuse of IOU's name or logo in violation of Section 9 of this Agreement.

17.2 Termination for IOU's Reason

With the approval of the CPUC Agreement Representative, IOU may terminate this Agreement, upon written notice to Implementer. Implementer shall take whatever action will minimize its claim against IOU. If IOU terminates this Agreement, Implementer shall not be entitled to any payment for lost or anticipated profits or overhead on uncompleted portions of the Authorized Work. Any reports, drawings or other documents prepared as part of the Authorized Work prior to the effective date of termination shall be delivered by Implementer to the IOU prior to releasing any final payments to Implementer.

17.3 CPUC Jurisdiction

If the Agreement is terminated, any reports, drawings, specifications, software programs, or other documents required to be prepared and delivered to the CPUC and/or Utility Agreement Representative as part of the Authorized Work which are prepared by Implementer prior to the effective date of such termination shall be delivered to the CPUC and/or IOU Agreement Representative by Implementer prior to the CPUC's approval of and the IOU's release of the final payment owed to Implementer.

In no event shall the CPUC or IOU be liable for lost or anticipated profits or overhead on uncompleted portions of the Authorized Work.

18. NON-WAIVER

None of the terms, covenants or conditions of this Agreement shall be considered waived by either Party unless such waiver is specifically stated in writing.

19. ASSIGNMENT

IOU may be required by the CPUC to assign its rights, duties and obligations under this Agreement to the CPUC and/or its designee. Implementer hereby consents to such assignment.

Implementer shall not assign its rights, duties, and obligations under this Agreement without the prior written approval of the CPUC. Unless otherwise expressly agreed by the CPUC, Implementer shall remain responsible for the quality and timeliness of performance notwithstanding any assignment, or other delegation.

20. FORCE MAJEURE

Neither Party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by "Force Majeure." As used in this Section, Force Majeure is defined as: Acts of war and acts of God such as earthquakes, floods and other natural disasters, or actions of others, including but not limited to strikes, lockouts or other industrial disturbance, not within the control or arising from the fault of the Party claiming Force Majeure.

The Party affected by a Force Majeure Event ("Affected Party") shall be excused from performing its obligations under this Agreement to the extent that such performance is prevented or delayed due to the delay occasioned by a Force Majeure event; provided, however, that the suspension of performance is of no greater scope and of no longer duration than is required by such Force Majeure event. If a Force Majeure Event excuses the Implementer from performing its obligations under the Agreement, the Implementer will not be paid for the obligations that were excused because of the Force Majeure Event and must refund unspent dollars to the IOU for deposit in the balancing accounts that tracks the gas and/or electric Public Goods Charge fund.

21. NON-DISCRIMINATION CLAUSE

Implementer and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Implementer and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Implementer and subcontractors shall comply with the applicable provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable

regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Implementer and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other similar agreement.

Implementer shall include the nondiscrimination and compliance provisions of this clause in all subcontracts related to this Agreement for the Authorized Work.

22. RIGHT TO AUDIT

Implementer agrees that the IOU and/or the CPUC Agreement Representative, or its designated representatives, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement or the Authorized Work. Implementer agrees to maintain such records for possible audit through three years following the end of the contract term.. Implementer agrees to allow the auditor(s) reasonable access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Implementer agrees to include a similar right of the CPUC and IOU to audit records and interview staff in any subcontract related to performance of the Authorized Work or this Agreement.

23. INDEPENDENT CONTRACTOR

Implementer, and the agents and employees of Implementer, in the performance of the Authorized Work, shall act in an independent capacity and not as officers, employees or agents of the CPUC or IOU. Nothing in this Agreement shall be construed so as to render Implementer, or any persons hired by Implementer, an employee, agent, representative, joint venturer or partner of the CPUC or IOU, and neither Implementer nor its employees or subcontractors shall hold themselves out to others in such capacity.

24. INTELLECTUAL PROPERTY RIGHTS

24.1 Ownership Of Deliverables

The CPUC shall own all data, reports, information, manuals, computer programs, works of authorship, designs or improvements of equipment, tools or processes (collectively "Developments") or other written, recorded, photographic or visual materials, or other deliverables produced in the performance of this Agreement. Developments do not include equipment or infrastructure purchased for research, development, education or demonstration related to energy efficiency.

Implementer shall retain no ownership, interest or title in the Developments except as may otherwise be provided in **Attachment A**.

24.2 Use And Reproduction Rights

If and to the extent that Implementer retains any preexisting rights to any materials furnished under this Agreement, including Developments, Implementer hereby grants to the CPUC the irrevocable, perpetual, non-exclusive, worldwide, royalty free right and license to make, use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based on such preexisting rights and derivative works thereof. Any claims of Implementer to proprietary rights in materials furnished under this Agreement must be explicitly set forth in this Agreement.

24.3 Infringement Protection

Implementer represents to IOU and CPUC that the material prepared under this Agreement will not infringe on the copyright, patent, or license, or otherwise violate the proprietary rights, including trade secret rights, of any person or entity. Implementer agrees to indemnify and hold IOU and its parent company, and the CPUC, harmless from and against all liabilities, costs and damages arising out of such infringement, as well as claims of infringement. Implementer further agrees to pay any judgment or reasonable settlement offer resulting from a suit, demand or claim, and pay any reasonable attorney's fees incurred by IOU or CPUC in defense of such a suit.

24.4 Claims Substantiation

Implementer represents that it has adequately substantiated all claims made as part of the Authorized Work according to the requirements of California and federal law. Implementer shall substantiate claims made in all program materials, including but not limited to: program descriptions, web sites, fact sheets, brochures, and advertisements ("Program Materials"). Claims include, but are not limited to, statements about the energy efficiency, safety, reliability, or performance of a piece of equipment or category of energy efficiency measures.

For each Program Material, Implementer shall identify all claims, and shall have written evidence and data to substantiate the claim. Implementer shall provide the claims and claims substantiation to the IOU or CPUC Agreement Representative within five (5) business days of a request. If IOU or the CPUC Agreement Representative determines that the evidence or data that Implementer has submitted to IOU is inadequate to substantiate the claim, then Implementer shall either provide additional evidence or data, that in IOU's or CPUC's sole discretion is adequate to substantiate the claim, or redraft or eliminate the claim so that the data and evidence, in the IOU or CPUC Agreement Representative's sole discretion, adequately supports the claims made.

Implementer agrees to indemnify and hold IOU and its parent company, and the CPUC, harmless from and against all liabilities, costs and damages arising out of or related to claims that are inadequately substantiated. Implementer further agrees to pay any judgment or reasonable settlement offer resulting from a suit or demand, and pay any reasonable attorney's fees incurred by IOU or CPUC in defense of such a suit.

25. NOTICES OR DEMANDS

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, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by a Party. Notices shall be addressed as follows:

<p>CPUC AGREEMENT REPRESENTATIVE Name: Attention: _____ Address: Telephone: Fax:</p> <p>IMPLEMENTER AGREEMENT REPRESENTATIVE Name: Attention: _____ Address: Telephone: Fax:</p> <p>IOU AGREEMENT REPRESENTATIVE Name: Attention: _____ Address: Telephone: Fax:</p>

Notices shall be deemed received by the Agreement Representative (a) if personally or hand-delivered, upon the date of delivery to the address of the person authorized to receive such notice if delivered before 5:00 p.m., or otherwise on the business day following personal delivery; (b) if mailed, three business days after the date the notice is postmarked; (c) if by facsimile, 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.

26. UNENFORCEABLE PROVISION

In the event that one or more of the provisions contained in this Agreement shall for any reason be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement.

27. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or in any way relating to this Agreement which cannot be amicably settled without court action shall be litigated in a California State Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California State Court, in a Federal Court of competent jurisdiction situated in the State of California.

28. SECTION HEADINGS

Section headings appearing in this Agreement are for convenience only and shall not be construed as interpretations of text.

29. SURVIVAL

Notwithstanding completion or termination of this Agreement, or any amendment to this Agreement, the Parties shall continue to be bound by the provisions of this Agreement and subsequent Amendment(s), including the indemnification and insurance provisions, which by their nature shall survive such completion or termination.

30. ATTORNEYS' FEES

In the event of any legal action or other proceeding between the Parties arising out of this Agreement or the transactions contemplated herein, the prevailing Party in such legal action or proceeding shall be entitled to have and recover from the other Party all costs and expenses incurred therein, including reasonable in-house and outside attorneys' fees.

31. AMENDMENT; MODIFICATION

No modification or change to this Agreement shall be binding or effective unless expressly set forth in writing and signed by the CPUC Agreement Representative, IOU and Implementer. No oral understanding or agreement not incorporated in this Agreement is binding on any Party.

32. COMMISSION AUTHORITY TO MODIFY/REGULATORY REVIEW

32.1 This Agreement is entered into in furtherance of D.01-11-066, D. 2-03-056 D.02-05-046, and D.02-06-026 and 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.

32.2 This Agreement is conditioned upon, and shall not be effective, until five (5) business days after the assigned ALJ issues a decision or ruling that in terms satisfactory to both Implementer and Utility approves the reasonableness of this Agreement. The terms shall be considered to be satisfactory to a Party if that Party does not file a written objection within 5 business days of issuance of the ALJ decision or ruling.

33. COMPLETE AGREEMENT

This Agreement, as defined herein, constitutes the complete and entire agreement between the Parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein, unless stated below. Neither Party has relied upon any representation, warranty, projection, estimate or other communication from the other not specifically identified in this Agreement.

The Parties hereby agree that no trade usage, prior course of dealing or course of performance under this Agreement shall be a part of this Agreement or shall be used in the interpretation or construction of this Agreement.

34. COUNTERPARTS

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

35. AUTHORITY TO EXECUTE

Each individual executing this Agreement on behalf of IOU and Implementer represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said Party, and that this Agreement is binding upon said Party in accordance with its terms and conditions.

36. CONSTRUCTION OF AGREEMENT

The terms and conditions of this Agreement shall not be construed against either party as the drafting party.

37. CONFLICT OF TERMS

Should a conflict exist between the main body of the Agreement and the Appendices, the main body of the Agreement shall control. Should a conflict occur in the Appendices, the Appendices shall control in following order: Specific Contract conditions, as applicable, Program Implementation Plan as approved by the assigned ALJ on June -, 2002, and data request responses submitted regarding the Program Implementation Plan, Implementation Report, Implementer's Proposal with Attachments, as approved by the CPUC on May 16 or June 6, 2002. Varying degrees of stringency among the main body of this Agreement and the Appendices are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon identification of any conflict or inconsistency in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last written below.

UTILITY

IMPLEMENTER

By: _____

By: _____

Name Printed: _____

Name Printed: _____

Title: _____

Title: _____

Date: _____, 2002

Date: _____, 2002

ATTACHMENTS