

**CUSTOMER AGREEMENT  
2013-2016 STANDARD  
THIRD PARTY IMPLEMENTED PROGRAM**

**TERMS AND CONDITIONS**

This Customer Agreement ("Agreement") is entered into by Southern California Edison Company ("SCE") and the Customer in connection with SCE's 2013-2016 Third Party Implemented Program ("Program"). Customer agrees to fully review these terms and conditions. SCE and Customer may be individually referred to as a "Party" and collectively as the "Parties."

**1.0 PROJECT DESCRIPTION** This Agreement is limited to those projects ("Project(s)") described in Customer's Project Feasibility Study ("PFS") approved by SCE. SCE shall pay Incentives to Customer ("Incentive(s)"), or such other party properly authorized to receive payment of the Incentive(s), in accordance with the terms and conditions of this Agreement. Customer may not authorize Consultant to receive payment of the Incentive(s). (Consultant is defined for the purpose of this Section to be "Customer's Contractor, Employee, or Consultant").

**2.0 DOCUMENTS INCORPORATED BY REFERENCE** The following documents are hereby incorporated by reference and made part of this Agreement: (1) Customer's completed, signed and submitted Program Agreement (including the SCE Terms & Conditions signed by Customer); (2) Customer's PFS, as approved by SCE; (3) SCE letter approving the PFS; and (4) SCE Project Summary Form. Customer acknowledges receiving and reviewing copies of all incorporated documents. In addition, reference is made to the Program's statewide manual (2013-2016 Third Party Implemented Program Policy and Procedure Manual for Business ("Policy Manual")) which provides further information, terms and condition of the Program and which may be accessed at <https://www.sceonlineapp.com/Docs.aspx>.

**3.0 FUNDING AVAILABILITY/ESTIMATES** Program funding is limited and is available on a first-come, first-served basis until funding is depleted or the Program is terminated. Funds will be reserved only upon SCE's execution of this Agreement; however, payment of any Incentive is subject to fulfillment of all Program terms and conditions and subject to post-installation performance verification. Customer understands that all energy savings, Incentives and installed costs provided by SCE or its contractors during the Program are estimates only. These estimates are subject to change based on SCE review and approval. The Customer is solely responsible for the selection, purchase, installation and ownership of the equipment and services under the Program.

**4.0 ELIGIBILITY** Projects and Customers must meet the following requirements to be eligible for payment of Program Incentives:

- (1) Project site must be a nonresidential facility located within SCE's service territory;
- (2) SCE Customers must pay the Public Purpose Program ("PPP") surcharge, on the SCE electric meter, where the energy-efficient equipment is installed;
- (3) Projects will be evaluated using the Customized or Express Approach and/or through Measurement and Verification ("M&V");
- (4) Energy savings and demand reduction resulting from the Project must be above and beyond baseline energy performance, which include state-mandated codes, federal-mandated codes, industry-accepted performance standards or other baseline energy performance standards, as determined by SCE. Specific restrictions may apply to each energy efficiency solution as outlined in the Policy Manual, Appendix A, Section 1, 1.4 (<https://www.sceonlineapp.com/Docs.aspx>);

- (5) Projects must meet all other Program requirements, terms and conditions;
- (6) Customer certifies that Customer will not apply or receive rebates, Incentives, or services for the Incentives covered by this Agreement in an amount greater than the total cost of the Project or solution(s) installed (including labor and materials);
- (7) Customer certifies that the energy savings components of this Project have not and will not receive any funds from any other energy conservation program funded by the PPP surcharge, the CEC or the California Public Utilities Commission ("CPUC").

**5.0 SUBMITTAL REQUIREMENTS FOR PAYMENT** Customer shall submit to SCE the documents described below prior to being eligible for payment of Incentives. Required documents include, but are not limited to: (1) This Agreement, fully executed and with the Customer's Program Agreement and approved PFS and all required documentation attached; (2) Complete engineering calculations to demonstrate energy savings and documentation, if applicable (including archival diskette, CD, etc.); (3) Schematic drawings and/or manufacturer specification sheets, if applicable; (4) Invoices and/or documentation detailing equipment being purchased which includes, but is not limited to, a Customer's Purchase Order to a vendor, Bill of Lading (listing equipment), and/or equipment invoice to support solution costs at SCE's request ("Proof of Payment"); (5) Project Installation Report; (6) Project Completion Certificate; and (7) Any other documents related to the Project, Project site, solutions, energy savings or otherwise requested by SCE, in its sole discretion, in connection with the Program.

**6.0 INSPECTIONS/SITE ACCESS** Customer is solely responsible for ensuring that SCE (or its contractor) has reasonable access for all inspections, including but not limited to: (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) Post-operation inspection to verify energy savings of the solutions after installed equipment has been operating, if requested by SCE; and (4) Inspection for any other reason that SCE, in its sole discretion, deems necessary.

**7.0 REVIEW AND DISCLAIMER** SCE'S AND/OR ITS CONTRACTOR'S AND/OR CONSULTANT'S REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF THE PROJECT OR ENERGY EFFICIENCY SOLUTIONS SHALL NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY, OR RELIABILITY OF THE PROJECT OR SOLUTIONS, NOR SHALL THE CUSTOMER, IN ANY WAY, MAKE SUCH A REPRESENTATION TO A THIRD PARTY. CUSTOMER IS SOLELY RESPONSIBLE FOR THE ECONOMIC AND TECHNICAL FEASIBILITY, CONSTRUCTION, OPERATIONAL CAPABILITY AND RELIABILITY OF CUSTOMER'S PROJECT AND SOLUTIONS. SCE MAKES NO REPRESENTATION OR WARRANTY, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, USE OR APPLICATION OF THE INSTALLED PRODUCT OR SOLUTION.

**8.0 PAYMENTS OF INCENTIVES** Payments of Incentives will be made only after all Program requirements are met by Customer to SCE's sole satisfaction.

8.1 SCE retains sole discretion to determine the appropriate baseline values and energy savings calculations used to determine Incentive payments. Incentives shall only be paid on Projects that meet or exceed the baseline performance standards applicable when this Agreement is signed. SCE reserves the right to modify or cancel the Incentive

amount if the actual solution installed (or the actual energy savings resulting from such solution) differs from the installation as set forth in this Agreement.

8.2 The total Incentive payment under the Customized or Express Savings Approach shall not exceed the total Incentive in the Final Approved Savings Estimate (as presented in this Agreement). However, Projects may (at the discretion of SCE) be eligible for Incentive payments in excess of the Final Approved Savings Estimate if the Project results in: (a) increased actual energy savings resulting from the installation of a greater quantity of the approved solutions (the approved solutions outlined in the SCE-approved PFS); (b) increased actual energy savings resulting from greater efficiencies than estimated (such estimates as outlined in the SCE-approved PFS and/or (c) greater actual Project costs than originally estimated (applicable if the 50% Project cost cap had been applied in the original estimate). Such results in (a), (b) or (c) shall be evidenced by the Installation Report and post review of the Project (including invoices).

In addition, the total Incentive payment is limited by the following Project caps:

1) For Customized Solutions-Total Incentive may not exceed 50% of the total cumulative Project costs. Project costs for Customized Solutions may include costs of audits, design, engineering, construction, equipment and materials, overhead tax, shipping and labor on a per solution basis, but exclude bidding costs, marketing and Request-for-Proposal labor expenses.

2) For Express Solutions-Total Incentive per solution is 100% of the total solution cost, as listed on the Proof of Payment. Incentives are not paid above the costs listed on the Proof of Payment. Solution costs for Express Solutions include material cost only. Labor costs may be eligible for an Incentive when a vendor-installed solution is involved. Sales taxes and freight are not eligible for Incentive and may not be included in the equipment costs.

3) Total calendar year Incentive payments to a Project site may not exceed \$6,000,000 (Project site defined as a single free-standing building/structure, an individual utility meter, or a service account number where the retrofit or installation is taking place).

Incentive rates shall apply for the following types of retrofit projects: Lighting \$0.03/kWh; Advanced Lighting \$0.08/kWh; Non-Lighting \$0.08/kWh; and Advanced Non-Lighting \$0.15/kWh. An Incentive rate of \$150 per peak KW reduction shall also apply. Calculations shall be in accordance with the Addendum A of the Policy Manual, Section 2 (<https://www.sceonlineapp.com/Docs.aspx>). Energy Efficiency solution(s) will be evaluated using the Customized or Express Approach and/or through Measurement and Verification ("M&V").

8.3 Energy savings for which Incentives are paid cannot exceed the actual electric usage for each SCE customer service account for which Incentives are being requested. Non-SCE supply, such as cogeneration or deliveries from another commodity supplier, does not qualify as usage from SCE (with the exception of Direct Access customers or customers paying departing load fees for which SCE collects PPP surcharges).

8.4 SCE will make the applicable Incentive payment to the designated payee, in one or more installments, only after all required and/or requested documents have been

submitted to, and approved by, SCE, and the appropriate inspection(s) of the Project or Project site have been completed in accordance with the rules set forth in the Policy Manual (<https://www.sceonlineapp.com/Docs.aspx>).

8.5 All Projects and/or solutions must be completely installed and fully operational within three years from the date the Project(s) is approved by SCE to be eligible for Incentive payments. SCE reserves the right to cease making Incentive payment(s), require the return of the total or prorated Incentive payment(s) and/or terminate this Agreement if the Project(s) is not completely installed and fully operational within such three year period, unless an installation extension is granted by SCE, in SCE's sole discretion, in writing. Any extension that is granted shall not exceed two years in total and shall be granted on a one year at a time basis.

8.5.1 Prior to any extension being granted, SCE will reassess the Project(s) viability and Customer must provide reasonable assurance(s), at SCE's direction and in SCE's sole discretion, that the Project is progressing toward installation and fully operational status. Additionally, after the initial three year period from SCE's approval of the Project, changes impacting savings calculations or solution eligibility, such as Title 24, CPUC Engineering Division direction, etc., may cause SCE to revise the energy savings and Incentive amounts for which the Customer is eligible.

**9.0 PAYMENT DISQUALIFICATION** Any Incentives received by Customer shall be repaid to SCE, in whole or in part, as follows:

9.1 If Customer fails to pay the PPP surcharge throughout the Term of this Agreement. In this event, the total estimated amount of the Incentives shall be prorated and any Incentive payment shall be based on the energy savings that occur during the payment of the PPP surcharge;

9.2 If Customer does not provide SCE with 100% of the related benefits specified in this Agreement for a period of five (5) years from the SCE-approved installation date;

9.3 If the energy benefit to SCE ceases in any way, including but not limited to Customer and/or the Project site ceasing to receive electricity from SCE, the solution, equipment and/or Project ceasing to function, or Customer ceasing the use of the equipment, solution or Project site; or

9.4 Customer fails to comply with any other applicable Program requirement.

As a result of any of the foregoing, Customer shall refund a prorated amount of the Incentive to SCE that SCE, in its sole discretion, determines must be repaid, based on the actual period of time for which Customer provided the energy benefit. Customer will be solely responsible for paying the refund to SCE even if the Incentive has been released to an Authorized Third Party. Customer shall repay any Incentive amounts due to SCE within thirty (30) calendar days of notification by SCE. SCE shall be entitled to offset any amount due to SCE that remains unpaid forty (40) calendar days after SCE's written demand for payment against any payments SCE owes to Customer.

**10.0 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 (5) years from

SCE's written project Installation Report approval date, unless terminated earlier pursuant to this Agreement ("Term").

**11.0 ASSIGNMENT** Customer consents to SCE's assignment of all of SCE's rights, duties and obligations under this Agreement to the CPUC and/or its designee. Such assignment shall relieve SCE of all rights, duties and obligations arising under this Agreement. Other than SCE'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 or delayed. If an assignment is requested, Customer is obligated to provide additional information if requested by SCE.

**12.0 PERMITS AND LICENSES** Customer, at its own expense, shall obtain and maintain and cause its contractors and/or subcontractors to obtain and maintain licenses and permits required by federal, state, local, or other relevant governing or regulatory bodies needed to perform its work on the Project. 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.

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

**14.0 INDEMNIFICATION** Customer shall indemnify, defend and hold harmless, and release SCE, 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 SCE or Customer; (ii) injury to property or other interests of SCE, 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) 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 Customer's performance of, or failure to perform, this Agreement, however caused, regardless of any strict liability or negligence of SCE 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 SCE, its officers, managers or employees.

14.1 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.

14.2 Customer shall, on SCE'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 SCE in enforcing this indemnity, including reasonable attorney's fees (that may include costs allocated to SCE's in-house counsel). This indemnity shall survive the termination of this Agreement for any reason.

14.3 If this Agreement is assigned pursuant to Section 11.0, Customer agrees that this indemnification shall continue to apply to SCE and shall apply to the assignee.

**15.0 LIMITATION OF LIABILITY** SCE 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.

**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 SCE.

**SCE**

SCE Offer Manager: Eugene Ayuyao  
Address: 1515 Walnut Grove  
City, State, Zip: Rosemead, CA 91770  
Fax#: (626) 302-6133  
Email: eugene.ayuyao@sce.com  
Phone: (626) 302-0708

**CUSTOMER**

Name:  
Company:  
Address:  
City, State, Zip:  
Fax#:  
Email:  
Phone:

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 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.

**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) SCE letter approving the PFS; (2) Customer's SCE-approved PFS; (3) Customer's signed Program Agreement; and (4) SCE Project Summary

Form. 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** SCE may suspend or terminate the Agreement, without cause, upon written notice to the Customer.

**19.0 MISCELLANEOUS** The Program, Program funding, and 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 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 SCE's representative authorized to execute the Agreement.

**IN WITNESS WHEREOF**, the party hereto have caused this Agreement to be executed by the duly authorized representative as of the date set forth below

By: \_\_\_\_\_  
Customer Signature

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

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

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