

**2017**  
**RESIDENTIAL AND HARD-TO-REACH**  
**STANDARD OFFER PROGRAM**  
**AGREEMENT**

**BETWEEN**

**SHARYLAND UTILITIES, L.P.**

**AND**

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**(DATE)**

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**2017 RESIDENTIAL AND HARD-TO-REACH  
STANDARD OFFER PROGRAM CONTRACT**

This 2017 Residential and Hard-to-Reach Standard Offer Program Agreement (the "SOP Agreement") is made and entered into by and between **Sharyland Utilities, L.P.**, a Texas limited partnership (hereinafter "Sharyland") and \_\_\_\_\_ (hereinafter "Project Sponsor"), collectively referred to as the Parties.

**WHEREAS**, Sharyland has developed demand-side Residential and Hard-to-Reach Standard Offer Programs for its residential customer classes (the "SOPs"); and

**WHEREAS**, the SOPs seek to procure energy and peak demand savings through the installation and operation of energy efficiency measures at residential customer sites; and

**WHEREAS**, Project Sponsor has developed a plan for participation in the SOPs through a set of proposed energy efficiency measures necessary to produce consistent and predictable energy and peak demand savings over the Estimated Useful Life (EUL) of the measures;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**ARTICLE I – DEFINITIONS**

The following terms shall have the meanings set forth below. Capitalized terms not defined in this Article or elsewhere in this Agreement shall have the meanings specified in the SOP Manual.

1.1 "Affiliate" shall mean,

- (A) a person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider;
- (B) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
- (C) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider;
- (D) a corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by:
  - (i) a person who directly or indirectly owns or controls at least 5.0% of the voting securities of an energy efficiency service provider; or

- (ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
  - (E) a person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;
  - (F) a person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider;
  - (G) a person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph;
  - (H) a person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or
  - (I) a person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.
- 1.2 "Baseline" means a relevant condition that would have existed in the absence of the energy efficiency project or program being implemented, including energy consumption that would have occurred. Baselines are used to calculate program-related Deemed Savings, and are defined in the Texas Technical Reference Manual (the "TRM4.0").
- 1.3 "Contract Documents" shall mean i) Project Sponsor's approved SOP Application, attached hereto and incorporated herein as Exhibit A; ii) Project Sponsor's approved Supplemental Application Information, attached hereto and incorporated herein as Exhibit B; iii) a Host Customer Agreement, attached hereto and incorporated herein as Exhibit C; (iv) the SOP Manual, attached hereto and incorporated herein as Exhibit D; (v) the insurance requirements, attached hereto and incorporated herein as Exhibit E; and (vi) this Agreement, and any and all other exhibits, addenda, or amendments referenced herein or made a part hereof in accordance with this Agreement.
- 1.4 "Customer Acknowledgments or Certificates" must be included with each

- monthly Invoice submitted by the Project Sponsor. Among other things, the certification provides the Project Sponsor with a release for Sharyland, allowing energy use and billing information to be provided to the Project Sponsor and provides Sharyland with permission to inspect installations.
- 1.5 “Deemed Savings” shall mean a pre-determined, validated estimate of Energy Savings and Peak Demand Savings attributable to a single unit of an installed energy efficiency measure in a particular type of application, as found in the Technical Reference Manual (“TRM4.0”).
  - 1.6 “Energy Savings” shall mean a quantifiable reduction in a customer’s consumption of energy that is attributable to energy efficiency measures, usually expressed in kilowatt-hours (kWh) or megawatt-hours (MWh).
  - 1.7 “Evaluation, Measurement and Verification Contractor” or “EM&V Contractor” shall mean one or more independent, third-party contractors selected and retained by the Public Utility Commission of Texas (PUCT) to plan, conduct, and report on energy efficiency evaluation activities, including verification.
  - 1.8 “Hard-to-Reach Customers” shall mean residential customers with an annual household income at or below 200% of the federal poverty guidelines, and who have properly completed a PUCT approved income verification form.
  - 1.9 “Host Customer” shall mean a residential distribution system customer of Sharyland that owns or leases facilities at a Project Site and that has entered into a Host Customer Agreement with the Project Sponsor for the installation of Measures as a part of a Project. For the purposes of this Agreement, a residential customer shall mean a Sharyland distribution residential customer with one or more metered facilities, none individually exceeding 100 kW demand nor together exceeding 250 kW demand in the aggregate; a customer’s load within a service territory that is under common ownership shall be combined.
  - 1.10 “Host Customer Agreement” shall mean the agreement between the Host Customer and the Project Sponsor that specifies the rights and obligations of each party with respect to the installation of the Measures at the Project Site. In the case of a multifamily project, the Host Customer Agreement is between the Project Sponsor and the property management or owner.
  - 1.11 “Incentive Payment” shall mean a payment made by Sharyland to a Project Sponsor for implementing Measures that produce Deemed Savings.
  - 1.12 “Invoice” shall mean the monthly reporting instrument used by the Project Sponsor during the program implementation period. All Project Sponsors must submit the required Invoices.
  - 1.13 “Measure” shall mean equipment, materials, and practices that when installed and used at a customer site result in a measurable and verifiable reduction in either purchased electric energy consumption, measured in

kilowatt hours (kWh), or peak demand, measured in kilowatts (kW), or both.

- 1.14 “Peak Demand Savings” shall mean a reduction in demand on the utility's system at the times of the utility's summer peak period or winter peak period, as found in the TRM4.0, usually measured in kW.
- 1.15 “Project” shall mean a Measure or combination of Measures installed under this Agreement that results in a reduction in customer's electric energy consumption, peak demand, and energy costs.
- 1.16 “Project Site” shall mean the location of a Host Customer's facilities where approved Measures will be installed and from which Peak Demand Savings and Energy Savings will be obtained..
- 1.17 “Project Sponsor” shall mean any organization, group, or individual who contracts with Sharyland to provide Peak Demand Savings and Energy Savings under the SOPs.
- 1.18 “Prudent Electrical Practices” shall mean those practices, methods, standards and equipment commonly used in prudent electrical engineering and operations to operate electrical equipment lawfully and with safety, dependability and efficiency and in accordance with the National Electrical Safety Code, the National Electrical Code and any other applicable federal, state and local codes provided, however, that in the event of a conflict, the applicable federal, state or local code shall govern.
- 1.19 “Technical Reference Manual” or “TRM” refers to the common reference document in Texas for estimating Peak Demand Savings and Energy Savings resulting from the installation of energy efficiency measures. This document is a compilation of deemed savings values approved by the PUCT.

## **ARTICLE II - TERM AND TERMINATION**

- 2.1 The term of this Agreement shall commence on the date of execution by Sharyland (the “Effective Date”) and, unless otherwise terminated in writing, shall continue in force and effect until payment by Sharyland of all incentive payments due to Project Sponsor pursuant to Article VII below.
- 2.2 Sharyland reserves the right, in its sole discretion, to terminate this Agreement with or without cause.

### **ARTICLE III - COMPLIANCE WITH SOP MANUAL**

- 3.1 By executing this Agreement, the Project Sponsor acknowledges that it is familiar with all Sharyland SOP rules and information, including the SOP Manual, and all applicable laws and regulations, including PUCT Substantive Rule 25.181.
- 3.2 The Project Sponsor acknowledges that it meets or exceeds all of the following qualifications required by Sharyland for participation in the SOPs:
- Possesses and can demonstrate experience relevant for implementation of the Project;
  - Can produce evidence of a good credit rating;
  - Can produce evidence of financial strength and capability through 10Ks or other financial statements;
  - Can produce evidence of possession of all applicable licenses required under state law and local building codes;
  - Can produce evidence of possession of all building permits required by governing jurisdictions; and
  - Can produce the proof of insurance required by Article VIII and Exhibit E of this Agreement.
- 3.3 Project Sponsor acknowledges that its Projects will meet all regulatory requirements, including:
- Each Project will result in a reduction in purchased energy consumption, peak demand, and energy costs for the end-use customer;
  - Each Project will result in consistent and predictable Peak Demand and Energy Savings over the EUL of the Measures installed;
  - Projects will not result in negative environmental or health effects, including effects that result from improper disposal of equipment and materials;
  - Projects will not achieve demand or energy reduction by eliminating an existing function or shutting down a facility or operation, or result in building vacancies or the re-location of existing operations to a location outside of the area served by Sharyland;
  - Measures installed pursuant to each Project would not be installed in the absence of the Project; and
  - Each Project will not involve the installation of self-generation or cogeneration equipment, but may involve renewable demand side management (DSM) technologies.

- 3.4 Project Sponsor acknowledges that it has received a copy of the SOP Manual prior to submission of its Project Application, and that the SOP Manual constitutes a part of this Agreement, and that the terms of the SOP Manual are incorporated into this Agreement as if set forth herein. Project Sponsor represents and affirms that its participation in the SOPs will at all times be in compliance with the procedures and conditions set forth in the SOP Manual and that any failure to comply therewith may be treated as a breach of this Agreement notwithstanding the fact that such failure occurred prior to the execution of this Agreement. Project Sponsor also acknowledges that it meets or exceeds all of the qualifications required to participate in the SOPs as described in the SOP Manual and that failure to meet the qualifications therein may be treated as a breach of this Agreement.
- 3.5 Procedures or conditions set forth in the SOP Manual may only be waived or modified by written agreement of the Parties. Any such agreement shall be attached hereto and incorporated herein for all purposes.

#### **ARTICLE IV – HOST CUSTOMER AGREEMENT and ACKNOWLEDGEMENT**

- 4.1 The Project Sponsor will be solely responsible for entering into a Host Customer Agreement(s) with the Host Customer(s) as appropriate for implementation of the Project. The Host Customer must execute a Host Customer Agreement prior to Project Sponsor beginning installation of Measures at the Project Site. Sharyland will not award incentive payments without proper completion of the Host Customer Agreement as provided for in the Contract Documents.

To the extent possible, Host Customer Agreements will be kept confidential.

- 4.2 The Host Customer Agreement shall contain the following provisions:
- (a) Host Customer agrees, upon three (3) days' prior oral notice, to provide Sharyland and the independent EM&V Contractor selected by the PUCT with full and complete access to the Project Site for any purpose related to the SOP. The right of access will be subject to Host Customer's reasonable access requirements.
  - (b) Host Customer acknowledges that any view, inspection, or acceptance by Sharyland or its designees of the Project or of the design, construction, installation, operation or maintenance of the Measures is solely for the information of Sharyland and that, in performing any such inspection or review or in accepting the Measures, Sharyland makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by Project Sponsor or their compatibility with the Host Customer's facilities.
  - (c) Host Customer acknowledges that Project Sponsor is an independent contractor with respect to Sharyland and the SOPs



and that Project Sponsor is not authorized to make representations or incur obligations on behalf of Sharyland. Host Customer further acknowledges that Sharyland is not a party to the Host Customer Agreement or any contract between the Project Sponsor and Host Customer and that Project Sponsor is solely responsible for performance thereunder.

- (d) Host Customer agrees to provide Sharyland with access to Host Customer's utility bills, project documentation, contractor invoices, and technical and cost information directly related to the Project.
- (e) Host Customer acknowledges that Sharyland makes no warranty or representation regarding the qualifications of the Project Sponsor, and that the Host Customer is solely responsible for the selection of the Project Sponsor.
- (f) Host Customer acknowledges that it may file a complaint with the PUCT concerning the Project Sponsor, but that Sharyland will play no role in resolving any disputes that arise between the Host Customer and the Project Sponsor.
- (g) Host Customer agrees to release Sharyland and its agents from any and all claims, demands, losses, damages, costs, and legal liability including, but not limited to: 1) injury or death of persons, 2) damage to natural resources, 3) violation of any local, state, or federal law or regulation including, but not limited to, environmental and health and safety laws or regulations, 4) strict liability imposed by any law or regulation, 5) equipment malfunctions, or 6) energy savings shortfalls arising out of, related to, or in any way connected with the Project, regardless of any strict liability or negligence of Sharyland, whether active or passive, excepting only such claims, demands, losses, damages, costs, expenses, liability, or violation of law or regulation as may be caused by the gross negligence or willful misconduct of Sharyland, and resulting from its acceptance of the Project for participation in the SOPs.

4.3 Project Sponsor must obtain an acknowledgement from each Host Customer indicating that the Measures contracted for were actually installed at the Project Site. The acknowledgement should be in the form of the Customer Acknowledgement set forth on the SOP website ([www.sharylandefficiency.com](http://www.sharylandefficiency.com)). The Customer Acknowledgement(s) should be submitted to Sharyland with the Invoice described in Section 5.6 below. If a Host Customer refuses to sign the Customer Acknowledgement, Project Sponsor may request, at Project Sponsor's expense, that Sharyland perform an inspection of the Project Site. Sharyland shall not make final payment of incentives unless and until a Customer Acknowledgement or inspection and all documentation has been completed in accordance with the terms of the Contract Documents.

## **ARTICLE V - PROJECT IMPLEMENTATION**

- 5.1 Project Sponsor agrees on and after the Effective Date to use all reasonable efforts to implement Projects without undue delay and otherwise in accordance with the terms of the Contract Documents.
- 5.2 Measures shall be designed, constructed and installed in a good and workmanlike manner only with materials and equipment of appropriate quality, and, in any event, in accordance with Prudent Electrical Practices.
- 5.3 Project Sponsors must complete and submit Invoices and all required documentation to Sharyland on a monthly basis.
- 5.4 If the Project Sponsor completes multiple Projects within a month, installation data should be summarized on a single Invoice and submitted along with official Sharyland forms .
- 5.5 Project Sponsor shall notify Sharyland of homes in which measures are to be installed by submitting the project information into the Work Schedule. Each project submitted into the Work Schedule is subject to a pre-inspection. Once a project has been input into the database, Project Sponsor will be contacted to schedule pre-installation inspections. During the program year, Sharyland's program administrator will monitor the number of projects implemented by each Project Sponsor, and will attempt to conduct a sufficient number of pre-inspections to maintain the percentage of pre-inspected projects at or above 10% of all projects.
- 5.6 Project Sponsor shall notify Sharyland of Measure installation at each Project Site by submitting an Invoice documenting the Measures actually installed at the Project Site. Each Invoice must be completed electronically on official Sharyland forms. Invoices may be submitted to Sharyland up to three (3) times each month. Within thirty (30) days of receipt of the Invoice, Sharyland or a third-party evaluator shall complete a random sample inspection of the Measure installations at the Project Site(s). This inspection shall be used to determine whether the Measures were installed and are capable of performing their intended function of producing Peak Demand Savings and Energy Savings. If Sharyland reasonably determines that the Measures at the Project Site(s) have been installed, tested and inspected to the extent required by Sharyland and found to be capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, the Invoice will be approved as submitted. The Deemed Savings attributable to the Measures documented in the approved Invoice will be used for purposes of calculating the Incentive Payment in Article VI.
- 5.7 If Sharyland determines that any of the Measures installed at the Project Site are not capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, a reduction of savings may be required for purposes of calculating the Incentive Payment in Article VI.

- 5.8 Any review, inspection, or acceptance by Sharyland, its designee or any third party evaluator of any Project Site or of the design, construction, installation, operation and maintenance of Measures is solely for the information of Sharyland. In performing any such inspection or review or in accepting the Measures, Sharyland makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by Project Sponsor or their compatibility with the Host Customer's facilities.

## **ARTICLE VI - INCENTIVE PAYMENTS**

- 6.1 Incentive Payments due to Project Sponsor will be calculated by multiplying the Deemed Savings associated with the Measures installed at the Project Site and found to be capable of providing Peak Demand Savings and Energy Savings in material compliance with the Contract Documents, by the applicable "Incentive Rate" specified in the SOP Manual. .
- 6.2 The applicable Incentive Rates are as follows for savings derived from Measures installed at eligible Project Sites:
- Non-Hard-to-Reach Customer Projects
    - (1) Peak Demand Savings Incentive Rate = \$278.00/kW  
(coincident with system peak)
    - (2) Energy Savings Incentive Rate = \$0.10/kWh
  - Hard-to-Reach Customer Projects
    - (1) Peak Demand Savings Incentive Rate = \$477.00/kW  
(coincident with system peak)
    - (2) Energy Savings Incentive Rate = \$0.16/kWh
- 6.3 Upon completion of Measure installation and approval of an Invoice, Sharyland will pay the Incentive Payment. Sharyland will make the Incentive Payment within forty-five (45) days of its approval of the Project Implementation Report and Invoice

## **ARTICLE VII - AUDIT AND RECORDS**

- 7.1 Project Sponsor or its assignee shall keep and maintain accurate and detailed records and documentation relating to the Projects and their associated Peak Demand Savings and Energy Savings for a period of not less than three (3) years beyond the termination of this Agreement. During the retention period, such records shall be made available at the offices of the Project Sponsor or other mutually agreeable location, upon reasonable notice, for inspection during normal business hours by Sharyland or any governmental agency having jurisdiction over the SOPs or any portion of the Projects.

## **ARTICLE VIII - INSURANCE**

8.1 Project Sponsor represents and agrees that it and its subcontractors will carry:

- all statutorily required insurance for the protection of its employees and that each of its subcontractors will carry such insurance for the protection of their respective employees; and
- all insurance required by Exhibit E, which is attached hereto and incorporated herein for all purposes.

Prior to commencement of any installation of Measures under this Agreement, Project Sponsor shall furnish to Sharyland a certificate or certificates of insurance indicating Project Sponsor's compliance with this paragraph and stating that the insurance described therein shall not be canceled or terminated except on thirty (30) days written notice to:

Sharyland Utilities, L.P.  
Attn: Kelly Bradford  
1515 S. Capital of Texas Hwy Suite 110  
Austin, TX 78746-6544

Additionally, the Project Sponsor represents and agrees that:

- Sharyland shall be named as an additional insured on all policies (except worker's compensation) in the amounts of coverage stated in Exhibit E;
- all policies will include a waiver of subrogation in favor of Sharyland, with the appropriate certificates of insurance evidencing that Sharyland has been named as an additional insured on such policies and that such policies include a waiver of subrogation in favor of Sharyland; and
- The Project Sponsor shall furnish evidence that such policies have been issued in accordance with the requirements of this paragraph by furnishing copies of such for Sharyland's inspection.

## ARTICLE IX – INDEMNITY

- 9.1 The Project Sponsor agrees to and will defend, protect, indemnify and hold harmless Sharyland, its affiliates, officers, directors, agents and employees (collectively referred to as “Sharyland Group”) from and against all claims, losses, expenses, attorneys’ fees, damages, demands, judgments, causes of action, suits, and liability in tort, contract, or any other basis and of every kind and character whatsoever (collectively referred to as “Claims”), for personal injury, death, or property damage of any member of the Project Sponsor or its agents, employees or contractors (collectively referred to as “Project Sponsor Group”), arising out of or incident to or related in any way to, directly or indirectly, this Agreement, or the work, services, or materials to be performed or supplied hereunder, or to any activities of any member of the Project Sponsor Group, including while on any premises actually or allegedly owned, controlled, or operated by Sharyland Group, including, but not limited to, Claims arising out of or resulting from (1) any condition of Host Customer premises, (2) separate operations being conducted on Host Customer premises, or (3) the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied, or furnished by Sharyland Group. **IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE PROJECT SPONSOR'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS, WILL INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM SHARYLAND GROUP'S SOLE OR CONCURRENT NEGLIGENCE; PROVIDED HOWEVER, THE PROJECT SPONSOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT INCLUDE CLAIMS ARISING OUT OF OR RESULTING FROM SHARYLAND'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

In addition to Claims for personal injury, death, or property damage of any member of the Project Sponsor Group within the scope of the preceding paragraph, the Project Sponsor agrees to and will defend, protect, indemnify, and hold harmless Sharyland Group from and against any and all Claims arising out of or incident to or related in any way to, directly or indirectly, this Agreement, or the work, services, or materials to be performed or supplied thereunder, including, but not limited to, Claims arising out of or resulting from (1) any condition of Host Customer premises, or (2) separate operations being conducted on Host Customer premises, or (3) the imperfection or defective condition, whether latent or patent, of any material or equipment sold, supplied, or furnished by Sharyland Group (4) any energy or demand savings expected to be achieved as a result of the Projects, or (5) any cost expected to be saved as a result of the Projects. **IT IS THE EXPRESS INTENT OF THE PARTIES THAT, FOR THE PURPOSES OF THIS PARAGRAPH, CLAIMS, AND THE PROJECT SPONSOR'S OBLIGATIONS TO DEFEND, PROTECT, INDEMNIFY, AND HOLD HARMLESS, WILL**

**INCLUDE, BUT NOT BE LIMITED TO, CLAIMS ARISING OUT OF OR RESULTING FROM SHARYLAND GROUP'S SOLE OR CONCURRENT NEGLIGENCE; PROVIDED HOWEVER, THE PROJECT SPONSOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT INCLUDE CLAIMS ARISING OUT OF OR RESULTING FROM SHARYLAND'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

To the extent necessary to permit Sharyland to enforce any term, clause, or condition of this Agreement, the Project Sponsor agrees that with respect to any Claims brought against Sharyland Group, the Project Sponsor will and does hereby waive as to Sharyland Group any defense it may have by virtue of the workers' compensation laws of any state.

#### **ARTICLE X– PERMITS, LICENSES AND COMPLIANCE WITH LAWS**

- 10.1 Any review, inspection, or acceptance by Sharyland of any Project Site or of the design, construction, installation, operation and maintenance of the Measures is solely for the information of Sharyland. In performing any such inspection or review or in accepting the Measures, Sharyland makes no representation or warranty whatsoever as to the economic or technical feasibility, capability, safety or reliability of the Measures, their installation by Project Sponsor or their compatibility with the Host Customer's facilities.
- 10.2 Project Sponsor represents and warrants that prior to beginning installation of Measures under this Agreement, Project Sponsor will, at its own cost and expense, obtain all permits and other authorizations from governmental authorities as they may be required to install, construct, operate and maintain the Measures and to perform its obligations hereunder. During the term hereof, Project Sponsor will obtain all such additional governmental permits, licenses, and other authorizations when required with respect to any of the Measures under this Agreement. If requested by Sharyland, the Project Sponsor shall furnish to Sharyland copies of each such permit, license or other approval promptly following receipt thereof. Project Sponsor shall maintain in full force and effect all such governmental permits, licenses and other authorizations as may be necessary for the construction, operation or maintenance of the Measures in accordance herewith.
- 10.3 Project Sponsor shall be responsible for all royalties, fees, or claims for any licensed, copyrighted or similarly protected intellectual property, device, process or procedure used, installed, or provided by it. Project Sponsor shall defend any suit that may be brought against Sharyland and shall hold Sharyland harmless from any liability or infringement of any such intellectual property used by Project Sponsor in the implementation of the Projects.
- 10.4 All work performed by Project Sponsor in connection with the implementation of the Projects and all Measures installed or maintained by

Project Sponsor shall conform to all applicable laws, statutes, ordinances, rules, regulations, and decrees of any governmental or administrative body having jurisdiction over the SOPs or any portion of the Projects, including without limitation, Occupational Safety and Health Administration (OSHA) regulations, the National Electric Safety Code (NESC), the National Electric Code (NEC) and Sections 752.001 – 752.008 of the Texas Health and Safety Code. Handling of hazardous waste must be in compliance with all applicable Environmental Protection Agency (EPA) and state and local codes.

## **ARTICLE XI – CONSUMER PROTECTION**

- 11.1 Each Project Sponsor shall provide clear disclosure to the Host Customer of the following:
- (a) The customer’s right to a cooling-off period of three (3) business days, in which the contract may be cancelled, if applicable under law;
  - (b) The name, telephone number, and street address of the Project Sponsor, any subcontractor that will be performing services at the customer’s home;
  - (c) The fact that incentives are made available to the Project Sponsor through a program funded by Sharyland customers, manufacturers or other entities, and the amount of any incentives provided by Sharyland;
  - (d) The amount of any incentives that will be provided to the customer;
  - (e) Notice of provisions that will be included in the Host Customer Agreement, including warranties;
  - (f) The fact that the Project Sponsor must measure and report to Sharyland the Energy Savings and Peak Demand Savings from installed Measures;
  - (g) The liability insurance to cover property damage carried by the Project Sponsor and any subcontractor;
  - (h) The financial arrangement between the Project Sponsor and the customer, including an explanation of the total customer payments, the total expected interest charged, all possible penalties for non-payment, and whether the customer’s installment sales agreement may be sold;
  - (i) The fact that the Project Sponsor is not part of or endorsed by the PUCT or Sharyland; and
  - (j) A description of the complaint procedure established by Sharyland, and toll free numbers for the Office of Customer Protection of the PUCT, and the Office of Attorney General’s Consumer Protection Hotline..

- 11.2 Project Sponsor shall enter into a Host Customer Agreement with each Host Customer that includes the following provisions in accordance with PUCT Substantive Rule 25.181(u)(2):
- (1) Information on the Project Sponsor's or its contractors' work activities and completion dates, and the terms and conditions that protect residential Host Customers in the event of non-performance by the Project Sponsor;
  - (2) Provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs;
  - (3) A disclosure notifying the Host Customer that consumption data may be disclosed to the EM&V Contractor for evaluation purposes; and
  - (4) Information on complaint procedures to address performance issues by the Project Sponsor or a subcontractor.
- 11.3 When Project Sponsor completes the installation of Measures for a Host Customer, Project Sponsor shall provide the Host Customer an "All Bills Paid" affidavit to protect against claims of subcontractors.

## **ARTICLE XII - DEFAULT AND REMEDIES**

- 12.1 Each of the following events will be deemed to be an Event of Default hereunder:
- (a) Failure of Project Sponsor to perform its responsibilities in a timely manner or implement Projects in compliance with the SOP Manual and other Contract Documents;
  - (b) Failure of Project Sponsor to provide Sharyland and/or its contractors with sufficient access to Project Sites for the purposes of conducting inspections or EM&V activities;
  - (c) Failure of Project Sponsor to maintain any necessary permits, licenses or insurance required pursuant to the Contract Documents;
  - (d) Project Sponsor's assignment or subcontracting of all or part of the duties required under the Contract Documents without the prior written consent of Sharyland;
  - (e) Project Sponsor's submission to Sharyland of any false, misleading or inaccurate information or documentation with respect to implementation of Projects or Project Sponsor's performance hereunder, when Project Sponsor knew or reasonably should have known that such information was false, misleading or inaccurate; or
  - (f) Failure of either party in a material fashion to perform or observe any of the material terms, conditions or provisions of this



Agreement which failure materially adversely affects the other party and continues after notice and a thirty (30) day period to cure, or, if such failure cannot reasonably be cured within thirty (30) days, after notice and such period to cure in excess of thirty (30) days as may be reasonably required (provided that the non-performing party commences action to cure within an initial period of thirty (30) days after notice and thereafter pursues such cure with reasonable diligence).

- 12.2 If an Event of Default occurs, the non-defaulting party shall be entitled to exercise any and all remedies provided for by law or in equity, including the right to terminate this Agreement upon written notice to the other party. Termination shall be effective upon the receipt of properly served notice. Termination of this Agreement will not relieve the defaulting party of any obligations accruing prior to the event of termination.

### **ARTICLE XIII - INDEPENDENT CONTRACTOR**

- 13.1 Project Sponsor will act as and be deemed to be an independent contractor. Project Sponsor will not act as, nor be deemed to be, an agent or employee of Sharyland. Project Sponsor will have the sole right to control and directly supervise the method, manner and details of the Projects providing it is in accordance with the Contract Documents.

### **ARTICLE XIV - NOTICES**

- 14.1 All notices from one party to the other will be deemed to have been delivered if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid to the following addresses:

Sharyland Utilities, L.P.:  
1515 S Capital of Texas Hwy

Suite 110

Austin TX 78746-6544

Phone: (512) 372-8778, ext. 111

Attn: Kelly Bradford

Project Sponsor

Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 14.2 Either party may change its address by written notice to the other in accordance with Article XIV.

### **ARTICLE XV – AMENDMENT**

- 15.1 No amendment or modification of this Agreement shall be binding on either party unless it is in writing and signed by both Parties. Amendments to this Agreement will be attached hereto and made a part hereof for all purposes.

## **ARTICLE XVI – FORCE MAJEURE**

- 16.1 Should either Party be rendered unable, either wholly or in part, by an event of Force Majeure, to fulfill its obligations under this Agreement, the obligation of the Party so rendered, that is affected by the event of Force Majeure, will be suspended only during the continuance of that inability. The Party so affected will give written notice of the existence, extent and nature of the Force Majeure to the other Party within forty-eight (48) hours after the occurrence of the event. The Party so affected will use its best efforts to remedy its inability as soon as possible and will provide the other Party with prompt notice when it is able to resume the performance of its obligations. Failure to give notice will result in the continuance of the affected Party's obligation regardless of the extent of any existing Force Majeure.
- 16.2 The term "Force Majeure" as used in this Agreement will mean acts of God (except as excluded herein), strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, priority allocations of pipe or other materials or restraints or prohibitions by any court, board, department, commission or agency of the United States or of any State, any arrests and restraints, civil disturbances, explosions, and inability despite reasonable diligence to obtain materials essential to this Agreement. Rain, snow, ice or other adverse weather conditions will not be considered events of Force Majeure.
- 16.3 The term "Force Majeure" does not include: events or circumstances that affect the costs of installing the Measures but do not prevent performance, including, but not limited to, requirements, actions or failures to act on the part of governmental authorities (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by federal, state or local governmental bodies); changes in market conditions; and events or conditions attributable to normal wear and tear or flaws randomly experienced in materials and equipment and their assembly and operation, unless such events and conditions are caused by an occurrence which would fit the definition of Force Majeure set forth in Section 16.2.
- 16.4 In no event will any Force Majeure extend this Agreement beyond its stated term.
- 16.5 If any Force Majeure causes a reduction in the Measures, the Parties may at any time agree to reduce the number of Measures for the duration of the Force Majeure event.

## **ARTICLE XVII - MISCELLANEOUS**

- 17.1 Project Sponsor will not assign, transfer or otherwise dispose of any of its obligations or duties under this Agreement without the prior written approval of Sharyland. Any assignment or transfer made without the

express written approval of Sharyland will be null and void.

- 17.2 The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise. No waiver by the Parties hereto of any default or breach of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition or covenant contained herein.
- 17.3 The Contract Documents constitute the entire Agreement between the Parties with respect to the subject matter hereof and there are no express or implied warranties or representations upon which any party may rely beyond those set forth therein. The execution of this Agreement supersedes all previous agreements, discussions, communications and correspondence with respect to the subject matter of this Agreement.
- 17.4 In the event any provision of this Agreement is held to be void, unlawful, or otherwise unenforceable, that provision will be severed from the remainder of the Agreement and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible; and the Agreement, as so modified, will continue to be in full force and effect.
- 17.5 This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Texas. The Parties agree that the proper venue and jurisdiction for any cause of action relating to the Agreement will be in Dallas County, Texas.
- 17.6 Project Sponsor shall not use Sharyland's or any affiliate of Sharyland's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, including to solicit customers for participation in its project.
- 17.7 To the extent there is any conflict between the terms of this Agreement and other Contract Documents, the terms of this Agreement shall prevail.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**SHARYLAND UTILITIES, L.P.**

**PROJECT SPONSOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

Company: \_\_\_\_\_

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

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

**EXHIBIT A  
PROJECT APPLICATION**

**EXHIBIT B**  
**SUPPLEMENTAL APPLICATION INFORMATION**

## **EXHIBIT C HOST CUSTOMER AGREEMENT**

The Host Customer Agreement, for purposes of Exhibit C, is available from the [www.sharylandefficiency.com](http://www.sharylandefficiency.com) site under Downloads & Tools.

## **EXHIBIT D SOP PROGRAM MANUAL**

The SOP Program Manual, for purposes of Exhibit D is available from the [www.sharylandefficiency.com](http://www.sharylandefficiency.com) site under Downloads & Tools.



## EXHIBIT E INSURANCE REQUIREMENTS

NOTE: Each policy shall include a Waiver of Subrogation in favor of Sharyland Utilities, L.P. (Sharyland), and shall provide for 30 days prior written notice of cancellation.

<b>TYPE/COVERAGE</b>	<b>LIMITS OF LIABILITY</b>
WORKERS' COMPENSATION EMPLOYERS' LIABILITY        ) ) )	Statutory \$1,000,000. Each Accident \$1,000,000. Disease Policy Limit \$1,000,000. Disease Employee Limit
COMMERCIAL GENERAL LIABILITY, OCCURRENCE FORM with the following coverages included (not excluded): <ul style="list-style-type: none"> <li>- Premises/Operations</li> <li>- Underground Explosion and - Collapse Hazard</li> <li>- Products/Completed Operations Hazard</li> <li>- Contractual Insurance (applicable to indemnity clause contained in contract(s))</li> <li>- Independent Contractors</li> <li>- Broad Form Property Damage</li> <li>- Personal Injury</li> </ul>	Bodily Injury & Property Damage Combined:  Each Occurrence:                         \$1,000,000 General Aggregate:                        \$2,000,000. Products Comp/Ops. Aggregate:        \$2,000,000.
AUTOMOBILE LIABILITY, with coverage applicable to all owned, hired, and non-owned vehicles	Bodily Injury and Property Damage Combined: Each accident:                             \$1,000,000

**INFORMATION FOR PROJECT SPONSOR:**

- \*\* Insurance provided by Project Sponsor must be maintained in effect during the entire term of this Agreement.
- \*\* A copy of this sheet and a copy of this Agreement should be furnished to Project Sponsor's Insurance Agent.
- \*\* Amendment or waiver of the insurance requirements will only be valid if prior written consent is received from Sharyland.

**INFORMATION FOR INSURANCE AGENTS:**

- \*\* Liability policies will be written on an occurrence form.
- \*\* Required insurance should be certified using the ACCORD CERTIFICATE OF INSURANCE, or a form similar thereto.
- \*\* Project Sponsor's insurance agent is responsible to list on CERTIFICATE OF INSURANCE all endorsements which eliminate any required coverages.
- \*\* Project Sponsor's insurance agent is responsible to state on the CERTIFICATE OF INSURANCE that all policies of insurance include Waiver of Subrogation in favor of Sharyland.
- \*\* CERTIFICATE OF INSURANCE must be dated and signed by insurance agent or authorized representative.
- \*\* CERTIFICATE HOLDER must be shown as Sharyland Utilities, L.P. (Sharyland), 1515 S. Capital of Texas Hwy, Suite 110, Austin, Texas 78746, ATTN: Kelly Bradford.
- \*\* The original CERTIFICATE OF INSURANCE must be forwarded to the CERTIFICATE HOLDER.