



# PROJECT IMPLEMENTATION AGREEMENT

## Project Summary

CUSTOMER INFORMATION				
Customer Name:				
Customer Mailing Address	City		State	Zip
Contact Name:			Title:	
Contact Phone Number	Contact Fax Number		Email Address	
Tax ID:	PG&E Electric Service Agreement ID #:		PG&E Gas Service Agreement ID #:	

PROJECT INFORMATION			
Project Name:			
Project Number:	Project Application Receipt Date:		
Project Site Address	City	State	Zip
Contact Name at Project Site	Contact Phone Number	Contact Email Address	

SAVINGS AND INCENTIVE INFORMATION						
	Measure Name	Calculated Energy Savings (kWh/yr)	Calculated Demand Savings (kW)	Calculated Gas Savings (Therms)	Estimated Incremental Cost (\$)*	Standard IRCx Incentive (\$)**
1						
2						
3						
4						
Totals						
Estimated GHG Emission Reduction*** (lbs of CO2e per year)						

\* Estimated based on project scope. Costs may include, but are not limited to, audits, design, engineering, construction, materials, permits, fees, overhead, and labor.

\*\* Based on IRCx incentive rates (Electric process-related measures \$0.09 / kWh; Gas process-related measures \$1.00/Therm; Demand reduction \$100 per verified peak kW). IRCx incentives are capped at 50% of the total recommissioning cost..

\*\*\* Estimated using a CO<sub>2</sub> emission factor of 1.09822 lbs/kWh and 11.7 lbs/therm, which is applied to all PG&E programs including the Integrated Energy Audit. Figure is for informational purposes only and may not be valid for greenhouse gas (GHG) reduction credit.



# PROJECT IMPLEMENTATION AGREEMENT

## Project Agreement

By signing this agreement, the Customer (as indicated in the Project Summary) and Nexant, Inc. agree and acknowledge:

- 1) that the Customer will install the energy efficiency measures according to the installation timeline as described in the attached Implementation Plan;
- 2) that the Customer will enter into a multiple year contract with a preventive maintenance (PM) contractor or implement an in-house proactive maintenance program utilizing a computerized maintenance management system (CMMS) to ensure persistent energy savings from the installed IRCx measures;
- 3) that the Customer has read and understood the project installation and reporting requirements, the calculated energy savings and Industrial Recommissioning Program ("IRCx") incentive payments for which the Customer will be eligible, and the required measurement and verification activities that are described in the Implementation Plan, which is attached hereto and hereby incorporated into this Agreement;
- 4) that the Customer has read and understood the Terms and Conditions of the Agreement, which are attached hereto and hereby incorporated into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute and deliver this Agreement as of the day and year set forth below.

Customer Name	Title	Signature	Date
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Nexant, Inc.	Title	Signature	Date
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*California consumers are not obligated to purchase any full fee service or other service not funded by this Program. This Program is funded by California utility ratepayers under the auspices of the California Public Utilities Commission (CPUC).*

*Los consumidores en California no están obligados a comprar servicios completos o adicionales que no esten cubiertos bajo este programa. Este programa está financiado por los usuarios de servicios públicos en California bajo la jurisdicción de la Comisión de Servicios Públicos de California (CPUC).*



# *PROJECT IMPLEMENTATION AGREEMENT*

## Implementation Plan

### Measure Descriptions

### Project Savings and Costs

### Measurement and Verification Plan

### Project Contacts and Roles



# PROJECT IMPLEMENTATION AGREEMENT

## Terms and Conditions

- 1.0 **Project Description:** The Implementation Plan describes the project(s) that qualify for an incentive (“Projects”)
- 2.0 As used throughout this Agreement, the term “Party” means Nexant or Customer, and collectively, both Nexant and Customer shall be referred to as the “Parties”.
- 3.0 **Program Dates:** The Industrial Recommissioning Program (“Program”) will run from January 1, 2010 through December 31, 2012. The Incentive Applications must be submitted to Nexant and postmarked on or prior to October 31, 2012. All project installations must be completed, commissioned, and the Installation Report submitted to Nexant postmarked on or prior to December 1, 2012 to be eligible for Program incentives. All incentive payments will be paid on or prior to December 31, 2012. Nexant will not pay incentives after December 31, 2012.
- 4.0 **Funding:** Nexant is receiving funds from PG&E for this Project, but the Parties agree that PG&E is not liable to either Party for any losses or damages, including incidental or consequential damages, arising from this Agreement. PG&E and Nexant make no representations or warranties, and assume no liability with respect to quality, safety, performance, or other aspect of any design, system or appliance installed pursuant to this Agreement, and expressly disclaims any such representation, warranty or liability.
- 5.0 **Incidental and Consequential Damages:** BOTH PARTIES AGREE THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES.
- 6.0 **Customers with Self Generation Capabilities:** If Customer has existing on-site cogeneration or self-generation energy capabilities, Nexant shall not pay incentives for energy savings that exceed Customer’s annual energy usage from PG&E. KW, kWh and therm savings are limited to the previous 12 months quantity of kW, kWh, and/or therms purchased from or delivered by the utility on the meter(s), serving the equipment to be installed, for which the utility collects the Public Purpose Programs (PPP) surcharge. The previous 12 months are defined as the calendar year prior to the date the Customer submitted and signed this Program Implementation Agreement (including usage from Standby Service and less savings associated with pending energy efficiency applications). This policy is subject to change with thirty (30) days written notice to Customer.
- 7.0 **Incentive may not Exceed Project Cost:** The incentive amount cannot exceed the total project cost. Customer must submit the project invoice(s) which shall include: vendor name/address/phone, itemized listing of product(s) including quantity, product description(s), manufacturer, model #, and other identifying information as appropriate, Project cost, date invoice paid or payment terms, and installation date.
- 8.0 **If Tenant:** If Customer is a tenant, Customer is responsible for obtaining the property owner’s permission to install the Project(s) for which Customer is applying for an incentive payment. Customer’s signature on this Project Implementation Agreement indicates Customer has obtained this permission.
- 9.0 **Compliance with Laws:** Nexant shall comply with all federal, state, and municipal laws, ordinances, rules, orders, and regulations, which apply to its actions at the Facility or to the Project. Customer, at its own expense, shall obtain and maintain licenses and permits needed to perform its work. Failure to maintain necessary licenses and permits constitutes a material breach of Customer’s obligations.
- 10.0 **Advertising:** Nexant agrees not to use the names or identifying characteristics of the Customer’s Facility for published Project reports (except to fulfill reporting requirements to PG&E and/or the CPUC), advertising, sales promotion or other publicity without the Customer’s written approval. In addition, Customer agrees not to use the



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names or identifying characteristics of Nexant for published Project reports, advertising, sales promotion, or other publicity without Nexant's written approval.

11.0 **No Double-Dipping:** Customer understands that Customer cannot receive incentives for the same product, equipment or service from more than one California investor-owned utility or third party energy efficiency program offering incentives for the same product, equipment, or service funded with CPUC Public Goods Charge funds. Customer understands this prohibition applies three years prior to and three years after receiving the incentives for the same product, equipment or service.

12.0 **No Obligation:** California consumers are not obligated to purchase any full fee service or other service not funded by this Program. This Program is funded by California utility ratepayers under the auspices of the CPUC.

Los consumidores en California no están obligados a comprar servicios completos o adicionales que no esten cubiertos bajo este programa. Este programa está financiado por los usuarios de servicios públicos en California bajo la jurisdicción de la Comisión de Servicios Públicos de California (CPUC).

13.0 **Availability of Funds:** This Program is available on a first-come, first-serve basis until allocated funds are depleted. This Program may be modified or terminated without notice.

14.0 **Eligibility:** Customer must receive electricity or natural gas service from PG&E and pay Public Goods Charges ("PGC"). IRCx serves the following North American Industry Classification System (NAICS) Code in PG&E's service territory:

- 313000, Textile Mills through 339999, Miscellaneous Manufacturing excluding:
  - 24110, Petroleum Refineries;
  - 325400, Pharmaceutical & Medicine Manufacturing,
  - 327300, Cement and Concrete Manufacturing, and
  - Any public or Agricultural Process Water & Wastewater Treatment Plants.

15.0 **Qualifying Equipment:**

15.1 Customer is responsible for checking the product/equipment specification to make sure that all requirements are met.

15.2 New products that are ordered, purchased and installed prior to January 1, 2010 or after December 1, 2012 do not qualify for an incentive. Resale products, products leased, rebuilt, rented, received from warranty or insurance claims, exchanged, won as a prize, or new parts installed in existing products also do not qualify.

16.0 **Submittal Requirements for Payment of Incentive:** As a condition of payment of the incentive, Customer shall submit to Nexant the following documents, which include but are not limited to: 1) Schematic drawings and/or manufacturer specification sheets if applicable; 2) Invoices and/or documentation to support Project cost at Nexant's request; 3) Copy of the service contract between the customer and the preventive maintenance service contractor or detailed specifications of the CMMS installed to monitor the RCx upgrades; 4) Additional Project-specific documents as requested by Nexant prior to payment of incentives; 5) Project Installation Report; and 6) Acceptance of the energy savings as verified according to the M&V Plan.

17.0 **Inspections/Audits:** As a condition of payment, Customer is responsible for ensuring that Nexant, PG&E, and CPUC representative and their subcontractors have reasonable access to Customers Facility for all inspections, audits and verifications, including but not limited to the following: 1) Scoping and/or detailed audits to identify RCx opportunities; 2) Post-Installation Equipment Inspection to check installed measures and to verify accuracy of Customer's equipment survey; or 3) Post-installation measurement and verification activities to check the energy savings of the Measures after installed equipment has been operating.



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- 18.0 **Review and Disclaimer:** PG&E's, and/or Nexant's review of the design, construction, operation or maintenance of the project, energy efficiency measures, or demand response measures do not constitute any representation as to the economic or technical feasibility, operational capability, or reliability of the project measures. Nexant is solely responsible for identifying prospective projects, assessing potential energy savings, verifying the performance of the measures/projects, and processing all Program related paperwork. Nexant, and/or its subcontractors are not responsible for the final design, procurement, installation, commissioning, and continuing operation of the proposed project. Customer is solely responsible for the final design, procurement, installation, commissioning, and continuing operation of the proposed project. Furthermore, PG&E and Nexant make no representations or warranties, and assume no liability with respect to quality, safety, performance, or other aspect of any design, system or appliance installed pursuant to this agreement, and expressly disclaim any such representation, warranty or liability.
- 19.0 **Payments:** Incentive payments will only be paid after the requirements set forth in this Agreement are met by Customer to Nexant's satisfaction. Nexant retains sole discretion to determine the appropriate baseline values and energy savings calculations used to determine incentive payments. Incentive payments shall only be paid on Projects that exceed California Title 20 and Title 24 standards, or industry standards in the absence of applicable local, state or federal standards. Nexant reserves the right to modify or cancel the incentive amount if the actual system installed differs from the one set forth in this Agreement. The standard IRCx incentives are paid based on the verified energy savings at IRCx incentive rates (Lighting \$0.05/kWh, A&CR I: \$0.15/kWh, Others: \$0.09/kWh, Natural Gas: \$1.00/therm, All Measures: \$100/Peak kW), and may be limited by 50% of the Project's cost (see "Project Savings and Costs" section in Implementation Plan). The IRCx incentives will be paid within 30 calendar days after receipt of the customer signed M&V Report and receipt of an invoice that includes receipts for all Project costs.\
- 20.0 **Life of Product and Payment Disqualification:** Customer understands that incentive payments are based on related energy benefits over the life of the product. A prorated amount of incentive payment(s) (based on the actual period of time for which Customer provided the records of the related energy benefits as an electric Customer of PG&E) shall be repaid to PG&E and/or Nexant if: 1) Customer does not provide PG&E with records of 100% of the related benefits for the life of the product or for a period of 5 years, whichever is less; 2) Customer ceases to be a distribution customer of PG&E during during the Term of this Agreement, as defined below; or 3) Customer fails to pay the Public Goods Charge or demand side management ("DSM") surcharge throughout the Term.
- 20.1 Customer shall repay any payments made by Nexant within thirty (30) days of notification by Nexant that repayment is required. Nexant is entitled to offset against payments owed to Customer any amount due to Nexant which remains unpaid 40 calendar days after Nexant's written demand for payment.
- 20.2 Nexant will not pay any incentives for Projects installed after December 31, 2012.
- 21.0 **Tax Liability:** Incentives and direct installations greater than six hundred dollars (\$600.00) will be reported to the IRS unless the Customer is exempt. Please consult a tax advisor concerning the taxability of incentives. Customer is responsible for any taxes that may be imposed as a result of receipt of incentives from this Program. A form 1099 will be issued for the Customer, regardless of the payee's identity because the Customer receives the benefit of the incentives.
- 22.0 **Project Audits:** The Customer understands that Nexant, PG&E or their subcontractors may perform audits of their use of incentive funds ("Project Audit"). If a Project Audit reveals any material errors in the calculation of the incentive due to Customer, including but not limited to double-dipping, ineligible Customers or nonqualifying equipment ("Material Error") or fraud on the part of the Customer, Nexant will promptly provide PG&E with all information and materials required by it for the purpose of correcting any Material Error or fraud and will fully cooperate with PG&E in its efforts to seek refunds of the mistakenly or fraudulently paid funds. Customer hereby agrees to make a refund to PG&E and/or Nexant within 30 days of receipt of written notice from Nexant that the incentive payment contained a Material Error or fraud was discovered during a Project Audit.



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- 23.0 **Company Data:** Nexant will use commercially reasonable efforts to maintain the confidentiality of all data collected from the Customer (collectively, “Customer Data”). In the event that there is an unauthorized access to Customer Data for which a security breach notification to consumers will be legally required under applicable state or federal law (a “Security Incident”), Nexant will (i) use commercially reasonable efforts to investigate the Security Incident and prevent further or ongoing unauthorized access to such information; and (ii) provide any legally necessary notifications to Customer.
- 24.0 **Term and Termination:** The Term of this Agreement shall commence on the last date that a Party executes this Agreement and shall terminate five years from the Project Installation Report approval date, unless another termination date is specified in the Project Installation Report or the Parties agree to early termination. Nexant may suspend or terminate the Agreement upon written notice to Customer in the event that Customer materially breaches this Agreement, PG&E terminates its prime contract with Nexant, or a CPUC takes an action that materially alters the costs or risks involved in implementation of IRCx. In such event, Nexant will continue to cover all payments required under this Agreement to the extent allowed by PG&E.
- 25.0 **CPUC Authority to Modify:** This Agreement shall at all times be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction.
- 26.0 **Ownership of Deliverables:** Nexant shall own all data, reports, information, computer programs or other written, recorded, photographic or visual materials, or other deliverables produced in the performance of this Agreement.
- 27.0 **Written Notice:** Any written notice, demand or request required or authorized in connection with this Agreement, shall be deemed properly given if delivered in person or sent by facsimile, nationally recognized overnight courier, or first class mail, postage prepaid, to the address specified below, or to another address specified in writing by Program Implementer.

Implementer		Customer
IRCx Manager	Mushtaq Ahmad	Name
Address	101 2 <sup>nd</sup> Street 10 <sup>th</sup> floor	Company
City, State, Zip	San Francisco, CA 94105	Address
Fax # (facsimile)	(415) 369-0894	City, State, Zip

Notices shall be deemed received (a) if personally or hand-delivered, upon the date of delivery to the address of the person to receive such notice if delivered before 5:00 p.m., or otherwise on the Business Day following personal delivery; (b) if mailed, three Business Days after the date the notice is postmarked; (c) if by facsimile, upon electronic confirmation of transmission, followed by telephone notification of transmission by the noticing Party; or (d) if by overnight courier: on the Business Day following delivery to the overnight courier within the time limits set by that courier for next-day delivery.

- 28.0 **Integration:** This Agreement constitutes the entire Agreement and understanding between the Parties as to the subject matter of the Agreement. It supersedes all prior or contemporaneous Agreements, commitments, representations, writings, and discussions between Customer and Nexant, whether oral or written, and has been induced by no representations, statements or Agreements other than those expressed herein. Neither Customer nor Nexant shall be bound by any prior or contemporaneous obligations, conditions, warranties or representations with respect to the subject matter of this Agreement.

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



## *PROJECT IMPLEMENTATION AGREEMENT*

29.0 **Applicable Law:** This Agreement and the relationship between the Parties shall be governed by and interpreted in accordance with the laws of California, without reference to its conflicts of law principles. The Parties further agree that no claim may be brought against any Party in contract, tort or otherwise save in so far as such claim could be brought under the laws of the State of California or any applicable US federal law without reference to the law of any other country.