



# Energy Upgrade California® Home Upgrade

## In the Pacific Gas and Electric Company (PG&E) Territory

### Rater Participation Agreement

THIS **AGREEMENT** (Agreement) is between the undersigned Rater (Rater) participating in the PG&E Energy Upgrade California Home Upgrade (“Program”), comprised of the Home Upgrade and Advanced Home Upgrade rebate pathways, and Build It Green (BIG), the Program implementer. This Agreement is effective upon BIG’s approval of Rater’s Program application and shall continue until terminated as provided herein. Rater and BIG are sometimes referred to herein collectively as “Parties” and individually as “Party” or by their proper name.

#### CONFIRMATION OF RECEIPT AND INCORPORATION OF DOCUMENTS

Rater acknowledges that it has received, read, and understands to abide by the following Program documents that are incorporated into this Agreement by reference:

- Exhibit A: *Whole House Terms and Conditions*
- Exhibit B: *Whole House Combustion Appliance Safety Test Procedure*
- Exhibit C: *Participant Handbook*
- Exhibit D: *PG&E’s Energy Upgrade California (EUC) Program Guidelines for Customer Collateral*
- Exhibit E: *EUC Home Upgrade Usage & Graphic Standards Guide (Appendix D)*

#### TERMINATION

BIG may terminate, or for any duration suspend, this Agreement and Rater’s participation in the Program, without cause at any time and for any reason. This Agreement shall be automatically suspended upon and throughout any suspension of BIG’s role as Program implementer, and it shall automatically terminate upon termination of BIG’s contract as Program implementer.

#### NOTICES

Any notice provided under this Agreement shall be sent via first-class U.S. Mail. Notice is deemed effective on the third day after it is deposited in the U.S. Mail. Alternatively, notice may be given by fax, which is effective upon confirmation of successful fax transmission to the recipient. Notice pursuant to this Agreement shall be sent to:

If to Rater:  
 Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Fax: \_\_\_\_\_

**If to BIG:**  
 Sandy Fischler,  
 Senior Program Manager  
 Build It Green 1300 Frank  
 H. Ogawa Plaza, Suite 620  
 Oakland, CA 94612 (510)  
 590-3360 xt 311



**AUTHORITY**

Rater represents and warrants that it has the requisite power, legal authority and capacity to enter into this Agreement and to perform each and every obligation required of Rater under this Agreement. In addition, Rater warrants and represents that the person signing this Agreement on Rater’s behalf has and shall have all requisite power and legal authority to bind Rater on whose behalf he/she is signing to Rater’s obligations under this Agreement.

**MISCELLANEOUS**

Rater may not assign this Agreement without BIG’s prior written consent. This Agreement, inclusive of all items incorporated herein by reference and any written modification shall represent the entire and integrated agreement between the Parties hereto regarding the subject matter of this Agreement, shall constitute the exclusive statement of the terms of the Parties’ agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification. If any provision of this Agreement is in any way deemed unenforceable, then the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those to which it is held unenforceable, shall not be affected, and each term and provision shall be enforceable to the fullest extent permitted by law.

**EXECUTION**

This Agreement may be executed in counterparts, and all executed counterparts shall constitute one Agreement, which shall be binding on the Parties even though the Parties’ signatures do not appear on the same page or same copy. Facsimile signatures may be used in lieu of original signatures and shall have the same binding effect. Rater shall fax the fully executed Agreement to Program Participant Services to 1-800-506-9073, or print, scan, and upload it to Build It Green’s [Program Enrollment website](#).

This Agreement shall become effective as of the date Rater signs this agreement.

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement.**

Sandy Fischler  
Senior Program Manager  
Build It Green

**Rater**

By: \_\_\_\_\_  
Signature and Date

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Printed Company Name (if applicable)

\_\_\_\_\_  
HERS II Rater ID & BPI ID Numbers



# Energy Upgrade California<sup>®</sup> Home Upgrade

## In the Pacific Gas and Electric Company (PG&E) Territory

### Rater Terms and Conditions

#### EXHIBIT A

#### 1.0 DEFINITIONS

**Advanced Home Upgrade** (formerly Advanced Package) means a customized path to Home performance that requires diagnostic “test-in” and “test-out” Whole House assessments consistent with Home Energy Rating System guidelines, Building Performance Institute, and the national Home Performance with ENERGY STAR program. Compared to the Home Upgrade pathway (formerly Basic Package), the Advanced Home Upgrade pathway requires higher levels of Rater training and qualifications; uses commercially available and properly-approved building simulation software and methodology to model site performance and estimate energy savings for each Job; and provide higher Customer rebates than are available under the Home Upgrade pathway.

**Assessment** means diagnostic testing and Combustion Appliance Safety testing (test-in and/or test-out) events, as well as energy software modeling and document submission, but specifically excludes installation or other work performed by Participating Contractors and/or subcontractors.

**Building Performance Institute (BPI):** A nonprofit organization that develops technical standards for Energy Efficiency Measure (EEM) Retrofit work in North America.

**California Whole-House Home Energy Rater (HERS Whole House Rater or HERS II Rater)** means a person who has been trained, tested, and certified by a HERS Provider to properly gather information on the energy consuming features of a home, perform diagnostic testing at the home, evaluate the validity of that information, simulate and perform analysis for a California Whole-House Home Energy Rating or a California Home Energy Audit using an Energy Commission-approved HERS rating software program to estimate the energy consumption of a home using the information gathered on site, and complete all of the cost-effectiveness evaluations described in the HERS Technical Manual.



**Combustion Appliance Safety Policy:** The PG&E safety policy regarding the safe installation, maintenance, and removal of Combustion Appliances and the detection and repair of gas leaks as more fully set forth in Exhibit B, which is attached hereto and incorporated by reference herein.

**Confidential Information:** Customer energy usage and billing data, together with all data or information that is marked “confidential” or verbally identified as “confidential” or “proprietary” by BIG or PG&E. Notwithstanding any independent reference to Customer Information, Customer Information shall be included with the definition of Confidential Information. Confidential Information shall not include information that Rater can prove: (i) was in the public domain at the time of the disclosure; (ii) is subsequently made available to the general public without restriction and without any breach of the Agreement by Rater; or (c) was lawfully received by Rater from a third party who was not under any written confidentiality or non-disclosure obligations.

**Customer:** Any current or former PG&E gas and/or electric utility Customer and any individual that is eligible to be a gas or electric utility customer of PG&E at any time during the Program term.

**EPA** means the U.S. Environmental Protection Agency, an agency of the federal government.

**Energy Efficiency Measures (EEM Retrofit):** All energy efficiency measures installed in a Home, which may include, but are not limited to, air sealing, duct sealing, attic insulation, domestic hot water pipe insulation, low flow showerhead, wall insulation, distribution system, heating equipment, cooling equipment, variable speed motor air handlers, thermostatic low flow restrictive valves, floor insulation, crawl space insulation, radiant barriers, refrigerant charge and airflow, energy-efficient windows, and cool roofs.

**Energy Upgrade California<sup>®</sup>** refers to a collaborative effort among California counties, cities, non-profit organizations, the state's investor-owned utilities (Pacific Gas and Electric Company, Southern California Edison, Southern California Gas Company, and San Diego Gas & Electric Company), and publicly owned utilities. The goals of this statewide effort are four-fold:

- a. Help residential and commercial consumers and the building industry become knowledgeable about the many energy and water efficiency programs and financing options that will be available during the next several years including the State Energy Programs, utility company home upgrade programs, local rebates, appliance and renewable energy rebates, and energy financing programs.
- b. Provide a consistent and clear message regarding how consumers can choose the best energy-efficient measures and the right contractors to provide those services.
- c. Drive consumers, raters, and contractors to a central resource that provides educational information that links all the state energy efficiency upgrade, rebates, and incentive programs.
- d. Educate the building trades and home improvement industry on jobs, training, and required certifications.

**ENERGY STAR<sup>™</sup>:** A joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy helping us all save money and protect the environment through energy efficient products and practices. ENERGY STAR<sup>™</sup> is a registered trademark and use of the ENERGY STAR<sup>™</sup> logo must meet strict guidelines.

**Energy Training Center:** PG&E's Energy Training Center located in Stockton, California.



**Home Energy Rating System (HERS) Program:** California Energy Commission (as required by Public Resources Code Section 25942) established this statewide home energy rating program for residential dwellings. California HERS regulations also established the requirements for Field Verification and Diagnostic Testing services used to show compliance with the Title 24, Part 6; Building Energy Efficiency Standards, and established the basic framework for HERS Rater training, certification, and quality assurance. A recent update to HERS established a systematic process for the delivery of California Whole-House Home Energy Ratings to provide California homeowners and prospective home buyers with information about the energy efficiency of the homes they live in or are considering for purchase. The Ratings also provide an evaluation of the cost-effectiveness of options that can improve the energy efficiency in these homes.

**Home:** Any single family detached (for both Home Upgrade and Advanced Home Upgrade projects) or 2-4 unit (Advanced Home Upgrade projects only) residences eligible to have an Energy Efficient Measure or Appliance installed as part of Home Upgrade.

**Home Performance with ENERGY STAR™:** Home Performance with ENERGY STAR, a national program from the U.S. EPA and U.S. Department of Energy, offers a comprehensive, whole-house approach to improving energy efficiency and comfort at Home, while helping to protect the environment.

**Home Upgrade (formerly Basic Package)** means the flexible, points-based selection of home energy efficiency measures intended to promote improvement based on at least one required 'base' measure and at least two additional 'flex' measures. This simple, menu-driven, flexible pathway is designed to encourage widespread Customer participation and provide rigorous quality assurance and quality control for elements completed within the deemed-savings based scope of work for the measures selected.

**Home Upgrade (formerly the Whole House Rebate Program):** The rebate Program whereby Customers receive incentives to conduct residential upgrades under the Home Upgrade and/or Advanced Home Upgrade rebate pathways. This is the PG&E Program under the statewide Energy Upgrade California brand.

**Installer (Field) Verifier:** A third party employed or engaged by Build It Green that: (a) reviews the work performed by an Installer in connection with an EEM Retrofit; and (b) reviews and verifies that the Post-EEM Retrofit Inspection performed by said Installer was properly performed.

**Intellectual Property Rights:** All trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof.

**Job:** The Energy Efficiency Measure(s) that will be installed in a Participating Customer's Home by a Participating Installer, which shall be more fully described in a written agreement between the Participating Customer and Participating Installer.

**Rater:** A Building Performance Institute (BPI) certified California Whole-House Home Energy (HERS II) Rater.



**Work:** Goods and services supplied by Raters to Customers.

## 2.0 RATER COMMITMENT

Rater shall:

- a. Perform and report a minimum of four (4) completed Assessments in each 12 month cycle of the Program period;
- b. Assure that all Work in connection with an Assessment is performed in a safe and professional manner, including but not limited to full adherence to the Program's *Whole House Combustion Appliance Safety Test Procedure* (Exhibit B);
- c. Abide by the quality assurance procedures including reporting and sampling protocols, as specified in the Program's *Participant Handbook* (Exhibit C);
- d. Train internal staff to field Customer inquiries about Energy Upgrade California and Home Upgrade;
- e. Provide excellent Customer service to any Customer requesting an Energy Efficiency Assessment of their home;
- f. Require all employees to present company identification upon the start of work each day in a Home;
- g. Comply with Rater certification requirements, applicable building codes, and all applicable federal, state, and local laws, ordinances, rules, and regulations;
- h. Warrant that Rater's leadership (President, CEO, etc.) have no prior conviction of crimes identified below in Section 6.0 as well as no lawsuits or liens filed against the Installer or its leadership within the previous seven (7) years;
- i. Abide by the Program standards in any co-marketing collateral Rater may produce, consistent with *PG&E's Energy Upgrade California (EUC) Program Guidelines for Customer Collateral* (Exhibit D) and the *EUC Home Upgrade Usage & Graphic Standards Guide - Appendix D* (Exhibit E); and
- j. Immediately report to BIG, or its representatives, all Customer conflicts that are not resolved to Customer's full satisfaction.

## 3.0 SUBCONTRACTORS

If Rater uses any subcontractors to perform services under the Program, then it shall require subcontractors to enter into a subcontract by which they agree to comply with all obligations and requirements imposed on Rater under this Agreement, including but not limited to those with respect to safety, data security and PG&E IT Security requirements, confidentiality, insurance, and indemnification. Rater agrees that Rater is solely responsible for any acts or omissions of its subcontractors and any breach of this Agreement by Rater's subcontractors constitutes breach by Rater. Rater agrees to notify PG&E and BIG of subcontractors that will be performing services under the Program.

## 4.0 INSURANCE

Throughout the term of this Agreement, Rater will procure and maintain adequate levels of insurance, specifically:

### 4.1 Commercial General Liability

- 4.1.1 Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.

4.1.2 The limit shall not be less than \$1,000,000 each occurrence / \$2,000,000 in aggregate for bodily injury, property damage and personal injury.

4.1.3 Coverage shall: a) By "Additional Insured" endorsement add as insureds BIG, PG&E, and their respective affiliates, subsidiaries, parent companies, directors, officers, agents and employees with respect to liability arising out of or connected with the Work performed by or for the Rater (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 these additional insured requirements: "BIG, PG&E, their respective affiliates, subsidiaries, parent companies, directors, officers, agents and employees with respect to liability arising out of the work performed by or for the Rater are additional insured under a blanket endorsement."; b) be endorsed to specify that the Rater's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

#### **4.2 Business Automobile Liability**

Coverage shall be at least as broad as the ISO Business Auto Coverage form covering Automobile Liability, code 1 "any auto." The limit shall not be less than \$1,000,000 each accident for bodily injury and property damage.

#### **4.3 Workers Compensation and Employers' Liability**

Workers' Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Rater performs the services in connection with the Job. Employers' Liability insurance shall not be less than \$1,000,000 for injury or death each accident. California Statutory Workers' Compensation insurance is not required if you have no employees (please provide a waiver for workers' compensation liability or Workers' Compensation Declaration with your Rater Application if you have no employees).

#### **4.4 Professional Liability/Errors and Omissions**

Professional Liability insurance is not required. Rater is encouraged to consider such coverage in consultation with Rater's insurance broker.

#### **4.5 Insurance Certificates**

Rater will provide to BIG certificate(s) of insurance evidencing the coverage required hereunder within thirty (30) days after Rater's execution of this Agreement, and, if the Agreement extends beyond twelve (12) months, will provide updated certificate(s) no less frequently than annually on the anniversary of the Effective Date. Rater shall provide BIG with no less than thirty (30) days written notice of any cancellation or changes in any above-mentioned insurance.

## **5.0 DISCLAIMER OF LIABILITY**

Rater is responsible for performing the evaluation and technical feasibility of any design, system, appliance, or any measure recommended as part of an Assessment under this Program. Neither BIG nor PG&E make any representation or warranty, and they assume no liability with respect to, the quality,



safety, performance, or other aspect of any design, system, appliance, or any measure recommended or installed pursuant to this Agreement. BIG and PG&E expressly disclaim any such representation, warranty or liability. Rater's compensation for the Work shall be determined by Rater and Customer, it being understood that Rater shall receive no compensation from BIG or PG&E.

## **6.0 CRIMINAL RECORD OF EMPLOYEES**

Rater represents and warrants that:

(i) it has a security background check policy which includes, at a minimum, a search using federal, state and municipal databases (e.g., Global Watch Search, National Federal Crime Search, National Crime Database, etc.) to determine if an individual has been convicted of a felony or misdemeanor for any of the following crimes: arson, assault, battery, burglary, driving under the influence, domestic violence, larceny, manslaughter, murder, theft (including but not limited to identity theft), sexual crimes, felony drug conviction, and any crimes against children (the "Background Check"),

(ii) each Rater employee that will perform any work on the property of a PG&E customer has successfully passed the Background Check and has not been convicted of any of the felonies or misdemeanors listed in the Background Check within the past seven (7) years OR has been working for the preceding twelve (12) consecutive months in a PG&E Energy Efficiency Program without incident,

(iii) said Rater employees shall be in compliance with the Background Check throughout the Rater's participation during the Term of the PG&E Program and shall submit a Background Investigation Policy Compliance Certificate at the start of each calendar year,

(iv) Notwithstanding anything to the contrary herein, if an individual has been convicted for driving under the influence or a similar offense ("DUI Conviction") during the past three (3) years, the individual may be eligible to perform work on the property of a PG&E customer provided the individual has no more than one (1) DUI Conviction within the last three (3) years,

(v) it will not assign or permit any individual to perform work on the property of a PG&E customer that has not undergone and passed Rater's security background check,

(vi) If requested by PG&E or Build It Green, any personnel to be assigned by Rater to perform work on customer property will, prior to commencing such work, execute the necessary consents and releases to allow a third party agency acting on its own behalf to, without liability to Rater's personnel, collect and check the criminal background and qualifications of such personnel as permitted by applicable law,

(vii) Warrant that Rater's leadership (Owner, CEO, President, etc.) have no prior conviction of crimes identified in Section 6.0(i) above as well as any lawsuits or liens filed against the Rater or its leadership within the previous seven (7) years.

### **6.1 Additional Policies and Records**

- a. Drug and Alcohol Policy. Rater employee and its subcontractors that perform any work on the property of a PG&E customer is and shall be drug and alcohol-free while performing any work on PG&E customer property.
- b. Social Security Number Trace. Rater has verified the identity and work authority of its employees who will perform work under the PG&E Program and all employees are in compliance with the U.S. immigration laws.
- c. Rater will provide the following information on their Technicians who will be participating in the program: Name, years of experience, and credentials held.



## 7.0 SAFETY PRECAUTIONS AND PROTECTION OF PROPERTY

Rater shall be solely responsible for maintaining a safe workplace and initiating, maintaining and supervising all safety precautions and programs in connection with work, including those required by state, federal or local laws, regulations and ordinances. BIG may at any time designate safety precautions in addition to those in use or proposed by Rater. BIG reserves the right to inspect the work and to halt work to ensure compliance with reasonable and safe work practices and with applicable federal, state, and local laws, rules and regulations. Neither the requirement that Rater follow said practices and applicable laws, rules and regulations, and any special instructions given by BIG nor the adherence thereto by Rater shall relieve Rater of the sole responsibility to maintain safe and efficient working conditions.

## 8.0 COMBUSTION SAFETY FAILURE

If, during the course of performing Work, Rater reasonably believes that it has encountered or detected at, in and/or near a Combustion Appliance, the presence of natural gas or other hazardous materials (collectively, the "Hazardous Condition"), the Rater will promptly stop Work on the Job and immediately notify BIG and PG&E of such Hazardous Condition. PG&E or a representative designated by PG&E will investigate for the presence of the Hazardous Condition and inform BIG and Rater of the results of this evaluation. Rater will not resume any Work on the Job until the Hazardous Condition has been removed, disposed of, abated or remediated to PG&E's reasonable satisfaction. In addition to the foregoing obligations, Rater shall at all times strictly comply with PG&E's *Whole House Combustion Appliance Safety Test Procedure* policy, attached hereto as EXHIBIT B.

## 9.0 INDEMNIFICATION

**9.1 Indemnitees Defined.** PG&E, its affiliates, subsidiaries, parent company, BIG, BIG's Program subcontractors and each of the forgoing entities' respective officers, managers, directors, agents, and employees are collectively referred to as "Indemnitees".

**9.2 Rater Indemnity Obligations.** To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Rater shall indemnify, hold harmless and defend each of the Indemnitees from and against all claims, demands, losses, damages, costs (including attorneys' fees and expert witness fees), expenses, and liability of any kind (including settlements), which arise from or are in any way connected with the Work, including but not limited to:

- (i) injury to or death of any persons;
- (ii) injury to property belonging to anyone;
- (iii) violation of local, state, or federal common law, statute, ordinance, code, or regulation, including but not limited to environmental laws or regulations;
- (iv) strict liability imposed by any law or regulation;
- (v) claims of any kind asserted by Customer relating to the Work;
- (vi) Rater's breach of this Agreement;
- (vii) payments to Rater's employees and/or subcontractor(s) arising from or in connection with this Agreement (including but not limited to any demands for payment, invoices, or liens) and/or Rater's delay or failure to pay any of its employees or subcontractor(s) the compensation, monies, wages or other payment due or allegedly due such Subcontractor(s) with regard to any services performed hereunder; and/or
- (viii) Rater's breach of any representation made in entering or performing this Agreement or the Work.



As to each Indemnitee, Rater's foregoing indemnity, defense and hold harmless obligations shall not apply to the proportional extent that the same are caused by the sole negligence or willful misconduct of such Indemnitee. Upon BIG's request, Rater shall defend any action, claim, or suit asserting a claim which might be covered by this indemnity.

## 10.0 CONFIDENTIALITY

**10.1 Duty of Confidentiality.** Throughout and after the duration of this Agreement, Rater shall hold all Confidential Information in strict confidence. Without PG&E's prior written approval, Rater shall not use, disclose, reproduce, distribute, or otherwise misappropriate any Confidential Information. Nor shall Rater take any action that may cause, or fail to take any action necessary to prevent causing, any Confidential Information to lose its character as Confidential Information.

**10.2 Return of Materials.** Upon the termination or conclusion of this Agreement for any reason, or upon earlier request by PG&E or BIG, Rater shall promptly erase and destroy or otherwise return to BIG (as requested by BIG) all Confidential Information and other documents or data that contains Confidential Information.

**10.3 Customer Information.** Rater acknowledges and agrees that all information Rater collects or obtains from PG&E or Build It Green with regard to Customers, including but not limited to names, addresses, telephone numbers, account numbers, utility bill data, energy usage, demographics, financial data, or any other personal information ("Customer Information"), shall be deemed the Confidential Information of PG&E.

**10.4. Data Security.** Rater will establish and maintain diligent safeguards and security practices to protect against the destruction, loss, or disclosure of any Confidential Information in its custody or possession. If Rater discovers a breach of security, it shall immediately notify BIG and PG&E and use its best efforts to mitigate the breach and prevent any such disclosure or loss of Confidential Information.

## 11.0 RETENTION OF RECORDS

Rater agrees to retain all records and results of the Jobs performed under this Agreement for a period of not less than three (3) years from the expiration date of this Agreement. At BIG's request Rater will deliver a copy of any or all original field notes, investigative notes, tests, photographs, records, calculations, summaries, reports, and records produced and collected in the course of the work performed on all of the Jobs.

## 12.0 INTELLECTUAL PROPERTY

Nothing in this Agreement or the Parties' performance of it is intended or shall be deemed to convey any Intellectual Property Rights to Rater. All Intellectual Property Rights relating to the Program are expressly reserved to BIG, PG&E and their respective licensors.



### **13.0 NO GUARANTEE OF WORK**

This is not an exclusive contract between BIG and Rater. This Agreement does not guarantee Rater any minimum number of Jobs or volume of Work.

### **14.0 FURTHER RATER REPRESENTATIONS**

Rater warrants and represents that (i) Rater has, holds, and possesses all applicable licenses, certifications, permits and other governmental authorizations as required and necessary to conduct its business and to perform the Work; (ii) Rater has not received notice that any governmental authority intends to cancel, terminate or not renew any such licenses, certifications, permits or other governmental authorizations; (iii) if Rater is an entity (i.e., corporation or partnership), Rater is duly organized, validly existing and in good standing under the laws of its domestic state; and (iv) this Agreement along with all of the documents which comprise this Agreement constitute the valid and binding legal obligation of Rater enforceable in accordance with its terms.

### **15.0 WAIVER**

No provision of this Agreement may be waived unless agreed to by BIG in writing. BIG'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.

### **16.0 DISPUTE RESOLUTION; ARBITRATION**

**16.1 Meet and Confer.** Before commencing any dispute resolution procedure, Rater and BIG shall make a good faith effort to resolve the dispute by negotiation between representatives with decision-making power, who, to the extent possible, shall not have had substantive involvement in the matters of the dispute.

**16.2 Arbitration.** Any remaining disputes arising out of or relating to this Agreement shall be resolved by binding arbitration administered by the initiating Party's selection of the American Arbitration Association or JAMS, under its then current rules. The arbitration shall be conducted in Oakland, California. The Parties hereby irrevocably waive any right to have such disputes tried before a jury. If either Party refuses or fails to participate in arbitration after receiving notice, then the arbitrator shall make an award based on the evidence presented to him or her. The arbitrator shall award the prevailing Party its fees and costs. Any arbitration award shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. In no event may arbitration be demanded on any claim after the applicable statute of limitation for commencing litigation has expired.

### **17.0 GOVERNING LAW**

This Agreement shall be deemed to have been executed in the City of Oakland, Alameda County, California. Rater Enforcement of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for any litigation arising from or relating to this Agreement shall be in Alameda County, California.



## **18.0 INDEPENDENT RATER**

Rater is an independent Rater and warrants that it shall, at its sole cost and expense, comply with all rules, ordinances, regulations, orders or laws of any kind of all governing bodies having jurisdiction over the Work, including without limitation laws pertaining to occupational health and safety and the handling, storage and disposal of hazardous materials and wastes. Rater shall pay all related local, state and federal taxes of any kind, as well as all social security, unemployment, fringe benefits or other remunerations paid to Rater's employees or which otherwise result from the performance of their labor as required by law or any collective bargaining agreement. Nothing herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties and neither Party may create any obligations or responsibilities on behalf of the other Party.

## **19.0 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.