



SDG&E® Energy Upgrade California™ Home Upgrade Program Contractor Participation Agreement

Program Description

The Energy Upgrade California™ Advanced Home Upgrade Program (“Program”) is an energy efficiency program funded by California ratepayers and administered by San Diego Gas & Electric Company (“SDG&E”) under the auspices of the California Public Utilities Commission. The Program provides incentives for the installation of certain energy efficiency measures in single-family residential homes by an approved contractor in accordance with Program requirements. This Contractor Participation Agreement (“Agreement”) describes the Program and contains the terms and conditions all installation vendors (or providers) participating in the Program (“Contractors”) must comply with to participate in the Program.

The Home Upgrade Program is a performance-based energy savings program that utilizes energy modeling software to projects savings and incentives.

Under the Program, Participating Contractors will perform, through a Participating Rater, a comprehensive whole house diagnostic assessment of the existing home in accordance with BPI Standards. Participating Contractors will be required to develop a pre-retrofit test-in energy modeling assessment based on the existing conditions using Program-approved modeling software. Participating Contractors will install selected energy efficiency measures and then perform, through a Participating Rater, a detailed post-retrofit test-out energy modeling assessment verifying the required percentage energy reduction of the retrofit. At least a 10% site savings modeled energy reduction assessment is required to qualify for an Advanced Home Upgrade.

Participating Contractors may self-perform the duties of Participating Raters if they also sign the SDG&E® Energy Upgrade California™ Home Upgrade Program Rater Participation Agreement and meet the qualifications of a Participating Rater described therein. If Participating Contractors do not meet the qualifications of a Participating Rater, Participating Contractors are responsible for subcontracting or hiring Participating Raters to perform those duties and is required to provide SDG&E with a copy of the SDG&E® Energy Upgrade California™ Home Upgrade Program Rater Participation Agreement signed by the Participating Rater prior to starting any work under the Program. Participating Contractors shall be solely responsible and liable for the acts and omissions of Participating Raters used or engaged by them in connection with the Program.

Terms, Definitions, and Conditions of Participation in the Program

1.0 DEFINITIONS

- 1.1 Building Performance Institute, Inc. (“BPI”)** is a building performance credentialing, quality assurance and standards setting organization. BPI develops technical standards using an open, transparent, consensus-based process built on sound building science. BPI is approved by the American National Standards Institute, Inc. (“ANSI”) as an accredited developer of American National Standards.
- 1.2 Contractor** means the entity executing this Contractor Participation Agreement below.
- 1.3 Energy Upgrade California™ Advanced Home Upgrade Program (“Program”)** is the statewide program of the four California investor owned utilities (Southern California Edison, Southern California Gas Company, Pacific Gas & Electric, and SDG&E), and the two California Regional Energy Networks (RENs) (SoCalREN and BAYREN) designed to improve the energy efficiency of existing residential single family homes and multifamily buildings. This Agreement refers to the single-family home component of the Program.
- 1.4 EPA** means the U.S. Environmental Protection Agency.
- 1.5 Home Performance with ENERGY STAR® or HPwES®** refers to the national program developed by the EPA and the U.S. Department of Energy, offering a comprehensive, whole-house approach to improving energy efficiency and comfort of homes, while maintaining or improving safety.
- 1.6 Intellectual Property** means all marketing pieces, explanatory materials, websites, signs, and any and all documentation developed by SDG&E and its subcontractors in connection with the Program.
- 1.7 Participating Contractor** means a Contractor who meets the qualifications of a Participating Contractor as set forth in Section 2.1 below and is otherwise in compliance with the terms of this Agreement and the requirements of the Program.
- 1.8 Participating Rater** means a rater who meets the qualifications of a Participating Rater as set forth in Section 2.1 in the SDG&E® Energy Upgrade California™ Home Upgrade Program Rater Participation Agreement and is otherwise in compliance with the terms of the Agreement and the requirements of the Program.

2.0 PARTICIPATING CONTRACTOR QUALIFICATION

- 2.1 Contractor Participation Requirements** – Only Contractors who qualify as Participating Contractors are eligible to participate in Program projects. In order to become qualified as a Participating Contractor for the Program, Contractor must meet all of the following requirements:
- Have all certifications and licensing required under all applicable federal, state and local laws.
 - Be appropriately bonded and in good standing with the California Secretary of State.
 - Ensure building permits are obtained and finalized on all work as required by the applicable local jurisdiction.
 - BPI Building Analyst (BA) certification and company BPI Accreditation is strongly encouraged.

- Carry insurance coverage as required under this Agreement and all federal, state, and local laws.
- Execute this Contractor Participation Agreement.
- Provide copies of the SDG&E® Energy Upgrade California™ Home Upgrade Program Rater Participation Agreement signed by each Participating Rater used by Contractor in connection with the Program, whether Contractor intends to self-perform the duties of the Participating Rater or not.

2.2 BPI Building Analyst (BA) certification and company BPI Accreditation is strongly encouraged. Certification as a Building Analyst Professional by BPI means a certified individual will be allowed to align their business services with the BPI logo and brand. BPI is a national standards development and credentialing organization for residential energy efficiency retrofit work. BPI provides training through a network of training affiliate organizations, individual certifications, company accreditations and quality assurance programs that supports the development of a highly professional building performance industry. Several certifications are available through BPI, including Building Analyst Professional, Envelope Professional, Heating Professional, Air Conditioning and Heat Pump Professional, and others. Contractors are encouraged to visit the BPI website at www.bpi.org for more information about the opportunities and related technical standards. Contractors should note that BPI requires recertification every three years. Recertification can be completed in three different ways. See <http://www.bpi.org/Contractor/recert2.htm> to further understand recertification requirements.

2.3 Subcontractors — A Participating Contractor shall ensure that all contractors and subcontractors working on Contractor’s behalf comply with all of the applicable terms and conditions of this Agreement; have a current and valid license from the California Contractors’ State License Board in the specialty for the work being performed by them under the Program; and do not perform work for which they are not licensed. The Participating Contractor shall remain responsible for all work performed by such Contractor’s hired contractors and subcontractors and shall ensure that such work is completed to the quality standards imposed herein.

3.0 PROGRAM REQUIREMENTS

3.1 Program Policies and Procedures – Participating Contractors must be familiar with and be responsible for compliance with all Program requirements for measure installation and quality assurance processes in accordance with all current and successor versions of the *San Diego Gas & Electric Energy Upgrade California™ -- Home Upgrade Policies and Procedures*, and the *Energy Upgrade California Installation Standards for Energy Upgrade California® Advanced Home Upgrade, Eligible Measures*.

3.2 Permits – In its performance of any work under the Program, Participating Contractors must ensure all required permits (e.g. building permits) are obtained and finalized as may required by the applicable federal, state or local jurisdiction

4.0 CONFIDENTIALITY OF INFORMATION AND DATA

4.1 In performance under this Agreement and the Program, Contractor will receive certain personal information and consumption and energy use data from SDG&E customers (“Customer Confidential Information”). Contractor agrees that the Customer Confidential Information shall be deemed strictly confidential.

- 4.2 Contractor shall use commercially reasonable physical, operational, and technical safeguards to preserve the confidentiality, integrity, and security of Customer Confidential Information and data while in its possession and control.
- 4.3 Contractor shall not use any Customer Confidential Information received from SDG&E customers for any purpose, commercial or non-commercial, other than to perform its obligations to its customers under the Program and pursuant to the requirements of this Agreement.
- 4.4 No Customer Confidential Information obtained by Contractor through the performance of under this Program or this Agreement shall be disclosed to ANY third party except upon written authorization from such SDG&E customers to allow such third-party access to the information and data.
- 4.5 Notwithstanding the return or destruction of all or any part of the Customer Confidential Information to SDG&E or the applicable customer, the terms of this Section shall remain in full force and effect in perpetuity.
- 4.6 Contractor acknowledges that the Customer Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Contractor and its representatives are specifically enforceable. Accordingly, Contractor agrees that in the event of a breach or threatened breach of this Agreement by Contractor, SDG&E shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, money damages or any other legal or equitable remedy available.

5.0 MARKETING

- 5.1 All marketing, advertising or promotional materials which references SDG&E or the Program shall include a disclaimer which shall state:

“The Energy Upgrade California™ Advanced Home Upgrade Program is an energy efficiency program funded by California ratepayers and administered by San Diego Gas & Electric Company (“SDG&E”) under the auspices of the California Public Utilities Commission. _____ **(Insert name of Contractor)** is not an agent or affiliate of SDG&E.”
- 5.1.1 In the case of television marketing, advertising or promotional spots which reference the Program, the disclaimer requirement may be satisfied by either (i) verbally announcing the disclaimer as part of the television spot, or (ii) displaying the disclaimer in a format equal to or greater than four percent of the vertical picture height, for a period of not less than four seconds, excluding fade in and fade out.
- 5.1.2 In the case of radio marketing, advertising or promotional spots, which reference SDG&E or the Program, the disclaimer shall be verbally announced as part of the radio spot.
- 5.1.3 In the case of telemarketing efforts that reference SDG&E or the Program, the disclaimer shall be included as part of the text read by the telemarketing representatives and in contacting or responding to SDG&E customers.
- 5.1.4 In the case of printed marketing, advertising, or promotional materials, which reference SDG&E or the Program, the disclaimer shall appear in the text of such materials and shall be printed in bold type.

- 5.2 Contractor shall not use the SDG&E logo/trademarks in any of its marketing, advertising, or promotional materials without express written approval from SDG&E as appropriate.
- 5.3 Contractor must use up-to-date Program marketing program materials.
- 5.4 All marketing and advertising materials shall comply with the California Business and Professions Code and must include the Contractor's CSLB license number.
- 5.5 SDG&E reserves the right to review and approve any and all advertising, marketing, or promotional copy or materials developed or used by the Contractor which references the Contractor's participation in this Agreement or the Program, financing and other SDG&E programs. At its sole discretion, SDG&E may require the Contractor to submit such copy and materials for pre- approval. SDG&E will respond within ten (10) working days of receipt if such review is required. Contractor agrees to remove from circulation or otherwise discontinue the use of any copy or materials as requested by SDG&E.
- 5.6 **HOME PERFORMANCE WITH ENERGY STAR® LOGO USE GUIDELINES**
Contractor agrees to use the HPwES® names and related marks for the Advanced Path of Energy Upgrade California only as long as Contractor is a Participating Contractor participating in the SDG&E Advanced Path of the Program and using SDG&E approved marketing materials. Moreover, Contractor agrees that it will abide by all of the terms and conditions regarding the use of HPwES® marks as specified by the EPA through either printed documentation the EPA issues or verbal or written directions provided by EPA employees. For more information on the EPA logo use guidelines, see https://www.energystar.gov/index.cfm?c=logos.pt_guidelines.

6.0 REPRESENTATION

- 6.1 Contractor, its representatives and agents shall not represent themselves as an agent, representative or employee of SDG&E, the CPUC, the California Energy Commission ("CEC"), or the EPA, or claim association or affiliation with SDG&E, the CPUC, the CEC, or the EPA in any capacity other than as an independent contractor. Further, Contractor shall not make false claims about any part of the Program or their performance therein, including performance or savings, nor engage in fraudulent or deceitful conduct in the sale, measurement, or installation of measures.
- 6.2 Contractor, its employees and representatives shall be solely responsible for all representations made to customers regarding the Program or work performed for a customer under the Program, and shall be responsible for all sales, installations, warranties, maintenance and service for all products and systems installed under the Program and this Agreement.

7.0 WARRANTY

- 7.1 Contractor shall warrant to all SDG&E customers it serves under the Program that any materials and equipment installed as part of the Program shall be free from original defects in material, workmanship, design and installation for at least the greater of (a) two (2) years from the date of completion of the work, or (b) the original manufacturer's warranty for such materials and equipment, and Contractor shall remedy, at its sole expense and cost, any such defect that arises during the warranty period.

- 7.2 If Contractor offers warranties beyond the required two (2) years, Contractor shall clearly indicate whether this extended warranty is through the Contractor, factory, or third party in its contract with the customer.
- 7.3 Contractor shall instruct all SDG&E customers it serves under this Program on system or product operations and maintenance and shall provide such customers with all owner's manuals and warranty documents.

8.0 CONTRACTOR STATUS

- 8.1 Accepted – Upon confirmation from SDG&E that Contractor has met the qualifications as a Participating Contractor, Contractor will be placed on the proper Participating Contractor List. Participating Contractors must meet the minimum qualifications for participation in the Program as described above and establish a satisfactory work record with SDG&E.
- 8.2 Probation – Participating Contractors that are required to satisfy special conditions will be placed on probation. Project approval and/or incentive payments may be contingent upon passing pre-inspection and/or quality assurance requirements by SDG&E's quality assurance team or its certified representatives.
- 8.3 Removed – Participating Contractors who fail to meet all of the terms and conditions of this Agreement or the Program will be removed from the list of approved Participating Contractors. Contractors who have been removed from Program participation are not eligible to sell additional jobs under the Program. The suspension shall be in effect for a minimum of thirty (30) calendar days and until the Contractor satisfies the following conditions (and any other conditions that SDG&E deems appropriate):
 - 8.3.1 All jobs submitted to the Program with outstanding deficiencies are completed.
 - 8.3.2 Outstanding Customer/Contractor complaints are resolved.
 - 8.3.3 Outstanding issues concerning eligibility requirements such as insurance, bond, or licensing are resolved.
 - 8.3.4 Outstanding issues concerning fraudulent documents are resolved.
 - 8.3.5 Satisfactory evidence that Contractor has in compliance with the requirements of this Agreement.
- 8.4 SDG&E by or through its designated representatives reserves the right at all times to audit, inspect and verify Contractor continuing eligibility and minimum qualifications for participation in the Program. Upon SDG&E's request, Contractor shall promptly make available to SDG&E and its designated representatives all documents and records, and make its employees and personnel available for interviews, in respect of its participation in the Program.

9.0 CUSTOMER SATISFACTION

- 9.1 Contractor shall train internal staff to field customer inquiries about the Program;
- 9.2 Contractor shall immediately report to SDG&E, or its designated representatives, all customer conflicts not resolved to the customer's full satisfaction.

- 9.3** Contractor shall participate in good faith in a reconciliation conference when there is a dispute involving the Contractor initiated by a customer. Options for unresolved disputes include filing a complaint with CSLB or filing legal actions to gain restitution or recover damages.

10.0 CONTRACTOR STANDARDS OF PERFORMANCE

Contractor commits to:

- 10.1** Be open and transparent with the customer through the course of each project under the Program;
- 10.2** Address all customer questions and concerns in a fair and prompt manner;
- 10.3** Provide to SDG&E a list all subcontractors participating in the Program and provide their contact information to SDG&E, SDG&E designated representatives and the customer;
- 10.4** Provide updates to the homeowner/customer during installation to enable them to monitor progress;
- 10.5** Respect customer property and leave it in a clean and orderly condition, including fixing or replacing anything damaged during the course of their work;
- 10.6** Ensure the homeowner/customer is in possession of warranties for all new equipment and materials installed;
- 10.7** Ensure the homeowner/customer understands that a final payment is not required until all work has been completed;
- 10.8** Ensure the homeowner/customer understands the rebate process;
- 10.9** Provide the customer with contact information for the program administrator at SDG&E or their designated representative should there be a question or dispute that cannot be resolved by the Contractor;
- 10.10** Perform its work and duties under this Agreement and the Program in the most substantial and skillful manner and in accordance with all established professional business and ethical standards as well as those standards of care and diligence normally practiced by nationally-recognized firms performing similar work or duties;
- 10.11** Conduct its business activities without perpetrating any fraud or dishonesty on customers it serves through the Program;

11.0 TERMINATION

- 11.1** SDG&E may terminate this Agreement (and revoke Contractor's eligibility as a Participating Contractor) at its sole convenience and discretion, and for any reason (including without limitation as a result of cancellation or modification of the terms or funding for the Program or Contractor's non-compliance with the terms and conditions of this Agreement and the Program) or for no reason, at any time upon written notice to Contractor. In the event of termination, Contractor shall immediately cease all work being performed for any SDG&E customer under the Program. Contractor shall not be eligible for, and hereby waives, any termination charges or any payments, damages, losses, or claims arising out of or in connection with such termination for any reason under any theory of law.

11.2 Contractor may discontinue participation in this Program by providing thirty (30) days' written notice to SDG&E. Any such discontinuance by Contractor shall not release or relieve Contractor of any obligations or liabilities arising or incurred under this Agreement prior to such discontinuance.

12.0 INSURANCE

12.1 Contractor is required to maintain, and shall require its subcontractors to maintain, the following insurance coverage at all times as a Participating Contractor:

12.1.1 Commercial General Liability: \$1,000,000 minimum

12.1.2 Commercial or Business Auto: \$1,000,000 minimum

12.1.3 Workers' Compensation: Statutory minimum

12.1.3 Employer's Liability: \$1,000,000 minimum

12.1.4 Professional Liability (if Contractor is providing professional design, engineering or other professional services): \$1,000,000 minimum

12.2 As a condition to being qualified as a Participating Contractor and from time to time upon SDG&E's request, Contractor shall provide evidence (including original certificates of insurance) that the above insurance policies are in full force and effect and provide the coverage and limits of insurance the Contractor is obligated under this Agreement to maintain.

12.3 Contractor shall require its subcontractors under the Program to carry and maintain coverage with limits not less those required in this Article.

13.0 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, state, and local statutes, rules, regulations, laws, orders and decisions that relate to or govern their participation in the Program and/or their interactions with customers, including but not limited to the CAN-SPAM Act and applicable antitrust and anti-competition laws.

14.0 EFFECTIVE DATE AND TERM

The effective date of this Agreement is the date of Contractor's authorized representative's signature at the end of this Agreement. The term of this Agreement shall commence on the effective date and shall continue until the end of the calendar year of the effective date of this Agreement. This Agreement shall be automatically renewed for additional one-year terms each subsequent calendar year, unless either party notifies the other in writing not less than thirty (30) calendar days' prior to the expiration of the current term.

15.0 INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless SDG&E, its current and future parent companies, its affiliates and its designated representatives and their respective directors, officers, agents, assigns, successors-in-interest and employees against any and all claims (including without limitation claims made by Contractor's employees, contractors or subcontractors, SDG&E customers, and members of the public), losses, damages, expenses, actions, suits, costs (including attorney's fees (which shall include, but are not limited to, allocable costs of in-house counsel)), and liabilities incurred by any of them that arises out of

or results from (i) any act or omission of Contractor, its agents, employees, contractors, subcontractors and/or suppliers in connection with this Agreement or the Program, whether intentional, negligent (whether active or passive), or otherwise, or (ii) Contractor's breach of any provision of this Agreement or the terms of the Program.

Contractor acknowledges and agrees that under no circumstances shall SDG&E, its current and future parent companies, its affiliates and its designated representatives and their respective directors, officers, agents, assigns, successors- in-interest and employees be liable to Contractor, its agents, employees, contractors, subcontractors and/or suppliers for any damages, payments, losses, liabilities, or claims arising out of or resulting from their performance under this Agreement or their participation in the Program, including but not limited to any direct, indirect, special, consequential, incidental or punitive damages, arising under any theory of law.

16.0 INTELLECTUAL PROPERTY

All Intellectual Property provided by SDG&E or its respective representatives to Contractor shall remain the sole and exclusive property of SDG&E. In no event shall Contractor reproduce, distribute, copy, make derivative works of or use any documents or materials provided by SDG&E without the permission of SDG&E or as established herein or the terms of the Program.

17.0 LEGAL AUTHORITY

Contractor's signatory to this Agreement hereby certifies possession of the legal authority to execute this Agreement.

18.0 WAIVER

No provision of this Agreement may be waived unless agreed to by SDG&E in writing. SDG&E's failure to insist upon strict performance of any provision of the Agreement or to exercise any right based upon a breach thereof, or the acceptance of any performance during such a breach, shall not constitute a waiver of any right under this Agreement.

19.0 GOVERNING LAW and VENUE

This Agreement is made and entered into in the State of California and shall be governed by the laws of the State of California. In the event of any litigation to enforce or interpret any terms of this Agreement, the parties agree that such action will be brought in the Superior Court of the County of San Diego, California (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Southern District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.

20.0 EQUAL OPPORTUNITY

Contractor agrees to operate its business in compliance with all state and federal laws regarding employment and the fair provision of its services. Contractor expressly agrees not to discriminate in the course or conduct of its business based on race, creed, ethnicity, religion, national origin, gender, or age.

21.0 SEVERABILITY

If any provision under this Agreement or its application to any person or circumstance is held invalid by any court of lawful jurisdiction, this invalidity does not affect other provisions of the Agreement which can be given effect without the invalid provision.

22.0 CHANGES TO THE PROGRAM

The Program may be changed or terminated by SDG&E at any time without notice.

23.0 PARTICIPANT ACKNOWLEDGMENT AND SIGNATURE

Contractor certifies the information submitted in this Agreement or any other application or document for the Program is true and correct.

Contractor agrees to cooperate with all verifications by SDG&E and its quality assurance team and shall provide information about its installation practices for confidential use in measurement and evaluation activities.

Contractor has read and understood the Program requirements as set forth in this Agreement and agrees to abide by those requirements. Contractor understands payment of rebates, if applicable, to customers is contingent upon Contractor's compliance with all Program requirements and providing all necessary documentation to SDG&E.

Company Name: _____

Signature of
Authorized Representative:

Title: _____

Print Name: _____

Date: _____