

Appendix A

Customized Energy Efficiency/Demand Response Incentive Program

Sample Non Residential Retrofit – Demand Response Agreement

This is a sample 2008 NRR-DR Agreement. It is subject to change, therefore be sure to review the actual agreement you receive before signing.

2008 NONRESIDENTIAL RETROFIT - DEMAND RESPONSE AGREEMENT

This Agreement is entered into by [Pacific Gas and Electric Company] ("UTILITY") and the Project Sponsor (third party entity or UTILITY Customer if self sponsored), as indicated. Project Sponsor agrees to review these terms and conditions. Any implementation of this project will be deemed the Project Sponsor's acceptance of these terms and conditions. If these terms and conditions are not acceptable, the Project Sponsor must notify UTILITY and refrain from any implementation of the project, otherwise will do so at their own risk.

Application Information

Project Name: _____

App. Number: _____

Date Received: _____ Demand Response Calculated Approach M&V Required

Utility Customer Information

COMPANY NAME

CORP. PARENT NAME (if applicable)

ADDRESS

CITY/STATE

ZIP CODE

CONTACT NAME

E-MAIL ADDRESS

TITLE

() _____
TELEPHONE NO.

() _____
FAX NO.

TAX STATUS: Corp. Non-Corp. Exempt Exempt Reason: _____

COMPANY/CORP. FEDERAL TAX ID

Project Sponsor Information

COMPANY NAME

CORP. PARENT NAME (if applicable)

ADDRESS

CITY/STATE

ZIP CODE

CONTACT NAME

E-MAIL ADDRESS

TITLE

() _____
TELEPHONE NO.

() _____
FAX NO.

TAX STATUS: Corp. Non-Corp. Exempt Exempt Reason: _____

COMPANY/CORP. FEDERAL TAX ID

Site Information

SITE NAME

SITE I.D. # (if applicable)

SITE ADDRESS

CITY/STATE

ZIP CODE

SITE CONTACT NAME

CONTACT PHONE #

ELECTRIC SERVICE AGREEMENT(S) #

GAS SERVICE AGREEMENT(S) #

other NRR-DR Program requirements. (7) Project Sponsor certifies that the dispatchable peak reduction components of the Project have not and will not receive funds from any energy conservation program funded by the PPP fund, the CEC or the CPUC.

3.0 SUBMITTAL REQUIREMENTS FOR PAYMENT As a condition of payment, Project Sponsor shall submit to UTILITY the documents described below. Required documents include but are not limited to: 1) Completed, signed Application; 2) Complete engineering calculations and documentation to demonstrate energy savings, permanent peak demand reduction, and dispatchable peak demand reduction (including archival diskette if applicable); 3) Schematic drawings and/or manufacturer specification sheets if applicable; 4) Invoices and/or documentation to support Project cost at UTILITY'S request; 5) Additional Project-specific documents as requested by UTILITY prior to payment of incentives; and 6) Operating Report if the Measured Savings Approach is used.

4.0 INSPECTIONS As a condition of payment, Project Sponsor is responsible for ensuring that UTILITY has reasonable access for all inspections, including but not limited to those as described below: 1) NRR-DR Pre-Installation Equipment Inspection to examine the existing/baseline equipment and to check the accuracy of Project Sponsor's equipment survey; 2) NRR Post-Installation Equipment Inspection to check installed equipment and to verify accuracy of Project Sponsor's equipment survey; 3) DR Post-Installation dispatchable load reduction demonstration(s), 4) NRR-DR Post-operation inspection to check the energy savings of the Measures after installed equipment has been operating. This inspection can take place after the Operating Report has been submitted or earlier, at UTILITY's discretion.

5.0 REVIEW AND DISCLAIMER UTILITY'S AND/OR ITS CONSULTANTS' REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT, ENERGY EFFICIENCY MEASURES, OR DEMAND RESPONSE MEASURES DO NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT MEASURES. PROJECT SPONSOR SHALL IN NO WAY REPRESENT TO ANY THIRD PARTY THAT UTILITY'S REVIEW OF THE MEASURES OR PROJECT, INCLUDING, BUT NOT LIMITED TO, UTILITY'S AND/OR ITS CONSULTANTS' REVIEW OR ANALYSIS OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE MEASURES OR PROJECT, IS A REPRESENTATION BY UTILITY AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, AND RELIABILITY OF SUCH MEASURES OR PROJECT. PROJECT SPONSOR IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY AND RELIABILITY OF PROJECT SPONSOR'S PROJECT AND MEASURES.

6.0 PAYMENTS Incentive payments will only be paid after all NRR-DR requirements are met by Project Sponsor to UTILITY's satisfaction. UTILITY retains sole discretion to determine the appropriate baseline values, dispatchable peak reduction and energy savings calculations used to determine incentive payments. Incentive payments shall only be paid on NRR Projects that exceed Title 24 standards applicable when this Agreement is signed or industry standards in the absence of Title 24 standards. DR Projects are not subject to a standard baseline. UTILITY reserves the right to modify or cancel the incentive amount if the actual system installed differs from the installation in Project Sponsor's approved Application(s).

6.1 NRR Incentive Payments The total incentive payment under the Calculated Savings Approach or Measured Savings Approach shall not exceed the total incentive in the Final Approved NRR Energy Savings Estimate (as presented on Page 2 of this Agreement). Projects with increased measure costs or installation of more efficient equipment are eligible for incentive payments above the total incentive, based on actual installed measure costs and energy savings from the actual installed equipment. Projects using the Measured Savings Approach are eligible for up to an additional 10% of the approved incentive amount in the event that actual energy savings are higher than projected. See Program Manual for details. The total incentive payment may be limited as described in the Program Manual. The calculations shall be in accordance with the Program Manual. The following incentive rates shall apply for the types of retrofit projects: Lighting, 5 cents/kWh; AC & Refrigeration I, 14 cents/kWh; AC & Refrigeration II, 8 cents/kWh; Other (motors, etc), 8 cents/kWh; and Natural Gas, 80 cents/therm. UTILITY will make the applicable incentive payment to Customers, in one or more installments, only after the appropriate documents have been submitted and approved, and the appropriate inspections of the Project have been satisfactorily completed, in accordance with the rules set forth in the Program Manual. All Project(s) must be installed and fully operational by June 1, 2009. UTILITY reserves the right to cease making incentive payments, required the return of incentive payments and/or terminate this Agreement if the project(s) is not installed and fully operational by June 1, 2009. Energy savings for which incentives are paid cannot exceed the actual usage provided by the UTILITY Non-utility supply, such as cogeneration or deliveries from another commodity supplier, does not qualify as usage from the UTILITY (with the exception of Direct Access customers or customers paying departing load fees for which the UTILITY collects PPP surcharges).

6.2 DR Incentive Payments The total dispatchable peak incentive payment under either the Calculated Savings or Measured Savings Approach shall not exceed the total incentive approved in the Approved Demand Response Dispatchable Peak Demand Reduction Estimate (as presented in this Agreement). The combined total energy savings incentive and total coincidental peak reduction incentive (summer and winter) is limited to 100% of the total Project cost. The calculations shall be in accordance with the Program Manual. The following dispatchable peak reduction incentive rates shall apply for the types of retrofit projects: All Measure Types, \$250/kW and \$300/kW for AutoDR. UTILITY will make the applicable incentive payment in one or more installments, only after the appropriate documents have been submitted and approved, and the appropriate inspections of the Project have been satisfactorily completed, in accordance with the rules set forth in the Program Manual. The first installment, 25% of the total DR incentive, will be paid upon submittal and approval of the Post Installation Report. The second installment, 25% of the total DR incentive, will be paid after the load reduction demonstration. The last installment and

final 50% of the total DR incentive will be paid upon successful enrollment in a Demand Response Program for at least 12 months, where the Customer must enroll within 6 months of receiving the load reduction demonstration incentive payment installment. The equipment needs to be in place for a period of not less than five years or the rated life of the equipment, if that is less than five years. All Project(s) must be installed and fully operational by June 1, 2009. UTILITY reserves the right to cease making incentive payments, require the return of incentive payments and/or terminate this Agreement if the Project is not installed and fully operational by June 1, 2009.

7.0 **PAYMENT DISQUALIFICATION** A prorated part of the incentives shall be repaid by Project Sponsor to UTILITY if:

For NRR Projects, Customer fails to pay the PPP surcharge throughout the Term of this Agreement.

For DR Projects, Customer ceases to receive retail electric service from UTILITY any time throughout the Term of this Agreement.

For both NRR and DR Projects, UTILITY did not receive the energy benefit for which the incentive is paid, for a period of not less than five years.

7.1 Project Sponsor agrees that if 1) Project Sponsor does not provide UTILITY with 100 percent of the related benefits specified in the Application, for a period of five years from the UTILITY approved installation date, or 2) the energy benefit to UTILITY ceases (for example, if UTILITY Customer stops using the equipment, no longer pays the PPP surcharge for energy efficiency projects, or discontinues retail electric service with UTILITY), Project Sponsor will return to UTILITY the prorated portion of the Incentive dollars based on the actual period of time for which UTILITY Customer provided the energy benefit.

7.2 **Project Sponsor shall repay any payments made by UTILITY within 30 days of notification by UTILITY that repayment is required. UTILITY is entitled to offset against payments owed to Project Sponsor any amount due to UTILITY which remains unpaid 40 calendar days after UTILITY'S written demand for payment. Project Sponsor may designate in writing a third party to whom UTILITY shall make incentive payments.**

8.0 **TERM AND TERMINATION** The Term of this Agreement shall commence on the last date that a Party executes this Agreement and shall terminate no later than five years from the Project Installation Report approval date, unless terminated earlier pursuant to this Agreement.

9.0 **ASSIGNMENT** Project Sponsor consents to UTILITY's assignment of all of UTILITY's rights, duties and obligations under this Agreement to the CPUC and/or its designee. Such assignment shall relieve UTILITY of all rights, duties and obligations arising under this Agreement. Other than UTILITY'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, the Project Sponsor is obligated to provide additional information if requested by UTILITY.

10.0 **PERMITS AND LICENSES** Project Sponsor, at its own expense, shall obtain and maintain licenses and permits needed to perform its work. Failure to maintain necessary licenses and permits constitutes a material breach of Project Sponsor's obligations.

11.0 **ADVERTISING, MARKETING AND USE OF UTILITY'S NAME** Project Sponsor shall not use UTILITY's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers to participate in the Project, without UTILITY's prior written consent. Project Sponsor shall make no representations to its customers on behalf of UTILITY.

12.0 **INDEMNIFICATION** Project Sponsor shall indemnify, defend and hold harmless, and releases UTILITY, its affiliates, subsidiaries, parent company, 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: injury to or death of persons, including but not limited to employees of UTILITY or Project Sponsor; (ii) injury to property or other interests of UTILITY, Project Sponsor, 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) strict liability imposed by any law or regulation; so long as such injury, violation, or strict liability (as set forth in (i) - (iv) above) arises from or is in any way connected with Project Sponsor's performance of, or failure to perform, this Agreement, however caused, regardless of any strict liability or negligence of UTILITY 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 UTILITY, its officers, managers or employees.

12.1 Project Sponsor 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.

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

12.3 If this Agreement is assigned pursuant to Section 9.0, the Project Sponsor agrees that this indemnification shall continue to apply to UTILITY and shall apply to the assignee.

13.0 **LIMITATION OF LIABILITY** UTILITY shall not be liable for any incidental or consequential damages, including without limitation, loss of profits or commitments to Subcontractors, and any special, incidental, indirect or consequential damages incurred by Project Sponsor or its Customer.

14.0 **CPUC AUTHORITY TO MODIFY** 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.

15.0 **INTEGRATION** This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of the Agreement. It supersedes all prior or contemporaneous agreements, commitments, representations, writings, and discussions between Project Sponsor and UTILITY, whether oral or written, and has been induced by no representations, statements or agreements other than those expressed herein. Neither Project Sponsor nor UTILITY shall be bound by any prior or contemporaneous obligations, conditions, warranties or representations with respect to the subject matter of this Agreement.

NO AMENDMENT, MODIFICATION OR CHANGE TO THIS AGREEMENT SHALL BE BINDING OR EFFECTIVE UNLESS EXPRESSLY SET FORTH IN WRITING AND SIGNED BY UTILITY'S REPRESENTATIVE AUTHORIZED TO EXECUTE THE AGREEMENT.

16.0 **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 UTILITY.

<p>UTILITY</p> <p>UTILITY Project Manager:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Fax # (facsimile):</p> <p>Email:</p>

PROJECT SPONSOR

Name _____
Company _____
Address _____
City, State, Zip _____
Fax # (facsimile) _____
Email _____

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 5:00 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; (d) if by email; or (e) 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.

17.0 **CONFLICTS BETWEEN TERMS** Should a conflict exist between the main body of this Agreement and the Documents Incorporated by reference, the main body of this Agreement shall control. Should a conflict exist in the Documents Incorporated by reference, the Documents shall control in the following order: 1) Program Manual; 2) UTILITY acceptance letter(s) and incentive estimate(s) based on Measures as approved in Application(s); and 3) Project Sponsor'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. Varying degrees of stringency among the main body of this Agreement, the Documents Incorporated by reference, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any conflict or inconsistency concerning this Agreement.

18.0 **CANCELLATION OF AGREEMENT** UTILITY may suspend or terminate the Agreement, without cause, upon written notice to Customer/ Project Sponsor.

This program is funded by California Utility Customers and administered by UTILITY under the auspices of the CPUC.