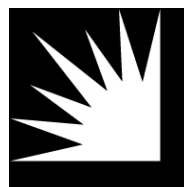


Application No.: A.18-03-002  
Exhibit No.: SCE-01  
Witnesses: G. Chinn  
M. Dresti  
J. Edwards  
G. Flores  
L. Gaillac  
M. Irwin  
B. Landry  
J. Lim  
M. Sheriff  
B. Tolentino



SOUTHERN CALIFORNIA  
**EDISON**<sup>®</sup>

An *EDISON INTERNATIONAL*<sup>®</sup> Company

(U 338-E)

***Testimony of Southern California Edison  
Company in Support of Its 2018 Energy  
Storage Procurement and Investment Plan***

Before the

**Public Utilities Commission of the State of California**

Rosemead, California  
March 1, 2018

# SCE-01: Testimony of Southern California Edison Company in Support of Its 2018 Energy Storage Procurement and Investment Plan

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I.

**INTRODUCTION**

**A. Overview of SCE's Energy Storage Procurement and Investment Plan for 2018**

Pursuant to Decision (D.) 13-10-040, or the "Storage Decision,"<sup>1</sup> Southern California Edison Company (SCE) is filing an application (Application) requesting California Public Utilities Commission (Commission or CPUC) approval of SCE's 2018 Energy Storage Procurement & Investment Plan (ESP&IP) and is concurrently serving this testimony in support of SCE's Application. Subsequent to the Storage Decision, the Commission issued D.17-04-039,<sup>2</sup> which among other things, requires the Investor Owned Utilities (IOUs) to propose programs and investments for up to 500 MW of distributed energy storage systems split evenly among the IOUs,<sup>3</sup> pursuant to Assembly Bill (AB) 2868. Consistent with these decisions, SCE proposes (1) to hold an energy storage solicitation to address the reliability concerns associated with the partial shutdown of the Aliso Canyon natural gas storage facility consistent with Senate Bill (SB) 801; and (2) programs and investments consistent with AB 2868, namely (a) approximately 40 MW of utility-owned energy storage investments at SCE substations; and (b) an incentive program for energy storage paired with solar at low-income multifamily dwellings. As explained in SCE's Application and in this testimony, SCE's proposed 2018 ESP&IP is reasonable and consistent with the requirements and policy objectives of the Storage Decision and the subsequent Commission decisions pertaining to deployment of Energy Storage resources, and should be approved by the Commission.

This testimony consists of seven chapters:

- Chapter 1 provides an overview of SCE's energy storage procurement and investment plan, as well as background on relevant Commission decisions and legislative bills;

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<sup>1</sup> D.13-10-040, p. 77, Ordering Paragraph 4.

<sup>2</sup> D.17-04-039, pp. 19-22.

<sup>3</sup> *Id.*, p. 20. SCE's share of the 500 MW of distributed energy storage systems is 166.6 MW.



- Chapter 2 describes SCE’s overall energy storage procurement framework and discusses how SCE will meet the Commission’s energy storage procurement requirement;
- Chapter 3 identifies SCE’s existing and planned energy storage projects that SCE believes are eligible to count towards SCE’s 2018 energy storage procurement target;
- Chapter 4 discusses the mechanisms by which SCE will procure additional energy storage during the 2018 biennial procurement cycle, including a solicitation to address the reliability needs caused by a partial shutdown of the Aliso Canyon natural gas storage facility pursuant to SB 801;
- Chapter 5 describes SCE’s proposed energy storage programs and investments pursuant to AB 2868;
- Chapter 6 describes SCE’s other energy storage activities that further the Commission’s policies promoting energy storage; and
- Chapter 7 describes SCE’s commitment and approach to safety issues arising out of energy storage procurement.

SCE also attaches the following appendices to its testimony:

- Appendix A Table with Details on 2018 Eligible Storage Resources
- Appendix B Witness Qualifications
- Appendix C SCE’s Pro Forma Contract for the LESMS Design Build Transfer RFP

SCE seeks timely approval of SCE’s Application so that it can proceed with its planned energy storage programs and investments pursuant to AB 2868.

**B. Background**

AB 2514 (Stats. 2010, Ch. 469) required the Commission to determine appropriate targets, if any, for each load-serving entity (LSE) to procure viable and cost-effective energy storage systems.<sup>4</sup> Rulemaking (R.) 10-12-007, opened to implement AB 2514, culminated in the Storage Decision, which was adopted by the Commission on October 17, 2013.

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<sup>4</sup> Cal. Pub. Util. Code § 2836 *et seq.*

1 The Storage Decision requires the three IOUs in California to procure 1,325 megawatts (MW) of  
2 energy storage capacity by 2020.<sup>5</sup> SCE's share of the 1,325 MW target is 580 MW, which is divided  
3 into biennial procurement targets in 2014, 2016, 2018, and 2020 as reflected in Table I-1 below.<sup>6</sup>

***Table I-1***  
***SCE Biennial Procurement Targets***

<b>Grid Domain</b>	<b>2014</b>	<b>2016</b>	<b>2018</b>	<b>2020</b>	<b>Total</b>
Transmission	50	65	85	110	310
Distribution	30	40	50	65	185
Customer	10	15	25	35	85
<b>Total</b>	<b>90</b>	<b>120</b>	<b>160</b>	<b>210</b>	<b>580</b>

4 Cumulatively, SCE's targets through the third biennial procurement cycle, beginning in 2018,  
5 are 200 MW of transmission connected storage, 120 MW of distribution-connected storage, and 50 MW  
6 of customer-connected storage – a total of 370 MW of energy storage across the three grid domains.

7 As stated in the Storage Decision, the Commission's goal of the Energy Storage Procurement  
8 Framework is to transform the energy storage market to overcome the barriers that are hindering broader  
9 adoption of emerging storage technologies.<sup>7</sup> SCE shares this goal and recognizes the key role that  
10 energy storage will play in California's clean energy future. As described in more detail in this  
11 testimony, SCE has made great strides in using energy storage in varied use cases. For example, SCE  
12 has procured energy storage for resource adequacy, to provide local resource capacity, as fast-  
13 responding resources to address reliability constraints caused by the partial shutdown of the Aliso  
14 Canyon natural gas storage facility, as an enhancement to SCE's natural gas peaker plants, and through  
15 pilot programs, to facilitate learning about how and where energy storage can manage distribution  
16 system needs. And now with AB 2868, SCE is pursuing investments in energy storage that will help

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<sup>5</sup> D.13-10-040, p. 2.

<sup>6</sup> *Id.*, p. 15.

<sup>7</sup> *Id.*, p. 7.

1 integrate renewable resources, and introducing a program that will expand access to energy storage for  
2 low income customers. The transformation of the energy storage market is well under way.

3         During this third biennial cycle of the Energy Storage Procurement Framework, SCE will  
4 continue to pursue reasonable and cost-effective energy storage solutions that will facilitate system  
5 reliability, and provide the grid with additional operational flexibility, while achieving the guiding  
6 principles of AB 2514. SCE has also begun to look past the initial goals of AB 2514 – market  
7 transformation and overcoming barriers to the adoption of energy storage – to the role that energy  
8 storage can play in facilitating the state’s achievement of a clean energy future.<sup>8</sup> Given the state’s low  
9 carbon goals, the planning process for large-scale energy storage investments should start now.  
10 SCE will continue to evaluate how, and in what way, energy storage can contribute to the state’s low  
11 carbon future, and SCE looks forward to working with the Commission and stakeholders to develop  
12 policies that will support these goals while maintaining reliability and cost savings for customers.

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<sup>8</sup> For additional information on SCE’s vision for how the state can achieve its environmental goals to reduce the threat of climate change and improve public health related to air quality, please see SCE’s recently released whitepaper. Southern California Edison, *The Clean Power and Electrification Pathway: Realizing California’s Environmental Goals* (November 2017), available at <https://www.edison.com/content/dam/eix/documents/our-perspective/g17-pathway-to-2030-white-paper.pdf>.

1 II.

2 **OVERVIEW OF SCE'S 2018 ENERGY STORAGE PORTFOLIO DEVELOPMENT**

3 **FRAMEWORK**

4 **A. After Accounting for SCE's Existing Eligible Energy Storage and the Flexibility Across**  
5 **Grid Domains, SCE Must Procure 6.5 Megawatts of Energy Storage in the 2018**  
6 **Procurement Cycle**

7 Pursuant to the Storage Decision,<sup>9</sup> SCE's target for the 2018 procurement cycle is 160 MW  
8 across the three grid domains, and its cumulative target (accounting for the 2014, 2016, and 2018  
9 procurement cycles) is 370 MW across the three grid domains.

10 Currently, SCE's planned and existing energy storage consists of: 120 MW in the transmission-  
11 connected domain, 73.5 MW in the distribution-connected domain, and 272.9 MW in customer-  
12 connected domain,<sup>10</sup> for a total of 466.4 MW. The flexibility rules adopted in the Track 1 Decision in  
13 R.15-03-011<sup>11</sup> allow SCE to apply up to 85 MW of customer-connected storage toward meeting the  
14 targets in the transmission and distribution domains. As further detailed in this testimony – and as  
15 depicted in Table III-10 – after applying this flexibility provision, SCE's total eligible procurement  
16 through the 2018 procurement cycle is 363.5 MW, which is 6.5 MW short of the 2018 cumulative target.  
17 To meet the 2018 interim target, SCE will procure energy storage resources to satisfy SB 801, which  
18 requires an electrical corporation operating in the Los Angeles Basin to procure a minimum aggregate  
19 total of 20 MW. Energy storage resources will also have the ability to compete in SCE's Integrated

<sup>9</sup> D.13-10-040, Appendix A, p. 2.

<sup>10</sup> This number accounts for the rule established in D.16-01-032 that credit for SGIP-funded energy storage projects installed by Direct Access (DA) and Community Choice Aggregation (CCA) customers should be split evenly between an unbundled customer's IOU and the DA/CCA service provider. See D.16-01-032, pp. 2-3. SCE estimates that, of its 106.5 MW of forecasted customer-connected energy storage under SGIP, approximately 20% could be attributable to projects that will be installed by DA/CCA customers. Of that 20%, half of the MW should be credited to DA/CCA providers. SCE thus provides a very conservative estimate that approximately 96 MW of the forecasted 106.5 MW of SGIP energy storage projects would be counted towards SCE's customer-connected domain. See Section III.D.1.b of this testimony for additional details.

<sup>11</sup> D.16-01-032, pp. 32-33.

1 Distributed Energy Resources (IDER) solicitation, and SCE's 2018 Local Capacity Requirements (LCR)  
2 RFP, as described in Chapter IV. Additionally, pursuant to D.17-04-039, SCE is also proposing a mix  
3 of customer incentive programs and utility-owned storage investments to meet the objectives of AB  
4 2868. The details of SCE's respective plans to satisfy the requirements of SB 801 and AB 2868 are  
5 provided in Chapters IV and V.

6 **SCE Intends to Conduct an Energy Storage Solicitation to Address Aliso Canyon**  
7 **Reliability Needs As Required by Senate Bill 801**

8 As previously discussed, SCE is currently 6.5 MW short of meeting its 2018 cumulative energy  
9 storage target. SB 801 requires the Commission to order a solicitation to "procure a minimum aggregate  
10 total of 20 MW of cost-effective energy storage solutions to help address the Los Angeles Basin's  
11 electrical system operational limitations resulting from reduced gas deliverability from the Aliso Canyon  
12 natural gas storage facility"<sup>12</sup> by June 1, 2018. Given the timing and minimum procurement  
13 requirements of SB 801, this procurement will satisfy the remaining 6.5 MW necessary for SCE to meet  
14 its 2018 target. SB 801 is discussed further in section IV.A, below.

15 **SCE Seeks Approval of Two Programs and Investments Pursuant to Assembly Bill 2868**

16 AB 2868 (Gatto) requires that PG&E, SCE, and SDG&E propose programs and investments for  
17 up to 500 MW of distributed energy storage systems, distributed equally among the three utilities, above  
18 and beyond the 1,325 MW target for energy storage generally. In D.17-04-039, the Commission  
19 directed the utilities to incorporate these program and investments, for up to 166.66 MW each, in their  
20 2018 energy storage procurement and investment plans. Consistent with Public Utilities (P.U.) Code  
21 Section 2838.2, the proposed programs and investments should demonstrate customer benefits, seek to  
22 minimize overall costs and maximize overall benefits, reduce dependence on petroleum, meet air quality  
23 standards, and reduce greenhouse gas emissions while not unreasonably limiting or impairing the ability  
24 of nonutility enterprises to market and deploy energy storage systems.<sup>13</sup> AB 2868 further provides that

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<sup>12</sup> Cal. Pub. Util. Code § 2836.7 (b).

<sup>13</sup> See D.17-04-039, p. 20.

1 the Commission prioritize approval of those programs and investments that provide energy storage  
2 systems to public sector and low-income customers.

3 In accordance with the statute, and considering input from stakeholders,<sup>14</sup> SCE proposes the  
4 following programs and investments pursuant to AB 2868: (1) Investments in Local Energy Storage and  
5 Management Systems (LESMS) at SCE substations; and (2) Energy Storage for Multifamily Affordable  
6 Housing. These investments and programs are described in detail in Chapter V.

7 **D. SCE Will Attempt to Use Storage to Fulfill System Needs Where the Needs Can Be**  
8 **Identified**

9 The Commission, the California Independent System Operator (CAISO), and the California  
10 Energy Commission (CEC) coordinate closely through various stakeholder proceedings to support grid  
11 reliability and system needs. SCE actively participates in these proceedings. SCE also plans and  
12 operates a distribution grid to deliver power from the CAISO-operated grid to end-use customers and  
13 manages distribution-level generation resources.

14 As directed by AB 327, SCE filed a Distribution Resources Plan (DRP) on July 1, 2015 to help  
15 facilitate the identification of optimal locations for distributed energy resources (DER). Since the 2015  
16 filing, SCE has developed tools to calculate DER hosting capacity on distribution circuits and benefits  
17 related to meeting electric system needs, and developed processes and criteria for identifying potential  
18 deferral opportunities of traditional wires investments through procurement of DERs. SCE is currently  
19 implementing the first system-wide implementation of these tools and processes in 2018, which will  
20 provide a streamlined approach and opportunity for future DER adoption. SCE will leverage these tools  
21 and processes to acquire increased DER on the grid to fulfill system needs for which energy storage will  
22 most likely be a component.

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<sup>14</sup> See Chapter V for a discussion of stakeholder engagement.

1           **1.       Generation Need**

2           On February 11, 2016, the Commission opened Rulemaking (R.) 16-02-007 to implement  
3 SB 350's (Stats. 2015, Ch. 547) requirement that the Commission adopt a process for integrated  
4 resource planning (IRP) to ensure that LSEs meet greenhouse gas (GHG) emissions reduction targets to  
5 be established by the California Air Resources Board, reflecting the electricity sector's contribution to  
6 achieving economy-wide GHG emissions reductions of 40 percent from 1990 levels by 2030.<sup>15</sup>  
7 In addition to adopting and implementing an IRP process and requirements, the scope of the proceeding  
8 also includes, among other things, certain unresolved issues from the previous Long-term Procurement  
9 Plan (LTPP) proceeding and issues traditionally associated with prior LTPP proceedings such as long-  
10 term system, flexible, and local reliability needs.<sup>16</sup>

11           On February 13, 2018, the Commission issued D.18-02-018, which, among other things,  
12 establishes requirements for all Commission-jurisdictional LSEs filing IRPs; adopts an electricity sector  
13 GHG planning target of 42 million metric tons (MMT) by 2030; and includes a modeled optimal  
14 portfolio of existing and incremental resources in 2030 to meet that 2030 GHG planning target, and for  
15 use as a guide for development of individual LSEs' IRPs (the Reference System Portfolio). In 2030, the  
16 incremental resources selected in the Reference System Portfolio to achieve the 42 MMT GHG planning  
17 target include approximately 9 GW of utility-scale solar, 1.1 GW of in-state wind, 2 GW of battery  
18 storage, and 0.2 GW of geothermal resources.<sup>17</sup>

19           All Commission-jurisdictional LSEs are required to file IRPs that include one portfolio that  
20 conforms to the Reference System Portfolio.<sup>18</sup> LSEs also have the option of submitting alternate  
21 portfolios that better reflect specific LSE needs or goals.<sup>19</sup> The Commission will approve and/or modify

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<sup>15</sup> R.16-02-007, p. 2.

<sup>16</sup> Joint Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, R.16-02-007, May 26, 2016, pp. 6-12.

<sup>17</sup> D.18-02-018, pp. 79-80, 84-91.

<sup>18</sup> *Id.*, at Ordering Paragraphs 13-14, Attachment A pp. 3-4.

<sup>19</sup> *Id.*

1 LSE IRPs and aggregate them into a system-wide Preferred System Plan.<sup>20</sup> At that time, the  
2 Commission may also authorize any associated procurement, as necessary, within the next one to three  
3 years.<sup>21</sup>

## 4 **2. Distribution Need**

5 SCE performs a Distribution Planning Process each year to identify future distribution system  
6 needs based on forecasted growth of customer demand and DER adoption, so as to provide adequate  
7 distribution substation and circuit capacity to serve forecasted peak loads and maintain safety and  
8 reliability for customers. The forecast represents new demand and DER additions at specific  
9 geographical locations throughout SCE's electrical system.

10 The annual planning process evaluates the ability of each distribution substation and distribution  
11 circuit to operate within its established loading limits under normal conditions. Loading limits are  
12 established based on manufacturer data and equipment ratings. If equipment loading limits are projected  
13 to be exceeded, SCE first evaluates no-cost solutions, such as phase balancing or operational grid  
14 reconfigurations using switches to transfer customers between substations or circuits. If the forecast  
15 distribution needs cannot be met through these no-cost solutions, a distribution upgrade or new project  
16 will be evaluated considering all connection points and reserves of adjacent substations and circuits.  
17 During this evaluation, solutions are identified to potentially address multiple distribution needs  
18 holistically with a single project rather than multiple smaller additions, reducing the overall cost and  
19 customer impact. SCE shares the results and proposed solutions of the distribution planning process  
20 with the Commission in SCE's General Rate Case (GRC) filings.

21 SCE has been working with stakeholders in multiple proceedings to better integrate DERs as a  
22 potential solution to distribution system needs identified in the annual planning process. Within the  
23 IDER proceeding, SCE has worked with stakeholders to select several distribution capacity projects that  
24 can potentially be deferred through a competitive solicitation process intended to procure DER products

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<sup>20</sup> *Id.*, pp. 14-16, 21-22.

<sup>21</sup> *Id.*, pp. 2, 22, Ordering Paragraph 5.



1 and services, which may include storage. In addition, SCE has been collaborating with stakeholders  
2 within the DRP proceeding to develop a process that would identify potential DER deferral  
3 opportunities on an annual basis.

### 4 **3. Transmission Need**

5 Each year, the CAISO conducts its Transmission Planning Process (TPP) to identify potential  
6 system limitations, as well as opportunities for system upgrades that improve reliability and efficiency  
7 up to ten years into the future. The TPP identifies areas in the transmission system that present  
8 reliability concerns, and then develops, selects, and initiates the required mitigations to address those  
9 concerns for each year in the planning horizon. The TPP is a public process and includes assessments  
10 for reliability, LCR, policy-driven needs, and economic planning. Any party may submit mitigation  
11 options into the TPP for consideration to address a transmission need. Once the CAISO Board finalizes  
12 the transmission plan, a solicitation process begins for competitive transmission projects to select  
13 qualified sponsors to finance and construct approved projects. While SCE participates as a stakeholder  
14 in the TPP and provides input into the process, the CAISO ultimately determines which transmission  
15 projects will proceed.

### III.

#### **EXISTING ENERGY STORAGE**

##### **A. SCE's Energy Storage Procurement Targets**

As described in Chapter I.B., R.10-12-007 established SCE's share of the 1,325 MW energy storage target to be 580 MW, which is divided into biennial procurement targets by "grid domain"<sup>22</sup> in 2014, 2016, 2018, and 2020 as shown in Table III-2 below.<sup>23</sup>

***Table III-2***  
***SCE's Energy Storage Procurement Targets (in MW)***

<b>Grid Domain</b>	<b>2014</b>	<b>2016</b>	<b>2018</b>	<b>2020</b>	<b>Total</b>
Transmission	50	65	85	110	310
Distribution	30	40	50	65	185
Customer	10	15	25	35	85
<b>Total</b>	<b>90</b>	<b>120</b>	<b>160</b>	<b>210</b>	<b>580</b>

As allowed in the Storage Decision, up to 80 percent of the MW assigned to the transmission and distribution grid domains can be shifted among the transmission and distribution grid domains.<sup>24</sup> Additionally, the Track 1 Decision determined that SCE may also count up to 85 MW of customer domain procurement toward the transmission and distribution domain targets, provided the customer domain target has been met.<sup>25</sup> The IOUs may also count energy storage projects authorized in other Commission proceedings towards meeting the energy storage procurement targets if the projects meet the Commission's requirements set forth in D.13-10-040, and if the Commission approves the projects.<sup>26</sup> Additionally, the Storage Decision provides that utility-owned storage projects may count once a

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<sup>22</sup> "Grid domain" refers to the point of interconnection – either customer-connected (*i.e.*, "behind-the-meter"), distribution-connected, or transmission-connected.

<sup>23</sup> D.13-10-040, p. 15.

<sup>24</sup> *Id.*, Appendix A, p. 3.

<sup>25</sup> D.16-01-032, p. 33, Conclusions of Law Paragraphs 21-22.

<sup>26</sup> D.13-10-040, Appendix A, p. 4.

1 specific procurement commitment is made by the IOU, such as a purchase order for equipment or a  
2 contract for buildout is issued.<sup>27</sup>

3         Given these counting rules, SCE has a number of existing projects that are eligible to count  
4 towards its 2018 energy storage procurement target. In the following section SCE describes:  
5 (1) existing procurement determined to be eligible in SCE's previous energy storage procurement plans;  
6 (2) additional procurement undertaken during the 2016 biennial procurement cycle; and (3) planned  
7 projects that are eligible to count towards SCE's 2018 procurement target. SCE's customer-side energy  
8 storage programs, including the Permanent Load Shift (PLS) program and the Self-Generation Incentive  
9 Program (SGIP), have a number of project applications that are expected to be approved and installed by  
10 the time SCE files its next biennial storage application (anticipated to be submitted on March 1, 2020).  
11 Because customer-side program forecasts are created on an annual basis, and the number of projects  
12 installed between the end of the year (December 31, 2019) and the application filing date (March 1,  
13 2020) is not expected to be very large, SCE will only count projects installed by December 31, 2019  
14 towards its 2018 target. In its 2020 application, SCE will update its energy storage procurement  
15 expectations to account for any differences between the forecasts of energy storage to be installed and  
16 the actual energy storage installed.

17 **B. Existing Procurement Approved in SCE's Previous Energy Storage Procurement Plans**

18         In the 2014 and 2016 biennial cycle plans, SCE identified and submitted eligible energy storage  
19 for approval to count toward its energy storage targets resources that comport with D.13-10-040.  
20 Existing eligible storage resources for the 2014 biennial cycle were approved by D.14-10-045,<sup>28</sup> and  
21 resources eligible to count towards SCE's targets for the 2016 biennial cycle were approved by  
22 D.16-09-007.<sup>29</sup> In Appendix A to this testimony, SCE provides a table with details on its eligible  
23 storage resources that count towards its 2018 energy storage targets.

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<sup>27</sup> *Id.*

<sup>28</sup> D.14-10-045, Attachment A.

<sup>29</sup> D.16-07-007, Conclusions of Law Paragraph 17. For a table with details on SCE's 2016 Eligible Storage Resources, see SCE's 2016 Energy Storage procurement plan, A.16-03-002, Appendix A.

1 **C. Additional Procurement Conducted During the 2016 Biennial Procurement Cycle**

2 During the 2016 biennial cycle, SCE conducted energy storage solicitations for third-party and  
3 utility-owned storage across all three grid domains. SCE's procurement resulted from a number of  
4 factors such as, (1) a pilot of preferred resources, including energy storage; (2) expedited procurement  
5 ordered by Commission Resolution E-4791 to help ensure system reliability; and (3) projects procured  
6 through the 2016 Energy Storage and Distribution Deferral RFO. Additionally, SCE released purchase  
7 orders for two Distributed Energy Storage Integration (DESI) projects submitted in its GRC  
8 proceedings. The sections below provide a summary of SCE's energy storage activity during the 2016  
9 procurement cycle.

10 **1. Preferred Resources Pilot Request for Offers (PRP RFO 2)**

11 a) Summary

12 The Preferred Resource Pilot (PRP) is a multi-year study designed to determine whether clean  
13 energy resources – including energy efficiency, demand response, distributed generation, and energy  
14 storage – can reliably help manage grid parameters. The focus of the PRP is to mitigate load growth in  
15 the PRP Region.<sup>30</sup> The PRP has acquired, and is in the process of deploying a portfolio of clean energy  
16 resources to offset the increasing customer demand for electricity in the PRP Region and to prove out  
17 the pilot's objectives. The outcomes of the PRP are expected to inform emerging modern grid standards  
18 with DER performance data, develop valuable information about DER locational value, improve urban  
19 acquisition and deployment of DERs, expand means to integrate and operationally manage DERs, and  
20 enhance methods to facilitate customer choice of cleaner energy resources.

21 b) Status

22 SCE completed its PRP RFO 2 solicitation on September 2, 2016. Originally, SCE requested  
23 approval of 125 MW in its PRP RFO 2 application. However, in 2017, seven PRP RFO 2 contracts for a  
24 total of 20 MW terminated, as allowed within their respective contracts, due to the contracts not

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<sup>30</sup> The PRP region is located in an area of Orange County served by the Johanna and Santiago A-bank substations. The Johanna and Santiago A-Bank substation region is part of the Southwest LA Basin sub-area.

receiving CPUC approval within a certain date. The terminated resources include five hybrid contracts (photovoltaic (PV) paired with storage) at 2 MW each from Distributed Generation PR LLC and two Demand Response (DR) contracts at 8.5 MW and 1.5 MW each from Orange County Distributed Energy Storage I, LLC and Orange County Distributed Energy Storage II, LLC, respectively. The remaining active contracts include distribution-connected and customer-side energy storage. Table III-3 provides a summary of all remaining PRP RFO 2 contracts:

***Table III-3  
Summary of PRP 2 Energy Storage Selected Offers***

<b>Grid Domain</b>	<b>Product Category</b>	<b>Total Contracts</b>	<b>Capacity (MW)</b>
Distribution	Energy Storage In-front-of-the-Meter	6	60
Customer	Energy Storage Behind-the-Meter Demand Response	6	45
	<b>Total PRP RFO 2 ES Contracts</b>	<b>12</b>	<b>105</b>

Consistent with D.13-10-040, SCE may only count these resources towards its energy storage targets once the contracts have been approved by the Commission. On February 23, 2018, the Administrative Law Judge assigned to SCE's PRP Application issued a proposed decision which rejects SCE's PRP 2 contracts. This proposed decision is scheduled to be voted on at the Commission's April 26, 2018 business meeting. Thus, SCE has not counted these resources towards its energy storage targets and will not do so unless and until the Commission revises the proposed decision to approve some or all of the PRP 2 contracts.<sup>31</sup>

## **2. Aliso Canyon Energy Storage (ACES) Solicitation**

On May 31, 2016 the Commission issued Resolution E-4791 (ACES Resolution), which directed SCE to expeditiously procure in-front-of-the-meter (IFOM) energy storage to help ensure electric

<sup>31</sup> Based on current rules and targets, SCE has already procured the maximum quantity of customer connected storage eligible to count toward its cumulative targets. If future Commission direction allows for additional flexibility between ES grid domains, SCE would count the customer connected ES resources procured in the PRP RFO 2 towards its ES targets if approved by the Commission. For some of the projects that include behind-the-meter energy storage, the specific amount of storage to be installed is left to the discretion of the developer. For those projects, the quantity of energy storage MW is still to be determined.

reliability due to the partial shutdown of the Aliso Canyon Gas Storage Facility. One day following the issuance of Resolution E-4791, SCE launched its ACES Solicitation. SCE's ACES Solicitation had two components – a Request for Offers (RFO) for third-party provided Resource Adequacy (RA), and a Request for Proposals (RFP) for utility-owned “Design, Build, Transfer” (DBT) projects.

a) ACES RFO

Consistent with the ACES Resolution, SCE procured 22 MW<sup>32</sup> of IFOM energy storage, sited south of Path 26 that could provide RA for up to a 10-year term, and could achieve a commercial online date of December 31, 2016. SCE submitted advice letters 3454-E, 3455-E, and 3456-E to seek approval of the ACES power purchase agreements (PPAs), all of which were approved by Commission Resolution E-4804. A summary of the selected offers that achieved their expected commercial online dates are provided in Table III-4 below:

***Table III-4  
Summary of ACES RFO Selected Offers***

<b>Counterparty</b>	<b>Storage Capacity (MW)</b>	<b>Commercial Online Date</b>	<b>Contract Term</b>	<b>Grid Domain</b>
Powin (Grand Johanna)	2	1/13/2017	10 Years	Distribution
AltaGas (Pomona Battery Storage)	20	12/31/2016	10 Years	Distribution

b) ACES RFP

Concurrently with the ACES RFO, and as authorized by Resolution E-4791, SCE launched its ACES RFP to bring online as much expedited energy storage as possible to help mitigate electric reliability concerns due to Aliso Canyon. SCE's ACES RFP sought DBT energy storage resources that met the requirements of the ACES Resolution. As a result of the ACES RFP, SCE contracted with Tesla Motors, Inc. for two 10 MW utility-owned storage projects sited adjacent to its Mira Loma Substation in Ontario, CA. SCE is seeking after-the-fact cost recovery in A.17-03-020, filed on March 30, 2017.

<sup>32</sup> SCE initially procured 27 MW, but one project totaling 5 MW did not come online, reducing SCE's ACES RFO energy storage procurement to 22 MW.

1 The resources achieved commercial operation by December 31, 2016 as prescribed by the resolution.

2 A summary of the ACES RFP selected offers is provided in Table III-5 below:

***Table III-5***  
***Summary of ACES RFP Selected Offers***

<b>Counterparty</b>	<b>Storage Capacity (MW)</b>	<b>Commercial Online Date</b>	<b>Grid Domain</b>
Mira Loma BESS A	10	12/30/2016	Distribution
Mira Loma BESS B	10	12/30/2016	Distribution

3 c) Peaker Enhanced Gas Turbines

4 Following the issuance of the ACES Resolution, SCE began negotiations with General Electric  
5 Current (GE) for a proposal to develop and perform Enhanced Gas Turbine (EGT) upgrades on one or  
6 more of its existing Peaker Generating stations. After negotiations, SCE contracted bilaterally with GE  
7 to integrate 10 MW of battery storage at each of its Grapeland (Rancho Cucamonga, CA), and Center  
8 (Norwalk) Peaker plants. By integrating 10 MW of battery storage at each site, SCE was able to  
9 increase the operational flexibility of its Peakers by adding an incremental 2.15 MW of RA and 20 MW  
10 of instantaneous energy to the bulk power grid without gas supply. Additionally, the integration of the  
11 batteries unlocked almost an additional 100 MW of spinning reserves that would not have been realized  
12 otherwise.

13 As California continues to decrease its dependence on fossil fuels, innovative resources like  
14 SCE's EGTs will be critical to meeting the state's energy and climate goals. As stated above, the  
15 integration of battery storage with the existing Peaker generating stations increased the resource's  
16 operational flexibility, which will become increasingly important as intermittent resources continue to  
17 be deployed on the grid. The first-of-their-kind EGTs received the industry's most coveted and  
18 prestigious honor – the EEI Award – for achieving “unprecedented levels of operational flexibility” and

being “capable of responding instantaneously to electric system needs while simultaneously reducing operating costs and emissions of greenhouse gases and smog-forming pollutants.”<sup>33</sup>

As described above for SCE’s ACES RFP, after-the-fact cost recovery for the EGT projects is being sought in A.17-03-020, filed on March 30, 2017. A summary of the ACES EGT projects is provided in Table III-6 below:

***Table III-6  
Summary of SCE EGT Projects***

<b>Location</b>	<b>Storage Capacity (MW)</b>	<b>Commercial Online Date</b>	<b>Grid Domain</b>
Center Peaker (Norwalk, CA)	10	12/31/2016	Transmission
Grapeland Peaker (Rancho Cucamonga, CA)	10	12/31/2016	Transmission

**3. 2016 Energy Storage and Distribution Deferral (ES & DD) RFO**

D.16-09-007 authorized SCE to procure up to 20 MW of RA-eligible energy storage and to explore additional innovative use cases to include in its 2016 biennial energy storage solicitation, including energy storage that can facilitate distribution deferral.<sup>34</sup> To meet this need, SCE issued a 2016 ES & DD RFO. D.16-09-007 ordered SCE to file an application requesting approval of contracts from the 2016 ES & DD RFO within one year of the December 1, 2016 launch date of the 2016 ES & DD RFO. SCE filed its application, A.17-12-002, on December 1, 2017. SCE sought approval of one contract, for a total of 10 MW, executed in SCE’s 2016 ES & DD RFO. A summary of this offer is provided in Table III-7.

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<sup>33</sup> Edison Electric Institute, *Edison International Awarded EEI’s 2017 Edison Award* (June 13, 2017), available at <http://www.eei.org/resourcesandmedia/newsroom/Pages/Press%20Releases/American%20Electric%20Power%20and%20Edison%20International%20Awarded%20EEIs%202017%20Edison%20Award.aspx>.

<sup>34</sup> D.16-09-007, p. 25, Ordering Paragraph 2.



**Table III-7**  
**Summary of 2016 ES & DD RFO Selected Offer**

Counterparty	Powin SBI, LLC
Storage Capacity	10
Commercial Operation Date	1/1/2022
Contract Terms (Years)	10
Offer Type	RA-Only
Grid Domain	Distribution

**4. Distribution Energy Storage Integration (DESI) Pilots**

SCE has two eligible DESI pilots that are a continuation of SCE's ongoing DESI Pilots<sup>35</sup> – DESI 2 and Mercury 4. Both of these pilots are currently in the deployment phase and have a target operational date of Q2 2018.

**a) DESI 2**

DESI 2 was approved in SCE's 2015 GRC.<sup>36</sup> It is a 1.4 MW/3.7 MWh lithium-ion battery energy storage system (BESS) connected to the Titanium 12 kV distribution circuit out of the Camden substation in Santa Ana. The pilot will implement capability in an urban environment to support dual functions of (1) local distribution reliability and optimization and (2) service in the wholesale market.

SCE procured the BESS from a vendor selected through a competitive RFP process held in 2015. The statement of work for the vendor, NEC Energy Solutions (NECES), includes providing the batteries, the enclosure and other equipment, electrical engineering design and implementation, testing, commissioning, and maintenance. SCE provides the site, environmental compliance work, civil engineering design and construction, administration of the interconnection process to provide electrical service to the site, and overall project management.

The purchase order for DESI 2 was released in March 2017. Site preparation began in November 2017, civil construction started in December 2017, and NECES installed batteries at the site in February 2018. It is expected that the project will be operational in April 2018.

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<sup>35</sup> DESI 1 was installed in 2015 and counted in SCE's 2016 Energy Storage Procurement Plan.

<sup>36</sup> D.15-11-021, pp. 47-48.

1                   b)     Mercury 4

2             Mercury 4 was proposed in SCE's 2018 GRC.<sup>37</sup> It is a 2.8 MW/5.6 MWh lithium-ion BESS  
3 connected to the Pronghorn 12 kV distribution circuit out of the Del Sur substation in Lancaster.  
4 The pilot targets a circuit with high PV penetration to provide support by regulating voltage, reducing or  
5 eliminating reverse power flow, improving or guaranteeing PV dependability, and increasing the  
6 circuit's renewables integration capacity. The PV penetration on Pronghorn is made up of 2.1 MW from  
7 15 customers connected under the Net Energy Metering tariff and 9.5 MW from six Generators and  
8 Commercial & Industrial customers. This circuit's generation portfolio is mainly composed of medium  
9 and large generation facilities.

10            SCE is using the same contract and contractor described for DESI 2, with the same breakdown of  
11 work between SCE and the vendor. The purchase order for Mercury 4 was released in June 2017.  
12 The project team began site preparation and civil construction in December 2017. NECES delivered  
13 batteries at the site in January 2018. It is expected that the project will be operational in April 2018.

14 **D.     SCE Has Energy Storage Projects Planned or Under Consideration That Are Eligible to**  
15 **Count Towards Its 2018 Target**

16            SCE currently has planned energy storage projects that are eligible to count toward its 2018  
17 energy storage procurement target. These projects include energy storage procured through  
18 Self-Generation Incentive Program (SGIP) and energy storage procured through the Permanent Load  
19 Shifting (PLS) program.

20            **1.     SGIP (Installed by December 31, 2019)**

21                   a)     Background and Program Overview:

22            The Commission established the SGIP in D.01-03-073 pursuant to P.U. Code Section  
23 399.15(b).<sup>38</sup> The SGIP provides financial incentives for qualified distributed generation (DG)

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<sup>37</sup> A.16-09-001, SCE-02, Vol. 11, pp. 34-43.

<sup>38</sup> § 399.15(b) of the Cal. Pub. Util. Code no longer addresses SGIP. The SGIP is now governed by Cal. Pub. Util. Code § 379.5 and § 379.6.

1 technologies that are installed on the customer side of the utility meter and that serve some or all of a  
2 customer's onsite electric load.<sup>39</sup> Incentives offered under the SGIP vary based on the technology and  
3 whether the DG technology uses renewable or non-renewable fuel.

4 In 2008, the Commission adopted D.08-11-044, which allowed advanced energy storage systems  
5 that meet certain technical parameters and are coupled with eligible DG technologies to receive  
6 incentives under the SGIP. In addition to advanced energy storage systems coupled with eligible SGIP  
7 technologies, the Commission granted eligibility to stand-alone advanced energy storage systems to  
8 participate in the SGIP in D.11-09-015. In D.14-12-033, the Commission extended a budget of \$28  
9 million per year from 2015 through 2019 in upfront and performance-based incentives for eligible  
10 behind-the-meter SGIP technologies in SCE's service territory. D.17-04-017 doubled this budget  
11 amount from \$28 million to \$56 million for each year in 2017-2019.

12 As of December 31, 2017, there were 1,104 active advanced energy storage projects in SCE's  
13 service territory, both stand-alone and coupled with eligible DG technologies that have received or  
14 applied for incentives under the SGIP.

15 b) Program Forecast

16 Based on 2017 year end program applications, SCE is forecasting 106.5 MW of SGIP energy  
17 storage to be installed by the end of 2019, and thus eligible to count toward the 2018 energy storage  
18 procurement cycle. Table III-8 shows the committed and pending reservations for advanced energy  
19 storage technologies that applied for SGIP incentives as of December 31, 2017.

20 Consistent with the rule from the Track 1 Decision concerning credit for SGIP projects installed  
21 by DA/CCA customers,<sup>40</sup> Table III-8 includes an estimate of the projects that may be installed by

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<sup>39</sup> At its inception, the SGIP funded solar photovoltaic ("PV"), wind turbines, fuel cells, microturbines, small gas turbines, internal combustion engines, and combined heat and power plants. AB 2778 removed all incentives for solar PV systems from the SGIP as of January 2007, and provided incentives for solar PV through the California Solar Initiative program. *See* Cal. Pub. Util. Code § 379.6(a)(3).

<sup>40</sup> D.16-01-032, p. 57, Conclusion of Law Paragraph 29 ("For energy storage projects installed by customers of a CCA or ESP, credit for the SGIP-funded energy storage projects should be split evenly between the unbundled customers' IOU and the CCA/ESP.")

DA/CCA customers during the 2018 biennial cycle. Of the customer-connected energy storage projects acquired through SGIP that are either planned or under construction, SCE conservatively estimates that up to 20 percent of those projects could be installed by DA/CCA customers.<sup>41</sup> Given the 50/50 split of credit for SGIP projects installed in SCE's service territory by DA/CCA customers, as required in the Track 1 Decision, approximately 10 percent of the 106.5 MW forecast, or 10.65 MW, could be attributable to DA/CCA customers.<sup>42</sup> For simplicity, SCE provides a conservative assumption that 96 MW of the 106.5 MW of projected SGIP energy storage projects will count towards SCE's customer-connected domain for energy storage, with the remainder ultimately credited to the relevant LSE.<sup>43</sup>

**Table III-8**  
***Self-Generation Incentive Program Committed and Pending Advanced Energy Storage Reservations (MW) as of December 31, 2017***

Pending Reservation	21.8
Committed Reservation	84.7
<b>Total</b>	<b>106.5</b>
<b>Est. Total Per SGIP Counting</b>	<b>~96</b>

The SGIP currently has a statutory sunset date of December 31, 2020, and thus SCE expects that interested customers will take advantage of available incentives prior to this sunset date. Lastly, as shown in Table III-10, SCE has already exceeded its customer-connected energy storage target, and has exceeded the MW allowance that can be shifted from the customer domain to the transmission or distribution domains. SCE will continue to monitor the MW count of the SGIP in its biennial storage

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<sup>41</sup> This is a generous assumption given that the historical percentage of SGIP installations by DA and CCA customers is less than 10 percent. See SCE Advice Letters 3521-E, 3611-E, and 3712-E.

<sup>42</sup>  $(106.5 * .2) * .5 = 10.65$  MW.

<sup>43</sup> The Track 1 Decision provides that "SGIP-funded projects will count towards an LSE's target at the time the SGIP incentive payment process begins, and that the credited amount will not change if a customer subsequently moves to unbundled or bundled service." D.16-01-032, p. 44. SCE provides the actual breakdown of SGIP installations by DA and CCA customers twice a year on June 1 and December 1 via an informational Advice Letter, as required by D.16-09-007, p. 26, Ordering Paragraph 5.

1 plans, however, additional MW will not count towards SCE's targets unless additional flexibility among  
2 grid domains is authorized by the Commission.

3 **2. PLS (Installed by December 31, 2019)**

4 a) Background and Program Overview

5 In D.12-04-045, the Commission approved a PLS program budget for 2012-2014 and directed  
6 the three IOUs to propose a statewide PLS program based on a standard offer with common design and  
7 rules.<sup>44</sup> SCE launched the PLS program in its service territory on July 22, 2013. On May 15, 2014, the  
8 Commission adopted D.14-05-025, which approved the Permanent Load Shift – Thermal Energy  
9 Storage (PLS-TES) program funding for the 2015-2016 bridge period and D.16-06-029 extended the  
10 program through the end of 2017.

11 The statewide PLS program is designed to help customers shift electricity use by offering a one-  
12 time upfront incentive, based on the number of kW shifted,<sup>45</sup> to offset initial investments in a thermal  
13 energy storage system. Resolution E-4586 adopted a standardized PLS incentive level of \$875/kW  
14 across the IOUs.<sup>46</sup> Customers are required to shift energy usage during the summer peak hours as  
15 defined by each IOU. Providing customers an incentive to invest in a PLS technology helps the utilities  
16 reduce the need for peak generation investments, reduces the likelihood of shortages during peak  
17 periods, and lowers system costs overall by reducing the need for peaking units.

18 D.17-12-003 found the PLS Program to be consistently not cost-effective and as a result, the  
19 Commission ordered all IOUs to discontinue the PLS program effective January 1, 2018.<sup>47</sup> No further  
20 budget for PLS is authorized. The projects in process that were received before December 31, 2017 will  
21 be completed utilizing the 2017 funding (carried over from the 2015-2016 funding).

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<sup>44</sup> D.12-04-045, p. 226, Ordering Paragraphs 60, 62.

<sup>45</sup> The incentive is based on designed and verified kW shifted (per feasibility study and post-installation inspection approval).

<sup>46</sup> Resolution E-4586, p. 7.

<sup>47</sup> D.17-12-003, pp. 118-119.

b) Program Forecast

SCE's PLS program is funded through the end of 2017. For the purpose of tracking PLS projects that will count towards the 2018 energy storage procurement target, SCE will include the projects with submitted applications and feasibility studies that are currently under review, and projects forecasted to be installed before December 31, 2018. SCE has four projects totaling 2.1 MW that are expected to be completed by the end of 2018. As shown in the table below, SCE intends to count 5.5 MW of PLS storage towards the 2018 energy storage procurement cycle goals.

**Table III-9**  
**PLS Storage Eligible for 2018**

Installation completed	3.4 MW
Installation expected 2018	2.1 MW
<b>Total</b>	<b>5.5 MW</b>

**E. SCE's Forecast of Biennial Procurement Is Adjusted for Existing Energy Storage and Flexibility in Counting Among Grid Domains**

After considering the aforementioned existing and planned energy storage, as well as the flexibility in counting energy storage among the three grid domains, SCE's forecasted energy storage procurement, in MW, are adjusted in Table III-10, below.

**Table III-10**  
**Summary of Eligible Procurement**

Grid Domain	Previously Approved in D.14-10-045	Previously Approved in D.16-09-007 <sup>1</sup>	Additional Procurement during the 2016 Cycle <sup>2</sup>					Planned or Under Construction		Total	Total Eligible <sup>3</sup>	2018 Cumulative Target
			ACES RFO	ACES RFP	Peaker Enhanced Gas Turbine (EGT)	DESI	2016 ESDD RFO	SGIP	PLS			
Transmission	0	100	0	0	20	0	0	0	0	120	120	200
Distribution	13.6	3.7	22	20	0	4.2	10	0	0	73.5	73.5	120
Customer	10.8	160.6	0	0	0	0	0	96	5.5	272.9	170	50
<b>Total</b>	<b>24.4</b>	<b>264.3</b>	<b>22</b>	<b>20</b>	<b>20</b>	<b>4.2</b>	<b>10</b>	<b>96</b>	<b>5.5</b>	<b>466.4</b>	<b>363.5</b>	<b>370</b>

<sup>1</sup> SCE's eligible storage in the distribution domain has been reduced by 15 MW due to a contract termination

<sup>2</sup> SCE procured 60 MW of distribution connected storage and 45 MW of customer connected storage during the 2016 procurement cycle in its PRP2 RFO; however, Commission rules do not allow the MW to count as eligible until contracts are approved. To date, the Commission has not approved SCE's application.

<sup>3</sup> This column considers the ceiling on customer procurement contained in D.16-01-032

1 IV.

2 **PROPOSED PROCUREMENT DURING THE 2018 BIENNIAL PROCUREMENT CYCLE**

3 Pursuant to the Commission's Energy Storage Procurement Program Design, SCE has procured  
4 energy storage resources through stand-alone energy storage RFOs for the 2014 and 2016 biennial  
5 cycles to maintain momentum in transforming the energy storage market. In this biennial cycle, SCE  
6 will again solicit energy storage resources through a competitive solicitation to help address the  
7 reliability issues caused by the partial shutdown of the Aliso Canyon Natural Gas Storage Facility,  
8 pursuant to SB 801. Additionally, SCE's 2018 energy storage procurement and investment plan satisfies  
9 the legislative requirements of AB 2868 by proposing utility investments in energy storage and an  
10 incentive program for energy storage installed at low income multifamily dwellings.

11 **A. 2018 Aliso Canyon Energy Storage RFO – SB 801**

12 SCE's 2018 Energy Storage RFO will be conducted pursuant to SB 801, which requires the  
13 Commission to "direct an electrical corporation serving the Los Angeles Basin to deploy, pursuant to a  
14 competitive solicitation, a minimum aggregate total of 20 megawatts of cost-effective energy storage  
15 solutions to help address the Los Angeles Basin's electrical system operational limitations resulting  
16 from reduced gas deliverability from the Aliso Canyon natural gas storage facility."<sup>48</sup>

17 On February 27, 2018, SCE received a letter from the Director of the Commission's Energy  
18 Division (Executive Director Letter)<sup>49</sup> containing this direction. This letter directs SCE to prepare and  
19 submit an Advice Letter as soon as practicable that can be addressed through the Energy Division's  
20 Resolution process. Consistent with this mandate and SB 801, SCE will file an Advice Letter with  
21 SCE's proposed solicitation parameters and timeline. Once SCE receives approval of its proposed

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<sup>48</sup> Cal. Pub. Util. Code § 2836.7(b).

<sup>49</sup> Letter from Edward Randolph to Russell Worden re Direction on Compliance with Pub. Util. Code § 2836.7 (February 27, 2018).

1 solicitation, it will work expeditiously to issue its solicitation and procure the minimum aggregate 20  
2 MW as required by the statute.<sup>50</sup>

3 The IFOM procurement from the SB 801 Solicitation will count towards SCE's energy storage  
4 targets in accordance with D.13-10-040, which provides that energy storage projects procured through  
5 other Commission proceedings may count towards the IOU's procurement targets once approved by the  
6 Commission.<sup>51</sup> Given that SB 801 requires a minimum procurement of 20 MW, this solicitation will  
7 satisfy SCE's 2018 cumulative target net short of 6.5 MW.

8 **B. Other Solicitation Opportunities for Energy Storage During the 2018 Biennial Cycle**

9 **1. Integrated Distributed Energy Resources (IDER)**

10 The IDER proceeding is focused on sourcing of DERs to meet distribution needs, including  
11 through competitive solicitations and alternative sourcing mechanisms.<sup>52</sup> In D.16-12-036, the  
12 Commission adopted a competitive solicitation framework for procuring DER products and services to  
13 displace or defer the need for capital expenditures on traditional distribution infrastructure, including  
14 energy storage, and an incentive pilot for this framework, including testing an opportunity for utility  
15 shareholders to earn an incentive for procuring DERs as an alternative to traditional distribution  
16 infrastructure projects. In accordance with D.16-12-036, SCE filed Advice Letter 3620-E requesting  
17 authorization to launch its IDER Incentive Pilot solicitation to procure DERs that can defer two

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<sup>50</sup> The Executive Director letter indicates that "SCE is not required to file contracts for approval with the Commission pursuant to this directive to meet the full 20 MW goal if the solicitation does not yield sufficient contracts contacts [sic] for cost-effective storage resources."

<sup>51</sup> See D.13-10-040, Appendix A, pp. 4-5. SB 801 provides that the utility may elect to count distribution connected energy storage towards the programs and investment target adopted in AB 2868. SCE intends to count SB 801 procurement towards its Energy Storage Procurement Framework target instead, because the SB 801 Solicitation is limited to third-party procurement options, and AB 2868 is intended for utility-owned investment and customer programs.

<sup>52</sup> The scope of the proceeding also includes: (1) continued development of technology-neutral cost-effectiveness methods and protocols; (2) leveraging the work being performed through the Distribution Resources Plans Demonstration Projects where practical, for the purposes of advancing the development of a competitive solicitation framework for DERs; (3) utility role, business models, and financial interests with respect to DER deployment; and (4) considering how existing programs, incentives, and tariffs can be coordinated to maximize the locational benefits and minimize the costs of DERs.



1 conventional distribution projects (Newbury and Eisenhower). The Commission approved this advice  
2 letter, with modifications, in Resolution E-4889. After the filing of a compliance supplemental advice  
3 letter, SCE launched its IDER Incentive Pilot solicitation on January 12, 2018. Any contracts resulting  
4 from the solicitation will be submitted for Commission approval via Tier 2 advice letter by July 2018.

## 5 **2. 2018 LCR RFP**

6 On December 21, 2017, SCE submitted its Moorpark Sub-Area LCR Procurement Plan, pursuant  
7 to D.13-02-015 and a November 27, 2017 letter from the Director of the Commission's Energy Division  
8 to SCE, both of which require SCE to provide a procurement plan demonstrating how it will procure  
9 CPUC-authorized resources to meet a long-term local capacity requirement need in the Moorpark sub-  
10 area of the Big Creek/Ventura local reliability area by 2021. SCE's procurement plan was approved by  
11 the Energy Division on February 7, 2018, and SCE launched its RFP on February 28, 2018.

12 In the plan, SCE describes how it intends to procure LCR resources in the Moorpark sub-area,  
13 and the important role that preferred resources and energy storage will play in filling the LCR need.  
14 SCE will consider energy storage to the extent the resources are the best fit to meet the LCR need in the  
15 Moorpark sub-area. It is SCE's expectation that cost-competitive energy storage will be a critical  
16 component of the Moorpark LCR portfolio mix.

V.

**UTILITY PROGRAMS AND INVESTMENTS PURSUANT TO ASSEMBLY BILL 2868**

**A. Background**

On September 26, 2016, Governor Brown signed AB 2868 (Gatto), which adds Sections 2838.2 and 2838.3 to the Public Utilities Code. The statute requires the three IOUs to propose programs and investments for up to 500 MW of distributed energy storage systems, distributed equally among the three IOUs (*i.e.*, 166.66 MW per IOU), above and beyond the 1,325 MW target for energy storage adopted in D.13-10-040. In D.17-04-039, the Commission established a process for the IOUs to implement AB 2868.

In accordance with D.17-04-039, SCE, along with PG&E and SDG&E, hosted three workshops in 2017, in consultation with Commission staff, on the implementation of AB 2868. The workshops included discussions on the development of definitions of terms, proposals for evaluating projects against the statutory criteria, and the IOUs' plans for incorporating programs and investments for distributed energy storage systems into their 2018 energy storage procurement and investment plans. The final workshop, held on December 15, 2017, provided a preview of the IOUs' AB 2868 proposals and included discussions of how the IOUs incorporated stakeholder feedback from the prior two workshops. SCE previewed three AB 2868 proposals at the final workshop. In this Application, SCE is requesting Commission approval for two of those three proposals: (1) Local Energy Storage & Management Systems at Distribution Substations, and (2) an incentive program for Energy Storage for Multifamily Solar Projects. As explained below, SCE elected not to pursue the third program it had considered – a “Make Ready” program for energy storage.

SCE has elected to pursue less than the maximum megawatts allowed under AB 2868 in this application because it has a number of distribution-connected energy storage pilots proposed in SCE's 2018 GRC that are awaiting Commission approval. The pilots will be deployed on SCE's distribution system to support various capabilities, including but not limited to: enhancing distribution and sub-transmission reliability, integrating DERs, demonstrating dual-use (serving both a grid reliability function and participating in the market), fostering microgrids, and facilitating transportation

1 electrification. If the pilot applications demonstrate the greatest customer benefits, these pilots could be  
2 expanded with additional megawatts. Thus, SCE is taking a deliberate and measured approach in its  
3 first AB 2868 proposal so that it can determine the best use for remaining program megawatts after  
4 assessing the success of its GRC pilot programs.

5 **B. Statutory Requirements**

6 AB 2868 defines “distributed energy storage system” as an energy storage system with a useful  
7 life of at least ten years that is connected to the distribution system or is located on the customer side of  
8 the meter and that has an “energy storage management system.”<sup>53</sup> No more than 25 percent of the  
9 capacity of distributed energy storage systems approved for programs and investments pursuant to this  
10 section may be provided by behind-the-meter systems.

11 Public Utilities Code Section 2838.2 provides that proposed programs and investments should  
12 demonstrate customer benefits, seek to minimize overall costs and maximize overall benefits, reduce  
13 dependence on petroleum, meet air quality standards, and reduce greenhouse gas emissions while not  
14 unreasonably limiting or impairing the ability of non-utility enterprises to market and deploy energy  
15 storage systems. Additionally, the statute requires the Commission to prioritize its approval of programs  
16 that provide energy storage systems to public sector and low income customers, and provides that the  
17 Commission shall resolve the utilities’ applications within 12 months of filing. SCE’s proposals satisfy  
18 these criteria as discussed below.

19 **C. Local Energy Storage & Management Systems (LESMS) at Distribution Substations**

20 **1. Summary**

21 SCE proposes to launch an RFP for approximately 40 MW of utility-owned Local Energy  
22 Storage & Management Systems (LESMS) at selected locations on the distribution system. The sites  
23 have been strategically selected such that the installed storage systems will be available to assist in the

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<sup>53</sup> An “energy storage management system” is a system by which an electrical corporation can manage the charging and discharging of the distributed energy storage system in a manner that provides benefits to ratepayers. Cal. Pub. Util. Code § 2838.2 (a)(2).

1 integration of renewable resources at this time, and may provide grid resiliency support at the local level  
2 in the future. The selected circuits currently have low load factors<sup>54</sup> and are forecasted to have high  
3 levels of renewable generation. Initially, the energy storage will be providing system renewable  
4 integration support by participating in the energy and ancillary services (AS) markets. By participating  
5 in energy and AS markets, these energy storage resources will be able to provide system ramping  
6 support and/or over generation support depending on market conditions. The BESS installations will  
7 also be available to provide system and flexible RA. This will allow SCE to gain experience in how an  
8 energy storage system participating in the CAISO market can also support local renewable integration  
9 and distribution needs. To reduce overall cost, SCE will issue an RFP for the “design, build, and  
10 transfer” (DBT) of turnkey energy storage systems that meet SCE’s specifications. These systems will  
11 consist of an energy management system (EMS), a BESS, and associated integration infrastructure.

12 This LESMS deployment and utilization strategy will facilitate maximizing the benefit of  
13 distribution-sited energy storage by providing the flexibility to determine how to best support  
14 California’s clean energy future – as a market asset until the local renewable generation integration need  
15 arises, and as a grid asset once higher levels of renewable generation are interconnected. During the  
16 annual distribution planning process, if these identified locations require additional upgrades, SCE in  
17 collaboration with the Commission, will be able to determine if the installed BESS could be repurposed  
18 to meet those newly identified needs. The benefits LESMS can provide are described below:

#### 19 **System Renewable Integration Support**

- 20 • **Energy and Ancillary Services** – By proving energy and ancillary services to the  
21 CAISO, the BESS can help manage the system’s “duck curve” by allowing the CAISO to  
22 use the battery to store renewable energy during hours of high renewable generation  
23 and/or dispatch the battery to support the ramp.  
24

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<sup>54</sup> Please see Section C.2 for further detail on load factors.

## **Local Renewable Integration & Resiliency Support**

- **Increased Hosting Capacity**– Hosting Capacity refers to the amount of DERs that can be accommodated on a given distribution system without affecting system operation under existing control and infrastructure configurations. The addition of energy storage and management systems at these locations could be used to increase local hosting capacity to facilitate the integration of additional DERs. A BESS can shape the variable generation, provide load-leveling services, and charge from over-generation of local renewables, which leads to enhanced local reliability and increases the local renewable hosting capacity – all of which helps reduce GHG emissions and petroleum dependence based on the GHG content of the charging energy.
- **Increased Operational Flexibility** – Operational flexibility, in the context of electric distribution infrastructure, refers to the ability of grid operators to adapt to dynamic and changing conditions caused by variable generation, localized system congestion, and increase system loading over short periods of time. The deployment of LESMS allows grid operators to meet the operational flexibility challenges caused by the rapid deployment of intermittent DERs, such as behind-the-meter solar photovoltaics.
- **Enhanced Reliability and Emergency Resiliency** – LESMS could also provide emergency and backup power for local emergency resiliency and/or intermittent outages depending on the size of the system installed and local distribution needs at the time. Furthermore, these systems can provide local resiliency by providing power quality support.

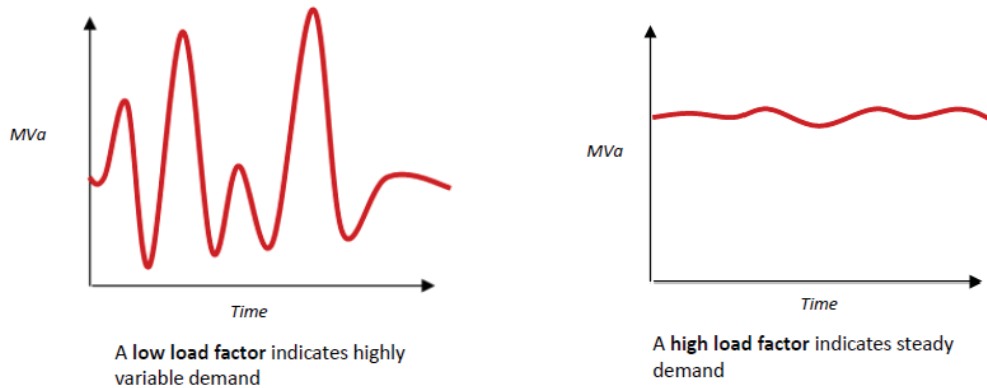
## **2. Description of How the LESMS Sites Were Chosen**

SCE employed load-factor research to identify candidate substations that could benefit from the deployment of energy storage to support renewable integration at the local level. A load factor is a measure of variability of demand or generation. It is defined as the average load divided by the peak load in a specified time period. Figure V-1 illustrates the variability of low load factors.

**Figure V-1  
Load Factors**

## Load Factors

- A **Load Factor** is a measure of variability of demand or generation. It is defined as the average load divided by the peak load in a specified time period.



SCE identified substations with low monthly and yearly load factors, and then screened these candidate sites for locations with currently deployed renewable resources and forecasted potential for increasing levels of such resources. SCE used the resulting information to prioritize locations with high levels of customers on California Alternate Rates for Energy (CARE) (as a proxy for low-income), relative to other candidates sites, as well as those located in Disadvantaged Communities.<sup>55</sup> Finally, SCE performed an analysis of the available real estate at and/or adjacent to those substations to determine the potential size of any BESS deployments. The resulting candidate locations, as well as an estimate of the relative size of the energy storage system that could be developed at the site (based on the available real estate), are identified in Table V-11 below.

<sup>55</sup> The CalEPA definition of Disadvantaged Community for the purpose of SB 535 are those areas which represent the 25% highest scoring census tracts in CalEnviroScreen 3.0, along with other areas with high amounts of pollution and low populations. See Office of Environmental Health Hazard Assessment, *Disadvantaged Community Designation* (April 2017), available at <https://oehha.ca.gov/calenviroscreen/sb535>.

**Table V-11**  
**LESMS Candidate Locations**

Substation	Voltage	Location	BESS Potential* (MWh)
Kimball	66/12 kV	Chino, CA	7 to 8
Fogarty**	115/12 kV	Lake Elsinore, CA	37 to 38
Triton	115/12 kV	Temecula, CA	95
Tenaja	115/12 kV	Wildomar, CA	9 to 23***
		Total	148 to 164 MWh

\* SCE assumes a 4 hour duration battery will be installed, which converts to a range of 37 to 41 MW.

\*\* Priority was given to substations in disadvantaged communities, and/or and communities with relatively large populations of CARE customers. Fogarty Substation was prioritized for deployment given that it met the use case requirements, and is located in a Disadvantaged Community, with a relatively large portion of CARE customers.

\*\*\* Three potential configurations.

Additional analysis must be conducted at these sites to verify their suitability for the contemplated energy storage installations, such as ascertaining interconnection requirements and identifying and designing construction requirements. Once SCE has conducted this work, SCE's site selection may change. SCE intends to work with prospective bidders in developing a more concise estimate of energy storage potential during the RFP process.

### **3. RFP Process**

#### **a) Timeline**

SCE intends to launch the RFP within 45 days following the Commission's Decision approving the LESMS proposal. This will afford SCE the time to refine solicitation materials and to consult with stakeholders prior to launch. Additionally, this timeline will provide potential bidders with adequate notice that SCE is seeking DBT energy storage projects at the specified substations, which is expected to result in a more robust portfolio of offers. Following the launch of the RFP, SCE will host a Bidders' Conference to discuss various aspects of the solicitation including the proposal submittal process and the valuation process.

**Table V-12**  
**Proposed RFP Timeline**

No. of Days	RFP Milestones
T	Commission decision approving LESMS RFP
T+45	RFP Launch
T+60	RFP Bidders Conference
T+120	Indicative offer submittal
T+180	Shortlisting; start contract negotiations
T+240	Negotiation deadline
T+250	Final offer submittal
T+300	SCE notifies successful bidders
T+365	SCE submits advice letter(s) for purchase order/ contract approval

b) Solicitation Structure

SCE is proposing a two-step process. In the first step, bidders will submit an indicative price as part of their proposal. In the second step, bidders that are shortlisted and have successfully negotiated a contract with SCE will be able to submit a last, best, and final price. SCE will make its final selections based on successful negotiation of a contract agreeable to both parties and SCE's final valuation of the entire project package (*e.g.*, economics, project viability, etc.), subject to ultimate SCE management approval.

Following the notification of shortlisted Sellers, SCE will invite vendors to conduct job walks of the four identified sites to see the conditions of the substation terrain, and to identify any potential safety concerns. To facilitate informed offers, SCE will provide additional site information as it relates to installing the BESS.

c) Eligibility

SCE requires proposed energy storage systems to be based on commercialized technology and Sellers to demonstrate past experience designing and constructing similar projects by providing evidence of at least two other similarly sized, utility-connected energy storage systems. As part of the RFP process, SCE performs a viability screen. To conduct its screening, SCE considers the following two criteria:



- Energy Storage Technology Commercial Maturity: Seller’s proposed energy storage technology has been utilized in at least two grid connected applications at a minimum scale of 20 percent of the proposed capacity (considering power and energy) in the last three years.
- Integration and Deployment Experience: Seller has demonstrated at least three years of experience integrating and deploying energy storage or photovoltaic products.

d) Independent Evaluator and CAM Consultation

The RFP process will be subject to the additional oversight of the independent evaluator and SCE will consult with its Cost Allocation Mechanism (CAM) group through the course of the RFP. The independent evaluator and the CAM group will provide an additional level of oversight following the approval of the proposed LESMS projects.

**4. Discretionary Permitting**

The Commission has exclusive jurisdiction over the permitting, construction, and operation of electric transmission lines and related facilities. This section summarizes, in particular, how such exclusive jurisdiction relates to the projects SCE is contemplating pursuant to AB 2868.

As provided above, the LESMS projects SCE is contemplating will connect to existing distribution circuits at the Kimball, Fogarty, Triton, and Tenaja substations. SCE’s understanding is that (1) these projects are governed by Chapter III.C of the Commission’s General Order 131-D; (2) these projects do not require any additional Commission authorization (*e.g.*, certificates or permits) in order to be developed and brought online; and (3) because these projects do not require additional Commission authorization, they do not require any analysis pursuant to the California Environmental Quality Act.<sup>56</sup>

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<sup>56</sup> Specifically, SCE’s proposed LESMS projects do not require either a Certificate of Public Convenience and Necessity (CPCN) or a Permit to Construct (PTC) given that none of these projects would constitute: (a) a “new electric generating plant having in aggregate a net capacity . . . in excess of 50 megawatts (MW); (b) “the modification, alteration, or addition to an existing electric generating plant that results in a 50 MW or more net increase in the electric generating capacity . . .”; (c) “major electric transmission line facilities which are designed for immediate or eventual operation at 200 kV or more . . .”; (d) “electric power line facilities or substations which are designed for immediate or eventual operation at any voltage between 50kV or 200kV;” or (e) “new or upgraded substations with high side voltage exceeding 50 kV....” *See* G.O. 131-D §§ III. A & B, p. 2.

1           **5.       Compliance with AB 2868 Statutory Requirements**

2                   a)       Minimize Overall Costs and Maximize Overall Benefits

3           SCE's LESMS projects will be competitively sourced through a solicitation, thereby minimizing  
4 the cost to customers for the DBT projects. Further, SCE proposes to deploy these storage facilities on  
5 circuits with low load factors, indicating the potential for the greatest "duck curve" need,<sup>57</sup> thereby  
6 facilitating increased renewable energy capacity benefits as described above in Section C.1. In addition,  
7 there are several benefits to utility-owned energy storage at locations on the distribution system where  
8 increased renewable penetration is likely. Although SCE intends to place the LESMS systems in the  
9 market at this time, SCE will have the flexibility to transition these facilities to also provide a  
10 distribution service in conjunction with market participation, or solely rely on these systems as a  
11 distribution asset if the need arises. SCE will have flexibility to operate the systems in a manner that  
12 provides continuing grid benefits for the full life of the system to maximize customer benefits.

13           For example, as owner and operator of the LESMS projects, SCE can prioritize reliability  
14 considerations over market revenues, thereby providing grid reliability benefits to all customers.  
15 The market price of electricity – the key driver for third-party sellers – does not always reflect the  
16 greatest value of the energy to customers from a grid reliability standpoint. For example, while ancillary  
17 services may provide the highest market revenues, dispatching a resource for ancillary services may not  
18 deliver the peak shifting that could become necessary on a circuit that is saturated with renewable  
19 energy. SCE, as the owner of the system and the distribution grid operator, can prioritize reliability  
20 considerations and local renewable integration over profitability, thereby providing reliability benefits to  
21 all customers. SCE can also operate and maintain these energy storage systems based on physical  
22 limitations, rather than contractual or warranty limitations as would likely occur with a third-party

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<sup>57</sup> The "duck curve" need describes the need for flexible ramping resources during the evening peak when variable, solar-backed renewable resources are no longer generating power, and evening demand is increasing.

1 contract. Thus, when it makes sense to do so, SCE will be able to operate the storage device safely, but  
2 beyond its warranted conditions.

3 b) Reduce Dependence on Petroleum, Meet Air Quality Standards, and Reduce GHG  
4 Emissions

5 SCE's proposal reduces dependence on petroleum, helps to meet air quality standards, and  
6 reduces emissions of GHG.<sup>58</sup> Specifically, LESMS projects could enable further renewable energy  
7 capacity on the system, thereby reducing the emissions of GHGs caused by the burning of fossil fuels, as  
8 well as improving air quality through reduced petroleum combustion. Moreover, making renewable  
9 generation available at the end of the day when peak load is experienced instead of at mid-day when the  
10 load is lower, further reduces dependence on relatively less clean energy.

11 c) Not Unreasonably Limit or Impair the Ability of Non-Utility Enterprises to  
12 Market and Deploy Energy Storage Systems

13 SCE's proposal does not impair the ability of non-utility enterprises to market energy storage.  
14 Rather, it will create direct opportunities for non-utility enterprises to supply and install energy storage  
15 systems at SCE's substations. As described above, SCE will issue a solicitation for turnkey projects.  
16 Thus, component manufacturers and project developers will have the opportunity to design, build, and  
17 then transfer energy storage systems to SCE. Moreover, SCE is utilizing distribution substation land  
18 that is owned and/or controlled by SCE. These sites would not otherwise be available for third-party  
19 project development. Thus, SCE's proposal provides an opportunity for manufacturers and sellers that  
20 would not otherwise exist.

21 d) Prioritize Public Sector and Low-Income Customers

22 SCE's site selection process prioritized locations with relatively high levels of CARE customers  
23 as well as those located in Disadvantaged Communities to select a substation serving low income  
24 customers based on the available candidate locations.<sup>59</sup>

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<sup>58</sup> Cal. Pub. Util. Code § 2838.2(b).

<sup>59</sup> *Id.* at § 2838.2(d)(2).

1 e) Remaining Statutory Requirements

2 SCE's LESMS proposal also meets the following additional requirements from AB 2868:

- 3 • The LESMS projects will be connected to the distribution system at SCE-owned
- 4 substations.<sup>60</sup>
- 5 • SCE's RFP will require that the storage systems procured have a useful life of at least ten
- 6 years.<sup>61</sup>
- 7 • SCE will install, in each selected project, an Energy Storage Management System (ESMS)
- 8 which will allow the CAISO and SCE's operators to manage the charging and discharging of
- 9 the each selected DER. When acting as a system's renewable integration asset, the ESMS
- 10 will allow the selected DERs to respond to CAISO's economic signals. Hence the ESMS
- 11 allows the DER to maximize ratepayer benefit by monetizing its ability to provide system
- 12 benefits.<sup>62</sup>
- 13 • SCE is proposing to invest in approximately 40 MW of LESMS in this biennial cycle – well
- 14 below the 166 MW allowed by AB 2868, and reserving some capacity for behind-the-meter
- 15 customer programs.<sup>63</sup>

16 **6. Valuation**

17 Given that the expected use of the LESMS system may change over time based on system and

18 local needs, SCE proposes to rank and select DBT proposals based on a market valuation and qualitative

19 considerations. A market valuation approach provides the appropriate indication as to the

20 competitiveness of proposals relative to each other as the market will always be the default option to

21 realize monetizable value and lower net costs. SCE will calculate the forecasted quantity of RA

22 capacity, electrical energy, and ancillary services (AS) that each proposal will provide, and multiply

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<sup>60</sup> *Id.* at § 2838.2(a)(1).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at § 2838.2(a)(2).

<sup>63</sup> *Id.* at § 2838.2(c)(1).

1 these quantities by their respective market price forecasts. The sum of these benefits represent the  
2 market value that the resource is forecasted to receive. SCE will then compare the DBT costs and other  
3 costs required to extract this market value to determine the cost-competitiveness of the systems.  
4 The most cost-competitive proposals will have the lowest overall costs as compared to their forecasted  
5 market value benchmark. The benchmark for determining cost-competitiveness will be the Net Present  
6 Value (NPV).<sup>64</sup>

7 a) SCE's Specific Valuation and Selection Process

8 As described in D.04-12-048, SCE will use a Least-Cost, Best Fit (LCBF) methodology to value  
9 proposals in the LESMS RFP. SCE's LCBF methodology employs an NPV analysis when it evaluates  
10 proposals submitted through competitive solicitations for energy storage. This methodology is  
11 consistent with valuations performed by SCE in other solicitations, such as SCE's LCR RFO, Combined  
12 Heat and Power (CHP) RFOs, Energy Storage RFOs, RPS solicitations, and All-Source RFOs for  
13 energy and Resource Adequacy (RA). The quantitative component of the valuation entails forecasting:  
14 (1) the present value of the contract benefits; (2) the present value of the contract costs; and (3) the NPV,  
15 which is the difference between (1) and (2). The NPV is the basis of the quantitative evaluation that  
16 compares the relative costs and benefits of each proposal, the selection process also carefully considers  
17 the qualitative characteristics of the proposals. SCE's process for valuation and selection is detailed  
18 below.

19 b) Develop Price Forecasts

20 SCE will prepare forecasts for RA capacity, electrical energy, ancillary services and GHG  
21 compliance market prices (*i.e.*, the market price forecast). SCE uses a blended approach for forecasting  
22 market prices. SCE's blending combines forward market prices and fundamental model prices to bridge  
23 SCE's use of forward market prices for the valuation of products that deliver in the near-term and SCE's  
24 use of fundamental model prices for the valuation of products that deliver over a longer term.

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<sup>64</sup> SCE currently uses a discount rate of 10% when determining the present value of the offers. SCE may update the discount rate and will use the most current discount rate in its solicitations.

Forward power prices may also be adjusted for location in the final valuation if a locational distinction is required in the selection process.

c) Determine Revenues and Cost Cash Flows

(1) RA Benefit

RA capacity benefits are derived by first developing a forecast of expected forward RA prices and then applying this forecast to the total RA capacity provided by the contract.

The RA quantity is determined by using the Commission's net qualifying capacity (NQC) counting rules. For each month of the offeror's contract, SCE calculated the RA value as the quantity of qualifying RA capacity multiplied by the forecasted capacity price. SCE employed the current RA counting rules when calculating the qualifying RA capacity for each Offer. More specifically for the LESMS RFP, the Qualifying Capacity (QC) for the offers will be determined by applying D.14-06-050.<sup>65</sup> Appendix B of D.14-06-050 states:

To the extent possible, System, Local, and Flexible RA eligibility requirements should remain consistent across all resource types, including storage and supply-side DR. These requirements include the ability to operate for at least four consecutive hours at maximum power output ( $P_{maxRA}$ ), and to do so over three consecutive days.

\* \* \*

Resources wishing to qualify for System or Local RA must also have the capability to offer into the CAISO markets, either via economic bids or via self-scheduling, under the Must Offer Obligation (MOO) applicable for that resource type.

(2) Day-Ahead Energy, Real-Time Energy, and Ancillary Services Benefits

Because SCE will be the scheduling coordinator for any selected offers, SCE will be controlling the energy storage system's operating profile. The operating profile dictates the system's net revenues from day-ahead energy, real-time (RT) energy and ancillary services (AS) net of the day-ahead, real-time, and variable operating costs.

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<sup>65</sup> If there are any updates or clarification to the definition of QC for IFOM Energy Storage prior to launch, SCE will consider the updates in its evaluation of RA benefit.

1 To estimate an energy storage system's operating profile, SCE utilizes a dispatch model to  
2 determine the operating profile over the storage system's useful life. The dispatch model maximizes the  
3 day-ahead, AS, and RT revenue while operating within the storage device's operational and physical  
4 constraint. These constraints include maximum dispatch capacity, operating range, charge and  
5 discharge time, unit efficiency, energy degradation and any circuit constraints.<sup>66</sup>

### 6 (3) Contract Payment Cost

7 Contract payments represent the total fixed contract payments SCE is expected to make under  
8 the contract for delivery of the completed system (*e.g.*, DB costs) and may also include other contractual  
9 payments such as a performance guarantee. Some contract costs may also include a contingency on the  
10 fixed payments. Furthermore, any contract costs that are deemed to be a capital expense will have  
11 associated revenue requirement that will be represented as a cost in the NPV evaluation.

### 12 (4) Network Upgrade Costs

13 For locations that do not have an existing interconnection to the electric system, network upgrade  
14 costs will be incurred. The network upgrade cost will be estimated and include the interconnection  
15 study costs, interconnection maintenance, cost and the interconnection costs.<sup>67</sup> The interconnection  
16 costs are treated as a capital investment resulting in an associated revenue requirement, which will be  
17 represented as a cost in the NPV calculation.

### 18 (5) Credit and Collateral Adder Costs

19 Vendors may seek to negotiate credit and collateral requirements that are different from SCE's  
20 pro forma requirements. In doing so, there is no longer a "level playing field" in terms of default  
21 exposure amounts across the vendors. In these cases, SCE will calculate a cost to the offer based on the  
22 incremental exposure created by the negotiated terms.

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<sup>66</sup> Circuit constraints may include BESS ramp rate restrictions and/or charging constraints.

<sup>67</sup> The interconnection costs will have a contingency applied to its estimate.

1 (6) Station and Idle Loss Load Costs

2 An energy storage system's inverter creates a load anytime the system sits idle; SCE therefore  
3 applies idle inverter load anytime the energy storage system did not receive a dispatch instruction from  
4 the dispatch engine. Furthermore, SCE's analysis assesses the station power loads of each proposals.  
5 While SCE does not pay for station or parasitic load at its generation or substation facilities, SCE will  
6 included these costs in the evaluation of the LESMS proposals to be consistent with evaluation of third  
7 party bids and to create further distinction between the proposals SCE will receive in the LESMS RFP.

8 (7) Real Estate Costs

9 SCE owns and controls all sites in the LESMS RFP. As a result, SCE will not need to procure  
10 additional real estate and therefore no incremental real estate costs will be considered in the evaluation  
11 of the offers.

12 (8) Project Development Costs and Other Costs

13 SCE will include costs associated with the development of an energy storage system, such as  
14 additional SCE labor needed for project development, interconnection upgrades, communication  
15 equipment costs and other miscellaneous expenses. SCE will estimate these costs based on its prior  
16 experience with energy storage deployment.

17 (9) Residual and Other Costs

18 SCE will consider any additional costs it may incur above and beyond any contractual  
19 operational agreement or guarantee.

20 d) Qualitative Considerations & Selection

21 In addition to the benefits and costs quantified during the evaluation, SCE assesses non-  
22 quantifiable characteristics of each offer by conducting an analysis of each project's qualitative  
23 attributes. SCE is authorized to choose projects for its short list and final selection that do not have the  
24 highest NPV based on the preferences set forth in Public Utilities Code sections 399.13(a)(7) and  
25 454.5(b)(9)(D)(ii), and the Commission may approve such contracts. SCE considers qualitative  
26 characteristics in determining the short list and final selection.



1 e) Joint IOU Consistent Evaluation Protocol

2 The Storage Decision allows each IOU to use its proprietary valuation and selection process for  
3 determining winning offers in its energy storage solicitations. The Storage Decision also directs the  
4 IOUs to utilize a “consistent evaluation protocol” (CEP) for the benchmarking and reporting of storage  
5 offers across the IOUs. Consistent with this decision, SCE and the other IOUs worked with Energy  
6 Division to develop the CEP. SCE’s proprietary process will be used to inform offer selection, while the  
7 CEP will be used only for benchmarking and reporting. SCE attaches the CEP results at the time it  
8 submits contracts for approval to the Commission.

9 **7. Cost Recovery and Cost Allocation**

10 a) Cost Recovery through CAM

11 AB 2868 provides that:

12 It is the intent of the Legislature that the commission, in authorizing an electrical  
13 corporation to recover the costs of approved energy storage programs and investments  
14 from all customers pursuant to Section 2838.2, shall ensure that the costs for the  
15 programs and investments are recovered in proportion to the benefits received, consistent  
16 with Section 451.<sup>68</sup>

17 Consistent with this provision, and with Decisions D.14-10-045 and D.16-01-032, SCE proposes  
18 to recover the costs of the LESMS projects from all customers, and share the benefits of these projects  
19 with all customers, through the Cost Allocation Mechanism (CAM). D.14-10-045 provides a  
20 framework<sup>69</sup> for cost recovery by storage grid domain that considers a project’s ownership, regulatory  
21 function, and whether connection is through the transmission or distribution network. The framework  
22 then clarifies the format of the cost recovery request and what balancing accounts and rate components  
23 will apply.

24 SCE is proposing to install approximately 40 MW of utility-owned LESMS at selected locations  
25 on the distribution system to facilitate the integration of renewable resources. Therefore, cost recovery  
26 through the CAM is requested and consistent with D.14-10-045. As with other CAM resources, SCE

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<sup>68</sup> Cal. Pub. Util. Code § 2838.3.

<sup>69</sup> D.14-10-045, pp. 27-28.

1 will record the costs of the LESMS projects in the New System Generation Balancing Account  
2 (NSGBA) and will seek review of these recorded costs through its ERRA Review proceeding.

3 b) CAM Net Revenue Calculation Proposal

4 In D.06-07-029, the Commission adopted a cost-allocation methodology that allows the benefits  
5 and costs of new generation to be proportionally shared by all benefitting customers in an IOU's service  
6 territory. The capacity and energy are "unbundled," and the rights to the capacity are proportionally  
7 allocated to all LSEs in the IOU's service territory to be used towards each LSE's RA requirements.  
8 The customers receiving the benefit of this additional capacity pay only the proportional "net costs" of  
9 the capacity through a "wires" charge,<sup>70</sup> determined as a net of the total cost of the contract minus the  
10 energy revenues associated with dispatch of the resource. The following sections describe how the net  
11 "revenues associated with the dispatch of the resource" are to be calculated. SCE proposes to use the  
12 IFOM CAM adopted in the Local Capacity Requirements Decision<sup>71</sup> for the LESMS Projects.

13 As clarified in the Joint Memorandum of Understanding adopted in D.15-11-041, the "net  
14 capacity cost" for energy storage CAM resources pursuant to the JPP is calculated as follows: The costs  
15 resulting from charging each battery in the lowest-priced hours of a 24-hour period are netted against the  
16 revenues resulting from discharging that battery during the highest-priced hours in the same 24-hour  
17 period to determine the net revenue received from the resource. That proxy for the net revenue is then  
18 credited back to the contract cost to calculate the net capacity cost of the resource to be recovered  
19 through the New System Generation Charge from all delivery service customers (JPP ES Methodology).  
20 SCE proposes to utilize the JPP ES Methodology to determine the proxy net revenues of the LESMS  
21 Projects.

22 The costs of the LESMS projects will be borne by all customers, as all customers will share in  
23 the benefits provided by these projects, as required by AB 2868. When these projects operate as market

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<sup>70</sup> D.06-07-029, p. 31. The net costs of all CAM-eligible resources are recovered from all delivery service customers through the New System Generation Charge.

<sup>71</sup> See D.15-11-041.

resources, all customers will share in the RA capacity value and market revenues from these resources. If, in the future, the resources are transitioned to distribution assets (with the regulatory approval of the Commission), all customers will share in the reliability value provided by these resources.

#### **8. CPUC Approval of LESMS Contracts**

Because the parameters of SCE's LESMS will be reviewed by stakeholders in this instant application, SCE proposes the use of a Tier Three advice letter for approval of contracts. Approval of contracts via Tier Three advice letters is the standard for procurement of other preferred resources, including renewables, CHP, and DERs. The Commission has also allowed contract approval via Tier Three advice letter for previous energy storage procurement in the context of SCE's ACES Solicitation, and has approved other utility-owned energy storage resources, such as SDG&E's Engineering, Procurement, and Construction (EPC) projects, via advice letter.<sup>72</sup> Energy storage projects should not be subjected to a lengthier approval process than is required for other preferred resources, particularly when the details of the procurement have been vetted in a Commission-approved procurement plan.

#### **D. Energy Storage for Multifamily Solar Projects Customer Program to Further Deployment of Customer-Connected Energy Storage**

SCE proposes a program to provide incentives to multifamily dwelling (MFD) building owners on SCE's Multifamily Affordable Solar Home (MASH) or its Solar on Multifamily Affordable Housing (SOMAH) programs to install behind-the-meter energy storage systems. The goal of this program is to expand the benefits of energy storage and renewable energy to the low-income multifamily customer segment by incentivizing MASH/SOMAH locations to install and use energy storage to shift the export of solar generated energy to times that are more beneficial to building owners, tenants on new TOU rates and the electric grid. Combining storage with solar will provide MFD building owners and their tenants benefits by being able to store energy generated by their existing installed solar systems for export at times when electricity costs are high, leveraging Virtual Net Energy Metering (VNEM) and TOU rates

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<sup>72</sup> SCE Advice Letter 3454-E, approved by Resolution E-4791; *see also* SDG&E Advice Letter 2924-E, approved by Resolution E-4798.

to lower their electricity bills. The program targets up to 4 MW of energy storage with a total budget of \$9.8 Million.

**1. Proposed Incentives and Incentive Structure**

The program will pay incentives in the form of a rebate to low-income MFD building owners who participate in MASH/SOMAH programs and choose to add energy storage systems to serve the MFD and its tenants. Although the incentives will be paid directly to building owners, the benefits of discharging the storage system during TOU peak times each day are expected to result in bill savings for all tenants and common areas, as discussed below.

SCE proposes to offer stepped incentive amounts between \$0.75/Watt-hour (Wh) and \$0.60/Wh, not to exceed the actual, reasonable cost of purchasing and installing an energy storage system including other incentives.<sup>73</sup> The incentive steps will work in a manner similar to the SGIP in that the incentive amount per Wh will decrease over time as more energy storage is installed through the incentive program. Incentive amounts will range from \$0.75/Wh in Step 1 and decrease in increments of \$0.05/Wh each step through Step 4 at \$0.60/Wh, and end when funds are exhausted, as shown in Table V-13, or the program is otherwise terminated by order of the Commission. The purpose of the stepped incentive approach is to effectively manage the total costs of the program while testing the effect of various incentive amounts on energy storage adoption among low-income MFD customers.

***Table V-13  
Proposed MASH/SOMAH Incentive Amounts***

	Step 1	Step 2	Step 3	Step 4
MW	1	1	1	1
Incentive per Wh	\$0.75	\$0.70	\$0.65	\$0.60

SCE based its proposed incentive amounts on large-scale energy storage costs of approximately \$1.04/Wh (based on statewide SGIP large-scale storage projects, Steps 1-3, 2017 – 2018, excluding

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<sup>73</sup> For example, the Investment Tax Credit (ITC) is worth 30% of the total system cost.

1 cancelled projects).<sup>74</sup> Customers on this program will be eligible to leverage the Investment Tax Credit  
2 provided by the U.S. Federal Government worth 30 percent of total system cost when batteries are  
3 charged completely from solar generation.

4 The proposed MASH/SOMAH Energy Storage program has similarities with the SGIP program,  
5 which also offers customer incentives for purchasing storage systems (a detailed description of the SGIP  
6 program and performance can be found in Chapter III of this document). However, this program is  
7 targeted at building owners of MFDs that participate in the MASH or SOMAH programs and will offer  
8 higher incentive levels than the SGIP with the objective of achieving higher energy storage penetration  
9 for low income customers residing in these MFDs.

10 On January 11 2018, the SGIP program opened Step 3, which provides funds targeted to low-  
11 income/disadvantaged community<sup>75</sup> customers through the non-residential storage equity budget. This  
12 category offers the same \$0.35/Wh incentive as the large-scale storage category with a provision for the  
13 incentive amount to increase.<sup>76</sup> Currently, approximately 18 percent of the SGIP Step 3 large-scale  
14 storage allocated and rollover funds for SCE have been reserved. During this same time period, no  
15 reservations have been confirmed for the residential or non-residential storage equity budgets.<sup>77</sup> SCE's  
16 MASH/SOMAH Energy Storage Program proposes an incentive amount for energy storage systems for  
17 MASH/SOMAH customers that is greater than current SGIP non-residential equity incentives. The

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<sup>74</sup> Calculated using information from the Self-Generation Incentive Program Online Application Database, *Self-Generation Incentive Program Weekly Statewide Report*, (Based on February 12<sup>th</sup>, 2018 Weekly Statewide Report), [https://www.selfgenca.com/documents/reports/statewide\\_projects](https://www.selfgenca.com/documents/reports/statewide_projects).

<sup>75</sup> See D.17-10-004.

<sup>76</sup> The SGIP Handbook states, "If a PA does not confirm any reservations in either the residential or non-residential Equity Budgets during any rolling three (3) month period, while five (5) or more energy storage projects not eligible for the SGIP Equity Budget secure confirmed reservations in the same time period, this will constitute a triggering event in the residential and/or non-residential Equity Budgets. If triggered, the PA will increase the incentive rate by \$0.05/Wh, but in no event shall the incentive exceed \$0.50/Wh." Self-Generation Incentive Program, *2017 Self-Generation Incentive Program Handbook*, Section 3.1.2 p. 25 (2017), <https://www.selfgenca.com/documents/handbook/2017>.

<sup>77</sup> Self-Generation Incentive Program Program Metrics, *Select Large-Scale Storage and Non-Residential Storage Equity Budget Categories* (February 27<sup>th</sup>, 2018 at 2:30pm), [https://www.selfgenca.com/home/program\\_metrics/](https://www.selfgenca.com/home/program_metrics/).

highest incentive SCE is offering when combined with ITC should cover the majority of system costs. Incentives will then be stepped down to identify the incentive level at which participation by this customer segment can be maintained. Beyond the incentive, the benefit MASH/SOMAH building owners receive for installing energy storage is based on the VNEM allocation for any common areas.<sup>78</sup> Based on SCE's analysis, the high incentive amounts proposed in this program are needed in order for building owners to see a return on investment (ROI) within the useful life of the energy storage system. Because total SGIP incentives are reduced by the full amount of any other IOU incentives,<sup>79</sup> customers will not be eligible to participate in both the SGIP and AB 2868 programs.<sup>80</sup>

## **2. Customer eligibility and Conditions of Participation**

### **a) MASH / SOMAH Participation**

To be eligible for this program, a customer must be a MASH/SOMAH customer with a solar system installed or in the process of being installed in a low-income MFD.

### **b) TOU Rate**

SCE's new residential TOU rates were designed to meet the changing needs of California's electric grid. New Off-Peak (Summer) and Super Off-Peak (Winter) periods occur during the day when solar generation occurs. On-Peak (Summer) and Mid-Peak (Winter) periods occur during the evening and night hours when solar generation has stopped and residential electricity usage is at its highest. Building owners of MFDs with solar systems can maximize the benefits for residential tenants on VNEM and TOU rates by adding appropriately sized energy storage capable of charging during off-peak times and fully discharging during on-peak times. For this reason, all service accounts of the MFD

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<sup>78</sup> On average, MASH/SOMAH building owners in SCE's territory have VNEM allocations of approximately 20 percent.

<sup>79</sup> Self-Generation Incentive Program, *2017 Self-Generation Incentive Program Handbook*, Section 3.2.6, p. 30 (2017), <https://www.selfgenca.com/documents/handbook/2017>.

<sup>80</sup> The Customer Distributed Resource Product group that administers these programs will educate building owners to about the differences between the programs to help customers select the optimal program for implementing energy storage.

1 building owner participating in the MASH/SOMAH Energy Storage program must be on a TOU rate or  
2 switch to a TOU rate once the energy storage system is installed.<sup>81</sup>

3 Although SCE does not propose to require all tenants of the MFD to take service on TOU rates at  
4 this time, SCE will actively encourage tenants to take service on a TOU rate to realize the increased bill  
5 savings that can be provided by adding energy storage. As described in more detail in Section D.5.a  
6 below, MFD tenants will benefit by being on TOU rates. MFD tenants are the intended beneficiaries of  
7 SCE's incentive program, and as such, SCE will engage in marketing and outreach to educate these  
8 customers about the benefits of TOU rates while participating in VNEM with energy storage.<sup>82</sup>

9 c) Energy Storage System Size

10 Any system receiving incentives from the proposed program must have a capacity between  
11 100 kWh and 1 MWh. This will help facilitate efficient use of program budget and maximize the  
12 number of customers participating by preventing only a few large installations from exhausting available  
13 incentives.

14 d) Additional Conditions on Participation

15 Once a customer has met the eligibility criteria described in the previous section, they must also  
16 agree to maintain and operate the storage system for ten years to meet AB 2868's requirement that the  
17 energy storage system must have a useful life of at least ten years.

18 **3. Schedule**

19 SCE will need approximately six months to launch the program following a final Commission  
20 decision. Figure V-2 shows the schedule for key activities related to the development, launch, and  
21 operation of the program.

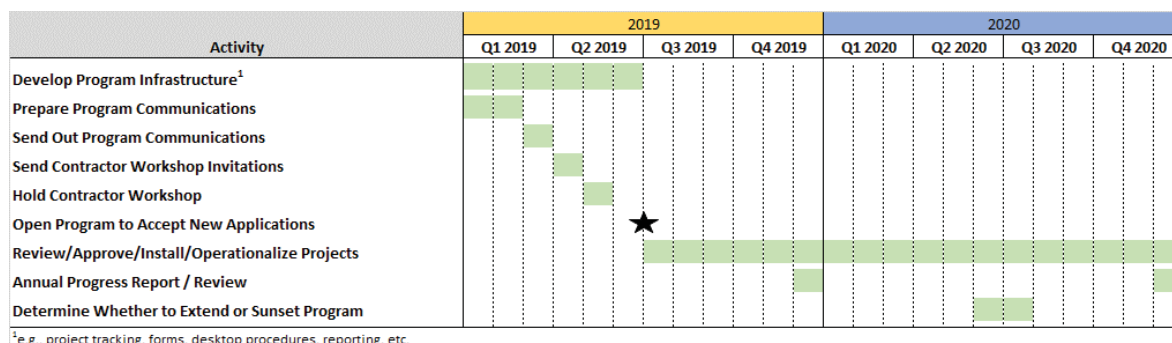
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<sup>81</sup> Currently the Multifamily Affordable Solar Housing Virtual Net Metering Successor Tariff (MASH-VNM-ST) requires customers to receive service on a TOU rate schedule. The proposed SOMAH program provides an exemption from TOU, but SCE proposes to require SOMAH MFD owners to be on a TOU rate to receive Energy Storage system incentives from this program to maximize customer and grid benefits.

<sup>82</sup> Depending on the TOU rate, SCE's On-Peak and Mid-Peak periods occur from 4-9 p.m. or 5-8 p.m.



**Figure V-2**  
**MASH / SOMAH Energy Storage Program Schedule**



#### 4. Program budget

SCE proposes a total budget of \$9.816 million for the MASH/SOMAH Energy Storage program. Table V-14 shows SCE's estimated costs for 2019-2020 across the following five budget categories: (1) Labor – Program Management Office (PMO), (2) Labor – Measurement & Verification (M&V), (3) Labor – Marketing and Outreach (M&O), (4) Incentives, and (5) Marketing Non-Labor. Each of the budget category estimates is explained in more detail in the subsections following the table.

**Table V-14**  
**Proposed MASH/SOMAH Energy Storage Program Budget<sup>83</sup>**

Budget Category	2019	2020	Total
Labor – PMO	\$122,663	\$125,509	\$248,172
Labor – M&V	\$30,666	\$31,377	\$62,043
Labor – M&O	\$15,333	\$15,689	\$31,021
Incentives	\$7,350,000	\$2,100,000	\$9,450,000
Non-Labor Marketing	\$15,000	\$10,000	\$25,000
<i>Total</i>	<i>\$7,533,661</i>	<i>\$2,282,575</i>	<i>\$9,816,236</i>

##### a) Labor – PMO

The budget for Labor-PMO covers the costs for overseeing and managing the program including the customer application process, tracking each project, coordination with internal and external

<sup>83</sup> Amounts are in 2019 dollars.



1 stakeholders, and incentive payment processing. SCE's Customer Distributed Resource Products  
2 (CDRP) group will act as the PMO for this program. CDRP is well-suited to administer this program  
3 based on its experience administering the California Solar Initiative, MASH, and SGIP programs.

4 SCE's estimate for Labor-PMO assumes incremental costs of \$248,172 for 0.80 Project Manager  
5 FTE's in 2019 and 2020 at a fully loaded cost rate of \$153,328 for 2019 and \$156,886 for 2020.

6 b) Labor – M&V

7 The budget for Labor-M&V covers the costs for resources to analyze actual program results and  
8 identify potential future improvements. SCE's estimate for Labor-M&V assumes incremental costs of  
9 \$62,043 for 0.20 Project Manager FTE's in 2019 and 2020 at a fully loaded cost rate of \$153,328 for  
10 2019 and \$156,886 for 2020.

11 c) Labor – M&O

12 The budget for Labor-M&O covers the costs for marketing and outreach to educate  
13 MASH/SOMAH customers about the availability and benefits of this new program. SCE will identify  
14 potential customers from MASH/SOMAH participants and will contact these customers to make them  
15 aware of the new program and benefits of taking service on TOU rates.

16 SCE's estimate for Labor-M&O assumes incremental costs of \$31,021 for 0.10 Project Manager  
17 FTE's in 2019 and 2020 at a fully loaded cost rate of \$153,328 for 2019 and \$156,886 for 2020.

18 d) Incentives

19 The budget for Incentives covers the costs for the rebates paid to building owners participating  
20 on the program. SCE's estimate for Incentives assumes rebates paid at the amounts specified in the  
21 stepped incentive structure with the budget for Steps 1-3 exhausted in 2019 and the budget for Step 4  
22 exhausted in 2020. SCE's incentive budget allocations at each step assume storage projects will size  
23 batteries to discharge for 3.5 hours each day (3 hours to cover on-peak periods and an additional 30  
24 minutes to account for battery performance degradation over ten years). With 1 MW of storage projects  
25 allocated in each step, this equates to 3.5 MWh of storage capacity that will be incentivized at each step.  
26 At \$0.75/Wh in Step 1, incentives are calculated to reach \$2,635,000. At \$0.70/Wh in Step 2, incentives

are calculated to reach \$2,450,000. At \$0.65/Wh in Step 3, incentives are calculated to reach \$2,275,000. At \$0.60/Wh in Step 4, incentives are calculated to reach \$2,100,000.

e) Marketing Non-Labor

The budget for Marketing Non-Labor covers the costs for marketing materials such as program fact sheets and mailers. SCE's estimate for Marketing Non-Labor assumes 60 percent of marketing costs will be required in 2019 for creative development, production and printing with the remaining 40 percent in 2020 for any minor updates and additional production and printing. The \$25,000 budget is based on marketing material required in previous similarly sized programs for SCE.

**5. Compliance with AB 2868 Statutory Requirements**

a) Minimize Overall Costs and Maximize Overall Benefits

The majority of SCE's current TOU rates have on-peak time periods occurring primarily in the afternoon hours either from 12-6 pm or 2-8 pm. With the rapid increase of renewable energy sources an imbalance of load to energy is emerging (*i.e.*, the "duck curve").<sup>84</sup> To mitigate the impacts of excess energy production during the day, SCE is developing new TOU rates with on-peak time periods beginning in the evening hours when solar generation is decreasing and typical customer electricity use is highest. These new TOU rates also shift off-peak time periods to morning and afternoon hours when solar generation is highest. The first of these new TOU rates have on-peak (summer) and mid-peak (winter) time periods from 4-9pm or 5-8pm with off-peak (summer) and super-off peak (winter) time periods from 8am to 4pm or 5pm. These new rates not only provide benefits to the grid, but also increase the economic viability of using energy storage to shift clean energy from the time of generation to the actual time that most customers need it, mitigating the effects of the duck curve.

Low-income customers living in multifamily housing with solar installed as part of the MASH or SOMAH programs receive benefits from VNEM. In this case, all solar generation is exported to the grid as it is generated. The monetary benefits are calculated based on the price of electricity at the time

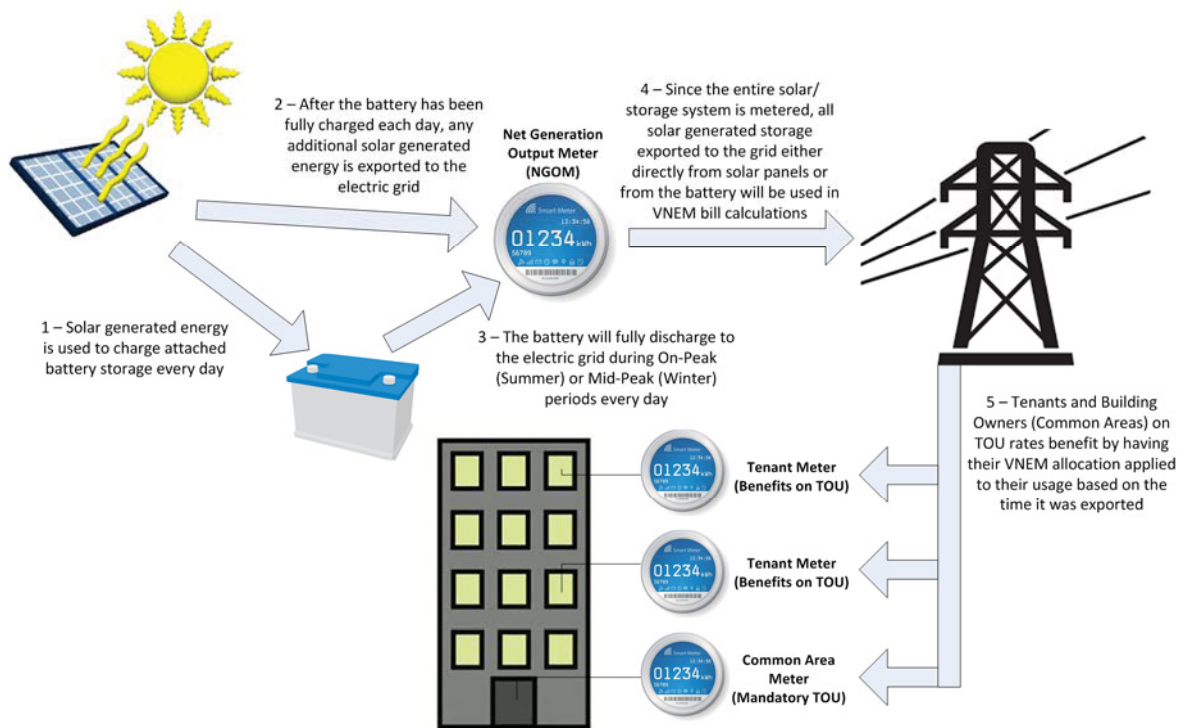
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<sup>84</sup> CAISO Fast Facts, *What the Duck Curve Tells Us About Managing a Green Grid* (2016), [https://www.caiso.com/Documents/FlexibleResourcesHelpRenewables\\_FastFacts.pdf](https://www.caiso.com/Documents/FlexibleResourcesHelpRenewables_FastFacts.pdf).

1 of export and shared among tenants and common areas at a set ratio (the average ratio for SCE MASH  
2 projects is approximately 80 percent tenant and 20 percent common area). Adding storage at these  
3 locations combined with the new TOU rates will result in attached battery storage being charged during  
4 the day at off-peak or super off-peak times and discharged at on-peak or mid-peak times when building  
5 owner, tenant and grid benefits are maximized.

6 Based on SCE's TOU-D Option 5-8pm rate, adding storage will result in an increased customer  
7 benefit of \$0.26/kWh during the summer months (instead of exporting solar generation at \$0.23/kWh  
8 during off-peak times, solar generation will be stored and exported during on-peak times at \$0.49/kWh)  
9 and \$0.13/kwh during the winter months (i.e. \$0.17/kWh during super off-peak times and \$0.30/kWh  
10 during mid-peak times). Any additional solar generation after the battery is fully charged will be  
11 exported to the electric grid at the current TOU rate. Assuming a similar differential between on-peak  
12 and off-peak rates is maintained when new commercial TOU rates are available (most MASH projects  
13 are at buildings on commercial TOU rates for electricity used by common areas) then these benefits will  
14 be shared between tenants and building owners based on the VNEM allocation. Figure V-3 shows how  
15 building owners and tenants will obtain benefits from the MASH/SOMAH Energy Storage program.

**Figure V-3**  
**Flow of Benefits on MASH/SOMAH Energy Storage Program**



b) Reduce Dependence on Petroleum, Meet Air Quality Standards, and Reduce GHG Emissions

SCE's proposal reduces dependence on petroleum and other fossil fuels, helps to meet air quality standards, and reduces emissions of GHGs. The MASH/SOMAH Energy Storage program is designed to charge batteries from zero emission resources (solar generation) and discharge to export this clean energy at times when the electric grid may be relying on fossil-fueled generation. Specifically, by incentivizing MFD owners to install energy storage systems that enable them to "save" energy produced by their solar systems for use at a time when solar cannot be produced, the MASH/SOMAH Energy Storage program will reduce the emission of GHGs caused by the burning of fossil fuels and will improve air quality.

1 c) Not Unreasonably Limit or Impair the Ability of Non-Utility Enterprises to  
2 Market and Deploy Energy Storage Systems

3 This program will provide incentives for MASH/SOMAH customers to install energy storage.  
4 Through this mechanism, the customer chooses the vendor of their choice and negotiates costs with the  
5 vendor to provide the energy storage equipment and installation. Therefore, the program does not limit  
6 or impair, and in fact it enhances, participation of non-utility enterprises.

7 d) Prioritize Public Sector and Low-Income Customers

8 SCE's proposed MASH/SOMAH Energy Storage program targets multifamily affordable  
9 housing locations where low-income customers reside.

10 e) Energy Storage Management System

11 SCE's proposed MASH/SOMAH energy storage program does not require a sophisticated  
12 energy storage management system because TOU rates will be the primary factor in determining when  
13 the battery is charged or discharged. Because on-peak/mid-peak and off-peak/super off-peak time  
14 periods remain the same year round on SCE's new TOU rates, once the battery is programmed to charge  
15 during off-peak periods and discharge during on-peak periods the benefits to building owners, tenants  
16 and the grid can be realized on a daily basis.

17 f) Remaining Statutory Requirements

18 SCE's MASH/SOMAH Energy Storage proposal also meets the following additional  
19 requirements from AB 2868:

- 20 • SCE's proposed MASH/SOMAH energy storage systems will be connected behind the meter to  
21 SCE's distribution system;
- 22 • SCE will require MFD building owners to maintain the MASH/SOMAH energy storage systems  
23 for ten years; and
- 24 • SCE's 4 MW program does not propose more than 25 percent of the AB 2868 MW for behind  
25 the meter installations.

1           **6. Cost Recovery & Cost Allocation**

2                   a)       **Cost Recovery through Public Purpose Programs Rate Component**

3           Consistent with D.14-10-045 and D.16-01-032 and AB 2868, SCE proposes to recover the costs  
4 of the incentive payments to customers on SCE's MASH or SOMAH programs through the Public  
5 Purpose Programs Rate Component. D.14-10-045 lays out a framework<sup>85</sup> for cost recovery by storage  
6 grid domain that considers a project's ownership, regulatory function, and whether connection is  
7 through the transmission or distribution network. The framework then clarifies the format of the cost  
8 recovery request and what balancing accounts and rate components will apply.

9           SCE proposes a program to provide incentives to customers on SCE's MASH or SOMAH  
10 programs to install BTM energy storage systems. The benefits of discharging the storage system during  
11 TOU peak times each day are expected to result in bill savings for all tenants and common areas, similar  
12 to energy efficiency customer programs. Therefore, cost recovery through the Public Purpose Rate  
13 Component is requested and consistent with D.14-10-045.

14                   b)       **Energy Storage Balancing Account**

15           SCE requests authorization to establish a new balancing account through a Tier One advice  
16 letter to record both the authorized funding and actual incentives paid to help ensure that payments do  
17 not exceed authorized program funding limits. SCE will seek review of the costs recorded to this  
18 balancing account in its annual April 1 ERRR Review proceeding.

19           **7. Description of Any Further Approvals Necessary**

20           If the Commission approves SCE's proposal, SCE will file a Tier Two advice letter with a more  
21 detailed plan for program implementation, including any necessary new tariffs or tariff modifications, 90  
22 days following issuance of a final decision.

23  

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<sup>85</sup> D.14-10-045, pp. 27-28.

1 **E. Make Ready Incentive for Public Sector Customer Program to Further Deployment of**  
2 **Customer-Connected Energy Storage**

3 The purpose of this program was to provide incentives for “Make Ready” infrastructure to  
4 support 5 MW of Public Sector energy storage projects. Energy storage projects typically involve  
5 expenses in addition to the actual energy storage equipment, such as design and engineering, permitting,  
6 wiring, and other balance of system (BOS) costs. By providing incentives that cover the majority of  
7 these “Make Ready” costs, Public Sector customers would be more likely to invest in energy storage.

8 SCE previewed its Make Ready program proposal at the December 15, 2017 workshop.  
9 A workshop participant raised a question about whether SCE's proposed incentives under this program  
10 could be combined with SGIP incentives. SCE has since investigated this issue and has verified that the  
11 SGIP rules would not permit customers to receive ratepayer-funded incentives from another source  
12 without reducing the SGIP incentive dollar for dollar.<sup>86</sup> The Make Ready program concept likely makes  
13 economic sense to potential public sector customers only if combined with SGIP incentive dollars.  
14 Therefore, SCE has determined that it will not pursue its Make Ready concept at this time.

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<sup>86</sup> Self-Generation Incentive Program, *2017 Self-Generation Incentive Program Handbook*, Section 3.2.6, p. 30 (2017), <https://www.selfgenca.com/documents/handbook/2017>.

1 VI.

2 **OTHER ENERGY STORAGE ACTIVITIES**

3 **A. Enhancements to Existing Generation Facilities**

4 As described in Chapter III, Section C.2.c, SCE successfully enhanced two of its gas turbine  
5 peaker plants with energy storage in 2016. By integrating battery storage with its peakers, SCE  
6 increased the operational flexibility of its existing resources, and added spinning reserves without fuel  
7 burn. The batteries also provided additional instantaneous MW to the bulk power supply. In an effort to  
8 identify new and beneficial use cases for energy storage, SCE is evaluating whether energy storage  
9 could enhance any additional existing generation facilities in a manner that will provide customer  
10 benefits. For example, SCE is considering adding energy storage to its Big Creek hydroelectric facility.  
11 The envisioned BESS would help improve the speed and precision with which the plant responds to  
12 CAISO's automatic generator control setpoints. SCE is also investigating whether additional EGTs,  
13 similar to those that SCE commissioned in response to the Aliso Canyon Resolution, would provide  
14 system and customer benefits. If SCE pursues these innovative use cases for energy storage, it will seek  
15 approval from the Commission through the next GRC or a separate application.

16 **B. DESI Pilots**

17 Three DESI pilots (DESI 1, 2, & 3) were approved in the 2015 GRC. DESI 1 was installed in  
18 2015 and approved for eligibility in SCE's 2016 Energy Storage Procurement Plan. SCE's 2018 GRC<sup>87</sup>  
19 described DESI 2 and DESI 3, and proposed ten additional energy storage pilots as an extension of  
20 DESI for a total of 12 pilots deployed with target operational dates in 2017 through 2020. The proposed  
21 pilots are capital projects that are aligned with the guiding principles of the Energy Storage Procurement  
22 Framework, which permits utility ownership of up to 290 MW.<sup>88</sup> The pilots will be deployed on SCE's  
23 distribution system in a reliability function to support various capabilities, including but not limited to:  
24 enhancing distribution and sub-transmission reliability, integrating DERs, demonstrating dual-use

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<sup>87</sup> A.16-09-001, SCE-02, Vol. 11 pp. 34-43.

<sup>88</sup> See D.13-10-040, pp. 51-52.



1 (serving both a grid reliability function and participating in the market), fostering microgrids, and  
2 spurring electrification of transportation.

3 Two of the 12 pilots, DESI 2 and Mercury 4, are described in Section III as Existing Eligible  
4 Energy Storage that has already been procured and will be operational in Q2 2018. For the remaining  
5 ten pilots, SCE is working to define project requirements and awaiting a Decision on the 2018 GRC.

6 **C. Energy Storage to Facilitate Transition to Low Carbon Future**

7 As described throughout SCE's testimony, SCE continues to work to meet the targets established  
8 pursuant to AB 2514, and procure energy storage to meet state reliability needs. Beyond these  
9 immediate needs, SCE is also examining the role that energy storage can play to facilitate the state's  
10 achievement of a clean energy future.<sup>89</sup> Given the state's low carbon goals, the planning process for  
11 large-scale energy storage investments should start now. SCE will continue to evaluate how, and in  
12 what way, energy storage can contribute to the state's low carbon future. If SCE determines that  
13 additional use cases, projects, or proposals can benefit customers and the State's energy policy goals,  
14 SCE will present those ideas to the Commission and stakeholders through an appropriate public filing.  
15 SCE looks forward to working with the Commission and stakeholders to develop policies that will  
16 support the State's clean energy goals while maintaining reliability and cost savings for customers.

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<sup>89</sup> For additional information on SCE's vision for how the state can achieve its environmental goals to reduce the threat of climate change and improve public health related to air quality, please see SCE's recently released whitepaper. Southern California Edison, *The Clean Power and Electrification Pathway: Realizing California's Environmental Goals* (November 2017), available at <https://www.edison.com/content/dam/eix/documents/our-perspective/g17-pathway-to-2030-white-paper.pdf>.

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VII.

**SAFETY CONSIDERATIONS**

**A. Energy Storage Safety Considerations**

With respect to utility procurement of energy storage resources, responsibility of safe operations falls on the owner/operator of the facility. However, SCE includes provisions in its contracts to require third-party sellers to engage in safe practices and comply with all applicable laws, permit requirements and applicable California utility industry standards.<sup>90</sup>

The safety of energy storage systems is addressed at the point of interconnection to SCE's distribution grid. Whether third-party or utility-owned, energy storage systems must adhere to Rule 21 or the Wholesale Distribution Access Tariff (WDAT) in order to interconnect. The majority of safety standards and certifications have been incorporated into both tariffs. Both the WDAT and Rule 21 allow SCE the ability to review energy storage equipment prior to installation, during pre- and post-commercial operation testing. As part of this commercial testing, SCE requires third-party inspection reports, commissioning test plans and checklists, as well as commissioning reports. SCE engineers provide technical review of the commission testing. Furthermore, as part of the interconnection tariff process, an Electrical Inspection Release from the appropriate local authority having jurisdiction is required to verify that the work on the customer's side of the meter meets requirements of the National Electric Code and all applicable local codes and ordinances.

Pursuant to D.16-01-032, SCE collaborated with other energy storage safety working group members and developed a Commission energy storage safety inspection protocol<sup>91</sup> for Safety and Enforcement Division inspectors to use based on expertise from the utilities, codes and standards development organizations, energy storage developers, and other interested parties. SCE will continue

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<sup>90</sup> See e.g., Section 8.01(a) of SCE's Energy Storage RFO *pro formas*, as referenced in SCE's Opening Comments on the Draft Workshop Reports for Energy Storage, R.15-03-011, pp. 3-4. See also contract information section at pp. X-Y of this Application for additional details.

<sup>91</sup> Defined as high-level guidelines. See D.16-01-032, pp. 54-55.

1 to participate in the energy storage safety working group to refine the energy storage safety protocol as  
2 technology develops and matures as needed.<sup>92</sup>

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<sup>92</sup> For additional details regarding the Commission's energy storage safety checklist, please refer to California Public Utilities Commission, *SED Safety Inspection Items for Energy Storage* (February 2017), [http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Safety/Risk\\_Assessment/ESS%20Inspection%20Guidelines.doc](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Safety/Risk_Assessment/ESS%20Inspection%20Guidelines.doc).

## **Appendix A**

### **Table with Details on 2018 Eligible Storage Resources**

Project name	Eligible biennial procurement cycle	Online date (expected or actual)	Project type	Point of interconnection	Capacity (MW)	Energy content (MWh)	Location (city)	Location (zip code)	Procurement proceeding	Procurement mechanism	Status of project	Expected operational life (years)	Primary application of project	Secondary application of project	Technology manufacturer	Project owner	Project operator	Operational requirements met (grid optimization, renewable integration, or GHG reduction)
Distribution Energy Storage Integration ("DESI") 2	2018	4/30/2018	Lithium-ion battery	Distribution	1.4	3.7	Santa Ana, CA	92704	2015 General Rate Case (D.15-11-021)	RFP	Execution	10	Distribution reliability	CAISO Market Participation	NECES	SCE	SCE	Grid optimization
Mercury 4	2018	4/30/2018	Lithium-ion battery	Distribution	2.8	5.6	Lancaster, CA	93536	2018 General Rate Case (A.16-09-001)	RFP	Execution	10	Renewable integration	N/A	NECES	SCE	SCE	Renewable integration
Pomona Battery Storage (AltaGas)	2018	12/31/2016	Lithium-ion battery	Distribution	20	80	Pomona, CA	91768	Resolution E-4804	ACES RFO	Achieved Commercial Online Date	10	Market function	N/A	Various	AltaGas	AltaGas	Grid Optimization, Renewable Integration, GHG Reduction
Grand Johanna BESS (Powin)	2018	1/13/2017	Lithium-ion battery	Distribution	2	8	Irvine, CA	92606	Resolution E-4804	ACES RFO	Achieved Commercial Online Date	10	Market function	N/A	Various	Powin	Powin	Grid Optimization, Renewable Integration, GHG Reduction
Mira Loma BESS A	2018	12/30/2016	Lithium-ion battery	Distribution	10	40	Ontario, CA	91752	Resolution E-4791	ACES RFP	Achieved Commercial Online Date	20	Market function	N/A	Tesla	SCE	SCE	Grid Optimization, Renewable Integration, GHG Reduction
Mira Loma BESS B	2018	12/30/2016	Lithium-ion battery	Distribution	10	40	Ontario, CA	91752	Resolution E-4791	ACES RFP	Achieved Commercial Online Date	20	Market function	N/A	Tesla	SCE	SCE	Grid Optimization, Renewable Integration, GHG Reduction
Grapeland EGT	2018	12/30/2016	Lithium-ion battery	Transmission	10	4.3	Rancho Cucamonga, CA	91739	Resolution E-4791	Bilateral	Achieved Commercial Online Date	20	Market function	N/A	GE	SCE	SCE	Grid Optimization, Renewable Integration, GHG Reduction
Center EGT	2018	12/30/2016	Lithium-ion battery	Transmission	10	4.3	Norwalk, CA	90650	Resolution E-4791	Bilateral	Achieved Commercial Online Date	20	Market function	N/A	GE	SCE	SCE	Grid Optimization, Renewable Integration, GHG Reduction
SGIP	2018	Before 12/31/2018	Various	Customer	96	various	Various	Various	D.11-12-030	Various	Various	10	peak demand reduction	N/A	Various	Various	Various	Grid Optimization, GHG Reduction
PLS	2018	Before 12/31/2019	Various	Customer	5.5	Information not collected from customers	Various	Various	D.14-04-045	Various	Various	20	peak demand reduction	N/A	Various	Various	Various	Grid Optimization, GHG Reduction

**Appendix B**  
**Witness Qualifications**

**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF GARRY L. CHINN**

Q. Please state your name and business address for the record.

A. My name is Garry L. Chinn, and my business address is 3 Innovation Way, Pomona, California 91768.

Q. Briefly describe your present responsibilities at the Southern California Edison Company.

A. I am a Manager for Electric System Planning within Transmission and Distribution (T&D). In this position, I am responsible for managing a group of power system engineers in assessing the electric system and developing transmission facilities to ensure the performance of SCE's bulk power system is in compliance with reliability standards.

Q. Briefly describe your educational and professional background.

A. In 1991, I received a Bachelor of Science degree in electrical & electronic engineering from California State University, Sacramento. I also earned a Master of Science degree in electrical engineering from the University of Southern California in 1994. I became a registered professional electrical engineer with the State of California in 1995. Since 1991, I have held positions related to the planning of the transmission system with the Los Angeles Department of Water & Power, Metropolitan Water District of Southern California and SCE. I have over fifteen years of service with SCE, all within transmission planning.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony in this proceeding is to sponsor portions of Exhibit SCE-01, entitled *Testimony of Southern California Edison Company in Support of Its 2018 Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

Q. Was this material prepared by you or under your supervision?

A. Yes, it was.

1 Q. Insofar as this material is factual in nature, do you believe it to be correct?

2 A. Yes, I do.

3 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
4 judgment?

5 A. Yes, it does.

6 Q. Does this conclude your qualifications and prepared testimony?

7 A. Yes, it does.



**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF MAURO DRESTI**

Q. Please state your name and business address for the record.

A. My name is Mauro Dresti, and my business address is 2244 Walnut Grove Avenue, Rosemead, California 91770.

Q. Briefly describe your present responsibilities at the Southern California Edison Company (SCE).

A. I am currently a senior manager in the Innovation, Development, & Controls Solutions Development Group within SCE's Customer Programs and Services Department. As such, my team is responsible for executing customer side studies and pilots. This includes responsibility for the Charge Ready electric vehicle charging pilot and future Charge Ready Demand Response Pilot, the Third Party Smart Thermostat Demand Response study and program, and the MASH/SOMAH + Storage AB 2868 incentive program proposed in this instant application. I also manage a group that oversees Energy Efficiency demonstrations and pilots.

Q. Briefly describe your educational and professional background.

A. I hold a Bachelor of Science Degree in Electrical Engineering from Oakland University, Rochester, Michigan and a Technical Masters of Business Administration Degree from the University of Phoenix, Diamond Bar, California. In 1986, I started working at SCE as a metrology engineer supporting the San Onofre Nuclear Generating Station. From the late 80's to 1998 I held several positions at SCE ranging from design engineer within the Shop Services and Instrumentation Division, to program manager in various program development groups under Customer Service. In 1998, I left SCE and held product development and management positions at several companies until 2011. In 2011, I returned to SCE as the program manager of Emerging Markets and Technology. In 2013, I was promoted to a senior manager of new program development for the mass market segment. In 2016, I attained my current position. I have not previously testified before the California Public Utilities Commission.

Q. What is the purpose of your testimony in this proceeding?

1 A. The purpose of my testimony in this proceeding is to sponsor portions of Exhibit SCE-01,  
2 entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy*  
3 *Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

4 Q. Was this material prepared by you or under your supervision?

5 A. Yes, it was.

6 Q. Insofar as this material is factual in nature, do you believe it to be correct?

7 A. Yes, I do.

8 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
9 judgment?

10 A. Yes, it does.

11 Q. Does this conclude your qualifications and prepared testimony?

12 A. Yes, it does.  
13

**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF JASON EDWARDS**

Q. Please state your name and business address for the record.

A. My name is Jason Edwards, and my business address is 2244 Walnut Grove Avenue, Rosemead, CA, 91770.

Q. Briefly describe your present responsibilities at Southern California Edison Company.

A. I am currently the principal manager of Portfolio Valuation and Analytics in the Energy Procurement and Management department. I have management responsibility on valuation for all of SCE's procurement efforts, including RFOs and bilateral negotiations. I am also responsible for providing analytic support for operations, including position management, commodity trading and risk management, among others.

Q. Briefly describe your educational and professional background.

A. I hold a master's degree in Applied Statistics, and undergraduate degrees in Applied and Pure Mathematics. I have been in the energy industry for approximately ten years. Before entering the energy industry, I held various positions in accounting, including the position of assistant controller at my previous firm.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony in this proceeding is to sponsor Exhibit SCE-01, entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

Q. Was this material prepared by you or under your supervision?

A. Yes, it was.

Q. Insofar as this material is factual in nature, do you believe it to be correct?

A. Yes, I do.

1 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
2 judgment?

3 A. Yes, it does.

4 Q. Does this conclude your qualifications and prepared testimony?

5 A. Yes, it does.

**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF GUS FLORES**

Q. Please state your name and business address for the record.

A. My name is Gus Flores, and my business address is 2244 Walnut Grove Avenue, Rosemead, California 91770.

Q. Briefly describe your present responsibilities at the Southern California Edison Company.

A. I currently hold the title of Principal Manager, Origination in the Energy Procurement and Management organization. My responsibilities include running competitive solicitations for conventional and renewable power products, combined heat and power, energy storage, transmission, emissions products, and resource adequacy. I also oversee negotiations of bilateral contracts as well as master agreements that establish trading relationships between SCE and our counterparties.

Q. Briefly describe your educational and professional background.

A. I received a Bachelor of Science degree in Mathematics/Economics from the University of California, Los Angeles and a Master of Business Administration degree from the University of Southern California. I joined SCE in 2002 and have held several staff and management roles including senior energy trader, originator, and Principal Manager of the Power, Gas, and Emissions trading groups. Prior to joining SCE I was employed by Constellation NewEnergy between 1998 and 2002 where I held various positions focusing on developing and pricing products to offer retail customers in the newly deregulated California market.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony in this proceeding is to sponsor Exhibit SCE-01, entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

Q. Was this material prepared by you or under your supervision?

A. Yes, it was.

1 Q. Insofar as this material is factual in nature, do you believe it to be correct?

2 A. Yes, I do.

3 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
4 judgment?

5 A. Yes, it does.

6 Q. Does this conclude your qualifications and prepared testimony?

7 A. Yes, it does.

**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF LOIC GAILLAC**

Q. Please state your name and business address for the record.

A. My name is Loic Gaillac, and my business address is 2244 Walnut Grove Avenue, Rosemead, California 91770.

Q. Briefly describe your present responsibilities at the Southern California Edison Company.

A. I'm managing the Distributed Energy Resource (DER) Demonstrations group for the Integrated Innovation & Modernization division of Southern California Edison (SCE). SCE's DER activities include the demonstration and validation of various technologies in the laboratory and through demonstrations and pilot programs, in cooperation with manufacturers, government and industry organizations. Technologies considered include energy storage, fuel cell, photovoltaic system and grid-connected transportation.

Q. Briefly describe your educational and professional background.

A. I have 20 years of experience managing projects to evaluate advanced energy storage for stationary applications including residential energy storage, distributed system for grid support and large energy storage system, as well as energy storage for transportation applications such as plug-in electric vehicles. Prior to working at SCE, I was employed by PSA ("Peugeot Société Anonyme", a French automaker). I have a B.S. degree in Electrical Engineering and a M.S. degree in Power Electronics and Control Systems from a leading graduate school in France.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony in this proceeding is to sponsor portions of Exhibit SCE-01, entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

Q. Was this material prepared by you or under your supervision?

A. Yes, it was.

1 Q. Insofar as this material is factual in nature, do you believe it to be correct?

2 A. Yes, I do.

3 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
4 judgment?

5 A. Yes, it does.

6 Q. Does this conclude your qualifications and prepared testimony?

7 A. Yes, it does.



**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF MARK E. IRWIN**

Q. Please state your name and business address for the record.

A. My name is Mark E. Irwin, and my business address is 2244 Walnut Grove Avenue, Rosemead, California 91770.

Q. Briefly describe your present responsibilities at the Southern California Edison Company.

A. I currently lead the management and settlement of the company's energy contracts.

Q. Briefly describe your educational and professional background.

A. I received a Bachelor's of Science degree in Business with an emphasis in Accounting from the University of Southern California and a Masters of Business Administration majoring in Finance from the Wharton School at the University of Pennsylvania. My professional experience includes 9 years at Southern California Edison with 5 years in Advanced Technology and 4 years leading renewable contract origination. I also have 16 years of experience in the unregulated power generation business with roles in business development and asset management.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony in this proceeding is to sponsor portions of Exhibit SCE-01, entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

Q. Was this material prepared by you or under your supervision?

A. Yes, it was.

Q. Insofar as this material is factual in nature, do you believe it to be correct?

A. Yes, I do.

Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best judgment?

A. Yes, it does.

1 Q. Does this conclude your qualifications and prepared testimony?

2 A. Yes, it does.

**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF BRYAN LANDRY**

Q. Please state your name and business address for the record.

A. My name is Bryan Landry and my business address is 8631 Rush Street, Rosemead, California 91770.

Q. Briefly describe your present responsibilities at the Southern California Edison Company.

A. I am a Senior Advisor of Modeling, Forecasting and Economic Analysis in the Strategy, Integrated Planning, and Performance organizational unit of SCE. In this role, I am responsible for developing planning frameworks for distributed energy resources to meet grid needs.

Q. Briefly describe your educational and professional background.

A. I completed a Bachelor's of Arts degree in Economics, from Louisiana State University in 1996 with a minor in History, and an emphasis in economic development. I completed a Master's of Science in Geography from Louisiana State University in 2006 with an emphasis in economic geography. I completed a Doctorate of Philosophy from Arizona State University in Geography in 2013 with an emphasis in energy geography. I completed coursework from Stanford University in the fields of Smart Grid design, distributed energy resource economics, distribution planning, battery cell design, and solar cell design. Prior to my current role, I served for seven years, as a project manager, as an employee and consultant, in the Customer Programs and Services organizational unit at SCE. Prior to SCE, I had over 10 years of experience working in disciplines such as engineering, consulting, and project management for a variety of for profit and not for profit organizations and clients.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony in this proceeding is to sponsor the portions of Exhibit SCE-01, entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

1 Q. Was this material prepared by you or under your supervision?  
2 A. Yes, it was.  
3 Q. Insofar as this material is factual in nature, do you believe it to be correct?  
4 A. Yes, I do.  
5 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
6 judgment?  
7 A. Yes, it does.  
8 Q. Does this conclude your qualifications and prepared testimony?  
9 A. Yes, it does.

**SOUTHERN CALIFORNIA EDISON COMPANY  
QUALIFICATIONS AND PREPARED TESTIMONY  
OF JESSICA LIM**

Q. Please state your name and business address for the record.

A. My name is Jessica Lim, and my business address is 1515 Walnut Grove Avenue, Rosemead, California 91770.

Q. Briefly describe your present responsibilities at the Southern California Edison Company (SCE).

A. I am the Principal Manager of Product Management in the Customer Programs and Services division of SCE. In this role, I am responsible for a subset of a portfolio of Customer Service programs, rates, and services focused on Customer Distributed Resources Programs, as well as Pricing Implementation.

Q. Briefly describe your educational and professional background.

A. I completed a Bachelor's degree in Administrative Studies from U.C. Riverside in 1992 with emphasis in business administration and marketing. I completed the Masters of Science in Leadership and Management program through the University of La Verne in January 2013. I have worked at SCE for approximately 12 years in Customer Service. Prior to my current function, which I described above, I was the Principal Manager of Customer Engagement in the Customer Programs and Services division of SCE. In this role, I was responsible for SCE's marketing communications and the digital customer experience associated with Customer Service programs, rates, and services. I have also served as the Principal Manager of Planning, Performance, and Integration in the Customer Service Operating Division. Prior to that position, I was the Manager of Customer Strategy in Customer Experience and Management for approximately five years. Prior to SCE, I had over 10 years of experience in business working in disciplines such as advertising, marketing, and e-commerce for a variety of profit and not-for-profit organizations and clients.

1 Q. What is the purpose of your testimony in this proceeding?

2 A. The purpose of my testimony in this proceeding is to sponsor portions of Exhibit SCE-01,  
3 entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy*  
4 *Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

5 Q. Was this material prepared by you or under your supervision?

6 A. Yes, it was.

7 Q. Insofar as this material is factual in nature, do you believe it to be correct?

8 A. Yes, I do.

9 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
10 judgment?

11 A. Yes, it does.

12 Q. Does this conclude your qualifications and prepared testimony?

13 A. Yes, it does.

**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF MATTHEW D. SHERIFF**

Q. Please state your name and business address for the record.

A. My name is Matthew David Sheriff, and my business address is 2244 Walnut Grove Avenue, Rosemead, California 91770.

Q. Briefly describe your present responsibilities at the Southern California Edison Company (SCE).

A. I am currently Senior Advisor in SCE's CPUC Revenue Requirements and Tariffs Department. In this role, I am primarily responsible for Cost Recovery support and also preparation of SCE's Consolidated Revenue Requirements showing and forecasting SCE's system average rates.

Q. Briefly describe your educational and professional background.

A. I graduated from the University of Maryland Baltimore County in May of 1995 with a Bachelors of Arts Degree in Political Science. For the next seven years I worked at several venture-backed new media startups in marketing and business development roles. In August of 2004, I earned a Master of Business Administration (MBA) from the University of Southern California. Shortly after graduation, I worked for Raytheon Inc. as a Senior Financial Analyst responsible for balance sheet and cash flow forecasting. In April of 2007, I joined the Southern California Edison Company as Senior Financial Analyst in the Financial Planning and Analysis group of the Treasurer's department. In this role as a financial subject matter expert, I prepared cost-effectiveness analysis in support of applications before the CPUC, including SmartConnect, SONGS High Pressure Turbine, and the sale of SCE's interest in Four Corners. I was promoted to Senior Project Manager while in this department. I started in my current position in January of 2014 and in early 2018 my title changed to Senior Advisor. I have previously testified before the California Public Utilities Commission.

Q. What is the purpose of your testimony in this proceeding?

1 A. The purpose of my testimony in this proceeding is to sponsor the portions of Exhibit SCE-01,  
2 entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy*  
3 *Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

4 Q. Was this material prepared by you or under your supervision?

5 A. Yes, it was.

6 Q. Insofar as this material is factual in nature, do you believe it to be correct?

7 A. Yes, I do.

8 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
9 judgment?

10 A. Yes, it does.

11 Q. Does this conclude your qualifications and prepared testimony?

12 A. Yes, it does.



**SOUTHERN CALIFORNIA EDISON COMPANY**  
**QUALIFICATIONS AND PREPARED TESTIMONY**  
**OF BRANDON TOLENTINO**

Q. Please state your name and business address for the record.

A. My name is Brandon Tolentino, and my business address is 14799 Chestnut St., Westminster, CA 92683.

Q. Briefly describe your present responsibilities at the Southern California Edison Company.

A. I am the Principal Manager of the Grid Modernization group within the Integrated Innovation and Modernization organization which oversees the integration of new technologies onto the grid and provides technical support to regulatory activities such as the Distribution Resources Plan (DRP) and Integrated Distributed Energy Resources (IDER) proceedings.

Q. Briefly describe your educational and professional background.

A. I received my Bachelor's Degree in Electrical Engineering from California Polytechnic State University, San Luis Obispo and I am a registered Professional Engineer in the State of California. I started my career at Pacific Gas & Electric Company (PG&E) in 2002 focusing on Distribution System Planning. I continued in that capacity until 2008, when I began working at Southern California Edison in the Distribution Engineering group, where I worked in various engineering and manager positions focused on Distribution System Planning and Operations Support. In 2015, I began working as a senior manager in the Integrated Grid Strategy & Engagement group focused on providing engineering support on regulatory proceedings such as the DRP and IDER. I became the Principal Manager of the Grid Modernization group in 2016.

Q. What is the purpose of your testimony in this proceeding?

A. The purpose of my testimony in this proceeding is to sponsor portions of Exhibit SCE-01, entitled *Testimony of Southern California Edison Company in Support of Its 2018 Energy Storage Procurement and Investment Plan*, as identified in the Table of Contents thereto.

Q. Was this material prepared by you or under your supervision?

A. Yes, it was.

1 Q. Insofar as this material is factual in nature, do you believe it to be correct?

2 A. Yes, I do.

3 Q. Insofar as this material is in the nature of opinion or judgment, does it represent your best  
4 judgment?

5 A. Yes, it does.

6 Q. Does this conclude your qualifications and prepared testimony?

7 A. Yes, it does.

**Appendix C**

**SCE's Pro Forma Contract for the LESMS Design Build Transfer RFP**

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**TURNKEY ENGINEERING, PROCUREMENT,  
CONSTRUCTION AND MAINTENANCE  
AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA EDISON COMPANY,  
a California corporation**

**AND**

---

**[supplier] a [state] [entity type]**

Dated as of \_\_\_\_\_, 20\_\_

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**TURNKEY ENGINEERING, PROCUREMENT,  
CONSTRUCTION AND MAINTENANCE  
AGREEMENT**

THIS TURNKEY ENGINEERING, PROCUREMENT, CONSTRUCTION AND MAINTENANCE AGREEMENT (this “Agreement”), dated as of the date set forth on the cover page hereof (“Effective Date”), is by and between Southern California Edison Company, a California corporation (hereinafter called “Company”) and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter called “Contractor”).

WITNESSETH:

WHEREAS, Company wishes to construct, own and operate a *[description of project (e.g., utility scale, electric battery energy storage system)]*, to be built on the Property Site (as hereinafter defined) located in the Job Sites identified in the Statement of Work;

WHEREAS, Contractor has represented that it is experienced and qualified in providing technical assistance, licensing, engineering, procurement, supply, assembly, management, construction, installation, commissioning, start-up, testing, and operations and maintenance services, and that it possesses the requisite expertise and resources to complete the Work (as hereinafter defined);

WHEREAS, Contractor has agreed to provide, through itself or through Subcontractors and Vendors (as such terms are hereinafter defined), such Work on a “turn-key” basis for the Contract Price (as hereinafter defined); and

WHEREAS, Contractor has agreed to guarantee the timely and proper completion of the Work in strict accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Contractor hereby agree as follows:

**ARTICLE I.  
GENERAL MATTERS**

**1.1 DEFINED TERMS.**

As used in this Agreement, including the exhibits and other attachments hereto, each of the following terms shall have the meaning assigned to such term as set forth below:

“**Affiliate**” means, in relation to any Person, any other Person: (i) which directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (ii) which directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (iii) which has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (iv) who either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word “controls” means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

“**After-Tax Basis**” means, with respect to any indemnity payment to be received by any Person, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Person so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all Federal, state, and local income Taxes required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (taking into account

any reduction in such income Taxes resulting from Tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the highest generally applicable Federal, state, and local income tax rates applicable to the Person for whom the calculation is being made for all relevant periods, and shall take into account the deductibility of state and local income taxes for Federal income tax purposes. The foregoing calculations shall be made by the recipient Person's third party tax advisors.

**"Agreement"** has the meaning set forth in the first paragraph hereof, as same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

**"Applicable Laws"** means any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Government Authority with jurisdiction over the ESS, the Job Site, the performance of the Work or other services to be performed under the Contract Documents.

**"Applicable Permits"** means any and all permits, clearances, licenses, authorizations, consents, filings, exemptions or approvals from or required by any Government Authority that are necessary for the performance of the Work, including the clearances, licenses, authorizations, consents, filings, exemptions and approvals listed on Exhibit G and Exhibit H.

**"Availability Guarantee"** has the meaning set forth in Section 11.3(a).

**"Availability Guarantee Fee"** has the meaning set forth in Section 7.1.

**"Availability Guarantee Period"** has the meaning set forth in Section 11.3(a).

**"Availability Liquidated Damages"** has the meaning set forth in Section 11.3(b).

**"Base Warranty Period"** means the two (2) year warranty period following the Substantial Completion Date.

**"BES Cyber System"** means one or more BES Critical Cyber Assets (as the term is defined by the North American Electric Reliability Corporation, as it may be amended from time to time) logically grouped by Company to perform one or more reliability tasks to promote or maintain the reliable operation of the electric grid and/or Company's Bulk Electric System. These include facilities, systems, and equipment, which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the electric grid and/or Company's Bulk Electric System.

**"BES Cyber System Information"** means information about the BES Cyber System that could be used to gain unauthorized access or pose a security threat to the BES Cyber System. Examples of BES Cyber System Information may include, but are not limited to, security procedures or security information about BES Cyber Systems, physical access control systems, and electronic access control or monitoring systems that are not publicly available and could be used to allow unauthorized access or unauthorized distribution; collections of network addresses; and network topology of the BES Cyber System.

**"Bulk Electric System" or "BES"** means the electrical generation resources, transmission lines, interconnections with neighboring transmission systems, and associated equipment, generally operated at voltages of 100 kV or higher. This definition is subject to exemptions and inclusion of resources, lines and other elements that do not fit the foregoing definition, if such exemptions or inclusions are required by energy industry regulatory agencies including the North American Electric Reliability Corporation and the Federal Energy Regulatory Commission. If Contractor is involved in a NERC CIP Project or any Project involving BES Cyber System Information, Contractor must be familiar with such exemptions and inclusions.

**"Builder's Risk Policy"** has the meaning set forth in Section 9.1(h).

**“Business Day”** means any day other than a Saturday, Sunday or a legal holiday in the State of California where the Work is performed.

**“Change In Law”** means, with respect to any portion of the Work performed in the State of California, the enactment, adoption, promulgation, modification, repeal, decision, determination, interpretation or administration after the date of this Agreement of any Applicable Law of any Government Authority of the State of California or the modification after the date of this Agreement of any Company Permit issued or promulgated by any Government Authority of the State of California that establishes requirements that materially and adversely affect Contractor’s costs or schedule for performing the Work; provided, however, that a change in any state or local Tax law or any other law imposing a Tax, duty, levy, impost, fee, royalty, or charge for which Contractor is responsible hereunder shall not be a Change In Law pursuant to this Agreement.

**“Change Order”** has the meaning set forth in Section 6.1(a).

**“Changes”** has the meaning set forth in Section 6.1(a).

**“Company”** means Southern California Edison Company, a California corporation (as referenced in the opening paragraph hereof) and includes its legal successors and those assignees as may be designated by Company, in writing, pursuant to the terms of this Agreement.

**“Company Caused Delay”** means a material delay in Contractor’s performance of the Work, which is actually and demonstrably caused directly and solely by Company’s failure to perform any covenant of Company hereunder (other than by exercise of rights under this Agreement, including the exercise by Company of the right to have defective or nonconforming Work corrected or re-executed). Contractor expressly acknowledges and agrees that any delay that is due in part to Contractor’s action or inaction is not a Company Caused Delay.

**“Company’s Computing Systems”** means Company’s and its Affiliates’ respective Information Systems, computers, servers, applications, files, electronic mail, electronic equipment, wireless devices, databases, data storage and other data resources, and Company-sponsored connections to the internet communications network. Company’s Computing Systems is referred to as “Edison’s Computing Systems” in the Cyber Policy.

**“Company’s Computing Systems”** means Company’s and its Affiliates’ respective Information Systems, computers, servers, applications, files, electronic mail, electronic equipment, wireless devices, databases, data storage and other data resources, and Company-sponsored connections to the internet communications network. Company’s Computing Systems is referred to as “Edison Data” in the Cyber Policy.

**“Company’s Environmental Health and Safety Handbook”** means “Southern California Edison ENVIRONMENTAL, HEALTH & SAFETY HANDBOOK FOR CONTRACTORS” as described in Section 3.5.

**“Company Data”** means any non-public information whether or not designated by Company or its representatives as Confidential Information at the time it is provided or made available to Contractor, and all information Contractor derives from such information. Company Data is referred to as “Edison Data” in the Cyber Policy.

**“Company Event of Default”** has the meaning set forth in Section 15.6.

**“Company Permits”** means the Applicable Permits listed on Exhibit H.

**“Company Personal Information”** means any information in the possession or under the control of Company or any of its Affiliates, or that is furnished or made available by Company or any of its Affiliates to Contractor, that identifies, an individual, or that relates to, describes, or is capable of being associated with, an identifiable individual (whether Company employee, customer, or otherwise),

including his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, medical information or health insurance information, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, combination of online account user name/ID and password and/or security question together with the answer, or information regarding the individual's electric energy usage or electric service, including service account number, electricity demand (in kilowatts), monthly billed revenue, credit history, rate schedule(s), meter data, or number or type of meters at a premise. Company Personal Information is referred to as "Edison Personal Information or 'EPI'" in the Cyber Policy.

**"Company Representative"** means the Company employee designated to direct, coordinate, expedite, inspect, and approve the Project.

**"Company Taxes"** has the meaning set forth in Section 4.5.

**"Computing System"** means Company's computers, servers, applications, files, electronic mail, electronic equipment, wireless devices, databases, data storage and other data resources, and Company-sponsored connections to the internet communications network.

**"Confidential Information"** has the meaning set forth in Section 18.3(a).

**"Contract Documents"** means the Purchase Order, this Agreement and all exhibits incorporated into this Agreement (as set forth in Section 1.3), as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

**"Contract Price"** means the "Contract Price" set forth in the Purchase Order, which shall equal the sum of the EPC Price, the Extended Warranty Fee, the Availability Guarantee Fee and the Post-Warranty Maintenance Fee, and which sum shall only be subject to adjustment in accordance with the Contract Documents.

**"Contractor"** means \_\_\_\_\_, a \_\_\_\_\_ [ENTITY NAME & TYPE] (as referenced in the opening paragraph hereof), and includes its legal successors and permitted assignees as may be accepted by Company, in writing, pursuant to the terms of the Contract Documents.

**"Contractor Equipment"** means all of the equipment, materials, apparatus, structures, tools, supplies and other goods provided and used by Contractor and its Subcontractors and Vendors, whether owned, leased, rented or hired, for performance of the Work but which is not intended to be incorporated into the ESS.

**"Contractor Event of Default"** has the meaning set forth in Section 15.1.

**"Contractor Insurance Policies"** has the meaning set forth in Section 9.1.

**"Contractor Permits"** means all Applicable Permits, except those Applicable Permits specifically listed on Exhibit G.

**"Contractor Personnel"** means Contractor's and its Subcontractor's employees, temporary personnel, day laborers, agents and representatives involved in the performance of Contractor's obligations under the Agreement.

**"Contractor Project Engineering Manager"** means the person designated by Contractor as having the responsibility, authority and supervisory power of Contractor for the engineering and design of the ESS.

**"Contractor Project Manager"** means the person designated by Contractor as having the centralized responsibility, authority and supervisory power of Contractor for design, procurement, construction, installation, testing and start-up of the ESS, as well as all matters relating to the administration of the provisions of the Contract Documents.

“**Contractor Records**” has the meaning set forth in Section 18.15(a).

“**Contractor Site Manager**” means an employee of Contractor, working under the supervision of the Contractor Project Manager, located at the Job Site on a daily basis.

“**Contractor Taxes**” has the meaning set forth in Section 3.28(a).

“**Contractor’s Representative**” has the meaning given in Section 3.19(e).

“**Corporate Communications Department**” means the company group responsible for control of the use of Company’s name and intellectual property whose specific title may be updated from time to time. Any questions about the identity of this group should be addressed to the Company Representative or Procurement Agent.

“**Corporate Communications Department**” means the Company manager responsible receiving asbestos notifications whose specific title may be updated from time to time. Any questions about the identity of this manager should be addressed to the Company Representative or Procurement Agent.

“**Corporate Security Department**” means the Company group responsible for physical security whose specific title may be updated from time to time. Any questions about the identity of this group should be addressed to the Company Representative or Procurement Agent.

“**Credit Rating**” means with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by the Ratings Agencies.

“**Critical Energy Infrastructure Information**” has the meaning set forth in 18 C.F.R. §388.113(c)(1), and includes specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that: (1) relates details about the production, generation, transmission, or distribution of energy; (2) could be useful to a person planning an attack on critical infrastructure; (3) is exempt from mandatory disclosure under the Freedom of Information Act; and (4) gives strategic information beyond the location of the critical infrastructure.

“**Critical Milestones**” means the Milestones set forth in Exhibit A.

“**Critical Path**” means a determination of the Project Schedule specifically illustrating those unique activities and durations that must be completed in sequence to complete the Work, which sequence shall be determined using critical path method precedence networking techniques applied by Contractor and approved by Company.

“**Cyber Incident**” means (a) any unauthorized access to, use of, or other breach in the security of Contractor’s Information Systems that contain Company Data, or any other accidental or unauthorized access to, interception of, acquisition, disclosure, use, modification, loss, damage, or destruction of Company Data; or (b) if caused by the action or inaction of Contractor, any unauthorized access to, use of, or other breach in the security of Company’s Computing Systems, or any unauthorized access to, interception of, disclosure or acquisition of Company Data caused by the action or inaction of Contractor, Contractor’s Affiliates or Subcontractors.

“**Cyber Policy**” has the meaning as set forth in Section 13.1(a)(16).

“**Damages**” has the meaning set forth in Section 16.1.

“**Day**” or “**day**” means a period of twenty-four (24) consecutive hours from 12:00 midnight (Pacific time), and shall include Saturdays, Sundays and all holidays except that in the event a time period set forth in the Contract Documents expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.

“**Defect**” means, any designs, engineering, software, drawings, components, tools, Equipment,



installation, construction, workmanship or Work that (i) do not conform to the terms of the Contract Documents, (ii) are not of uniform good quality, free from defects or deficiencies in design, application, manufacture or workmanship, or that contain improper or inferior workmanship, or (iii) would adversely affect (A) the performance of the ESS under anticipated operating conditions, (B) the continuous safe operation of the ESS during the ESS's design life or (C) the structural integrity of the ESS. The term "Defects" shall neither be construed to include material damage caused by Company's acts or omissions to the extent arising out of abuse, misuse, negligence in operation, maintenance and repair (unless such act or omission was taken or made at the direction of Contractor) or failure to follow Prudent Industry Practices, nor shall the term "Defects" be construed to include ordinary wear and tear. Anything to the contrary notwithstanding, the Parties agree that Work shall be considered to be defective if it does not conform to the usual and customary standards expected of experienced engineering, procurement, construction, installation and maintenance professionals in the major electric high power battery storage industry.

**"Dispute"** has the meaning set forth in Section 17.1.

**"Dollars"** or **"USD"** means lawful currency of the United States of America.

**"Drawings"** means (i) all specifications, calculations, designs, plans, drawings, engineering and analyses, and other documents which determine, establish, define or otherwise describe the scope, quantity, and relationship of the components of the ESS, including the structure and foundation thereof, and (ii) all technical drawings, operating drawings, specifications, shop drawings, diagrams, illustrations, schedules and performance charts, calculations, samples, patterns, models, operation and maintenance manuals, piping and instrumentation diagrams, underground structure drawings, conduit and grounding drawings, lighting drawings, conduit and cable drawings, electric one-line's, electric schematics, connection diagrams and technical information of a like nature, prepared or modified by Contractor or any of its Subcontractors or Vendors, all of which are required to be delivered by Contractor, or any Subcontractor or Vendor, from time to time under the Contract Documents to Company which illustrates any of the Equipment or any other portion of the Work, either in components or as completed.

**"EPC Price"** means the maximum sum payable by Company as stated in Section 7.1 for all labor, all materials, all equipment, and the warranty, which sum shall be due in accordance with the terms of the Contract Documents as consideration for the timely performance of the Statement of Work to be performed by or through Contractor on a "turn-key" basis in order to complete the Project (excluding the Post-Warranty Maintenance Fee, Extended Warranty Fee and Availability Guarantee Fee), all in strict accordance with the terms of the Contract Documents, which maximum sum is guaranteed by Contractor not to exceed the amount set forth in Section 7.1, which sum shall only be subject to adjustment in accordance with the Contract Documents.

**"ESS"** means the electric energy storage system, including Software, to be located on the Property Site as more particularly described in the Statement of Work.

**"Equipment"** means all of the equipment, materials, apparatus, structures, tools, supplies, goods and other items provided by Contractor and its Subcontractors and Vendors (or by Company pursuant to Section 3.1) that are installed or incorporated into the ESS or otherwise form or are intended to form part of the Work or the ESS (other than Contractor Equipment).

**"Equipment Tests"** means the tests further described in Exhibit A.

**"Exempt Equipment"** has the meaning set forth in Section 3.28(b).

**"Extended Warranty Period"** means the period specified in the Purchase Order following the Base Warranty Period during which Contractor shall maintain the ESS in accordance with the Warranty Requirements.

**"Extended Warranty Fee"** has the meaning set forth in Section 7.3.

**“Final Acceptance”** shall mean that all of the following have occurred: (i) Substantial Completion has been achieved; (ii) the Tests have been successfully completed and any Defects found have been corrected; (iii) the ESS has been manufactured and installed in accordance with the Contract Documents and the Drawings; (iv) the Final Plans accurately reflect the ESS as manufactured and installed; (v) the ESS is capable of being operated in a safe and proper manner in accordance with Applicable Laws and Applicable Permits (excluding for this purpose all variances or waivers of any Applicable Permits); (vi) Contractor shall have delivered to Company all operation and maintenance manuals and Final Plans in accordance with the Statement of Work; (vii) no defective or incomplete portions of the Work exist; (viii) either (A) all items on the Punch List have been completed or (B) the Parties have reached an agreement pursuant to Section 10.3(c) and Contractor has paid all amounts due to Company pursuant thereto; (ix) all of Contractor’s cleanup and related obligations have been completed; (x) any and all Liens in respect to the ESS, the Contract Documents, the Equipment, the Job Site or any fixtures, personal property or Equipment included in the Work created by, through or under, or as a result of any act or omission of, Contractor or any Subcontractor, Vendor or other Person providing labor or materials in connection with the Work shall have been released or bonded in form satisfactory to Company (provided that Contractor’s Lien Waiver and Release, in substantially the form of Exhibit K attached hereto from Contractor and Subcontractor’s Certificate for Final Waiver of Liens in the form of Exhibit K-1 attached hereto from each Substantial Subcontractor and Substantial Vendor, shall be given concurrently with Final Acceptance and payment of amounts due by Company in connection therewith); (xi) Contractor shall have paid all Liquidated Damages due under the Contract Documents, if any; (xii) all other outstanding obligations of Contractor hereunder that Company has notified Contractor of shall have been satisfied; and (xiii) Company has approved of and signed the Final Acceptance Certificate pursuant to Section 10.5.

**“Final Acceptance Certificate”** means the certificate issued by Company indicating that Final Acceptance has been achieved by Contractor.

**“Final Acceptance Date”** means the date of achievement of Final Acceptance as indicated in the Final Acceptance Certificate pursuant to Section 10.5.

**“Final Plans”** means final Drawings and final specifications, as revised to reflect the changes during construction, and shall include, as relevant, as-built drawings, piping and instrumentation diagrams, underground structure drawings, electric one-lines, electric schematics and connection diagrams.

**“Fitch”** means Fitch Ratings Ltd. or its successor.

**“Force Majeure Event”** has the meaning set forth in Section 14.1.

**“Government Authority”** means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

**“Guaranteed Completion Date”** means the date specified in the Statement of Work, which Contractor guarantees that the Project shall achieve Substantial Completion, as such date may be extended in accordance with the terms hereof.

**“Hazardous Material”** means any hazardous or toxic chemicals, hazardous materials, hazardous waste, hazardous constituents, hazardous or toxic or radioactive substances or petroleum products (including crude oil or any fraction thereof), defined or regulated as such under any Applicable Laws.

**“Indemnified Person”** has the meaning set forth in Section 16.3(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.3(a).

**“Information Security Department”** means the Company group responsible for information security whose specific title may be updated from time to time. Any questions about the identity of this group should be addressed to the Company Representative or Procurement Agent.

**“Information Systems”** means any information system(s) including internet services, computer systems, hardware, software, peripherals, data networks, broadband or telecommunications systems, servers, wireless communication systems, high-speed connectivity, cabling and other information or communication systems, regardless of the method of access to any of the foregoing, which may include but not be limited to via APIs, integration scripts, passwords, tokens or keys.

**“Initial Site Mobilization”** means the first instance when any of Contractor or its Subcontractors’ or Vendors’ Labor or other representatives is present on any of the Property Site after Company has issued the Notice to Proceed.

**“Intellectual Property Rights”** has the meaning set forth in Section 3.32(a).

**“Job Site”** means the Property Site and any other areas where Contractor may temporarily obtain care, custody and control, use, easement or license for purposes directly, indirectly or incidentally related to performance of, or as an accommodation to, the Work.

**“Labor”** means the workforce of the relevant Person, including its staff and employee and non-employee and skilled and unskilled workers.

**“Letter of Credit”** has the meaning set forth in Section 11.6.

**“Lien”** means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest, including any mechanics lien, supplier lien or stop payment notice.

**“Liquidated Damages”** has the meaning set forth in Section 11.4(a).

**“Maintenance Requirements”** has the meaning set forth in Exhibit R.

**“Major Equipment”** means either (a) any item or component of the Project, the proper or efficient function of which affects the ESS’s performance or reliability, or (b) without duplication, the long lead-time items of Equipment and critical items of Equipment listed on Exhibit I, which must be procured by, or through, Contractor at a certain stage of the Work in order to ensure the timely completion of the Project.

**“Major Manufacturers”** means the manufacturers of the Major Equipment.

**“Milestone Payment”** has the meaning set forth in Section 7.1.

**“Milestones”** means the activities, events and targets, or combination thereof, set forth in Exhibit A.

**“Moody’s”** means Moody’s Investor Services, Inc. or its successor.

**“NERC CIP Project”** means Work to be performed by Contractor that (1) requires Company to comply with cybersecurity regulations imposed by the North American Reliability Corporation or by the Federal Energy Regulatory Commission, and (2) is identified by Company as such in the Contract Documents.

**“Notice to Proceed”** means the notice given from Company to Contractor directing Contractor to commence performance of the Work.

**“Notice to Proceed Date”** has the meaning set forth in Section 5.2.

**“Operating Spare Parts”** are each manufacturer’s recommended spare parts list for the Equipment as described in Section 3.30(a).

**“Operating Year”** means each twelve (12) month period commencing (i) in the case of the first



Operating Year, on the Substantial Completion Date and (ii) thereafter, at 00:00 on the day following the completion of the immediately preceding Operating Year.

**“Parties”** means collectively, Company and Contractor.

**“Party”** means individually, Company or Contractor.

**“Performance Requirements”** means the performance requirements set forth in Exhibit D that the ESS must meet in order to achieve Substantial Completion.

**“Performance Tests”** means actions taken as described in Article X and Exhibit D to verify the performance of the Project, including whether the Performance Requirements have been achieved.

**“Person”** means an individual, partnership, corporation, limited liability company, company, business trust, joint stock company, trust, unincorporated association, joint venture, Government Authority or other entity of whatever nature.

**“Post-Warranty Letter of Credit”** has the meaning set forth in Section 11.6(c).

**“Post-Warranty Maintenance Period”** means the period specified in the Purchase Order following the Warranty Period during which Contractor shall maintain the ESS in accordance with the Maintenance Requirements.

**“Pre-Existing Hazardous Material”** means Hazardous Material that existed on or in the Property Site prior to Initial Site Mobilization by Contractor.

**“Post-Warranty Maintenance Fee”** has the meaning set forth in Section 7.1.

**“Procurement Agent”** means the procurement agent for Company or its Affiliate, as the case may be, responsible for a Purchase Order.

**“Prohibited Items”** means any pyrotechnics, explosives, firearms, weapons, alcoholic beverages, illegal drugs, or any items associated with those items.

**“Project”** means the ESS and all equipment, services and utilities related thereto which must be completed as part of the Statement of Work, all of which Contractor guarantees shall be designed, constructed, assembled, erected, commissioned, started, tested and otherwise completed by, or through, Contractor in strict accordance with the provisions of the Contract Documents.

**“Project Schedule”** means the schedule for completion of the Work developed and maintained by Contractor, provided to Company, including all scheduled activities and durations required to perform the Work attached hereto as Exhibit A and provided electronically to Company in the format and frequency required in Exhibit A, or any time upon Company’s request.

**“Property Site”** means that certain piece of real property located in such places as may be identified by Company in the Notice to Proceed.

**“Prudent Industry Practices”** means the practices generally followed by the United States electric utility industry with respect to design, construction, operation, and maintenance of utility scale, electric battery energy storage system facilities (including the engineering, operating and safety practices generally followed by the electric utility industry).

**“Punch List”** has the meaning set forth in Section 10.4(b).

**“Purchase Order”** means that certain Purchase Order issued by Company and accepted by Contractor, as of the date hereof, as the same may be amended, supplemented or modified from time to time in accordance with the terms thereof.

**“Qualified Institution”** means either (A) a commercial bank or financial institution (that is not an Affiliate of Contractor or Contractor’s Parent Guarantor) organized under the laws of the United States

or a political subdivision thereof or (B) a U.S. branch office of a foreign bank, with respect to both entities identified in clause (A) and (B), having (i) (a) Credit Ratings of at least "A-" by S&P, "A-" by Fitch and "A3" by Moody's, if such entity is rated by the Ratings Agencies; (b) if such entity is rated by only two of the three Ratings Agencies, a Credit Rating from two of the three Ratings Agencies of at least "A-" by S&P, if such entity is rated by S&P, "A-" by Fitch, if such entity is rated by Fitch, and "A" by Moody's, if such entity is rated by Moody's; or (c) a Credit Rating of at least "A-" by S&P or "A3" by Moody's, or "A-" by Fitch if such entity is rated by only one Ratings Agency, and (ii) having shareholder equity (determined in accordance with generally accepted accounting principles) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS).

**"Quality Assurance Program"** means Contractor's effective quality assurance programs for the Work which program (i) shall be acceptable to Company and (ii) shall be consistent with all of the requirements contained in the Statement of Work.

**"Ratings Agency"** means any of S&P, Moody's, and Fitch (collectively the 'Ratings Agencies').

**"Reference Rate"** means the lesser of (i) the prime rate of interest for United States of America financial institutions as reported from time to time by *The Wall Street Journal* (New York Edition) plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law.

**"Request for Payment"** means the written requests from Contractor to Company for payment hereunder.

**"Safe and Secure Workplace Policy"** means the safe and secure workplace policy of Company.

**"Schedule Liquidated Damages"** has the meaning set forth in Section 11.2(a) and Exhibit Q.

**"Statement of Work"** means the services and work to be provided, or caused to be provided, by or through Contractor under the Contract Documents for the Contract Price, as more particularly described in Exhibit A, as the same may be amended from time to time in accordance with the terms hereof, and which Statement of Work includes all licenses, technical assistance, engineering, assembly, construction management, construction, services, labor, materials, equipment, operations and management that are indicated on, inferable from, or incidental to, the Contract Documents or the Drawings prepared in connection with the Contract Documents or that are likely to be required in accordance with Applicable Law, or that are properly and customarily included within the general scope and magnitude of the work incorporated into similar projects having similar performance requirements, all in order to produce a Project that complies with the requirements of the Contract Documents.

**"Software"** means the object code Versions of any applications, programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation, in whatever form or media, including the tangible media upon which such applications, programs, operating system software, computer software languages, utilities, other computer programs and Related Documentation are recorded or printed, together with all corrections, improvements, updates and releases thereof.

**"Special Conditions"** means when Contractor has access to or use of (1) any Company Data maintained in electronic form or (2) Company's Computing Systems.

**"Subcontractor"** means any contractor, constructor or material man who performs any portion of the Statement of Work other than Contractor.

**"Substantial Completion"** shall mean that all of the following have occurred for the Project: (i) the Work has been completed in accordance with the Technical Specifications so that the ESS is ready for safe, efficient and reliable operation, including the completion of: (1) the Equipment for the Project has been installed with the required connections and controls; (2) all remaining electrical systems have been checked out and are ready for operation; (3) all electrical continuity and ground fault tests and all mechanical tests and calibrations have been completed; and (4) all instrumentation is operational and has

been calibrated in accordance with manufacturers' standards and guidelines and, where possible, loop checked.; (ii) the ESS has been interconnected with the Company's electrical system in accordance with the Statement of Work and the Company's interconnection requirements; (iii) the ESS is capable of being operated safely, reliably and normally in accordance with the requirements of all Applicable Laws, Applicable Permits and the Contract Documents at all operating conditions and modes specified in the Statement of Work (although minor portions of the Work not essential to its safe, normal and continuous operation may remain to be completed); (iv) the Performance Tests have been satisfactorily completed and the Performance Requirements have been achieved; (v) Contractor has provided Company with copies of all Contractor Permits; and (vi) Contractor shall have paid all Schedule Liquidated Damages due under the Contract Documents, if any.

**"Substantial Completion Date"** means the actual date of achieving Substantial Completion as determined pursuant to Section 10.4(b).

**"Substantial Subcontractor"** means those Subcontractors listed on Exhibit J and any other Subcontractor whose contract or contracts (in the aggregate) with Contractor require payments by Contractor totaling at least one hundred thousand Dollars (\$100,000).

**"Substantial Vendor"** means those Vendors listed on Exhibit J and any other Vendor whose contract or purchase orders (in the aggregate) with Contractor require payments by Contractor of at least one hundred thousand Dollars (\$100,000).

**"Supplier Code of Conduct"** has the meaning set forth in Section 3.5.

**"S&P"** means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

**"Tax"** or **"Taxes"** shall mean all fees, taxes (including sales taxes, use taxes, stamp taxes, value-added taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible), levies, assessments, withholdings and other charges and impositions of any nature), plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any federal, state, local or foreign government or other taxing authority (including penalties or other amounts payable pursuant to subtitle B of Title I of ERISA).

**"Technical Specifications"** means the design basis for the ESS, engineering plans and other technical data and documentation, all as specified in Exhibit A.

**"Termination Payment"** has the meaning set forth in Section 15.3(b).

**"Test Notice"** has the meaning set forth in Section 10.1(b).

**"Tests"** means collectively, actions taken to verify the performance of the Project, including achievement of the Performance Requirements.

**"Vendor"** means any supplier, manufacturer or vendor of Equipment to Contractor or any Subcontractor.

**"Version"** means a version of the Software, as signified by the number to the left of the decimal point (i.e., a change in numbers to the left of the decimal point represents a new Version, such as Version 1.0 to Version 2.0). A new Version of the Software shall include cumulative functionality of all prior Versions provided to Company.

**"Warranty Period"** has the meaning set forth in Section 12.1(d).

**"Warranty Period Letter of Credit"** has the meaning set forth in Section 11.6(b).

**"Work"** has the meaning set forth in Section 3.1(a).

## 1.2 INTERPRETATION

Unless the context of the Contract Documents otherwise requires:

- (a) the headings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties, nor should they be used to aid in any manner to construe or interpret this Agreement;
- (b) the gender of all words used herein shall include the masculine, feminine and neuter and the number of all words shall include the singular and plural words;
- (c) the terms “hereof”, “herein” “hereto” and similar words refer to this entire Agreement and not to any particular Article, Section, Exhibit or any other subdivision of this Agreement;
- (d) references to “Article,” “Section” or “Exhibit” are to this Agreement unless specified otherwise;
- (e) reference to “this Agreement” (including any Exhibit hereto) or any other agreement, Exhibit, permit or document shall be construed as a reference to such agreement or document as the same may be amended, modified, supplemented or restated, and shall include a reference to any document which amends, modifies, supplements or restates, or is entered into, made or given pursuant to or in accordance with its terms;
- (f) references to any law, statute, rule, regulation, notification or statutory provision (including Applicable Laws, Applicable Permits and the Technical Specifications) shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (g) references to any Person shall be construed as a reference to such Person’s successors and permitted assigns; and
- (h) references to “includes,” “including” and similar phrases shall mean “including, without limitation.”

### 1.3 EXHIBITS.

The following exhibits are attached to and incorporated into and made a part of this Agreement:

- (a) Exhibit A - Statement of Work, to include:
  - 1. Project Schedule
  - 2. Milestone Payments Schedule
  - 3. Critical Milestones
  - 4. Requirements
  - 5. Technical Specifications
  - 6. Applicable Documents
- (b) Exhibit B – Form of Substantial Completion Certificate
- (c) Exhibit C - Form of Final Acceptance Certificate
- (d) Exhibit D – Performance Requirements
- (e) Exhibit E - Form of Contractor Certificate for Partial Waiver of Liens
- (f) Exhibit E-1 - Form of Subcontractor Certificate for Partial Waiver of Liens
- (g) Exhibit F - Form of Contractor Parent Guaranty

- (h) Exhibit G - Contractor Permits
- (i) Exhibit H - Company Permits
- (j) Exhibit I - Major Equipment
- (k) Exhibit J - Approved Subcontractors and Substantial Vendors
- (l) Exhibit K - Form of Contractor Certificate for Final Waiver of Liens
- (m) Exhibit K-1 - Form of Subcontractor Certificate for Final Waiver of Liens
- (n) Exhibit L - Form of Letter of Credit
- (o) Exhibit L-1 - Schedule to Letter of Credit
- (p) Exhibit M – Availability Guarantees and Availability Liquidated Damages
- (q) Exhibit N – DBE Subcontracting Commitment and Reporting Requirements
- (r) Exhibit Q – Schedule Liquidated Damages
- (s) Exhibit R – Maintenance Requirements
- (t) Exhibit S – Construction Maintenance Labor Agreement

#### 1.4 ORDER OF PRECEDENCE.

(a) In the event of conflicts among the terms of the Contract Documents, interpretations shall be based upon the following Contract Documents which are set forth in ranked order of precedence:

- (1) amendments, addenda or other modifications to the Contract Documents (including Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;
- (2) the Purchase Order;
- (3) this Agreement; and
- (4) the exhibits to this Agreement.

(b) In the event of conflicts among the Exhibits, interpretations shall be based on the following order of precedence:

- (1) Exhibit A – Statement of Work; and
- (2) The remaining Exhibits shall apply in alphabetical order.

In the event of a conflict among, or within, any other Contract Document(s) within any one of the levels set forth in the foregoing order of precedence, the more stringent requirements of such Contract Document(s) which are applicable to the obligations of Contractor shall take precedence over the less stringent requirements applicable thereto.

## **ARTICLE II. RETENTION OF CONTRACTOR**

#### 2.1 RETENTION OF CONTRACTOR.

Company hereby engages Contractor, and Contractor hereby agrees to be engaged by Company to perform the Work in accordance with the terms and conditions set forth herein.

#### 2.2 STATUS OF CONTRACTOR; NO PARTNERSHIP.

Contractor shall be an independent contractor with respect to any and all Work performed and to be performed under the Contract Documents. The Contract Documents shall not be interpreted or



construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act on behalf of, or to act as or be an agent or representative of, or to otherwise bind or obligate the other Party.

### 2.3 SUBCONTRACTORS AND VENDORS.

(a) Subject to the terms hereof, Contractor shall have the right to have any portion of the Work performed by a Subcontractor or Vendor qualified to perform such Work pursuant to written subcontracts or written purchase orders; provided that Contractor shall not be relieved from any liability or obligation under the Contract Documents. Except as otherwise expressly provided in the Contract Documents, Contractor shall be solely responsible for engaging, managing, supervising and paying all such Subcontractors and Vendors. Contractor shall require that all Work performed, and all Equipment provided by Subcontractors and Vendors are received, inspected and otherwise furnished in accordance with the Contract Documents, and Contractor shall be solely liable for all acts, omissions, liabilities and Work (including Defects therein) of such Subcontractors and Vendors. Company shall not have any obligation or liability to any Subcontractor or Vendor. Nothing in any contract, subcontract or purchase order with any Subcontractor or Vendor shall in any way diminish or relieve Contractor from any duties and obligations under the Contract Documents; and each such contract, subcontract and purchase order must provide that the rights thereunder are assignable to Company or its designees at any time without the prior consent of the applicable Subcontractor or Vendor. No Subcontractor or Vendor is intended to be or shall be deemed a third-party beneficiary of the Contract Documents.

(b) A list of approved Substantial Subcontractors and Substantial Vendors as of the date hereof, including a brief description of the Work to be performed by such Persons, is attached hereto as Exhibit J. Contractor may retain those Substantial Subcontractors or Substantial Vendors which are set forth on Exhibit J. Company shall have the right to approve, in advance in writing, each additional Substantial Subcontractor and Substantial Vendor in accordance with the terms hereof. Prior to retaining any additional Substantial Subcontractors or Substantial Vendors, Contractor shall notify Company in writing and provide it with such information as necessary to enable Company to evaluate each such proposed Substantial Subcontractor or Substantial Vendor for the portion of the Work proposed to be performed by it. Within fifteen (15) days after receipt of such information, Company shall advise Contractor if any proposed Substantial Subcontractor or Substantial Vendor is unacceptable. If Company fails to object to any proposed Substantial Subcontractor or Substantial Vendor within such fifteen (15) day period, Contractor may retain such Substantial Subcontractor or Substantial Vendor for the portion of the Work proposed. If Company objects in writing within such fifteen (15) day period to such proposed Substantial Subcontractor or Substantial Vendor, Contractor shall not retain such proposed Substantial Subcontractor or Substantial Vendor. Approval of any Substantial Subcontractor or Substantial Vendor under this paragraph shall only be for the portion of the Work so approved. Contractor hereby acknowledges and agrees that the review and/or acceptance of any subcontract by Company and the acceptance of the approved Substantial Subcontractors and Substantial Vendors shall not: (i) modify, in any way, the obligations of Contractor pursuant to the Contract Documents; or (ii) be raised as a claim or as a defense or counterclaim to any claim in connection with the Contract Documents.

(c) Contractor shall submit to Company a copy of each purchase order or agreement entered into with a Subcontractor or Vendor. Each purchase order or agreement shall show, where applicable, the Vendor's or Subcontractor's name, manufacturer's or service provider's name, materials type, model number, size, quantity and lists of the Equipment ordered, or description of services, as appropriate, and shall be submitted to Company when issued for purchase.

(d) Each subcontract and purchase order shall require such Subcontractor and Vendor to assume toward Contractor those terms and conditions of contracting which Contractor customarily includes in its subcontracts. At a minimum, all subcontracts shall require the Subcontractors to comply

with Applicable Laws and Applicable Permits, shall provide that Company has the right of inspection as provided hereunder and require such Subcontractors and Vendors to (i) be subject to the labor obligations hereunder as well as the safety and security provisions of the Contract Documents, (ii) provide guarantees and warranties with respect to its portion of the Work and the Equipment, (iii) provide certificates of insurance as set forth herein, and (iv) be subject to the dispute resolution procedures as required herein. All subcontracts shall preserve and protect the rights of Company, shall not prejudice such rights and shall require each Subcontractor to enter into similar agreements with other Subcontractors.

(e) Unless otherwise agreed in writing by the Parties, all Work performed by a Subcontractor shall be performed pursuant to a written agreement between Contractor and Subcontractor, which agreement shall (i) require the Subcontractors to comply with Applicable Laws and Applicable Permits, provide that Company has the right of inspection as provided hereunder and require such Subcontractors (A) be subject to the labor obligations hereunder as well as the safety and security provisions of this Agreement, (B) provide guarantees, warranties and remedies with respect to the portion of the Work that are at least as favorable to Company as Contractor's guarantees, warranties and remedies hereunder with respect to such Work, (C) provide certificates of insurance substantially the same as required herein, and (D) require that disputes be resolved through arbitration; (ii) prohibit each Subcontractor from entering into subcontracts regarding its portion of the Work; (iii) provide a limitation of liability of not less than one hundred percent (100%) of the agreement value; (iv) provide a remedy for breach of any warranties at least as favorable to Company as the remedy for breach of warranty obligations contained herein; and (v) expressly provide that Company may direct Contractor to assign at any time Contractor's rights and obligations under such agreement to Company or its designees without the prior written consent of the applicable Subcontractor and shall include the following language to make Company an express third-party beneficiary of such agreement:

"The parties hereto agree and acknowledge that the services/work/equipment to be provided hereunder by Subcontractor will be incorporated into the energy storage system located at each Site. As such, the parties expressly agree that Company is a third party beneficiary of the purchase order entitled, in its own name, to enforce the purchase order against Subcontractor without first having to proceed against Contractor."

### **ARTICLE III. CERTAIN OBLIGATIONS AND RESPONSIBILITIES OF CONTRACTOR**

#### **3.1 STATEMENT OF WORK; APPLICABLE STANDARDS.**

(a) Contractor shall (i) provide the services specified in the SOW and perform its other obligations hereunder, including completion of the Work and any warranty work hereunder, (ii) maintain the ESS in accordance with the Maintenance Requirements through the Post-Warranty Maintenance Period, and (iii) manage, supervise, inspect and furnish all Labor, Equipment, Contractor Equipment, products and services for the foregoing, all on a turnkey basis, in accordance with the Contract Documents, including the Project Schedule and Statement of Work, as the same may be modified from time to time in accordance with the terms hereof by a Change Order or other amendment hereto (all of the foregoing being collectively referred to in this Agreement as the "Work").

(b) Contractor shall perform the Work and turn the ESS over to Company in a manner that is (i) sufficient, complete and adequate in all respects necessary for the Project to successfully achieve Substantial Completion by the Guaranteed Completion Date; (ii) in conformance with professional standards and skill, expertise and diligence of design and construction professionals regularly involved in major power projects of similar size and nature to the Project; (iii) in compliance with the terms of the Contract Documents, the Technical Specifications, and all Applicable Laws and Applicable Permits; and (iv) approved as to form, use and content by public and private entities authorized to administer or enforce any building or construction code or standard whose approval of the final design of the ESS, or any portion

thereof, is necessary for the construction, operation or interconnection of the ESS.

(c) Contractor has included within the Contract Price the cost to complete the entire Statement of Work. Items need not be specifically listed in the Contract Documents or in Exhibit A in order to be deemed to be items within the Statement of Work. It is understood that Contractor is better qualified to list exclusions than Company is to list inclusions. Therefore, any item or service indicated on the Contract Documents, inferable therefrom, incidental thereto or required in accordance with any Applicable Law is to be considered as part of the Statement of Work. In addition, the Statement of Work includes all that should be properly included and all that would be customarily included within the general scope and magnitude of the Work in order to achieve Substantial Completion. As a result, Contractor hereby waives any and all claims for an increase in the Contract Price or an extension of the Guaranteed Completion Date based, in whole or in part, upon an assertion that any certain license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is beyond the Statement of Work when such license, technical assistance, engineering, assembly, construction, service, labor, material, equipment, operation or management is indicated in the Contract Documents, the Drawings or other instruments of service prepared in connection with the Contract Documents, inferable therefrom, incidental thereto, required in accordance with any Applicable Law, Applicable Permits or otherwise necessary in order to complete the Project in accordance with and subject to the requirements of the Contract Documents.

(d) Contractor acknowledges that this Agreement constitutes an obligation with a maximum Contract Price as specified in Section 7.1 to (i) engineer, design, procure, construct, test, install and start up through Substantial Completion a turnkey Project, complete in every detail, within the time and for the purpose designated herein, (ii) achieve Final Acceptance, (iii) maintain the ESS in accordance with the Maintenance Requirements through the Post-Warranty Maintenance Period, and (iv) comply with all of the warranty obligations set forth in this Agreement. References to the obligations of Contractor under this Agreement as being “turnkey” and performing the Work on a “turnkey basis” means that Contractor is obligated to supply all of the Equipment and design services, install all of the Equipment and supply all labor and to supply and perform all of the Work, in each case as may reasonably be required, necessary, incidental, or appropriate (whether or not specifically set forth in this Agreement) to complete the Work such that the Project satisfies the applicable terms, conditions, and Contractor’s obligations concerning the Performance Requirements and all other guarantees and requirements set forth in the Contract Documents, all for the Contract Price.

### 3.2 CONTROL AND METHOD OF THE WORK.

Subject to the terms hereof, Contractor shall be solely responsible for performing or causing to be performed the Work in accordance with the terms of the Contract Documents, and for all means, methods, techniques, sequences, procedures, and safety and security programs in connection with such performance. Contractor shall inform Company in advance concerning its plans for carrying out the Work.

### 3.3 COMPLIANCE WITH LAW.

(a) Contractor shall comply, and shall cause all of its Subcontractors, Vendors and Persons that it has a right to direct and who are engaged in the performance of any of the Work to comply with, all Applicable Laws, and Applicable Permits. Contractor shall perform the Work in a manner designed to protect the environment on and off the Job Site and minimize damage or nuisance to Persons and property of the public or others, including damage or nuisance resulting from pollution, noise or other causes arising as a consequence of methods of construction or operation of the ESS. In the event of a conflict between the provisions of any of the Contract Documents and the requirements of any Applicable Laws or Applicable Permits applicable to the obligations of Contractor under the Contract Documents, the requirements of such Applicable Laws or Applicable Permits shall take precedence over such provisions of



the Contract Documents. The provisions of this Section 3.3 shall not be construed as to limit Contractor's obligations and liabilities under Section 3.22.

(b) Rehabilitation Act and Vietnam Era Veterans Readjustment Assistance Act. Notwithstanding any provision to the contrary contained elsewhere in a Purchase Order (including this Agreement, terms and conditions, Scope of Work, specification, exhibit, attachment, or other document incorporated by reference) and to the extent the Equipment or Work are related to a government contract or subcontract, Contractor shall abide by the applicable government requirements, including 41 CFR 60-741.5(a) and 41 CFR 60-300.5(a). 41 CFR 60-741.5(a) prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. 41 CFR 60-300.5(a) prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

### 3.4 CERTAIN MATTERS PERTAINING TO JOB SITE.

Contractor acknowledges that prior to the execution of this Agreement, Contractor (i) has made a complete and careful examination of the Job Site and the surrounding areas, drawings and specifications; (ii) has made a complete and careful examination to determine the difficulties and hazards incident to the performance of the Work, including (A) the location of the Project, (B) the proximity of the Project to adjacent facilities and structures, (C) the conditions of the roads and waterways in the vicinity of the Job Site, including the conditions affecting shipping and transportation, access, disposal, handling and storage of materials, (D) the nature and character of the soil, terrain, and surface conditions of the Job Site, (E) the labor conditions in the region of the Job Site, (F) Applicable Laws and Applicable Permits, (G) rights of Company regarding the Job Site as set forth herein, (H) the local weather conditions based upon previous weather data, (I) the qualifications of all Subcontractors and Vendors, and (J) all other matters known or which a prudent contractor should know that might affect Contractor's performance under this Agreement or the design, engineering, procurement, construction, installation, start-up, demonstration and testing of the ESS; and (iii) has determined to Contractor's satisfaction the nature and extent of such difficulties and hazards.

### 3.5 ENVIRONMENTAL, HEALTH AND SAFETY REQUIREMENTS.

(a) The "Southern California Edison ENVIRONMENTAL, HEALTH & SAFETY HANDBOOK FOR CONTRACTORS" and the "SUPPLIER CODE OF CONDUCT," which may be updated from time to time, are located on Company's website at <http://www.sce.com/contractorhandbook> and <https://www.sce.com/Supplier Code of Conduct.pdf>, respectively, and incorporated herein by reference in their entirety. Contractor shall immediately notify the Company Representative if Contractor is unable to satisfy any of these requirements. With at least two (2) days' advance notice, Company may terminate this Agreement for cause and without liability or notice to Contractor if Contractor fails to satisfy any of these requirements within five (5) days' of being notified by Company. However, Company may immediately suspend the performance of the Work under this Agreement without notice if the Contractor violates any Federal, State, or local regulations or in the case of an emergency endangering life or property.

(b) Responsibility. Contractor shall be solely responsible for the safety and health of personnel and the prevention of industrial accidents and illness arising out of the performance of the Work.

### 3.6 SAFETY NOTIFICATIONS.

(a) Hazardous Substances and Material Safety Data Sheets.

(1) Prior to performing the Project Work, Contractor shall submit to the Company Representative a list of all Hazardous Materials to be used in performing the Work. Contractor shall maintain a list of all Hazardous Materials used at the Job Site. A material safety data sheet (“SDS”) shall be readily available from Contractor for each Hazardous Material at the Job Site for which a manufacturer has prepared an SDS. For purposes of this Agreement, “readily available” means that Contractor shall produce an SDS for review within fifteen (15) minutes of the SDS being requested by Company Representative or by an official from a Governmental Authority.

(2) SDSs shall comply with the Federal (29 CFR 1910.1200) and California (Title 8, CCR 5194) OSHA Hazard Communication Standards.

**(b) Container Labeling Requirements.**

(1) All containers of Hazardous Materials shall be properly labeled in accordance with Applicable Laws.

(2) These labels shall be clearly legible and capable of withstanding normal shipping and handling while maintaining legibility. Any container received at the Project Site without labels, or with illegible information, is subject to rejection and return to Contractor at Contractor’s expense.

(3) Labels of new chemical products shall be legible and bear the manufacturer’s label and shall include, at a minimum:

(4) Identification of any Hazardous Material;

(5) Appropriate hazard warnings; and

(6) Name and address of manufacturer, importer, or other responsible party.

(7) Manufacturer labels that are illegible shall be replaced with a label bearing the required data. Each container of Hazardous Materials not in the manufacturer’s original container shall be labeled, tagged or marked with the following information:

(8) Identification of the Hazardous Material; and

(9) Appropriate hazard warnings.

**(c) California’s Proposition 65 – Toxic Enforcement Act Requirements.**

(1) Contractor is hereby warned that exposure to chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm may occur at Company facilities. Upon request, Company shall make available to Contractor and its employees an SDS for such chemical exposures at the Job Site. Contractor shall inform the Contractor agents performing any of the Work at the Job Site of the above information.

(2) From the time that Contractor enters the Job Site or begins the Work until the time the Work is completed, Contractor shall issue warnings for exposure to chemicals that Contractor may use in connection with the Work or that Contractor is aware of, and that are known to the State of California to cause cancer, birth defects, or other reproductive harm to personnel at the Job Site. Contractor shall also warn the Company Representative of any exposure which may continue after Contractor has completed the Project Work. Such warnings may take the form of an SDS.

**(d) Asbestos Notification.**

(1) Company’s buildings and structures are of such an age that they may contain asbestos-containing materials (“ACMs”) and asbestos-containing-construction-materials (“ACCMs”). Company has conducted limited surveys of its structures; therefore, all suspect ACMs are assumed to be asbestos containing until proven otherwise through survey and analysis.

(2) All suspect ACMs must be surveyed by a certified asbestos consultant in California prior to any renovation, demolition or other activity that could disturb suspect ACMs. The survey shall be provided to the Company Corporate Environment, Health and Safety Asbestos Program Manager (“APM”) at least fifteen (15) Business Days prior to the start of the Work. The APM will provide direction for projects that could disturb ACMs or ACCMs. ACMs or ACCMs that could be disturbed must be removed in compliance with Applicable Laws by a contractor that has the proper asbestos registrations.

3.7 SUBCONTRACTING WITH DIVERSE BUSINESS ENTERPRISES (“DBE”).

(a) Subcontractor Commitment and Reporting. The DBE Subcontracting Commitment and Reporting Requirements are set forth in Exhibit N. As required by Exhibit N, Contractor shall deliver to Company a monthly report setting forth the actual payments made to DBE subcontractors in support of the ESS, Equipment, Software, or Work provided by Contractor under this Agreement.

(b) DBE Plan. Contractor shall develop and deliver to Company upon its request, a DBE plan to utilize DBE subcontractors in its performance of the Work in accordance with Diverse Business Enterprise Subcontracting Commitment and Reporting Requirements (the “DBE Plan”).

3.8 ACCESS TO COMPANY’S COMPUTING SYSTEMS AND COMPANY DATA.

Contractor shall access, use and disclose Company Data solely as permitted in this Agreement, to perform the Work or as otherwise directed in writing by Company, including as permitted or required under the Cyber Policy. Contractor shall immediately notify the Company Representative and the Company Procurement Agent if Contractor is unable to meet it knows or reasonably believes that it is not in compliance with any of the requirements. of the Cyber Policy.

3.9 BACKGROUND CHECKS.

All persons who require unescorted access to a Jobsite, or any access to Company’s Computing Systems or Confidential Information, are required to undergo a criminal background investigation and confirmation of identity prior to being provided such access and are subject to recurring background investigations throughout the duration of their performing any portion of the Services. The criminal background investigation shall be performed by Company, or an Company designee, at Company’s sole discretion. Company is responsible for its cost for performing the background investigation. Company’s Corporate Security Department will be the sole determiner if access to the Jobsite should be granted, not granted, or revoked.

3.10 REMOVAL OF PERSONNEL AND RETURN OF BADGES AND EQUIPMENT.

When Contractor’s or any of its Subcontractor’s employee, representative, or agent is reassigned to non-Company work, or is no longer employed by Contractor or Subcontractor, Contractor shall immediately inform the Company Representative and, as applicable, Company’s Information Security Department or Company’s Corporate Security Department. Upon receipt of notification, Company may immediately revoke that person’s access which was granted pursuant to Section 3.9, above. Contractor shall confirm such verbal notification by providing notice to the Company Representative, or designee, within 24 hours of the verbal notification. Contractor shall immediately deliver to Company all Company Computing Systems equipment, access badges and other Company identification, and any other equipment that may have been issued or loaned to such re-assigned or terminated Contractor Personnel. If Contractor and Company agree that such access should be restored, the employee shall be re-processed as set forth in Section 3.9, above, and Section 3.11, below.

### 3.11 JOB SITE ACCESS REQUIREMENTS.

(a) Compliance with Job Site Access Requirements. If Contractor is given access to any Job Site, then such access is subject to Contractor Personnel's compliance with all Company policies and Contractor's obligations set forth in this Agreement. Access to any Job Site is strictly for the purpose of Contractor's performance of the Work during the Term, but not otherwise. In no event shall Contractor, Contractor Personnel or Subcontractor access or make use of the Job Site for any other purpose. Contractor shall reimburse Company for any costs and expenses incurred due to any breach of this Section 3.11.

(b) Denial of Access. Company reserves the right to deny Job Site access to any employee, representative, agent, or invitee of Contractor or any Subcontractor, at Company's sole discretion.

(c) Notification of Convictions. Throughout the term of the Agreement, Contractor shall immediately notify Company whenever Contractor becomes aware that any employee, representative, or agent of Contractor or any of its Subcontractors is currently charged with, has been convicted of, or is on probation or parole for, any crime against person or property, or any felony. Contractor will also immediately remove that employee, representative, or agent from the Job Site, and revoke their access to Company's Computing Systems.

(d) Visitor Badge Requirement. All visitors to a Job Site must comply with that Job Site's specific visitor access requirements.

(e) Extended Stay Badge Requirement. Persons requesting to have access to the Job Site at least three (3) times a week for a period of thirty (30) days or more must obtain a Job Site badge from Company prior to performing any Work. Each person must submit a complete "Temporary Access Authorization Questionnaire" or other form as required by Company.

(f) Escort Requirement. Pending approval of a badge or repeated visitor access, all persons requesting Job Site access must be escorted by Company personnel while at the Job Site. Contingent workers should not be given visitor access pending the approval of a badge; this should be completed prior to granting access.

(g) Fitness for Duty.

(1) Fitness. Contractor Personnel at the Job Site must:

(A) Report for work in a manner fit to do their job;

(B) Not consume or be under the influence of or in possession of any alcoholic beverages or of any controlled substance (except a controlled substance as prescribed by a physician that does not affect that individual's ability to properly and safely perform his or her duties); and

(C) Is not currently charged with, convicted of, or on probation or parole for any crime against person or property, or any felony.

(2) Inspection. Contractor, its Subcontractors and their respective employees, representatives, and agents shall not bring onto or keep any Prohibited Items at the Jobsite or on any Company-owned or -leased property. In order to ensure Contractor's compliance with this Section 3.11, Company-authorized representatives may, without notice, search work areas and other common areas, lockers, storage areas, vehicles, persons, or personal effects on Company-owned or -leased property at any time, using any reasonable means including detection dog teams.

(3) Compliance. Contractor shall advise its Contractor Personnel, Subcontractors, representatives, and agents of the requirements of this Section 3.11 before they enter a Job Site and, if any violations are found, immediately remove the violating Contractor Personnel,

Subcontractor, representative, or agent from the Job site.

(h) Harassment. Company supports a diverse work force and prohibits unlawful employment discrimination and harassment, including sexual harassment, in accordance with Applicable Laws. Whenever present on a Company Job Site, property or facilities, Contractor shall require its employees, Subcontractors, agents, and representatives to comply with all Applicable Laws and standards prohibiting conduct that might reasonably be construed as violating Applicable Laws, including conduct such as making sexually suggestive or discriminatory jokes or remarks, touching, assaulting, making gestures of a threatening, sexual or suggestive nature, and impeding or blocking any Company's employee's, subcontractor's, or agent's movement.

### 3.12 REMOVAL OF PERSONNEL AND RETURN OF BADGES AND EQUIPMENT.

When Contractor's or any of its Subcontractor's employee, representative, or agent with Jobsite access is reassigned to non-Company work, or is no longer employed by Contractor or Subcontractor, Contractor shall immediately inform the Company Representative and, as applicable, Company Corporate Security. Upon receipt of notification, Company may immediately revoke that person's Jobsite access, as the case may be. Contractor shall confirm such verbal notification by providing notice to the Company Representative, or designee, within twenty-four (24) hours of the verbal notification. Contractor shall immediately deliver all equipment, access badges and other Company identification, and any other equipment that may have been issued or loaned to such re-assigned or terminated Contractor Personnel. If Contractor and Company agree that such access should be restored, the employee shall be re-processed as set forth in Sections 3.11, "Jobsite Access Requirements," and 3.9, "Background Checks," of this Agreement.

### 3.13 COMPANY ACCESS TO JOB SITE.

Contractor shall provide unrestricted access to the Job Site and the Work at all times to Company, Company's other contractors and their respective employees, representatives, agents and consultants; provided, however, that in the absence of an emergency or a default by Contractor hereunder, (i) Company or each such person shall give reasonable prior notice to Contractor and (ii) Contractor may provide, and each such person shall accept, an escort or any safety equipment or measures that Contractor, in its reasonable discretion, deems necessary or advisable.

### 3.14 INSPECTION AND TESTING OF WORK IN PROGRESS.

(a) Each item of Equipment to be supplied by Contractor shall be subject to inspection and testing during and upon completion of its fabrication and installation in accordance with the provisions of the Statement of Work. Without limiting the foregoing, Contractor shall be responsible for inspection and testing of the Equipment in accordance with standard inspection practices and as required by applicable specifications before their shipment and shall be responsible for successful completion of the Equipment Tests.

(b) Contractor shall perform such detailed inspection and testing of work in progress at intervals appropriate to the stage of construction or fabrication of the Project as is necessary to ensure that such work is proceeding in accordance with the Contract Documents. At least ten (10) Business Days prior to the time Contractor or its representative intends to inspect any item of Equipment, Contractor shall notify Company in writing of such inspection which notice shall state the date, time and place where such inspection is to be conducted. Company and its designated agent may, at their option and at its expense, accompany Contractor to the inspection by notifying Contractor in writing within five (5) Business Days of receipt of notice of the inspection. Company's failure to notify Contractor within the permitted time period shall be deemed to be a decision by Company not to attend the inspection. Contractor shall arrange for access to the manufacturer's facilities to permit any such inspection to be conducted smoothly. With respect to any inspection that Company chooses not to attend, Contractor (i) shall keep Company informed in all material respects of the progress and quality of all work; (ii) shall advise Company of any



deficiencies revealed through such inspections and of the measures proposed to remedy such deficiencies; and (iii) shall, upon Company's request, provide Company with a reasonable opportunity to review Contractor's records with respect to such inspections. Contractor shall include the right to inspection by Company or its representative in all subcontracts and purchase orders.

(c) Contractor shall permit Company, and as authorized by Company, any party designated by Company to inspect, test and observe the Work from time to time; provided, however, that none of such Persons shall have any authority or responsibility for such Work. Contractor shall provide Company each month during performance of the Work with a schedule of all testing proposed for the following forty-five (45) day period in compliance with the requirements of the Statement of Work.

### 3.15 NO WAIVER OF RESPONSIBILITY.

No inspection made, acceptance of Work, payment of money or approval given by Company shall relieve Contractor of its obligations for the proper performance of the Work in accordance with the terms hereof. Company may reject any Work with Defects or which is not in accordance with the requirements of the Contract Documents, regardless of the stage of completion, the time or place of discovery of error, and whether Company previously accepted any or all of such Work through oversight or otherwise. No approval given by Company, in and of itself, shall be considered as an assumption of risk or liability by any such Person. Any such approval shall mean that the Person giving the approval has no objection to the adoption or use by Contractor of the matter approved at Contractor's own risk and responsibility. Contractor shall have no claim relating to any such matter approved, including any claims relating to the failure or inefficiency of any method approved.

### 3.16 DEFECTIVE WORK.

Contractor shall, at its sole cost and expense and without reimbursement hereunder, correct or replace any Work that contains a Defect, or is not otherwise in accordance with the Contract Documents. Equipment that has been replaced, if situated on the Job Site, shall be removed by Contractor from the Job Site at its sole cost and expense and without reimbursement hereunder. If Contractor or any Subcontractor defaults or neglects to carry out the Statement of Work in accordance with the Contract Documents and Contractor fails within a reasonable period of time (as reasonably determined by Contractor) after it knows or should have known of such default or neglects to commence and continue correction of such default or neglect with diligence and promptness, Company may, without prejudice to other remedies Company may have under this Agreement or otherwise at law or equity, correct such deficiencies. In such event, an appropriate Change Order shall be issued reducing the Contract Price and deducting from payments then or thereafter due to Contractor the cost of correcting such deficiencies, including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due to Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Company within three (3) days from Company's request therefor. Contractor shall correct any and all deficiencies as required by the Contract Documents notwithstanding any actual or possible legal obligation or duty of a Subcontractor concerning same and nothing contained in this Section 3.16 shall modify Contractor's obligation to achieve Final Acceptance in accordance with the Contract Documents. Contractor shall seek sales tax refund from the appropriate governmental entity on Equipment found to be defective or assist Company in seeking the refund, in the event Company direct pays the sales or use tax.

### 3.17 CLEAN-UP.

(a) Without limiting the provisions of Section 3.22, Contractor shall at all times keep the Job Site reasonably free from waste, rubbish and Hazardous Material, other than Pre-Existing Hazardous Material, relating to its Work. Contractor shall maintain the Job Site in a neat and orderly condition throughout the performance of the Work. Contractor shall employ sufficient personnel to clean its office

at the Job Site and work areas each working day and shall cooperate with the other Persons working at the Job Site to keep the Job Site clean.

(b) Prior to the Final Acceptance Date, Contractor shall (i) remove all Contractor Equipment from the Job Site (other than equipment, supplies and materials necessary or useful to the operation or maintenance of the Facilities and Equipment and equipment, supplies and materials directed by Company to remain at the Job Site until completion of the Facilities), (ii) clean out all pits, pipes, chambers and conduits, (iii) tear down and remove all temporary structures on the Job Site built by it or its Subcontractors and restore such areas to their prior condition, except as required by Applicable Law, Section 3.22 or any other provision of this Agreement, and (iv) remove all waste, rubbish and Hazardous Material from and around the Job Site, except that Contractor shall not be required to excavate, remove, transport or otherwise dispose of (A) Pre-Existing Hazardous Material on the Job Site, other than as set forth in Section 3.22(a)(iv), or (B) any waste, rubbish or Hazardous Material caused by Company or its representatives.

### 3.18 OBTAINING, MAINTAINING AND IDENTIFYING PERMITS.

(a) Contractor shall obtain and maintain all Contractor Permits in a timely manner. In addition, Contractor shall provide all assistance reasonably requested by Company in connection with Company's efforts to obtain and maintain the Company Permits, including witnesses testimony, depositions, preparation of exhibits, technical calculations and attending meetings. In the event that any Applicable Permit is required for the Facilities or to perform the Work that is not identified in the Contract Documents, Contractor or Company, as applicable, shall promptly, after it becomes aware of the need for such Applicable Permit, notify the other Party that such Applicable Permit is required. If such permit is of a nature typically obtained by contractors in similar projects, Contractor shall, at its sole cost and expense and without reimbursement hereunder, be obligated to obtain and maintain such Applicable Permit on behalf of Company. Otherwise, Company shall obtain and maintain such Applicable Permit.

(b) All Applicable Permits (other than any building permits (but excluding any applicable occupancy certificates) or other Applicable Permits designated as either "To be issued in the name of Contractor" or "To be issued in the name of the Company and Contractor" on Exhibit G or Exhibit H) shall be issued in the name of Company unless otherwise required by Applicable Law or such Applicable Permit. If any Contractor Permit (or application therefor) is in the name of Company or otherwise requires action by Company, Company shall, upon the request of Contractor, sign such application or take such action as reasonably appropriate.

(c) Company reserves the right to review any such application of Contractor; provided, however, that Company's exercise of such right shall not under any circumstances, be considered an approval of the necessity, effect or contents of such application or related permit. Contractor shall deliver to Company true and complete copies of all Applicable Permits obtained by Contractor upon its receipt thereof. Contractor shall use best efforts to identify in writing to Company all Applicable Permits and other government requirements for performance of the Work not identified in the Contract Documents, or shall confirm in writing that, to the best of Contractor's knowledge, there are no such Applicable Permits or other government requirements other than as identified in the Contract Documents prior to the date of this Agreement.

### 3.19 LABOR.

(a) General. Contractor shall be responsible for retaining all Labor necessary for it to perform its obligations hereunder and comply with the provisions hereof, all in accordance with Applicable Laws. Contractor shall comply with the provisions of the Construction Maintenance Labor Agreement and other applicable labor agreements as listed in Exhibit S and all successor or follow on agreements entered into by Company that are applicable to the Project. Contractor shall be responsible for all costs incurred in complying with this Section 3.19 or otherwise associated with its Labor, including

costs incurred by any member of its Labor, whether by direct contract or subcontract, for medical treatment, transport and accommodation as a result of injuries or illness arising from engagement or employment in the execution of the Work.

(b) Engagement of Labor. Contractor shall make its own arrangements for the engagement of all Labor in connection with the Contract Documents and the performance of the Work. Contractor shall employ in the performance of the Work only Labor, whether supervisors, skilled workers or laborers, who are competent to perform their assigned duties in a safe and secure manner and shall use all reasonable efforts to cause its Subcontractors and Vendors to adhere to the same standard with respect to their Labor.

(c) Identification. Contractor shall identify each member of its and its Subcontractor's and Vendor's Labor in accordance with the standards and procedures that are mutually acceptable to the Parties.

(d) Supply of Services for Labor. Contractor shall provide and maintain at the Job Site, in accordance with Applicable Laws and Applicable Permits, such accommodations, services and amenities as necessary for all Labor employed for the purpose of or in connection with the Contract Documents, including all water supply (both for drinking and other purposes), electricity supply, sanitation, safety, security, fire prevention and fire-fighting equipment, refuse disposal systems and other requirements in connection with such accommodations or amenities.

(e) Project Management and Contractor's Representative.

(1) Project Management. Contractor has designated a project management team, as set forth in the Statement of Work, Exhibit A, and any future members of the project management team must be approved by Company in writing prior to his/her designation, which approval shall not be unreasonably withheld. During the performance of the Work from the Initial Site Mobilization through Substantial Completion, Contractor shall maintain continuously at the Job Site adequate management, supervisory, administrative, security and technical personnel, including the Contractor Site Manager, to ensure expeditious and competent handling of all matters related to the Work, according to its determination of the staffing required for this purpose. Contractor will not re-assign, remove or replace the Contractor Project Manager, Contractor Project Engineering Manager or Contractor Site Manager without Company's prior written consent, which consent shall not be unreasonably withheld. Contractor shall promptly replace its Contractor Project Manager, Contractor Project Engineering Manager or Contractor Site Manager, upon written request of Company, if such individual is disorderly or if in Company's opinion, such individual is otherwise unsuitable for his or her position and responsibilities.

(2) Contractor's Representative. Contractor shall appoint one individual (the "Contractor's Representative"), with the prior written consent of Company, which shall not be unreasonably withheld, who shall be authorized to act on behalf of Contractor and with whom Company may consult at all reasonable times, and whose instructions, requests and decisions in writing will be binding upon Contractor. Contractor shall not remove or replace such representative without Company's prior written consent, which consent shall not be unreasonably withheld.

3.20 COOPERATION WITH OTHER CONTRACTORS/COMMUNITY.

(a) Contractor acknowledges that work may be performed by others at the Job Site during the execution of Work under this Agreement. Contractor further acknowledges that Company, through



itself or through its employees, subcontractors or agents, may continue to work and perform activities in connection therewith at and around the Job Site during the execution of the Work under this Agreement. Contractor shall cooperate and cause its Subcontractors and Vendors to cooperate with Company and other unrelated contractors who may be working at or near the Job Site in order to assure that neither Contractor, nor any of its Subcontractors or Vendors unreasonably hinders or increases, or makes more difficult than necessary the work being done by Company and such other unrelated contractors. Contractor agrees to perform the Work in full cooperation with such others and to permit, without charge, reasonable access to, and use of, the Job Site and the Work, by said others or by Company, whether such Work is partially or entirely complete, when such access or use is reasonably necessary for the performance and completion of the work of others. All material and labor shall be furnished, and the Work performed, at such time or times as shall be for the best interest of all contractors concerned, to the end that all Work, and the work of any separate contractor, will be properly coordinated and completed in accordance with the applicable schedules and the times of completion required by the Contract Documents.

(b) In addition to complying with all Applicable Laws and Applicable Permits, Contractor shall use reasonable efforts, and cause its Subcontractors and Vendors to use their reasonable efforts, to assist Company in creating, assessing and carrying out programs which shall, during all phases of the Work, minimize the impacts upon the host community caused by the construction of the Project. Such programs shall include: (i) sequencing of the Work so as to minimize the impacts of noise and dust at and around the Job Site; and (ii) using local labor and other resources whenever possible and cost effective.

### 3.21 PROTECTION AND SAFETY.

(a) Prior to the Substantial Completion Date, Contractor shall be responsible for the security, protection and safety of all Persons (including members of the public and the employees, agents, contractors, consultants and representatives of Company, Contractor and its Subcontractors and Vendors, and other contractors and subcontractors) and all public and private property (including structures, sewers and service facilities above and below ground, along, beneath, above, across or near the Job Site) that are at or near the Job Site or that are in any manner affected by the performance of the Work. As of the Substantial Completion Date, Company shall have operational control over the Project. Upon successful achievement of Substantial Completion and notwithstanding the foregoing, Contractor shall remain responsible for the security, protection and safety of all Persons performing any portion of the Work at the direction of Contractor.

(b) Contractor shall initiate and maintain reasonable safety precautions and accident prevention programs for the Job Site and in the performance of the Work, which shall be in compliance with all Applicable Laws and Applicable Permits, to prevent injury to persons or damage to property on, about or adjacent to the Job Site and in the performance of the Work at the Job Site. Without limiting the generality of the foregoing, Contractor shall furnish and maintain all necessary safety equipment such as signs and warning lights as required to provide adequate protection to persons and property.

(c) Contractor shall promptly provide Company with (i) written notification of all Occupational Safety and Health Act recordable events; (ii) written notifications and copies of all citations by Government Authorities concerning accidents or safety violations at the Job Site; (iii) written reports of near misses at the Job Site; and (iv) copies of written accident reports for lost time accidents.

### 3.22 ENVIRONMENTAL MATTERS.

(a) Hazardous Material. Contractor shall, and shall cause its Subcontractors and Vendors to, comply with all Applicable Laws relating to Hazardous Material and all Applicable Permits. Without limiting the generality of the foregoing:

(i) Contractor shall, and shall cause its Subcontractors and Vendors to, apply for, obtain, comply with, maintain and renew all Applicable Permits required of Contractor by Applicable Laws regarding Hazardous Material that are necessary, customary or advisable for the

performance of the Work. Contractor shall, and shall cause its Subcontractors and Vendors to, have an independent Environmental Protection Agency identification number for disposal of Hazardous Material under the Contract Documents if and as required under Applicable Laws or Applicable Permits.

(ii) Contractor shall conduct its activities under the Contract Documents, and shall cause each of its Subcontractors to conduct its activities, in a manner designed to prevent pollution of the environment or any other release of any Hazardous Material by Contractor and its Subcontractors and Vendors in a manner or at a level requiring remediation pursuant to any Applicable Law.

(iii) Contractor shall not cause or allow the release or disposal of Hazardous Material at the Job Site, bring Hazardous Material to the Job Site, or transport Hazardous Material from the Job Site, except in accordance with Applicable Law and Applicable Permits. Contractor shall be responsible for the management of and proper disposal of all Hazardous Material brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any. Contractor shall cause all such Hazardous Material brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any, (A) to be transported only by carriers maintaining valid permits and operating in compliance with such permits and laws regarding Hazardous Material pursuant to manifest and shipping documents identifying only Contractor as the generator of waste or person who arranged for waste disposal, and (B) to be treated and disposed of only at treatment, storage and disposal facilities maintaining valid permits operating in compliance with such permits and laws regarding Hazardous Material, from which, to the best of Contractor's knowledge, there has been and will be no release of Hazardous Material. Contractor shall submit to Company a list of all Hazardous Material to be brought onto or generated at the Job Site prior to bringing or generating such Hazardous Material onto or at the Job Site. Contractor shall keep Company informed as to the status of all Hazardous Material on the Job Site and disposal of all Hazardous Material from the Job Site.

(iv) If Contractor or any of its Subcontractors or Vendors releases any Hazardous Material on, at, or from the Job Site, or becomes aware of any Person who has stored, released or disposed of Hazardous Material on, at, or from the Job Site during the Work, Contractor shall immediately notify Company in writing. If Contractor's Work involved the area where such release occurred, Contractor shall immediately stop any Work affecting the area. Contractor shall, at its sole cost and expense and without reimbursement hereunder, diligently proceed to take all necessary or desirable remedial action to clean up fully the contamination caused by (A) any negligent release by Contractor or any of its Subcontractors or Vendors of any Pre-Existing Hazardous Material, and (B) any Hazardous Material that was brought onto or generated at the Job Site by Contractor or any of its Subcontractors or Vendors, whether on or off the Job Site. Company shall have the right to approve, in advance, the disposal site for such Hazardous Material and any subcontractor utilized by Contractor to dispose of such Hazardous Material. Prior to disposing of such Hazardous Material, Contractor shall notify Company in writing and provide Company with such information as necessary to enable Company to evaluate such disposal site and subcontractor. Contractor shall be responsible, at its sole cost and expense and without reimbursement hereunder, for remedial action to clean up fully the contamination referenced in clauses (A) and (B) of this Section 3.22(a)(iv).

(b) Waste Treatment and Disposal. Without limiting the foregoing:

(1) *Toxic Waste and Industrial Hazards*: Contractor shall be responsible for the proper management and disposal of all toxic waste and industrial hazards brought onto or generated at the Job Site by it or its Subcontractors or Vendors, if any. Contractor shall, and shall cause its Subcontractors and Vendors to, comply with all Applicable Laws, Applicable Permits

and applicable safety standards related to the treatment, storage, disposal, transportation and handling of toxic wastes and industrial hazards. Contractor shall not store or dispose of toxic wastes and industrial hazards near groundwater, surface water or drainage systems. Liquid wastes shall not be dumped onto the ground or in any groundwater, surface water or drainage systems. All waste oil and grease resulting from performance of the Work, including activities performed by Subcontractors and Vendors, shall be collected and disposed of in a manner that prevents contamination to soil, ground water, and surface water, and incinerated if possible. Vehicle maintenance shall be conducted in safe areas away from watercourses and oil or fluid runoff shall be collected in grease traps. Toxic waste and industrial hazard storage containers shall be well-labeled.

(2) *Environmentally sensitive areas*: Contractor shall perform the Work in such a manner so as to protect environmentally sensitive areas and water supplies.

(c) Fuel Storage. The location, facilities, safety measures and environmental and pollution control in connection with storage of fuel or like substances shall comply with all Applicable Laws and Applicable Permits.

### 3.23 FIRE PREVENTION.

(a) Contractor shall be responsible for providing adequate fire prevention and protection of the ESS and shall take all reasonable precautions to minimize the risk of fire at the Job Site. Contractor shall provide instruction to the Labor in fire prevention control and shall provide appropriate fire-fighting and fire protection equipment and systems at the Job Site.

(b) Contractor shall promptly collect and remove combustible debris and waste material from the Job Site in accordance with Applicable Laws and Applicable Permits, and shall not permit such debris and material to accumulate. Contractor shall not allow fires for any purpose in the vicinity of the Work and shall agree upon the appropriateness of any such fires with Company. Any areas damaged by fire which are considered by Company to have been initiated by Contractor's or Subcontractors' Labor shall be re-cultivated and otherwise rehabilitated by Contractor.

(c) Contractor will complete all systems, procedures and Equipment constituting the ESS fire protection system as necessary during construction to protect Work in progress, in particular with regard to fuel and other flammable materials.

### 3.24 REPORTS, PLANS AND MANUALS.

(a) Status Reports. Contractor shall prepare and submit to Company written progress reports as set forth in the Statement of Work. In accordance with Section 5.3 hereof, Contractor shall also report any events which may affect the Project Schedule, including any Force Majeure Events, liens on the Property Site or the Project, changes in Contractor's financial condition, or any asserted violations of Applicable Laws.

(b) Reporting of Accidents. Contractor shall report in writing to Company (and, to the extent required by any Applicable Law or Applicable Permit, the appropriate Government Authority) details of any accident that is on or about the Job Site immediately after its occurrence, but in any event not later than four (4) hours after such accident occurs. In the case of any fatality or serious injury or accident, Contractor shall, in addition, notify Company (and, to the extent required by any Applicable Law or Applicable Permit, the appropriate Government Authority) immediately.

(c) Contractor Not Relieved of Duties or Responsibilities. Neither the submission to or review or approval by Company of progress and other reports, plans and manuals, certifications, nor the provision of general descriptions shall relieve Contractor of any of its duties or responsibilities under the Contract Documents.

### 3.25 DRAWINGS, ENGINEERING DATA AND OTHER MATERIALS.

(a) All Drawings, Final Plans, reports and other information (except financial, accounting and payroll records) furnished to Contractor, or prepared by it, its Subcontractors or others in connection with the performance of the Work, whenever provided, shall be kept by Contractor in an orderly and catalogued fashion for reference by Company during the performance by Contractor of the Work. Contractor shall maintain at least one (1) copy of all Drawings, Final Plans, Change Orders and other modifications in good order and marked to record all changes made during performance of the Work, including all field deviations from the construction drawings. As a condition precedent to Final Acceptance, or upon the earlier termination of this Agreement, Contractor shall transfer the Final Plans to Company and they shall become the sole property of Company.

(b) Contractor shall furnish Company with documents that correctly reflect, with substantial completeness, the ESS or the Work against which progress is claimed as a condition precedent to Company's obligation to approve a Request for Payment. Final Plans (in both hard copy and magnetic media at no extra charge to Company), if not furnished earlier, shall be furnished to Company upon Contractor's request for a Final Acceptance Certificate or upon the earlier termination of this Agreement. Contractor and any of its Subcontractors, as applicable, may retain copies all such documents for their records, subject to the confidentiality provisions of this Agreement.

(c) Contractor shall submit all Drawings in electronic format to Company in accordance with Exhibit A for review and comment as provided in the Statement of Work. Based upon Company's comments, if any, Contractor shall resolve Company's comments. Contractor shall revise such Drawings from time to time, as required to reflect any changes, in the actual installation of any individual Equipment or system or the ESS as a whole. Notwithstanding anything contained herein to the contrary, Company's review and/or acceptance of the Drawings, or any portion thereof, shall not in any way relieve Contractor of any of its obligations or warranties set forth herein, including its full responsibility for the accuracy of the dimensions, details, integrity and quality of the Drawings.

### 3.26 OPERATING AND MAINTENANCE MANUALS.

Contractor shall supply Company copies of manuals and/or handbooks as set forth in the Statement of Work which provide, either in a single manual or handbook or collectively, complete operating and maintenance instructions (including inventories of spare parts and tools and parts lists with ordering instructions) for each major piece of Equipment and system of the ESS. Each such manual and handbook shall comply with the requirements of the Statement of Work, including with respect to matters such as quantity, content and the time when such manuals are to be supplied to Company, and shall be substantially complete and delivered to Company prior to Substantial Completion in order to support training of personnel and start-up and testing of the ESS.

### 3.27 ACCOUNTING INFORMATION.

During the term of this Agreement and continuing for five (5) years after the completion of the Work, Contractor will provide Company with any reasonably necessary assistance, including providing all documents, cost information and other information that Company believes necessary, in a form reasonably acceptable to Company, for Company's federal, state or local tax filings, exemptions or positions advocated by Company, including sales, use and property taxes, and to address audits conducted by a Government Authority.

### 3.28 CONTRACTOR TAXES.

(a) Except for Company Taxes, Contractor shall, as required by Applicable Law, pay and administer any and all Taxes and duties incurred or payable in connection with the Work, including taxes based on or related to the income, receipts, capital or net worth of Contractor, except for Company Taxes (collectively, "Contractor Taxes"). Contractor shall cooperate with Company to endeavor to minimize any

Company Taxes. Contractor shall make reasonable efforts to make available to Company and to claim any and all applicable sales and/or use tax exemptions, credits or deductions relating to the ESS and Equipment available to itself or Company, including any sale-for-resale exemption under Applicable Law and any manufacturing exemption under Applicable Law (as determined by Company with Contractor's reasonable assistance) and, at the direction of Company, Contractor agrees to take such action as may be reasonably required to allow such property, to the extent possible, to qualify for any applicable sales or use tax exemption. If required in connection with the purchase of any such property from its Vendors, to the extent permitted by Applicable Law, Contractor agrees to provide its Vendors a resale certificate as approved by the State of California, as applicable reflecting the fact that Contractor is purchasing such property for resale to Company. Company to provide Direct Pay Certificates, as applicable. Contractor agrees to take any other action reasonably necessary to ensure that the purchase of qualifying machinery with respect to the Work is exempt from sales and use tax under Applicable Law. To the extent Contractor is required by Applicable Law to collect sales tax from Company, Contractor shall collect sales tax from Company on all materials physically incorporated in the ESS that are not subject to exemption unless Company has elected to provide Contractor with a direct pay certificate issued to Company by the State of California. In the event that an assessment for sales and/or use or excise taxes are levied against Contractor, any Subcontractor or Vendor, Contractor shall promptly notify Company and furnish to Company a copy of such assessment. In the event that Company determines that the assessment should be contested and so notifies Contractor in writing, Company may, at Company's sole cost and expense, file such documents as are necessary to contest such assessment. Company shall exclusively control any contest, assessment or other action regarding any such taxes or assessments, or any penalties or interest in respect thereof. In addition to Contractor's other obligations as set forth herein, Contractor shall cooperate with and assist Company, at Company's expense, in any contest or proceeding relating to Taxes payable by Company hereunder.

(b) Exempt Equipment. Some of the machinery, equipment, parts or other items of tangible personal property to be incorporated into the ESS may be exempt from certain taxes (such exempt items, the "Exempt Equipment"). Company, with Contractor's assistance, and will determine which purchases constitute purchases of Exempt Equipment, and Contractor and Company will take reasonably necessary actions to ensure that such Exempt Equipment qualifies for applicable tax exemptions.

### 3.29 CLAIMS AND LIENS FOR LABOR AND MATERIALS.

If Company is paying when due all undisputed amounts in accordance with the Contract Documents, Contractor shall, at its sole cost and expense and without reimbursement hereunder, discharge and cause to be released, whether by payment or posting of an appropriate surety bond in accordance with Applicable Law, within fifteen (15) days after receipt of a written demand from Company, any Lien in respect to the ESS, the Contract Documents, the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Subcontractor, Vendor or other Person providing labor or materials within the scope of Contractor's Work.

### 3.30 SPARE PARTS AVAILABILITY.

(a) Operating Spare Parts. At least sixty (60) days prior to the Substantial Completion Date, Contractor shall provide Company with each manufacturer's recommended spare parts list for the Equipment, which list shall include part numbers, recommended quantities, price, mean times to failure, mean times to repair and a description of lead times necessary for orders of such spare parts, in each case to the extent reasonably available to Contractor. Contractor agrees to use all commercially reasonable efforts to:

(1) obtain from each Major Manufacturer an assignable guaranty that such Major Manufacturer will have available for purchase by Company for the longer of (i) seven (7) years



after the Substantial Completion Date or (ii) two (2) years after the end of the Warranty Period, all spare parts for the Major Equipment supplied by such Major Manufacturer required to keep the ESS in good operating condition, it being understood that some of such parts are not “shelf items” and will have to be manufactured by the Major Manufacturer after it receives an order for them;

(2) make spare parts (other than spare parts for the Major Equipment) available for purchase by Company for the longer of (i) seven (7) years after the Substantial Completion Date or (ii) two (2) years after the end of the Warranty Period, to the extent that Contractor is able to obtain them from the manufacturer who supplied them for the ESS as originally built; and

(3) find another source that can supply such spare parts if Contractor is unable to obtain such spare parts from such manufacturer.

### 3.31 CONTRACTOR’S OBLIGATION TO NOTIFY.

Contractor shall keep Company advised as to the status of the Equipment and Work and shall promptly inform Company and the in writing upon the occurrence of any of the following: (i) any occurrence or event that may be expected to impact the schedule for delivery and/or installation of Equipment; (ii) any technical problem not anticipated at the start of the Work or of significant magnitude that may impact the ESS or any component thereof or the Project Schedule; (iii) any Defect; and (iv) any material changes to previously submitted information. Company shall have the right to verify the information provided by Contractor. In connection therewith, Contractor shall identify those items provided to Company that would enable Company to verify such information in an expedient manner.

### 3.32 INTELLECTUAL PROPERTY RIGHTS.

(a) Rights and Ownership. Company’s rights to inventions, discoveries, trade secrets, patents, copyrights and other intellectual property (hereinafter, collectively the “Intellectual Property Rights”), used or developed by Contractor in the performance of the Work, shall be governed by the following provisions:

(1) If Intellectual Property Rights conceived, developed or reduced to practice by Contractor prior to the performance of the Work are used in or become integral with the Work, or are necessary for Company to have complete enjoyment of the Work, Contractor hereby grants to Company a non-exclusive, irrevocable, royalty-free license, as may be required by Company for complete enjoyment of the Work, including the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Work and grant sublicenses to others with respect to the Work.

(2) If the Work, or Company’s complete enjoyment of the Work, is likely to require Intellectual Property Rights that were conceived, developed or reduced to practice by a Subcontractor prior to the performance of the Work, then Contractor shall secure (before commencing Work that requires the use of these Intellectual Property Rights) on Company’s behalf, the necessary Intellectual Property Rights by grant from the Subcontractor or in the form of a royalty-free license that is irrevocable and provides Company with the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Work. Contractor shall assure that the Intellectual Property Rights provided by its Subcontractors in all cases satisfy the following requirements for minimum Intellectual Property Rights: the Intellectual Property Rights include all of the rights described above, except the right to make “commercial use” of the Intellectual Property Rights, where commercial use is defined as a transfer or sale of the Intellectual Property Rights for consideration and where such transfer or sale is not part of any transfer or sale of participation or ownership rights in the Project. Commercial use as defined in the preceding sentence shall not be interpreted to include any use of the Intellectual Property Rights at the Job Site or at non-Job Site locations where Company determines that such use is necessary to repair, modify or replace any portion of the Work.

(3) If the Work requires inclusion of the Intellectual Property Rights of others and Company agrees such rights cannot be secured by Contractor as described in Section 3.32(a)(1), then Contractor shall either procure, at no additional cost to Company, the necessary Intellectual Property Rights so as to allow Company the complete enjoyment of the Work, including the right to reproduce, correct, repair, replace, maintain, translate, publish, use, modify, copy or dispose of any or all of the Work, and grant sublicenses to others with respect to the Work, or revise the Work so that no such license is required. Any Intellectual Property Rights procured hereunder shall be in writing and shall be irrevocable and royalty-free to Company.

(b) Contractor Cooperation. Cooperation by Contractor in assigning and transferring these Intellectual Property Rights shall consist of (i) obtaining written approval from all Subcontractors to grant Intellectual Property Rights, in the form described herein, as part of performance of the subcontracted Work; and (ii) where the Subcontractor refuses to grant these Intellectual Property Rights, then securing the minimum Intellectual Property Rights described in Section 3.32(a)(iii) and use reasonable efforts to obtain such additional Intellectual Property Rights as Company determines are necessary for Company's complete enjoyment of the Work, as further described in Section 3.32(a)(iii). If Contractor is unable to obtain these lesser rights, then Company may refuse to allow Contractor to use the Subcontractor until this issue has been resolved, without such refusal constituting a Company Caused Delay or otherwise entitling Contractor to any relief through a Change Order.

(c) No Additional Compensation. Nothing in this Section 3.32 shall require payment by Company of any compensation for Intellectual Property Rights, or for any assignments or assurances required hereunder, since payment for the Work includes payment for any related Intellectual Property Rights. If Contractor is unable to secure Intellectual Property Rights from a Subcontractor without paying additional consideration for these rights, then Contractor must obtain Company's written approval to proceed with the Subcontractor and may only seek reimbursement for such payments where these payments are approved by Company in writing.

(d) Without limiting any of the provisions of this Agreement, if Company or contractor is prevented from completing the Work or any part thereof, or if Company is prevented from the use, operation, or enjoyment of the Project, the Work, or any Equipment as a result of a claim, action or proceeding by any person for unauthorized disclosure, infringement or use of any Intellectual Property Rights arising from (i) Contractor's performance (or that of its Affiliates or Subcontractors) under this Agreement, (ii) any Intellectual Property Rights licensed to Company hereunder, or (iii) use of any Equipment, then Contractor shall (at its sole cost and expense and without reimbursement hereunder) promptly, but in no event later than thirty (30) Days from the date of any action or proceeding (such period to be extended an additional thirty (30) days if such cure is being diligently pursued but is not capable of cure within such initial thirty (30) day period), take all actions necessary to remove such impediment, including (A) securing termination of the injunction and procuring for Company or its Affiliates or assigns, as applicable, the right to use such Work or Intellectual Property Rights in connection with the completion of the Work and for the use, operation, maintenance, repair, replacement, expansion and alteration of the Work and the Project, without obligation or liability; or (B) as approved by Company, replacing such Work with a non-infringing equivalent or modifying same to become non-infringing but subject to all the requirements of this Agreement. Contractor shall timely notify Company in writing of any claims which Contractor may receive alleging infringement of any Intellectual Property Rights which may affect Contractor's performance of the Work under this Agreement or the use, operation, maintenance, repair, replacement, expansion or alteration of the Work or the Project or any subsystem or component thereof.

(e) At Company's option and sole discretion and in addition to Company's other remedies provided in this Agreement or otherwise available at law or equity, Contractor shall immediately refund all monies paid by Company to Contractor for the Intellectual Property Rights, should Contractor fail to remove such impediment within a reasonable time.

(f) Contractor shall not include any unauthorized copyrighted or proprietary material not otherwise in compliance with this Section 3.32 in any documentation or written data furnished to Company, unless agreed to in writing by the Company Representative.

(g) This Section shall survive the termination or expiration of this Agreement.

3.33 EMERGENCIES.

In the event of any emergency that endangers or could endanger life or property, Contractor shall take such action as may be reasonable and necessary to prevent, avoid or mitigate injury, damage or loss and shall, as soon as possible, report any such incidents, including Contractor's response and actions with respect thereto, to Company.

**ARTICLE IV.  
CERTAIN OBLIGATIONS OF COMPANY**

4.1 THE PROPERTY SITE.

Company shall obtain the Company Permits necessary for Contractor to have access to, and perform the Work on the Property Site.

4.2 PERMITS.

Company shall, with Contractor's reasonable assistance, timely obtain and maintain, at its own cost and expense, all Company Permits. In addition, Company shall execute such applications as Contractor may reasonably request in connection with obtaining any of the Contractor Permits. Company shall deliver to Contractor evidence that the Company Permits necessary to begin construction of the ESS have been received by Company or, if any such required Company Permit has not actually been issued, that it has been approved for issuance, or in the opinion of Company, will be approved for issuance.

4.3 ACCESS TO PROPERTY SITE.

Subject to Section 3.32 and Section 3.11, from the date of this Agreement until Final Acceptance, Company shall permit the employees and agents of Contractor and its Subcontractors and Vendors to have uninterrupted access to the portions of the Property Site constituting the Job Site as may be reasonably required by Contractor in order to perform the Work, subject to all easements, restrictions, access road construction and other matters which may affect ingress and egress to the Job Site and such restrictions as may be reasonably imposed by Company in order to assure that only authorized persons enter the Property Site. Thereafter, upon reasonable notice and during reasonable times, and subject to such restrictions as may be reasonably imposed by Company and provided to Contractor in order to assure that only authorized persons enter the Property Site, Company shall permit the employees and agents of Contractor and its Subcontractors and Vendors to have access to the Property Site as necessary to repair or replace Defects or other Work that is not in compliance with the Contract Documents. As used above, the references to access contemplate that not only will the individuals referred to be permitted to enter upon and leave the Property Site but that they also will be permitted to bring onto and remove from the Property Site any and all kinds of Contractor Equipment.

4.4 RIGHTS OF WAY.

Company shall obtain, at its own cost and expense, any easements and rights of way over the property of others for the construction of the site access road as required, in order that Contractor Equipment, Contractor personnel and its Subcontractors and Vendors have ingress to and egress from the Property Site.



#### 4.5 COMPANY TAXES.

Company shall pay, or reimburse to the Contractor within thirty (30) Days of receipt of an invoice and evidence of payment by Contractor, all real property taxes assessed against the Property Site, any real or personal property taxes assessed against Equipment located at the Job Site, and any permanent use charges or assessments such as water or sewer, and, subject to Section 3.28, Company shall be responsible for the payment of, or reimbursement to Contractor of, state or local sales and/or use Taxes in connection with the purchase of all Equipment, except for such taxes Company contests in good faith (collectively, "Company Taxes"). Contractor shall be responsible for the cost of additional Taxes, penalties or interest, which shall be paid to Company within thirty (30) days of request therefore, to the extent that Company is required to pay such additional Taxes, penalties or interest because Contractor failed to use reasonable efforts to follow written instructions of Company appropriately or to comply with its obligations under Section 3.28.

#### 4.6 COMPANY'S COOPERATION.

Company shall cooperate in all material respects to permit Contractor to perform its obligations hereunder and shall make reasonable efforts to supply to Contractor, in a timely manner, either directly or indirectly, material information and data that is available to Company and that is required for the performance of the Work; provided, however, Company does not warrant the correctness of the information and documentation provided hereunder, except that the Company Permits provided by Company to Contractor are true and correct copies of the permits issued by the applicable Governmental Authority. Company may provide or may have provided Contractor with copies of certain studies, reports or other information (including oral statements), Contractor acknowledges and agrees that (A) all such documents or information have been or will be provided as background information and as an accommodation to Contractor, (B) Company makes no representations or warranties with respect to the accuracy of such documents or the information (including oral statements) or opinions therein contained or expressed and (C) it is not relying on Company for any information, data, inferences, conclusions, or other information with respect to the Job Site, including the surface and subsurface conditions of the Job Site and the surrounding areas; provided that Contractor may rely upon the information contained in the Company Permits.

### **ARTICLE V. PROJECT SCHEDULE**

#### 5.1 COMMENCEMENT OF WORK.

After the date hereof, subject to Section 5.2, Contractor will commence performance of the Work so as to ensure completion of the Work in accordance with the terms hereof.

#### 5.2 NOTICE TO PROCEED.

The Business Day after which Company provides Contractor with the Notice to Proceed shall be the "Notice to Proceed Date". On the Notice to Proceed Date, Contractor shall commence and shall thereafter diligently pursue the Work, assigning to it a priority that should reasonably permit the attainment of Substantial Completion on or before the Guaranteed Completion Date. Contractor shall proceed with the performance of the Work in accordance with the Project Schedules.

#### 5.3 PROJECT SCHEDULE.

Contractor shall perform the Work in compliance with the Project Schedule, including completing the Work required by the Guaranteed Completion Date and the Final Acceptance Date. Contractor hereby covenants and warrants to Company that in undertaking to complete the Work in accordance with the terms hereof, Contractor has taken into consideration and made reasonable allowances for hindrances and delays incident to such Work. Contractor shall provide the reports as

required herein, and shall provide any further information required by Company or as Company may reasonably request to verify actual progress and forecast future progress of the Work. Contractor shall promptly notify Company in writing of any occurrence that Contractor has reason to believe will adversely affect the completion of that phase of the Work by the Guaranteed Completion Date or materially adversely affect completion of the Work in accordance with the Project Schedule. Contractor will specify in said notice the corrective action planned by Contractor to overcome the effect of the delay or potential delay.

#### 5.4 LIQUIDATED DAMAGES.

Nothing contained in this Article V shall relieve Contractor of its obligation to pay Schedule Liquidated Damages in the event that Substantial Completion is not achieved by the Guaranteed Completion Date.

### **ARTICLE VI. CHANGE ORDERS**

#### 6.1 CHANGE ORDER AT COMPANY'S REQUEST.

(a) Company may at any time, by written notice to Contractor, request an addition to or deletion from or other changes in the Work (together with any necessary or requested amendments to this Agreement with respect thereto) (hereinafter "Change" or "Changes" by submitting a written request for Change Order). Contractor shall reasonably review and consider such requested Change and shall make a written response thereto to Company within seven (7) days after receiving such request. If Contractor believes that giving effect to any Change requested by Company will increase or decrease its cost of performing the Work, shorten or lengthen the time needed for completion of the Work, require modification of its warranties in Article XII or require a modification of any other provisions of the Contract Documents, its response to the Change request shall set forth such changes (including any amendments to the Contract Documents) that Contractor deems necessary as a result of the requested Change and its justification therefore. If Contractor accepts the Changes requested by Company (together with any amendments to the Contract Documents specified therein) or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to the Contract Documents, if any, in a written change order signed by the Parties (a "Change Order"). Each Change Order shall constitute a final settlement of all items covered therein, including any adjustment to the Contract Price for any impact on, or delay or acceleration in, performing the Work. If the Parties do not agree upon all terms of the Change Order or if the Parties dispute whether Contractor is entitled to a Change Order pursuant to any provision of this Article VI, Contractor shall proceed with such Work (including any Work covered by the disputed Change whether agreed to be within the Statement of Work or outside the Statement of Work) and the dispute shall be resolved in accordance with Article XVII; provided that if the Parties are unable to reach agreement on the cost of a requested Change, Contractor shall perform the requested Change and the cost therefor shall be determined in accordance with Section 6.3 pending resolution of the dispute pursuant to Article XVII.

(b) Company may at any time, by written notice to Contractor, propose Changes in the Work or the Project Schedule due to a Force Majeure Event or a Company Caused Delay. If there is an impact that will actually, demonstrably, adversely and materially affect the Critical Path of the Work as a result of such Force Majeure Event or a Company Caused Delay, then the Parties agree to bargain reasonably and in good-faith for the execution of a mutually acceptable Change Order. Force Majeure Events will only entitle Contractor to extensions of the Project Schedule.

#### 6.2 CHANGE ORDERS REQUESTED BY CONTRACTOR.

(a) It is the intent of Company and Contractor that the Statement of Work attached hereto as Exhibit A includes all items necessary for the proper execution and completion of the Work. As more

particularly described in Section 3.1(c), work not described in the Statement of Work attached hereto as Exhibit A shall be considered part of the Work if such work is consistent with and reasonably inferable from the Statement of Work, so that an engineering, procurement construction and maintenance contractor of Contractor's experience and expertise should have anticipated that the work would have been required.

(b) Subject to Sections 6.2(c) and (d) below, Contractor may at any time, by written notice to Company, request a Change in the Work (together with any necessary or requested amendments to the Contract Documents) due to the events described in Section 6.2(c). If Contractor believes that such requested Change will increase or decrease its cost of performing the Work, lengthen or shorten the time needed for completion of the Work, require modification of its warranties in Article XII or require a modification of any other provisions of the Contract Documents, it shall notify Company of such, setting forth its justification for and effect of such changes, within ten (10) days after making a request for a Change. If Company accepts the Changes requested by Contractor (together with amendments to the Contract Documents specified therein, if any), or if the Parties agree upon a modification of such requested Changes, the Parties shall set forth the agreed upon Change in the Work and agreed upon amendments to the Contract Documents, if any, in a written Change Order signed by the Parties.

(c) Contractor may at any time, by written notice to Company, propose Changes in the Work or the Critical Milestones: (i) due to a Force Majeure Event, provided that such Force Majeure Event has an impact that will actually, demonstrably, adversely and materially affect the Critical Path of the Work and further provided that Contractor complies with requirements provided in Article XIV and Section 6.2(b); (ii) due to a Company Caused Delay, provided that such Company Caused Delay has a demonstrable material cost increase to Contractor and/or schedule impact that will actually, demonstrably, adversely and materially affect the Critical Path of the Work and further provided that Contractor complies with the requirements set forth in Article XIV; (iii) due to a Change In Law; provided that such Change In Law prevents Contractor from performing all or a portion of the Work, has a demonstrable material cost increase to Contractor and/or has a schedule impact that will actually, demonstrably, adversely and materially the Critical Path of the Work, and further provided that Contractor shall diligently make adjustments to minimize the effect of such Change In Law on the Project; or (iv) due to certain unforeseeable subsurface conditions, Pre-Existing Hazardous Material and wetland areas but only to the extent provided in Section 3.22(a)(iv). Unless the foregoing conditions are met, Contractor may not request a Change in the Work or Critical Milestones due to a Force Majeure Event, Company Caused Delay, Change In Law or unforeseeable subsurface conditions. If Contractor has met all of the applicable condition precedents for a requested Change, then the Parties agree to bargain reasonably and in good faith for the execution of a mutually acceptable Change Order. If in such event the Parties are unable to agree on a mutually acceptable Change Order, then the dispute shall be resolved in accordance with Article XVII. Any extension permitted under this Section 6.2 shall be of an equitable duration designed to reflect the delay actually caused by the relevant event despite Contractor's efforts to mitigate the same. Notwithstanding anything contained in this Agreement to the contrary, Force Majeure Events will only entitle Contractor to extensions of the Project Schedule; provided, however, if the Force Majeure Event exceeds fifteen (15) Days, Contractor shall be entitled to an increase in the Contract Price for all reasonable amounts incurred after such fifteen (15) Day period as a result of such Force Majeure Event.

(d) If Contractor knows of circumstances or events that do or may require a Change in the Work or Project Schedule, and Contractor does not provide written notification to Company of such within fifteen (15) days after the date Contractor knows or should have known (in the exercise of due diligence) of such circumstances or events, then Contractor shall not have any right to request or require any additional consideration or other changes as to Contract Price, schedule, warranty obligations or other provisions hereof, and Contractor shall have waived any claims or offsets against Company, with respect to any Change Order or any necessary Change in the Work or Project Schedule arising out of such circumstances or events.

### 6.3 CHANGES TO CONTRACT PRICE; DISPUTES.

A Change Order initiated by either Party may have the effect of either increasing or decreasing the Contract Price. Any Contractor response to a Change Order under Section 6.1 and any Contractor request for Changes under Section 6.2, shall be accompanied by a description of the estimated cost of such change (separating materials, labor and overhead) to Company. In addition, in the event that Company and Contractor agree that Contractor is entitled to a Change Order but are unable to reach agreement on the terms of such a Change Order for a Change requested by either Company or Contractor pursuant to this Article VI, at the direction of Company (and only at the direction of Company), Company's proposed Changes shall become effective as a Change Order and Contractor shall continue to perform the Work in accordance with such Change Order and the proposed Changes shall be performed by Contractor based upon a fixed lump sum, as determined by Company, pending resolution of the dispute pursuant to Article XVII. In connection with any dispute regarding a Change, Company shall have the right to audit and inspect Contractor's records and accounts relating to any such Change, including composite rates for all labor and quantities and costs of material and equipment.

### 6.4 INFORMATION REQUESTS.

Company may request that Contractor provide written information (prior to the issuance of a request for Changes) regarding the effect of a contemplated Change on pricing, scheduling, warranty obligations or on other terms of the Contract Documents. The purpose of such a request will be to determine whether or not a Change will be requested. Contractor shall provide the requested information to Company within fourteen (14) days after the receipt of said request. Contractor will be allowed to reasonably delay its response to such request to the extent that fulfilling such request would significantly delay progress on the Work, unless Company agrees to extend the required completion date for the affected Milestone. Such an information request is not a Change Order and does not authorize Contractor to commence performance of the contemplated change in Statement of Work.

### 6.5 MINOR CHANGES.

Company shall have the direct authority to issue clarifications and order minor changes in the Work, effected by written order, which do not involve any adjustment to the Contract Price or the Guaranteed Completion Date; provided that such clarifications and changes are consistent with the intent of the Contract Documents. Such clarifications and changes shall be binding on Company and Contractor. Contractor shall carry out such written orders promptly and Contractor shall receive no adjustment in the Contract Price nor shall there be any change to the Contract Documents.

### 6.6 CYBER POLICY CHANGES.

Notwithstanding anything to the contrary in Article VI, Contractor acknowledges that changes to the Cyber Policy will be given only in extenuating circumstances and will only apply to specific Purchase Orders. Changes to the Cyber Policy will only be effective if a revised version of the Cyber Policy reflecting agreed-upon changes is attached to the Purchase Order or Change Order.

## **ARTICLE VII. CONTRACT PRICE; PAYMENTS TO CONTRACTOR**

### 7.1 CONTRACT PRICE.

Company shall pay to Contractor the "Contract Price" set forth in the Purchase Order as full payment for all Work to be performed by Contractor under the Contract Documents. The Purchase Order shall allocate the Contract Price between (1) a fixed fee for Contractor's obligation to engineer, design, procure, construct, test, install and start up the Project, within the time and for the purpose designated herein, achieve Final Acceptance, and comply with all of the warranty obligations set forth in this Agreement, payable as described below (the "EPC Price"), (2) a fixed fee for Contractor's obligation to maintain the ESS in accordance with the Maintenance Requirements through the Post-Warranty

Maintenance Period, payable in accordance with Section 7.3(a) (the “Post-Warranty Maintenance Fee”), (3) a fixed fee for Contractor’s obligation to meet the Availability Guarantees through the Availability Guarantee Period, payable in accordance with Section 7.3(b) (the “Availability Guarantee Fee”), and (4) a fixed fee for Contractor’s warranty obligations under Article XII during the Extended Warranty Period, payable in accordance with Section 7.3(c) (the “Extended Warranty Fee”). The Contract Price shall be subject to adjustment solely to the extent explicitly provided in this Agreement, including pursuant to Article VI. Except as expressly provided herein, payments of the EPC Price shall be made based on completion of milestones in accordance with the Milestone payments schedule as set forth in Exhibit A (each such payment, a “Milestone Payment”), subject to the terms and conditions hereof.

## 7.2 REQUESTS FOR PAYMENT.

(a) Commencing after the Effective Date of this Agreement, upon the date which Contractor successfully achieves one or more of the Milestones as listed in the Milestone payments table, Contractor shall submit to Company a Request for Payment for the Milestone Payment payable upon the achievement of such Milestones. Each Request For Payment shall be accompanied by a cover sheet summarizing the total amount invoiced to date, amounts previously invoiced and current invoice amount, and shall also recap the contract value, showing the original Contract Price, value of approved Change Orders and the revised Contract Price, and provide, for each Milestone in the Milestone payments table, (1) the amounts attributed to Milestones previously paid by Company, and (2) the amount attributed to Milestones for which the applicable Request for Payment is being submitted.

(b) Each Request for Payment shall be accompanied by appropriate supporting documentation that the applicable Milestone has been achieved (which, in the case of the Substantial Completion and Final Acceptance Milestone, shall be the Substantial Completion Certificate and the Final Acceptance Completion Certificate, respectively).

(c) Within thirty (30) days following the completion of the applicable Milestone, provided that Contractor has delivered any amendments to the Letter of Credit required in accordance with Section 7.5 and all Lien waivers required in accordance with Section 7.5(c), Company shall pay to an account specified in a written notice by Contractor the amount that remains after the deduction from the payment requested of the following amounts: (i) any portion thereof that Company disputes in good faith as not being due and owing, (ii) any overpayment made by Company for any previous period, (iii) any Liquidated Damages (including interest thereon) and (v) any amounts withheld pursuant to Sections 7.4(c), 7.5(a) and (vi) any costs incurred by Company in enforcing Section 6.2(b), Section 14.5, or any other provision hereof (including attorneys’ and other consultants’ fees) regardless of whether such provisions expressly provide for withholding or set-off. Company shall not be obligated to make more than one payment during each month. Disputes as to the completion of Work shall be resolved as soon as reasonably possible pursuant to Article XVII of this Agreement; provided, however, that Company shall be required to pay only those amounts for Work to be completed as set forth in the Milestone payments schedule during the month immediately following completion of such Milestone, except those amounts that are disputed in good faith, pending the resolution of such dispute pursuant to the terms of this Agreement.

## 7.3 POST-WARRANTY MAINTENANCE FEE; AVAILABILITY GUARANTY FEE; EXTENDED WARRANTY FEE.

(a) Contractor may invoice Company for the Post-Warranty Maintenance Fee for an Operating Year no earlier than sixty (60) days prior to the beginning of Post-Warranty Maintenance Period for that Operating Year.

(b) Contractor may invoice Company for the Availability Guarantee Fee for an Operating Year no earlier than sixty (60) days prior to the beginning of that Operating Year.



(c) Contractor may invoice Company for the Extended Warranty Fee for an Operating Year no earlier than sixty (60) days prior to the beginning of an Operating Year covered by the Extended Warranty Period.

(d) Each invoice for the Post-Warranty Maintenance Fee and the Availability Guarantee Fee and the Extended Warranty Fee shall reference this Agreement and clearly set out the amount payable and the period in respect of which such amount is payable.

(e) Not later than sixty (60) days following receipt of an valid invoice for the Post-Warranty Maintenance Fee or the Availability Guarantee Fee, Company shall pay the invoiced amount to an account specified in by Contractor in the applicable invoice, without offset, except that Company shall have the right to deduct from any payment requested the following amounts: (i) any portion thereof that Company disputes in good faith as not being due and owing (provided that Company provides notice of such dispute, with a reasonably detailed explanation of the reason for such dispute and supporting documentation); (ii) in all cases, any undisputed overpayment made by Company for any previous period; and (iii) any overdue and unpaid Liquidated Damages (including interest thereon).

#### 7.4 GENERAL PROVISIONS FOR PAYMENTS.

(a) If applicable, any payment by Company shall be accompanied by a notice to Contractor specifying the amount of each deduction and setting forth the reason(s) why the deduction is justified. If undisputed amounts are due and unpaid by Company, Contractor shall be entitled to payment of such amount, plus interest thereon at the Reference Rate (established as of the first day of the month on the month payment is due) from the date that such amount should have been paid until the date of such payment; provided, however, any amounts disputed by Company shall not be subject to the interest thereon. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, FAILURE BY COMPANY TO PAY ANY AMOUNT DISPUTED IN GOOD FAITH, UNTIL RESOLUTION OF SUCH DISPUTE IN ACCORDANCE WITH THIS AGREEMENT, SHALL NOT ALLEVIATE, DIMINISH, OR MODIFY IN ANY RESPECT CONTRACTOR'S OBLIGATIONS TO PERFORM HEREUNDER, INCLUDING CONTRACTOR'S OBLIGATION TO MEET THE GUARANTEED COMPLETION DATE.

(b) Failure or forbearance on the part of Company in withholding any amounts due under a Request for Payment or invoice shall not be construed as accepting or acquiescing to any disputed claims. In addition, the making of any payment by Company shall not constitute an admission by it that the Work covered by such payment (or any Work previously performed) is satisfactory or timely performed, and Company shall have the same right to challenge the satisfactoriness and timeliness of such Work as if it had not made such payment. If, after any such payment has been made, it is subsequently determined that Contractor was not entitled to all or a portion of any such payment, Contractor shall promptly refund all or a portion of such payment to Company with interest thereon at the Reference Rate (established as of the first day of the month in which the payment is due) from the date that Contractor received such payment to the date of refund.

(c) Notwithstanding any other provision to the contrary contained herein, Company, in addition to its rights set forth in Section 7.5, shall have no obligation to make payments to Contractor hereunder and Company may decide not to certify payment or may nullify the whole or a part of a certification for payment made pursuant to a previous Request for Payment to such extent as may be necessary in Company's opinion to protect Company from loss because of: (i) defective Work not remedied; (ii) third party claims filed (including Liens), or reasonable evidence indicating probable filing of such claims; (iii) failure of Contractor to make payments when due to Subcontractors or Vendors; (iv) damage to Company or another contractor, including damage to the property of Company or any of its Affiliates but only to the extent Contractor may be liable for such damage pursuant to this Agreement;

(v) Contractor's, or any Subcontractor's or Vendor's failure to carry out the Statement of Work in accordance with the Contract Documents; or (vi) the occurrence of a Contractor Event of Default. Company shall release payments withheld pursuant to this Section 7.4(c) within thirty (30) days from the date when Contractor cures all such breaches to the satisfaction of Company.

(d) Each payment made pursuant to this Article shall be paid directly to Contractor. Such payment shall be wire-transferred to an account or accounts designated by Contractor in its Request for Payment.

#### 7.5 LIENS.

(a) Provided Company has paid Contractor all undisputed amounts due to Contractor as required in this Agreement, within fifteen (15) days of receiving any notice of any Lien filed by any Subcontractor, or any Person working for, or through, Contractor or any Subcontractor, Contractor shall cause such Lien to be discharged or satisfied by bond. The expense of discharging or satisfying by bond any such Lien shall not be a part of the Contract Price payable to Contractor. If Company receives notice of any such Lien, Company shall provide notice thereof to Contractor. Contractor shall promptly commence all necessary proceedings to discharge or satisfy by bond any such Lien as soon as possible. Without limiting Contractor's obligation to discharge or satisfy any Lien as required in this Section 7.5, Company shall have the right to retain and withhold from amounts payable to Contractor in an amount sufficient to indemnify Company against any such Lien until such time as Company becomes satisfied that such Lien is discharged or satisfied by bond.

(b) As a condition precedent to the making of any payment hereunder, Contractor and each of its Substantial Subcontractors and Substantial Vendors shall provide Company with a certificate in the form attached hereto as Exhibit K and Exhibit K-1. Contractor shall provide such certificates simultaneously with each Request for Payment.

(c) Acceptance by Contractor of the final payment shall constitute a release by Contractor of Company, Affiliates, and every officer and agent thereof from all Liens (whether statutory or otherwise and including mechanics' or suppliers' liens), claims and liability hereunder with respect to any Work performed or furnished in connection with this Agreement, or for any act or omission of Company or of any person relating to or affecting this Agreement, except claims which (i) Contractor does not have actual knowledge of at the time of such payment, (ii) accrue after the date of such payment or (iii) for which Contractor has delivered a dispute notice to Company. No payment by Company shall be deemed a waiver by Company of any obligation of Contractor under this Agreement.

### **ARTICLE VIII. TITLE, RISK OF LOSS AND POSSESSION**

#### 8.1 CLEAR TITLE.

Contractor warrants and guarantees that legal title to and the ownership of the Work delivered to Company pursuant to this Agreement (including all Equipment, patents, licenses, Drawings, Final Plans, operation and maintenance manuals and the Operating Spare Parts as required by the Statement of Work) shall pass to Company, free and clear of any and all Liens caused or created by Contractor, its Subcontractors or Vendors upon payment to Contractor of the portion of the Contract Price then actually due to Contractor in connection with the Request For Payment as provided in the Contract Documents; provided that for all Equipment, title shall pass to Company upon such payment only if title has previously been transferred to Contractor, otherwise, title shall pass to Company at such time as Contractor has acquired title to the Equipment, but in no event later than delivery of such Equipment to the Job Site. Notwithstanding anything to the contrary, the costs of unloading and transporting to the Job Site are included in the Contract Price.

## 8.2 RISK OF LOSS.

(a) From the date of Contractor's commencement of the Work at the Job Site until the Substantial Completion Date, Contractor shall have care, custody, and control of the Project and the Work, and hereby assumes the risk of loss for the Project and the Work, including: (i) any Equipment whether on or off the Job Site, (ii) all other Work completed on or off the Job Site and (iii) all Work in progress. All Equipment not yet incorporated into the ESS shall be stored in secured areas whether on or off the Job Site. Contractor shall bear the responsibility of preserving, safeguarding, and maintaining such Equipment and any other completed Work and Work in progress (including spare parts provided by Company). If any loss, damage, theft or destruction occurs to the Work, regardless of the cause, on or off the Job Site, for which Contractor has so assumed the risk of loss, Contractor shall promptly repair or replace the Project or the Work affected thereby and shall complete the Work in accordance with the Contract; provided that, subject to Contractor's obligations pursuant to Section 9.12, Company shall cooperate with Contractor in obtaining the proceeds of the Builder's Risk Insurance Policy required to be maintained pursuant to Section 9.1(i). Contractor shall be solely responsible for all damage, loss, liability and costs incurred that are not paid by the insurer under the Builder's Risk Insurance Policy in connection with repair or replacement of the Project or the Work, including any Builder's Risk Insurance Policy deductibles, and any such costs shall not be reimbursed by the Company. Contractor assumes risk of loss at all times for Contractor's Equipment. To the extent that any physical loss or damage to the pre-existing property results from Contractor's negligent acts or omissions, and/or failure to comply with the requirements of the Contract Documents, whether or not such pre-existing property is insured, Contractor shall (i) bear all of the cost and expense of replacing or repairing such physical loss or damage; or (ii) be responsible, at its sole cost and expense and without reimbursement from Company, for Company's property insurance policy deductible up to \$5,000,000.00 for insured claims plus any additional costs for replacing or repairing such physical loss or damage that are not paid for by such property insurance.

(b) Risk of loss for the Project and the Work shall pass to Company (excluding Contractor Equipment not incorporated into the Work and other items to be removed by Contractor, which shall remain the responsibility of Contractor) until 11:59 pm, Pacific Time, on the Substantial Completion Date. Subject to the foregoing, from and after the date of the transfer of risk of loss (a) Company shall generally assume all risk of physical loss or damage thereto, and all responsibility for compliance by the ESS with applicable safety and environmental laws, and all other Applicable Laws. However, if any portion of the Project or the Work is damaged or destroyed after the Substantial Completion Date due to any negligent or intentional act or omission of Contractor, then Contractor shall (i) bear all of the cost and expense of replacing or repairing such physical loss or damage; or (ii) be responsible, at its sole cost and expense and without reimbursement from Company, for Company's property insurance policy deductible up to \$5,000,000.00 for physical loss or damage to the Project and the Work plus any additional costs for replacing or repairing such physical loss or damage that are not paid for by such property insurance. Company waives its right to claim a loss against Contractor to the extent that physical loss or damage to the Project or Work is paid for by property insurers, and property insurers waive their rights of subrogation against Contractor as to such payment.

## **ARTICLE IX. INSURANCE**

### 9.1 CONTRACTOR INSURANCE POLICIES.

Upon execution of this Agreement and continuing through the Final Acceptance Date or Termination of this Agreement, whichever is later (except as otherwise provided below in this Section 9.1), Contractor shall, at its sole cost and expense, obtain and maintain in effect those insurance policies and minimum limits of coverage as specified below and such additional coverage as may be required by applicable law (the "Contractor Insurance Policies"). In no way do these minimum insurance requirements limit or relieve Contractor of the obligations assumed elsewhere in this Agreement,



including Contractor's defense and indemnity obligations. By requiring these minimum insurance requirements, Company is not expressing or implying that such requirements are sufficient for the Project or the Work, and Contractor shall be solely responsible for assessing the sufficiency of the types and limits of insurance for the Project and the Work.

(a) Workers' Compensation Insurance with statutory limits, as required by and that complies with the laws of the state having jurisdiction over Contractor's employees, or the state in which the Work is performed and any other jurisdictions as may be applicable to its operations, and includes an alternate employer endorsement. Contractor expressly agrees to comply with all provisions of the Workers' Compensation Laws or similar employee benefit laws of the United States, and Employers' Liability Insurance in the amount of:

- (1) Bodily Injury by accident – one million Dollars (\$1,000,000) each accident
- (2) Bodily Injury by disease – one million Dollars (\$1,000,000) policy limit
- (3) Bodily Injury by disease – one million Dollars (\$1,000,000) each employee

The Employers' Liability Insurance shall not contain an "Occupational Disease" exclusion.

(b) Commercial General Liability Insurance, written on an "occurrence," not claims-made, basis covering third-party liability caused by or arising out of any operations by or on behalf of Contractor under the Agreement, including coverage for third party bodily injury; property damage (including property damage to third party property in Contractor's care, custody, or control, and third party property over which Contractor is exercising physical control); personal and advertising injury; products/completed operations (maintained for a period of five (5) years from the Final Acceptance Date or termination of this Agreement, whichever is later); and (i) liability of Contractor that would be imposed in the absence of the Agreement or (ii) liability assumed by the Contractor in a contract or agreement that is an "insured contract" (applicable to damages and indemnities set forth in this Agreement). Any "Professional Liability" exclusion must except contractor means and methods. The "your work" exclusion must except damaged work or the work out of which the damage arises that is performed by a subcontractor of the insured. Such insurance shall be in limits of two million Dollars (\$2,000,000) per occurrence, four million Dollars (\$4,000,000) Products/Completed Operations aggregate limit dedicated to the Project, and four million Dollars (\$4,000,000) general aggregate limit dedicated to the Project. Defense costs shall be outside of policy limits. The aggregate limits shall apply separately to the Project through the use of a designated project aggregate limit of insurance endorsement. Such insurance shall: (a) contain cross liability and severability of interests provisions; (b) contain coverage for Premises and Operations Liability (including explosion, collapse, and underground hazard), and (c) provide coverage that is equivalent in scope to or broader than the coverage provided by ISO form CG 00 01. If Contractor's Services involve the use of cranes, such coverage shall include riggers coverage for any operations performed by or on behalf of Contractor. Contractor shall continue to maintain the policy for five (5) years following Final Acceptance by Company or termination of this Agreement, whichever is later, or shall include supplemental extended reporting period coverage for not less than five years after Final Acceptance or termination of this Agreement, whichever is later.

(c) Automobile Liability Insurance, covering bodily injury and property damage liability caused by the use of Contractor's owned, hired or non-owned automotive in the performance of the Scope of Work under this Agreement with a combined single limit of not less than one million Dollars (\$1,000,000) per occurrence or accident or the amount required by Applicable Law, whichever is greater.

(d) Umbrella Liability or Excess Liability Insurance, written on a following-form policy (terms at least as broad as the underlying coverage) and on an occurrence basis, and not claims-made basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance, with limits of \$50,000,000 per occurrence and \$50,000,000 annual aggregate using, at Company's discretion and acceptance, either (i) Contractor's corporate insurance program, or (ii) Contractor's project-specific insurance dedicated solely to the Project; if a project-specific insurance policy is procured, Contractor shall ensure that it has limits of \$50,000,000 per occurrence and in the aggregate with a reinstatement provision whereby the project policy aggregate limit shall be reinstated if it becomes eroded due to claims incurred during the policy period or any extended reporting period. Such insurance shall be maintained for not less than five (5) years after Final Acceptance by Company or termination of this Agreement, whichever is later, or shall include supplemental extended reporting period coverage for not less than five (5) years after Final Acceptance or termination of this Agreement, whichever is later.

(e) For Contractor and Subcontractors performing engineering, architecture, design or similar professional services Work, Professional Liability (Errors and Omissions) Insurance covering negligent acts, errors and omissions and wrongful acts in the performance of such professional services, including supervisory services. Such insurance shall have limits of not less than \$5,000,000 per claim and in the annual aggregate using, at Company's discretion and acceptance, either (i) Contractor's corporate insurance program, or (ii) Contractor's project-specific insurance dedicated to the Project; if a project-specific insurance policy is procured for the Term of this Agreement, then limits of \$5,000,000 per claim and in the aggregate with a reinstatement provision whereby the Contractor shall trigger reinstatement should the project policy aggregate limit become eroded due to claims incurred during the policy period. The review and approval of the design portions of the Work by Company shall not constitute a release of Contractor's or any Subcontractor's liability for any negligent acts, errors or omissions or wrongful acts associated therewith. Such insurance shall have a retroactive date that equals or precedes the Effective Date of this Agreement. This insurance shall be maintained for not less than three years after Final Acceptance by the Company or termination of this Agreement, whichever is later, or shall include supplemental extended reporting period coverage for not less than three years after Final Acceptance by the Company or termination of this Agreement, whichever is later.

(f) For Contractor and Subcontractors performing Work involving Hazardous Material (whether brought onto or existing at the property), Contractors Pollution Liability Insurance, with limits of not less than \$5,000,000 each occurrence or each claim and in the annual aggregate using, at Company's discretion and acceptance, either (i) Contractor's corporate insurance program, or (ii) Contractor's project-specific insurance dedicated to the Project, covering losses caused by pollution conditions that arise from the operations of the Contractor or Subcontractors, including coverage for the following: (i) bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; (ii) property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; (iii) defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages; and (iv) natural resource damage, remediation costs (including on-site and off-site), restoration costs, emergency response costs, completed operations, transportation/movement of materials to or from the Project site (including loading and unloading), non-owned disposal sites. There shall be no exclusion or limitation for lead, naturally occurring hazardous substances, or contractual liability. Such insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability and provided that any failure to comply with reporting or other provisions, including breaches of warranties, shall not affect coverage provided to any other insureds. If a project-specific insurance policy is procured for the Term of this Agreement, then such insurance shall include a reinstatement provision whereby the Contractor triggers reinstatement should the project policy aggregate

limit become eroded due to claims incurred during the policy period. Such insurance shall have a retroactive date that equals or precedes the Effective Date of this Agreement. This Insurance shall be maintained for not less than three (3) years after Final Acceptance by the Company or termination of this Agreement, whichever is later, or shall include supplemental extended reporting period coverage for not less than three (3) years after Final Acceptance by the Company or termination of this Agreement, whichever is later.

(g) Inland Marine "Property or Equipment Floater" Insurance covering all risk of physical damage to Contractor's Equipment, including all property, apparatus, tools, structures, supplies, materials, equipment and other goods, and mobile construction equipment, owned, hired, rented or leased by Contractor and/or provided for use at the Job Site by Contractor or its Subcontractors or Vendors to perform Work while it is located at the Site or located at temporary off-site storage or staging areas, or while in land-based transit to the Site within the continental United States. Coverage shall apply to such Contractor's Equipment for the full replacement cost value of such equipment.

(h) Ocean Marine Cargo Insurance, if applicable to the Scope Of Work, for any supplies, machinery, Equipment, and other property intended to be permanently incorporated into the Project to be transported by ocean going vessels, unless such property is already insured by Contractor or other party under Incoterms 2010 rules or Incoterms 2000 rules.

(i) Builder's Risk Insurance. Within fifteen (15) days after Contractor notifies Company in writing that it will construct improvements at, or deliver supplies, materials or Equipment to the Job Site that may be insurable pursuant to a builder's risk insurance policy but not later than the date that any such activities are performed at the Project, and continuing through the Substantial Completion Date, Contractor shall obtain and maintain in force a Builder's Risk Insurance policy (the "Builder's Risk Policy"). The Builder's Risk Policy shall name Company (and any Affiliate that Company may request in writing be named as an insured), Contractor, and Subcontractors of any tier performing Work at the Job Site as named insureds, shall cover the Project, including all supplies, materials, Equipment, machinery, and other property intended to be permanently incorporated into the Project for which title or risk of loss shall have passed at the time of loss to an insured. Coverage shall be on an "all risk" basis, and shall not be less than 100% of the replacement cost value of the Project for physical damage, loss, or destruction to the Project and related expenses, and may also contain aggregate sub-limits for losses due to the perils of earthquake (including sinkhole), flood, as well as other sub-limits. Coverage shall apply to such Project property while it is located at the Job Site or located at temporary off-site storage or staging areas, or while in land-based transit to the Job Site within the continental United States, and shall include expediting expense coverage. The Builder's Risk Policy shall insure resulting damage from faulty workmanship, design, or materials. Company shall be named as loss payee. Company and Contractor agree to waive all rights of recovery against each other and Subcontractors for damages caused by fire and other perils to the extent paid by the Builder's Risk Policy. Contractor shall cause the Builder's Risk insurer to waive all rights of subrogation against Company, and shall cause Subcontractors to waive all rights of recovery against Company to the extent paid by the Builder's Risk Policy. Contractor shall provide Company with a copy of the Builders Risk Policy prior to commencing any Work, or as soon thereafter as the policy becomes available with Contractor's diligence in which case Contractor shall also provide Company with a proposed policy form or other documentation of the terms and conditions of the policy prior to commencing any Work. Company shall have the right to review the Builders Risk Policy including, without limitation, with respect to covered property, limits and sub-limits, exclusions, and coverage extensions, to ensure that the policy adequately insures the Project and the Work.

## 9.2 FORM OF CONTRACTOR INSURANCE POLICIES.

(a) Contractor shall be solely obligated, and Company shall bear no obligation, to pay any and all premiums, deductibles, retentions, co-pays, or other charges applicable to any of the Contractor Insurance Policies.

(b) Additional Insured: Contractor shall name Company and any other designated Affiliates of Company, and any other Person designated by Company with respect to the Project (including their respective officers, directors and employees), as additional insureds under the Contractor Insurance Policies specified in Section 9.1(b), (c), (d) and (f), and with regard to the insurance specified in Section 9.1(b), the additional insured coverage shall include ongoing operations and products/completed operations coverage.

(c) Primary/Non-Contributory: Regardless of any conflicting provision in Contractor's policies to the contrary, Contractor's Insurance Policies (i) required in Section 9.1(b) and (c) shall apply as primary insurance to, and without a right of contribution from, any other insurance or self-insurance program maintained by or afforded to Company and any other designated Affiliates of Company, and any other Person designated by Company with respect to the Project (including their respective officers, directors and employees); (ii) required in Section 9.1(d) shall apply as primary insurance to any other insurance or self-insurance program maintained by or afforded to Company and any other designated Affiliates of Company, and any other Person designated by Company with respect to the Project (including their respective officers, directors and employees); (iii) required in Section 9.1(a) shall apply without a right of contribution from, any other insurance or self-insurance maintained by or afforded to Company and any other designated Affiliates of Company, and any other Person designated by Company with respect to the Project (including their respective officers, directors and employees).

(d) Waiver of Subrogation: Contractor and its insurers of the coverages specified in Section 9.1, except for Section 9.1(e), shall be required to waive all rights of recovery from or subrogation against Company and any other designated Affiliates of Company and any other Person designated by Company with respect to the Project (including their respective directors, officers and employees). Contractor shall require the issuers of such Contractor Insurance Policies to waive all rights of subrogation.

(e) Contractor shall be responsible for additional costs associated with modifying inadequate coverage, terms and conditions to meet the requirements of this Agreement. Contractor shall comply with all the conditions stipulated in each of the insurance policies. Contractor shall make no material alteration to the terms of any insurance required herein without the prior written approval of Company. If an insurer makes (or purports to make) any such alteration, Contractor shall notify Company immediately. If any such notice is sent from an office outside the United States, it will be sent by international courier.

## 9.3 QUALIFIED INSURERS.

All Contractor Insurance Policies shall be written by insurers that are authorized to do business in the state in which the Work is to be performed, and rated "A-" VII or higher by A.M. Best's Key Rating Guide.

## 9.4 CERTIFICATES OF INSURANCE.

Contractor shall provide Company with certificates of insurance, in form and substance acceptable to Company, evidencing and describing Contractor's Insurance Policies and endorsements maintained hereunder within fifteen (15) days of commencement of the Work, but in no event later than the date Contractor enters the Job Site, or upon issuance of such policies, if earlier, and on each issuance



anniversary while such insurance is in effect. Contractor shall provide Company written notice at least thirty (30) days in advance of any change in, non-renewal of or cancellation of such insurance policies. The certificates of insurance shall evidence and describe the insurance policies and endorsements, including the requirements for additional insured, primary/non-contributory and waiver of subrogation as described in Section 9.2. Notwithstanding anything to the contrary contained herein, evidence of such coverage shall be provided to Company as a condition precedent to Initial Site Mobilization.

#### 9.5 INSPECTION OF CONTRACTOR'S INSURANCE POLICIES.

Contractor shall provide Company with complete copies of all (i) Project specific Contractor Insurance Policies prior to commencing any Work, or as soon thereafter as each policy becomes available with Contractor's diligence in which case Contractor shall also provide Company with a proposed policy form or other documentation of the terms and conditions of that policy prior to commencing any Work; and (ii) corporate-wide Contractor Insurance Policies promptly upon request of the Company in the event of an insured or potentially insured claim or loss. If policies have not been secured on a Project-specific basis, Contractor may redact proprietary information not relevant to the scope, terms, or conditions of coverage prior to transmission. Contractor shall, when so requested by Company, promptly produce confirmation of premium payments for such policies. Company's receipt, non-objection, or approval of certificates of insurance, policy endorsements, copies of insurance policies, and any other insurance-related documentation from Contractor with respect to the Contractor Insurance Policies shall not be deemed an agreement or acknowledgement by Company that Contractor has fulfilled its obligations under this Article IX, nor shall it relieve Contractor of such obligations, which obligations shall remain in full force.

#### 9.6 SUBCONTRACTORS' INSURANCE.

Before permitting any of its Subcontractors to perform any Work at the Job Site, Contractor shall obtain a certificate of insurance from each such Subcontractor evidencing that such Subcontractor has obtained the same types of insurance and limits required of Contractor, subject to Company's agreement to reasonable changes to types of insurance or limits based upon the scope of Work of each Subcontractor. All policies of Subcontractors shall (i) include a waiver of any right of subrogation of the insurers thereunder against Company and Contractor and any right of the insurers to set-off or counterclaim, offset or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under such policy, and (ii) name Company and Contractor as additional insureds for both ongoing operations and products/completed operations coverage. Subcontractors shall provide the types of insurance set forth in Section 9.1 (a), (b), (c), and, where applicable, (e) and (f), with limits and upon conditions as are customarily and normally provided in the power transmission industry. Vendors shall provide the types of insurance, with limits and upon conditions, as are customarily and normally provided in the power transmission industry. Contractor shall, in its subcontracts, obligate each of its Subcontractors to provide to Company and Contractor complete copies of all Subcontractor procured insurance policies promptly upon request by Company or Contractor.

#### 9.7 REMEDY ON FAILURE TO INSURE; INSURANCE INDEMNIFICATION.

Contractor shall not be entitled to any payment under the Agreement if it is not in compliance with all of its obligations with respect to the Contractor Insurance Policies as specified in this Article IX. If Contractor shall fail to obtain and keep in force all Contractor Insurance Policies, Company may, without limiting any other remedy it may have available under this Agreement or otherwise at law or equity, obtain and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and recover from Contractor whether by way of deduction, offset or otherwise the cost of obtaining and maintaining such insurance. If Contractor fails to comply with any of the

provisions of this Article IX, Contractor, among other things and without restricting Company's remedies under the law or otherwise, shall, at its own cost and expense, provide insurance as an insurer would in accordance with the terms and conditions above. With respect to the required Contractor Insurance Policies, Contractor shall provide a current, full and complete defense to the Company, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to any claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.

9.8 MANAGEMENT OF INSURANCE POLICIES.

Contractor shall be responsible for (a) managing and administering all Contractor Insurance Policies, including the payment of all deductibles and self-insured retention amounts, and (b) except for Company's rights under the Builder's Risk Policy, or as Company may otherwise direct, the filing of all claims and the taking of all necessary and proper steps to collect any proceeds on behalf of the relevant insured Person. Contractor shall immediately report to Company in writing the occurrence of any injury, loss, or damage at or to the Project or arising from the Work, including damage to property and bodily injury that might reasonably give rise to a loss or claim exceeding \$100,000. Contractor shall at all times keep Company informed of the filing and progress of any such loss or claim. In the event Contractor collects proceeds on behalf of other Persons, it shall ensure that these are paid directly from the insurers to the relevant Person and, in the event that it receives any such proceeds, it shall, unless otherwise directed by Company, pay such proceed to such Party forthwith and prior thereto, hold the same in trust for the recipient.

9.9 COMPANY INSURANCE POLICIES.

Prior to the Initial Site Mobilization by Contractor and continuing through the Final Acceptance Date, Company shall obtain and maintain in force with responsible and reputable insurance carriers, the following insurance of the types set forth below; provided, however, Company may self-insure any or all of such coverages, and the terms, conditions, and limits of such insurance shall be determined in Company's sole discretion:

(a) Workers' Compensation covering all of Company's employees, and Employers' Liability covering all of Company's employees;

(b) General Liability Insurance in limits and on terms that Company deems reasonable; and

(c) Property Insurance. After Substantial Completion and until Final Acceptance or the termination of this Agreement, whichever comes first, Company shall provide property insurance for the Project in an amount and on terms that Company deems appropriate.

(d) Other Company Policy Provisions. Prior to the initial site mobilization by Contractor, Company shall provide Contractor with a certificate of insurance evidencing those policies set forth in this Section 9.9. As it applies to this Agreement, Company-provided insurance required pursuant to this Section 9.9 shall: (i) provide a waiver of subrogation in favor of Contractor for the insurance in Sections 9.9(a), (b) and (c); (ii) unless otherwise noted and where applicable, provide that all amounts of coverage, deductibles and claims payments be in Dollars; and (iii) shall not be inclusive of coverage of Contractor Equipment or any Subcontractor's mobile equipment, tools or other equipment similar to Contractor Equipment.

9.10 CONTRACTOR'S ASSISTANCE.

In the event a loss is sustained under any of Company's policies, such loss will be adjusted by Company with the insurance companies. Contractor will assist Company in the adjustment of losses and shall cooperate fully and expeditiously with Company in Company's pursuit of insurance

coverage. Contractor shall replace or repair any loss or damage and complete the Work in accordance with the Contract Documents (subject to any right, if any, Contractor may have to receive compensation therefor under this Agreement). Contractor shall provide all Drawings, Final Plans, certificates and other information that Company or its insurers may reasonably require. Contractor shall with all due diligence comply with the conditions of Company's insurance policies and all reasonable requirements of the insurers in connection with the settlement of claims, the recovery of losses and the prevention of accidents and shall bear, at its sole cost and expense and without reimbursement hereunder, the consequences of any failure to do so. Contractor shall ensure, by contractually obligating each of its Subcontractors in their subcontracts, that each Subcontractor shall provide such cooperation to Company. Cooperation, as used in this section, includes providing access to non-privileged documents, and to employees with knowledge of the facts or circumstances, relevant to the pursuit of such insurance coverage. The parties will bear their respective costs in cooperating in the pursuit of such insurance coverage. The duty to cooperate shall survive any termination of the Agreement.

9.11 REPAIR OR REPLACEMENT COST RESPONSIBILITY OF CONTRACTOR.

Until the Substantial Completion Date, Contractor shall have the risk of loss to the Project in accordance with Section 8.2 and full responsibility for the cost of replacing the loss of or repairing the damage to any portion of the Project, including all Equipment, regardless of whether Company has title thereto under this Agreement, except to the extent such loss or damage is the result of gross negligence or willful misconduct of Company.

9.12 RESPONSIBILITY FOR SAFE DELIVERY OF MATERIALS OF CONTRACTOR.

In addition to Section 8.2, Contractor shall comply with all insurer requirements set forth in all policies or other insurer requirements or recommendations, including inland transport and ocean marine cargo insurance policies.

9.13 NO LIMITATION ON LIABILITY.

Nothing in this Article IX shall be deemed to limit Contractor's liability under the Contract Documents regardless of the insurance coverages required by this Article. No limitation of liability provided to Contractor under the Contract Documents is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable or available to Company or Contractor under Contractor Insurance Policies, it being the intent of the Parties that the full amount of such insurance be actually available notwithstanding any limitation of liability contained in the Contract Documents, if any. In the event that Contractor procures a Contractor's Insurance Policy with limits greater than that required under this Agreement, the higher limits of that policy shall apply, regardless of any provision in such policy seeking to limit the insurer's obligation to the lower limits set forth in this Agreement. Company assumes no responsibility for the solvency of any insurer or the failure of any insurer to settle any claim.

9.14 CANCELLATION OF CONTRACTOR INSURANCE POLICIES.

Should any insurer that issues any of the Contractor Insurance Policies withdraw or cancel its policy, or should any such insurer become insolvent, make an assignment for the benefit of creditors, or file for or be placed into bankruptcy, run-off, receivership, or liquidation, (a) Contractor shall promptly give Company written notice thereof, (b) Contractor shall promptly replace such insurance through another insurer acceptable to Company, and (c) Company shall have no obligation to make payment to Contractor until Contractor has complied with subpart (b) above.

## **ARTICLE X.**

### **TESTS, SUBSTANTIAL COMPLETION AND FINAL ACCEPTANCE**

#### **10.1    GENERAL.**

(a) All Tests conducted by either Party shall be in accordance with the Contract Documents, applicable manufacturers' instructions and warranty requirements, Applicable Laws, Applicable Permits, Prudent Industry Practices and any and all applicable rules. Except as otherwise provided in this Agreement, the Party performing the Tests shall provide the other Party with at least ten (10) Business Days' advance written notice of the Tests. Company and its respective authorized representatives or third parties, shall have the right to inspect the Work and to be present during the Tests performed by Contractor. The Party performing the Test shall provide a written report of the Test results to the other Party immediately upon such report becoming available to the Party performing the Test.

(b) Prior to performing any Test, Contractor shall deliver to Company a written notice thereof (a "Test Notice") specifying a date for commencement of any or all of the Tests. Contractor shall deliver a Test Notice at least ten (10) Business Days prior to the commencement of any Test. Company shall, within five (5) Business Days after its receipt of such Test Notice, deliver to Contractor a written notice (i) accepting such Test Notice or (ii) denying that the prerequisites for performing such Test have been completed and stating the facts upon which such reasonable denial is based. Upon receipt of such notice, Contractor shall take such action as is appropriate to remedy the conditions described in such notice from Company. Following any such remedial action, Contractor shall deliver to Company a new Test Notice conforming to the requirements of this paragraph (b), and the provisions of this paragraph (b) shall apply with respect to such new Test Notice in the same manner as they applied with respect to the original Test Notice. The foregoing procedure shall be repeated as often as necessary until Company no longer rejects the Test Notice; provided, however, if Contractor is required to notify following receipt of Company's written notice in which Company denies that the prerequisites for performing a task have been completed, such re-notification may be given within five (5) Business Days of such notice by Company, and Company shall have three (3) Business Days following the receipt of such resubmitted notice to file written objections as described above. Contractor shall reschedule Tests as requested by Company to reasonably accommodate the schedules of Persons whom Company deems necessary to attend the Tests. Contractor shall promptly notify Company of any proposed change in the schedule of Tests and may not conduct any such test under such proposed changed schedule unless Company receives reasonable advance notice of the actual date of commencement of such rescheduled test. Contractor shall reimburse Company for all additional direct costs reasonably and necessarily incurred by Company due to Contractor's failure to provide written notice in accordance with this Section 10.1(b) or due to Contractor's failure to prepare any portion of the Work for inspections or testing after having provided notice to Company of any such inspection or test.

#### **10.2    PERFORMANCE TESTS.**

No Performance Tests will be performed unless the Project (a) is capable of being energized and operated safely, normally and continuously in accordance with the requirements of the Contract Documents at all operating conditions and modes specified in the Statement of Work (although minor portions of the Project not essential to its safe, continuous and reliable operation may remain to be completed), and (b) is ready for the Performance Tests to be performed in accordance with the Contract Documents. The Performance Tests shall be performed by Contractor or Company, as set forth in Exhibit D, with the cooperation of the other Party. Contractor acknowledges and agrees that Company may engage third parties to assist with or conduct the Performance Tests. Each Performance Test shall be conducted in accordance with the terms of the Contract Documents, including the Statement of Work, after complying with the notice provisions of Section 10.1(b). If the Project achieves the Performance Requirements, Contractor shall, upon satisfaction of the other requirements to Substantial Completion, submit a notice of Substantial Completion in accordance with Section 10.4(a). If the Project fails all or



any part of the Performance Tests, Contractor shall take appropriate corrective action and the Performance Tests shall be performed again. If the Project fails all or any part of the retest, Contractor shall take appropriate corrective action and the Performance Tests shall be repeated. If Contractor fails to achieve the Performance Requirements and satisfy all of the other requirements of Substantial Completion on or prior to the Guaranteed Completion Date, Contractor shall pay Schedule Liquidated Damages in accordance with Section 11.2 hereof. In addition, the Performance Tests shall be repeated in accordance with this Section 10.2 during the applicable time periods set forth in Section 11.1.

#### 10.3 PUNCH LIST.

(a) At all times during performance of the Work, Contractor shall maintain a list setting forth parts of the Work which remain to be performed in order to confirm that the Work fully complies with the terms of the Contract Documents. Contractor shall promptly provide a copy of such list to Company upon request. Contractor shall make such revisions to such list as and when requested by Company from time to time.

(b) No later than five (5) days after the Substantial Completion Date, Contractor shall prepare and submit to Company a comprehensive list (the "Punch List") of items to be completed for the Project to reach Final Acceptance. Contractor shall make such revisions to the Punch List as and when requested by Company from time to time. However, Contractor shall not be obligated to include any items on the Punch List if such items: (i) directly relate to any part of the Work for which Company has taken operational care, custody and control and (ii) are submitted by Company more than twenty one (21) days after Company took operational care, custody and control over such part of the Work.

(c) Upon request of Company, the Parties shall reasonably agree upon the commercial value of all items on the Punch List that have not been completed. The Parties agree that with respect to Punch List items that remain uncompleted and which are preventing Final Acceptance, it may be more expedient for Company to complete such Punch List items, at its election and option. If the Parties are able to agree upon the commercial value of all items on the Punch List, and Company so elects, at its sole discretion, Company may, in lieu of requiring Contractor to complete the Punch List items, require Contractor to pay to Company an amount equal to one hundred fifty percent (150%) of the commercial value of the remaining Punch List items as agreed upon by Company. Company shall have the right to offset such amount owed by Contractor against any amounts owed by Company to Contractor at Final Acceptance, or otherwise under the Contract Documents.

#### 10.4 SUBSTANTIAL COMPLETION.

(a) After Contractor determines that all of the requirements for Substantial Completion have been completed, Contractor shall provide written notice thereof to Company.

(b) Within ten (10) Business Days following receipt by Company of such notice of Substantial Completion, Company shall notify Contractor in writing whether or not Contractor has fulfilled the requirements of Substantial Completion. If Contractor has fulfilled the requirements of Substantial Completion, Company shall notify Contractor that it has achieved Substantial Completion. If Contractor has not fulfilled such requirements for Substantial Completion, Company shall specify in such notice to Contractor in reasonable detail the reasons for determining that the requirements for Substantial Completion have not been met. Contractor shall promptly act to correct such deficiencies so as to achieve Substantial Completion as soon as possible (and no later than by the Guaranteed Completion Date if such date has not already passed). Following any such remedial action, Contractor shall deliver to Company and the a new notice of Substantial Completion and the provisions of this Section 10.4(b) shall apply with respect to such new Substantial Completion notice in the same manner as they applied to the original Substantial Completion notice. The foregoing procedure shall be repeated as often as necessary, so long as Contractor is paying when due Schedule Liquidated Damages (if applicable), until Substantial Completion has been achieved. The date on which Substantial Completion is achieved by Contractor shall be the

“Substantial Completion Date.”

10.5 FINAL ACCEPTANCE OF THE ESS.

Contractor shall achieve Final Acceptance within thirty (30) Days after the Substantial Completion Date. After achieving Substantial Completion in accordance with Section 10.4, when Contractor determines that all of the requirements for Final Acceptance have been completed (other than execution of the Final Acceptance Certificate by Company), or when Contractor has elected to or is required to declare Final Acceptance pursuant to this Section 10.5, Contractor shall submit a proposed Final Acceptance Certificate, in substantially the form attached hereto as Exhibit C, to Company. As soon thereafter as reasonably practicable, a team consisting of representatives of Company and Contractor shall make a final inspection of the ESS. Within ten (10) Business Days following such final inspection, Company shall notify Contractor in writing whether Contractor has fulfilled the requirements of the Contract Documents to reach Final Acceptance (other than execution of the Final Acceptance Certificate by Company). If such requirements have been fulfilled, Company will execute the proposed Final Acceptance Certificate. If the requirements for Final Acceptance have not been fulfilled, then Company shall deliver a written notice to such effect to Contractor describing in reasonable detail the deficiencies noted and corrective action recommended, including projected target dates for the completion of such incomplete or remedial Work. Contractor shall promptly act to correct any such deficiencies. The procedure set forth in this Section 10.5 shall be repeated as necessary, until the earlier of (i) Contractor has fulfilled the requirements for the issuance of the Final Acceptance Certificate and Company executes such certificate or (ii) termination of this Agreement.

10.6 CHANGES IN GUARANTEED DATES.

Except as otherwise set forth herein, no action by Company or Contractor (unless Company specifically agrees to the contrary) required or permitted under this Article X shall affect the Guaranteed Completion Date or any other scheduled date described or defined under the terms of the Project Schedule or other Contract Document.

**ARTICLE XI.**

**CONTRACTOR GUARANTEES AND LIQUIDATED DAMAGES**

11.1 COMPLETION GUARANTEE.

(a) Contractor hereby guarantees that Substantial Completion will occur no later than the Guaranteed Completion Date.

(b) Subject to Company's other rights as set forth in this Agreement and subject to the provisions of this Section 11.1, in the event that Substantial Completion occurs after the Guaranteed Completion Date but Contractor achieves Substantial Completion within sixty (60) Days after the Guaranteed Completion Date, Contractor shall pay and Company shall accept as its sole remedy for each and every day of such delay after the Guaranteed Completion Date the Schedule Liquidated Damages described in Section 11.2.

(c) If and in the event Contractor fails to achieve Substantial Completion within sixty (60) Days of the Guaranteed Completion Date, then (i) Contractor shall be considered in default, and may, at Company's sole and exclusive discretion, be terminated in accordance with Article XV of this Agreement, and (ii) Contractor shall continue to pay the Schedule Liquidated Damages described in Section 11.2 until the exhaustion of the aggregate amount of Schedule Liquidated Damages, payable by Contractor hereunder in accordance with Section 11.5(c).

11.2 SCHEDULE LIQUIDATED DAMAGES.

(a) Company and Contractor acknowledge and agree that any failure to achieve Substantial Completion for the Project by the Guaranteed Completion Date will directly cause substantial

damage to Company, which damage cannot be ascertained with reasonable certainty. If Contractor fails to achieve Substantial Completion for the Project by the Guaranteed Completion Date, subject to Section 11.4(c), it shall pay to Company, as liquidated and agreed damages and not as a penalty, an amount (collectively, the “Schedule Liquidated Damages”) as set forth in Exhibit Q for each Day (or portion thereof) that Substantial Completion is delayed beyond the Guaranteed Completion Date, commencing with the first Day following the Guaranteed Completion Date.

(b) It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Article XI as Schedule Liquidated Damages are reasonable, considering the damages that Company would sustain, and that these amounts are agreed upon and fixed as Schedule Liquidated Damages because of the difficulty of ascertaining the exact amount of damages that would be sustained by Company. Payment of Schedule Liquidated Damages are the exclusive remedies for delays if and in the event the Project ultimately achieves Substantial Completion before the earlier of sixty (60) Days after the Guaranteed Completion Date or such date on which the aggregate amount of Schedule Liquidated Damages is exhausted. Further, subject to the last sentence of this paragraph and Section 15.1(a) and Section 15.1(c) and provided Contractor (i) has not otherwise materially breached this Agreement and (ii) is paying the assessed Schedule Liquidated Damages, the failure to achieve Substantial Completion by the Guaranteed Completion Date shall not be considered an event of default under the Contract Documents. Notwithstanding anything contained herein to the contrary, in the event that Contractor has not achieved Substantial Completion but has reached its maximum liability hereunder for payment of Schedule Liquidated Damages in accordance with Section 11.4(c), Contractor shall be in breach of this Agreement.

### 11.3 AVAILABILITY GUARANTEES.

(a) Contractor hereby guarantees that the ESS will operate to meet or exceed the performance levels set forth in Exhibit M (the “Availability Guarantees”) for the period following the Substantial Completion Date as identified in the Purchase Order (“Availability Guarantee Period”).

(b) Company and Contractor acknowledge and agree that any failure to meet the Availability Guarantees will directly cause substantial damage to Company, which damage cannot be ascertained with reasonable certainty. Accordingly, if Contractor shall fail to meet the Availability Guarantees, subject to Section 11.4(c), it shall pay to Company, as liquidated and agreed damages and not as a penalty, an amount (collectively, the “Availability Liquidated Damages”) as set forth in Exhibit M within thirty (30) Days after the end of any Operating Year (or portion thereof) during which Contractor shall fail to meet the Availability Guarantees.

(c) It is understood and agreed between the Parties that the terms, conditions and amounts fixed pursuant to this Article XI as Performance Liquidated Damages are reasonable, considering the damages that Company would sustain, and that these amounts are agreed upon and fixed as Performance Liquidated Damages because of the difficulty of ascertaining the exact amount of damages that would be sustained by Company. Payment of Performance Liquidated Damages are the exclusive remedies for Contractor’s failure to meet the Availability Guarantees.

### 11.4 PAYMENT OF LIQUIDATED DAMAGES.

(a) Schedule Liquidated Damages and Availability Liquidated Damages (together, “Liquidated Damages”), if any, under this Article XI shall accrue as set forth in Exhibits Q and M, respectively. Any amounts not paid when due shall accrue interest from the due date until paid at the Reference Rate (established as of the first day of the month in which payment is due).

(b) Except as provided in Section 11.4(c), Contractor’s obligation to pay Liquidated Damages when and as provided in this Article XI is an absolute and unconditional obligation, and shall not be released, discharged, diminished, or in any way affected by (i) any default by Company in the

performance or observance of any of its obligations hereunder; provided that Company has paid all undisputed amounts due to Contractor hereunder, or any other circumstances, happening, condition or event. Contractor shall pay such Liquidated Damages without deduction, set-off, reduction or counterclaim.

(c) Notwithstanding anything contained herein to the contrary, Schedule Liquidated Damages shall not exceed an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the Contract Price, and Availability Liquidated Damages shall not exceed an amount equal to \_\_\_\_\_ percent (\_\_\_\_%) of the Contract Price.

(d) Company shall have the right to offset any amounts owing to Company under this Article XI against payments or other amounts owing to Contractor and to exercise its rights against any security provided by or for the benefit of Contractor, in such order as Company may elect in its sole discretion.

#### 11.5 ABSOLUTE OBLIGATIONS.

The Parties understand and agree that Contractor's obligation to achieve the Substantial Completion is an absolute obligation, which must be achieved. There are no Liquidated Damages payable by Contractor hereunder which would excuse Contractor from achieving Substantial Completion for the Project. Notwithstanding anything contained herein to the contrary, after the Project has achieved Substantial Completion and during the time period prior to Final Acceptance, the Project shall be capable of being operated in accordance with all the ESS's operating procedures and all Applicable Laws, Applicable Permits and the other requirements of the Contract Documents, and all operating conditions specified in the Statement of Work. The obligations set forth in this Section 11.5 are absolute obligations of Contractor regardless of the amounts and expenses required to be incurred by Contractor to satisfy such obligation, and notwithstanding that such amounts may exceed the Contract Price.

#### 11.6 LETTER OF CREDIT[TM1].

(a) Prior to commencing the Work, Contractor shall deliver to Company a letter of credit, in the form attached hereto as Exhibit L, issued by a Qualified Institution in the amount of \_\_\_\_\_ percent (\_\_\_\_%) of the Contract Price, as may be amended (the "Letter of Credit"), to secure Contractor's payment and performance obligations under this Agreement. A drawing against the Letter of Credit may be made by Company, its successors or permitted assigns, in the event that: (a) a Contractor Event of Default has occurred; (b) Company has not received proof of replacement of the Letter of Credit reasonably satisfactory to it at least thirty (30) days prior to the expiration date of the Letter of Credit; (c) the issuer of the Letter of Credit no longer qualifies as a Qualified Institution; (d) the Letter of Credit was amended or modified without the prior written consent of Company; (e) a provision of the Letter of Credit has ceased to be valid and binding on, or enforceable against, the issuer; or (f) the issuer has disaffirmed an obligation under the Letter of Credit. In the event that Company draws upon the Letter of Credit for any cause set forth in subsections (b) through (f) above, inclusive, Company shall hold the proceeds from such drawing in trust, for the benefit of Contractor, pending the delivery by Contractor to Company of a replacement Letter of Credit which satisfies the requirements set forth in this Section 11.6, and upon the delivery thereof, Company shall return to Contractor the proceeds held in trust, less any sums to which Company may be entitled pursuant to clause (a) above.

(b) Upon achieving Final Acceptance of the Work, Contractor shall deliver to Company a replacement letter of credit, in the form attached hereto as Exhibit L, issued by a Qualified Institution in the amount of \_\_\_\_\_ percent (\_\_\_\_%) of the Contract Price, as may be amended (the "Warranty Period Letter of Credit"), to secure Contractor's obligations under Section 11.3 and Article XII, a drawing against which Warranty Period Letter of Credit, may be made by Company, its successors and assigns, in the event that (a) a Defect or other breach of a warranty under Section 12.1 arises during the Warranty Period that Contractor fails to remedy as required under Section 12.2; (b) Company has not



received proof of replacement of the Warranty Period Letter of Credit reasonably satisfactory to it at least thirty (30) days prior to the expiration date of the Warranty Period Letter of Credit; (c) the issuer of the Warranty Period Letter of Credit no longer qualifies as a Qualified Institution; (d) the Warranty Period Letter of Credit was amended or modified without the prior written consent of Company; or, (e) a provision of the Warranty Period Letter of Credit has ceased to be valid and binding on, or enforceable against, the issuer or the issuer has disaffirmed an obligation under the Warranty Period Letter of Credit. In the event that Company draws upon the Warranty Period Letter of Credit for any cause set forth in subsections (b) through (e) above, inclusive, Company shall hold the proceeds from such drawing in trust, for the benefit of Contractor, pending the delivery by Contractor to Company of a replacement Warranty Period Letter of Credit which satisfies the requirements set forth in this Section 11.6, and upon the delivery thereof, Company shall return to Contractor the proceeds held in trust, less any sums to which Company may be entitled pursuant to clause (a) above.

(c) Upon expiration of the Warranty Period, Contractor shall deliver to Company a replacement letter of credit, in the form attached hereto as Exhibit L, issued by a Qualified Institution in the amount of \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Contract Price, as may be amended (the "Post-Warranty Letter of Credit"), to secure Contractor's obligations under Section 11.3, a drawing against which Post-Warranty Letter of Credit, may be made by Company, its successors and assigns, in the event that (a) the ESS fails to meet the Availability Guarantees; (b) Company has not received proof of replacement of the Post-Warranty Letter of Credit reasonably satisfactory to it at least thirty (30) days prior to the expiration date of the Post-Warranty Letter of Credit; (c) the issuer of the Post-Warranty Letter of Credit no longer qualifies as a Qualified Institution; (d) the Post-Warranty Letter of Credit was amended or modified without the prior written consent of Company; or, (e) a provision of the Post-Warranty Letter of Credit has ceased to be valid and binding on, or enforceable against, the issuer or the issuer has disaffirmed an obligation under the Post-Warranty Letter of Credit. In the event that Company draws upon the Post-Warranty Letter of Credit for any cause set forth in subsections (b) through (e) above, inclusive, Company shall hold the proceeds from such drawing in trust, for the benefit of Contractor, pending the delivery by Contractor to Company of a replacement Post-Warranty Letter of Credit which satisfies the requirements set forth in this Section 11.6, and upon the delivery thereof, Company shall return to Contractor the proceeds held in trust, less any sums to which Company may be entitled pursuant to clause (a) above.

## **ARTICLE XII. CONTRACTOR'S WARRANTIES**

### **12.1    WARRANTIES.**

(a) Contractor warrants to Company that all Equipment shall be (i) new and of good quality, (ii) free from improper workmanship and Defects, (iii) conform to all applicable requirements of all Applicable Laws and all Applicable Permits, and (iv) fit for Company's use in connection with battery storage facilities.

(b) Contractor warrants to Company that the Work will be performed in a good and workmanlike manner, and that the ESS will: (i) conform to and be designed, engineered and constructed in accordance with the Drawings, Statement of Work, all Applicable Laws and Applicable Permits and other terms of the Contract Documents; (ii) conform with, and be designed and engineered according to professional standards and skill, expertise and diligence of design professionals regularly involved in battery storage facilities similar to the Project; and (iii) contain the Equipment, supplies and materials described in the Statement of Work.

(c) Contractor warrants to Company that none of the Work, the ESS, the Equipment, the Drawings, Final Plans and the design, engineering and other services rendered by Contractor hereunder, nor the use or ownership thereof by Company in accordance with the licenses granted hereunder, infringes, violates or constitutes a misappropriation of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks.

(d) Except as expressly stated herein to the contrary, Contractor warrants that it shall remedy, in accordance with Section 12.2, any Defects in the Work due to faulty design, materials or workmanship which appear within the Base Warranty Period and any Extended Warranty Period (the “Warranty Period”). Contractor shall bear all costs of corrections, repairs, and Required Maintenance during the Warranty Period. The provisions of this Section 12.1 apply to Work performed by Subcontractors and Vendors as well as Work performed directly by Contractor. The provisions of this Article XII do not apply to corrective work caused by the acts or omissions of Company or any separate contractor of Company. If and in the event Company notifies Contractor of a Defect within the Warranty Period, Contractor, at Contractor’s expense, shall perform all Work necessary to remedy the Defect, and the repair or replacement Work performed by Contractor to accomplish that purpose shall be subject to the same Warranty Period. Contractor’s obligations to remedy any Defects surfacing after the Warranty Period shall be limited by the proceeds, if any, of any applicable insurance policy. Contractor agrees to reasonably cooperate with Company to effect the collection of any such insurance proceeds.

(e) THE WARRANTIES OF CONTRACTOR SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE). The foregoing sentence is not intended to disclaim any other obligations of Contractor set forth herein.

#### 12.2 REPAIR OF NONCONFORMING WORK.

(a) If the Work or the ESS are found to contain Defects, or Contractor is otherwise in breach of any of the warranties set forth in Section 12.1 within the Warranty Period, Contractor shall at its sole cost and expense and without reimbursement hereunder, correct, repair or replace such Defect or otherwise cure such breach as promptly as practicable upon being given notice thereof. Company shall provide Contractor with reasonable access to the ESS in order to perform its obligation under this Article and the Parties shall schedule such corrections or replacements as necessary so as to minimize disruptions to the operation of the ESS. Contractor shall bear all costs and expenses associated with correcting any Defect or breach of warranty, including necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of piping, ducts, machinery, Equipment or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect. If Contractor is obligated to repair, replace or renew any Equipment, item or portion of the Work hereunder, Contractor will undertake a technical analysis of the problem and correct the “root cause” unless Contractor can demonstrate to Company’s satisfaction that there is not a risk of the reoccurrence of such problem. Contractor’s obligations under this Section 12.2 shall not be impaired or otherwise adversely affected by any actual or possible legal obligation or duty of any Vendor or Subcontractor to Contractor or Company concerning any Defect or breach of warranty.

(b) If Contractor fails to complete or commence with due diligence to complete the correction of any Defect or cure of any breach of warranty as required herein within ten (10) days after receipt of written request from Company to perform such obligations, then Company may correct or cause to be corrected such Defect or cure such breach of warranty and Contractor shall be liable for all reasonable costs, charges, and expenses incurred by Company in connection therewith (including reasonable and necessary consultants’ fees), and Contractor shall, within fifteen (15) days after request therefore, pay to Company an amount equal to such costs, charges, and expenses. Any such request by Company shall be accompanied by proper documentation evidencing such costs, charges and expenses. Any amounts not paid when due shall accrue interest at the Reference Rate (established as of the first day of the month in which payment is due) from the date due until paid. Company and Contractor agree to treat (and shall cause each of their respective Affiliates to treat) any payment made pursuant to this Section 12.2(b) as an adjustment to the Contract Price.

(c) If, during the Warranty Period, Contractor shall change, repair or replace any Major Equipment item or component, Company, in its reasonable discretion, may require Contractor to assist Company in conducting any test required by Company with respect to the affected Equipment and will require Contractor to provide technical data for review by Company, for the Company to confirm that any repair or replacement shall not impact the terms of the system's interconnection agreement; provided, however, in connection with any performance of a test pursuant to this Section 12.2(c), appropriate allowance with respect to the performance of such Equipment shall be made for the fact that such Equipment may have operated prior thereto. If after running such test pursuant to this Section 12.2(c), the results indicate Contractor has not fulfilled any of its warranty obligations and there is a degradation in the performance of the Project and such degradation results from the warranty Work performed in accordance with this Article XII, then Contractor shall repair, correct or replace such affected Equipment and assist the Company in re-running such test until the results no longer indicate a degradation in the performance of the Project resulting from the warranty Work performed in accordance with this Article XII.

### 12.3 PROPRIETARY RIGHTS.

Without limiting any of the provisions of this Agreement, if Company or Contractor is prevented from completing the ESS, the Work or any part thereof, or from the use, operation, or enjoyment of the ESS, the Work or any part thereof as a result of a claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from Contractor's performance (or that of its Subcontractors or Vendors) under the Contract Documents, including the Work, Equipment, the Drawings, the Final Plans or other items and services provided by Contractor or any Subcontractor or Vendor hereunder, Contractor shall promptly, but in no event later than thirty (30) days from the date of any action or proceeding, take all actions necessary to remove such impediment, including (a) secure termination of the injunction and procure for Company or its Affiliates or assigns, as applicable, the right to use such materials, Equipment, Drawings or Final Plans in connection with the operation and maintenance of the Project, without obligation or liability; or (b) replace such materials, Equipment, Drawings or Final Plans, with a non-infringing equivalent, or modify same to become non-infringing, all at Contractor's sole cost and expense and without reimbursement hereunder, but subject to all the requirements of the Contract Documents.

### 12.4 REPAIRS AND TESTING BY COMPANY.

(a) During the Warranty Period, without prior notice to Contractor and without affecting the warranties of Contractor hereunder, Company shall be permitted to (i) make repairs or replacements on Equipment so long as the repair or replacement involves the correct installation of spare parts, and (ii) adjust the Equipment as outlined in the instruction manuals provided by Contractor or any Subcontractor or Vendor, or as agreed by Contractor or any Subcontractor or Vendor.

(b) In the event of an emergency and if, in the reasonable judgment of Company, the delay that would result from giving notice to Contractor could cause serious loss or damage which could be prevented by immediate action, any action (including correction of Defects) may be taken by Company or a third party chosen by Company, without giving prior notice to Contractor, and in the case of a Defect, the reasonable cost of correction shall be paid by Contractor. In the event such action is taken by Company, Contractor shall be promptly notified within five (5) Business Days after correction efforts are implemented, and shall assist whenever and wherever possible in making the necessary corrections. All such warranties obtained shall be in addition to, and shall not alter the warranties of, Contractor. Upon Company's request, Contractor shall use all reasonable efforts to force Subcontractors to honor warranties including filing suit to enforce same.

### 12.5 VENDORS AND SUBCONTRACTORS.

Contractor shall, for the protection of Contractor and Company, obtain from the Vendors

and Subcontractors such guarantees and warranties with respect to Work performed and Equipment supplied, used and installed hereunder as are reasonably obtainable, which guarantees and warranties shall equal or exceed those set forth in Section 12.1 and shall be made available and assignable to Company to the full extent of the terms thereof upon the expiration of Contractor's warranty hereunder. Company shall be an express third party beneficiary of all such guarantees and warranties, provided such third party beneficiary rights shall not be effective unless this Agreement has been terminated. To the extent available, Company shall have the right to require Contractor to secure additional warranty or extended guarantee protection pursuant to a Change Order issued in accordance with the provisions of Article VI. Upon the earlier of the Substantial Completion Date or termination of this Agreement, Contractor shall deliver to Company copies of all relevant contracts providing for such guarantees and warranties.

12.6 ASSIGNMENT OF WARRANTIES.

Upon the expiration of the Warranty Period or termination of this Agreement, Contractor shall assign to Company all warranties received by it from Subcontractors and Vendors or otherwise obtained under Section 12.5 (or the ESS or Work in the event of termination of this Agreement). Such assignment of warranties to Company must also allow Company to further assign such warranties.

12.7 SURVIVAL OF WARRANTIES.

The provisions of this Article XII shall survive the expiration or termination of this Agreement.

**ARTICLE XIII.  
REPRESENTATIONS**

13.1 REPRESENTATIONS AND WARRANTIES.

(a) Contractor represents and warrants to Company that:

(1) Contractor is a corporation, duly incorporated/formed/organized, validly existing and in good standing under the laws of the State of [REDACTED], and is duly authorized and qualified to conduct business in the State of California;

(2) Contractor has all requisite power and authority to conduct its business, own its properties and execute and deliver this Agreement and perform its obligations hereunder in accordance with the terms hereof;

(3) the execution, delivery, and performance of the Contract Documents have been duly authorized by all requisite corporate action and this Agreement constitutes the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms;

(4) neither the execution, delivery or performance of the Contract Documents conflicts with, or results in a violation or breach of the terms, conditions or provisions of, or constitutes a default under, the organizational documents of Contractor or any agreement, contract, indenture or other instrument under which Contractor or its assets are bound, nor violates or conflicts with any Applicable Law or any judgment, decree, order, writ, injunction or award applicable to Contractor;

(5) Contractor is not in violation of any Applicable Law or Applicable Permit, which violations, individually or in the aggregate, would affect its performance of its obligations under the Contract Documents;

(6) Contractor is an equal opportunity employer and, as required by 41 CFR 60-1.4(a), does not and will not discriminate in employment and personnel practices (including hiring, transferring and promotion practices) on the basis of race, sex, age, disability, religion, national origin,



color, sexual orientation, gender identity, or any other basis or characteristic prohibited by Applicable Laws;

(7) Contractor is the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by the Contract Documents, other than Contractor Permits and Company Permits which will be obtained in accordance with the terms of the Contract Documents;

(8) there is no pending controversy, legal action, arbitration proceeding, administrative proceeding or investigation instituted, or to the best of Contractor's knowledge threatened, against or affecting, or that could affect, the legality, validity and enforceability of the Contract Documents or the performance by Contractor of its obligations under the Contract Documents, nor does Contractor know of any basis for any such controversy, action, proceeding or investigation;

(9) Contractor has examined this Agreement, including all Exhibits attached hereto, thoroughly and become familiar with all its terms and provisions;

(10) Contractor, by itself and through its Subcontractors and Vendors, has the *full* experience and proper qualifications to design and perform the Work and to construct the ESS in accordance with the terms of the Contract Documents;

(11) Contractor has visited and examined the Property Site and is fully familiar with such Property Site and surrounding areas and based on such visit and examination has no reason to believe that Contractor will be unable to complete the Work in accordance with the Contract Documents;

(12) to the best of its knowledge, Contractor has reviewed all other documents and information necessary and available to Contractor in order to ascertain the nature, location and scope of the Work, the character and accessibility of the Property Site, the existence of obstacles to construction of the ESS and performance of the Work, the availability of facilities and utilities, and the location and character of existing or adjacent work or structures;

(13) Contractor owns or has the right to use all patents, trademarks, service marks, tradenames, copyrights, licenses, franchises, permits and intellectual property rights necessary to perform the Work without conflict with the rights of others;

(14) Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement;

(15) all Persons who will perform any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform their respective services under this Agreement;

(16) to the extent the Work involves Special Conditions, Contractor is not and has not been a party to any current, pending, threatened or resolved enforcement action of any government agency, or any consent decree or settlement with any governmental agency or private person or entity regarding any failure in Contractor's data security safeguards, or otherwise regarding information privacy or security; Contractor further represents that it has read and understood Company's "Policy on Information Security, Cybersecurity and Privacy for Suppliers" ("Cyber Policy") located on Company's Website at <http://sce.com/cyberpolicy>, and that Contractor is fully compliant with the Cyber Policy; Contractor further warrants that, throughout the term of the Agreement and as required in Section 18.6 ("Survivability"), Contractor will continue to comply fully with the Cyber Policy;

(17) to the extent the this Agreement is funded by or the Work involves activities subject to a contract or subcontract with a state or federal entity, Contractor is qualified and shall remain qualified to perform the work for such entities; and

(18) the access rights granted to or obtained by Contractor to the Job Site are adequate for the performance of the Work and operation of the ESS.

(b) Company represents and warrants to Contractor that:

(1) Company is a corporation, duly incorporated, validly existing, and in good standing under the laws of the State of California and is duly authorized and qualified to conduct business in the State of California;

(2) Company has all requisite power and authority to conduct its business, own its properties and execute and deliver the Contract Documents and perform its obligations hereunder in accordance with the terms hereof;

(3) the execution, delivery, and performance of the Contract Documents have been duly authorized by all requisite corporate action and this Agreement constitutes the legal, valid and binding obligation of Company, enforceable against Company in accordance with its terms;

(4) neither the execution, delivery or performance of the Contract Documents conflicts with, or results in a violation or breach of the terms, conditions or provisions of, or constitutes a default under, the organizational documents of Company or any agreement, contract, indenture or other instrument under which Company or its assets are bound, nor violates or conflicts with any Applicable Law or any judgment, decree, order, writ, injunction or award applicable to Company;

(5) Company is not in violation of any Applicable Law or Applicable Permit, which violations, individually or in the aggregate, would affect its performance of its obligations under the Contract Documents;

(6) Company is the holder of all governmental consents, licenses, permissions and other authorizations and Applicable Permits required to operate and conduct its business now and as contemplated by the Contract Documents, other than Company Permits which will be obtained in accordance with the terms of the Contract Documents;

(7) there is no pending controversy, legal action, arbitration proceeding, administrative proceeding or investigation instituted, or to the best of Company's knowledge threatened, against or affecting, or that could affect, the legality, validity and enforceability of the Contract Documents or the performance by Company of its obligations under the Contract Documents, nor does Company know of any basis for any such controversy, action, proceeding or investigation; and

(8) Company shall be financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Agreement.

#### 13.2 SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

The representations and warranties of Contractor and Company herein shall survive execution and termination of this Agreement.

### **ARTICLE XIV. FORCE MAJEURE AND OWNER CAUSED DELAY**

#### 14.1 DEFINITION OF FORCE MAJEURE EVENT.

As used herein, the term "Force Majeure Event" shall mean any event or circumstance, or combination of events or circumstances, that arises after the date hereof, is beyond the reasonable control of the Party claiming the Force Majeure Event, and is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the Force Majeure Event. Without limiting the generality of the foregoing, events that may give rise to a Force Majeure Event include acts of God, natural disasters, fires, earthquakes, lightning, floods, storms, civil disturbances, terrorism, riots, war, and the action of or failure to act on the part of any Government Authority having or asserting

jurisdiction that is binding upon the Parties and has been opposed by all reasonable means, in each case, that meet the definition of Force Majeure Event as set forth above. Notwithstanding the foregoing, the definition of "Force Majeure Event" shall not include: strikes, work stoppages (or deteriorations), slowdowns or other labor actions; any labor or manpower shortages; unavailability, late delivery, failure, breakage or malfunction of equipment or materials or events that affect the cost of equipment or materials; economic hardship (including lack of money); perils of sea; delays in transportation (including delays in clearing customs) other than delays in transportation resulting from accidents or closure of roads or other transportation route by Government Authorities; changes in Applicable Laws; weather conditions as recorded by the National Oceanic and Atmospheric Administration over the past fifty (50) years in the vicinity of the Project Site or elsewhere; actions of a Government Authority with respect to Contractor's compliance with Applicable Laws or Applicable Permits; any failure by the Contractor to obtain and/or maintain any Applicable Permit it is required obtain and/or maintain hereunder; any other act, omission, delay, default or failure (financial or otherwise) of a Subcontractor.

#### 14.2 NOTICE OF FORCE MAJEURE EVENT.

The Party claiming a Force Majeure Event shall within five (5) Business Days after it knows or should have known of the occurrence of the Force Majeure Event (or in any event, no later than sixty (60) days after the commencement of the Force Majeure Event), give the other Party written notice describing the details of the cause and nature of the Force Majeure Event, the anticipated length of delay due to the Force Majeure Event and any other effect on the Party's performance of its obligations hereunder; provided that if the Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, then the Party claiming a Force Majeure Event shall give such notice as soon as reasonably practicable after the reinstatement of communications, but no later than five (5) Business Days after such reinstatement. Within fifteen (15) days after initial notification, such Party shall provide sufficient proof of the occurrence and duration of such Force Majeure Event to the other Party's reasonable satisfaction and shall thereafter provide the other Party with periodic supplemental updates to reflect any change in information given to the other Party as often as requested by the other Party. The Party claiming the Force Majeure Event shall give notice to the other Party of (a) the cessation of the relevant Force Majeure Event and (b) the cessation of the effects of such Force Majeure Event on the performance by it of its obligations under the Contract Documents as soon as practicable after becoming aware thereof. No Force Majeure Event shall relieve any Party from performing those of its obligations that are not affected by the Force Majeure Event.

#### 14.3 DELAY AND ADJUSTMENT TO GUARANTEED COMPLETION DATE DUE TO FORCE MAJEURE EVENT.

So long as the conditions set forth in this Section 14.3 are satisfied, and subject to Section 14.7, neither Party shall be responsible or liable for or deemed in breach of this Agreement because of any failure or delay in complying with its obligations under or pursuant to the Contract Documents to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof, and in such event:

(a) except as otherwise provided herein, the performance by the Party claiming the Force Majeure Event of its obligations hereunder shall be suspended, and in the event that such Party is required to start or complete an action during a specific period of time, such start date or period for completion shall be extended, on the condition that: (i) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Force Majeure Event; (ii) the Party claiming the Force Majeure Event complies with Section 14.2; and (iii) the Party claiming the Force Majeure Event continually uses commercially reasonable efforts to alleviate and mitigate the cause and effect of the Force Majeure Event and remedy its inability to perform;

(b) in the event Contractor desires to claim a Force Majeure Event, it must submit a

request for Changes pursuant to Section 6.2(b) and Contractor shall be entitled to suspension of performance or extension of time (including an extension of the Guaranteed Completion Date if otherwise allowed pursuant to Section 6.1(b)) pursuant to a Change Order in accordance with the principles of this Section 14.3 and 6.1(b); provided Contractor shall not be entitled to any relief for a Force Majeure Event unless such Force Majeure Event has been shown to Company's reasonable satisfaction to actually, demonstrably, adversely and materially affect the Critical Path of the Work; and

(c) Contractor's failure to comply with this Section 14.3 shall constitute a waiver of any claims as a result of a Force Majeure Event.

#### 14.4 REMOVAL OF FORCE MAJEURE.

If, within a reasonable time after an Force Majeure Event that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of Company has been identified and recommended to Contractor, and Contractor has failed within five (5) days after receipt of notice thereof from Company to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Force Majeure Event or its direct or indirect effects, Company may, in its sole discretion and after notice to Contractor, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure Event or its direct or indirect effects and thereafter require Contractor to resume full or partial performance of the Work. If the action recommended by Company is agreed to by Contractor but Contractor does not take such action and Company performs such measures, to the extent Contractor's failure to take such measures results in expense in addition to what Company would have paid to Contractor (as part of the original Contract Price) had Contractor taken such measures, such additional expense shall be for Contractor's account.

#### 14.5 NOTICE OF COMPANY CAUSED DELAY.

In the event Contractor desires to claim a Company Caused Delay, Contractor shall within five (5) Business Days after it knows or should have known of the occurrence of the Company Caused Delay, give Company written notice describing the details of the Company Caused Delay, the anticipated length of such delay and any other effect on Contractor's performance of its obligations hereunder. Within fifteen (15) days after initial notification, Contractor shall (i) provide to Company reasonable evidence of the occurrence and duration of such Company Caused Delay; and (ii) thereafter provide Company with periodic supplemental updates to reflect any change in information given to Company as often as requested by Company.

#### 14.6 DELAY AND ADJUSTMENT TO CONTRACT PRICE DUE TO COMPANY CAUSED DELAY.

So long as the conditions set forth in this Section 14.6 are satisfied and subject to Section 14.7, Contractor shall not be responsible or liable for or deemed in breach of the Contract Documents because of any failure or delay in completing the Work in accordance with the Project Schedule or achieving Substantial Completion by the Guaranteed Completion Date to the extent that such failure has been caused by one or more Company Caused Delays, and in such event, the start date or period for completion of any portion of the Work shall be extended and the Contract Price shall be equitably adjusted pursuant to a Change Order, on the condition that: (i) such suspension of performance and extension of time shall be of no greater scope and of no longer duration than is required by the effects of the Company Caused Delay; (ii) Contractor complies with Section 14.5; (iii) the Company Caused Delay actually, demonstrably, adversely and materially affects the Critical Path of the Work; and (iv) Contractor provides all assistance reasonably requested by Company for the elimination or mitigation of the Company Caused Delay. In the event Contractor desires to claim a Company Caused Delay, it must submit a request for Changes pursuant to Section 6.2(b), and Contractor shall be entitled to suspension of performance or extension of time (including an extension of the Guaranteed Completion Date) together with demonstrated, justified and reasonable additional costs, including idle equipment costs, incurred by reason of such delay to the extent agreed upon by the Parties pursuant to a Change

Order in accordance with Section 6.2(b). Failure to comply with the terms of this Section 14.6 shall constitute a waiver of any claims for an adjustment in the Project Schedule or an increase in the Contract Price as a result of a Company Caused Delay.

14.7 PERFORMANCE NOT EXCUSED.

The payment of money owed shall not be excused because of a Force Majeure Event or Company Caused Delay. In addition, a Party shall not be excused under this Article XIV from timely performance of its obligations hereunder to the extent that the claimed Force Majeure Event or Company Caused Delay was caused by any negligent or intentional acts, errors, or omissions, or for any breach or default of the Contract Documents by such Party. Furthermore, no suspension of performance or extension of time shall relieve the Party benefiting therefrom from any liability for any breach of the obligations that were suspended or failure to comply with the time period that was extended to the extent such breach or failure occurred prior to the occurrence of the applicable Force Majeure Event or Company Caused Delay. Notwithstanding anything contained herein to the contrary, Contractor shall not withdraw Contractor's Equipment and Contractor Personnel from the Job Site or otherwise demobilize without the prior authorization of Company. Contractor shall be entitled to receive reimbursement for its reasonably incurred costs of a demobilization and/or remobilization required as a result of any Force Majeure Event.

**ARTICLE XV.  
TERMINATION**

15.1 CONTRACTOR EVENTS OF DEFAULT.

The occurrence and continuation of any of the following events shall constitute an event of default by Contractor (each a "Contractor Event of Default"):

(a) the failure of Contractor to achieve Substantial Completion within (60) days after the Guaranteed Completion Date;

(b) the failure of Contractor to achieve Final Acceptance prior to thirty (30) Days after the Substantial Completion Date;

(c) the ESS, during the period of time between Substantial Completion and Final Acceptance, is not capable of being operated in accordance with ESS operating procedures and all Applicable Laws and Applicable Permits, and other requirements of this Agreement, and all operating conditions specified in the Statement of Work;

(d) any failure by Contractor to make any payment or payments required to be made to Company under the Contract Documents within five (5) Business Days after receipt of written notice from Company of Contractor's failure to make such other payment or payments (except, in the case of payments other than Liquidated Damages, to the extent Contractor disputes such other payment or payments in good faith and in accordance with the terms of this Agreement);

(e) any breach by Contractor of any representation or warranty contained in Sections 13.1(a)(1) through 13.1(a)(18);

(f) any breach by Contractor of any obligation, covenant or agreement hereunder other than those breaches specified in this Section 15.1 and (i) such breach is not cured by Contractor within fifteen (15) days after notice thereof from Company, or (ii) if such breach is not capable of being cured within such fifteen (15) day period (as determined by Company in its sole discretion), Contractor fails to (A) commence to cure such breach within such fifteen (15) day period, (B) thereafter diligently proceed to cure such breach in a manner satisfactory to Company in its sole discretion, or (C) cure such breach within ninety (90) days after notice thereof from Company;

(g) any of the following occurs: (i) Contractor consents to the appointment of or taking



possession by, a receiver, a trustee, custodian, or liquidator of itself or of a substantial part of its assets, or fails or admits in writing its inability to pay its debts generally as they become due, or makes a general assignment for the benefit of creditors; (ii) Contractor files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any applicable bankruptcy or insolvency laws or an answer admitting the material allegations of a petition filed against it in any such proceeding, or seeks relief by voluntary petition, answers or consents, under the provisions of any now existing or future bankruptcy, insolvency or other similar law providing for the liquidation, reorganization, or winding up of corporations, or providing for an agreement, composition, extension, or adjustment with its creditors; (iii) a substantial part of Contractor's assets is subject to the appointment of a receiver, trustee, liquidator, or custodian by court order and such order shall remain in effect for more than thirty (30) days; or (iv) Contractor is adjudged bankrupt or insolvent, has any property sequestered by court order and such order shall remain in effect for more than thirty (30) days, or has filed against it a petition under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition shall not be dismissed within thirty (30) days of such filing;

(h) the dissolution of Contractor, except for the purpose of merger, consolidation or reorganization where the successor expressly assumes Contractor's obligations hereunder and such assignment and assumption does not materially adversely affect the ability of the successor to perform its obligations under the Contract Documents;

(i) the transfer by Contractor of (i) all or a substantial portion of the rights and/or obligations of Contractor hereunder, except for an assignment permitted hereunder, or (ii) all or a substantial portion of the assets or obligations of Contractor, except where the transferee expressly assumes the transferred obligations and such transfer does not materially adversely affect the ability of Contractor or the transferee, as applicable, to perform its obligations under the Contract Documents, as determined by Company in its sole discretion;

(j) the failure of Contractor to provide and maintain in full force and effect any Letter of Credit as required pursuant to Section 11.6;

(k) any failure by Contractor to maintain the insurance coverages required of it in accordance with Article IX; or

(l) any failure of Contractor to maintain any Letter of Credit once it has been issued in accordance with Section 11.6.

## 15.2 TERMINATION BY COMPANY DUE TO CONTRACTOR DEFAULT; OTHER REMEDIES.

(a) Upon the occurrence and during the continuance of a Contractor Event of Default, Company may, at its option, terminate this Agreement, without prejudice to any other rights and remedies available to Company under this Agreement or otherwise at law or equity, by giving written notice thereof to Contractor, which termination shall be effective upon the giving of such notice by Company.

(b) In the event of a termination by Company under this Section 15.2, Company shall have the right to take possession of and use all of the Contractor Equipment located at the Job Site on the date of such termination for the purpose of completing the Work and may employ any other Person to complete the Work by whatever method that Company may deem necessary. In addition, Company may make such expenditures as in Company's sole judgment will accomplish the timely completion of the Work in accordance with the terms hereof.

(c) In the event of termination by Company under this Section 15.2, Contractor shall not be entitled to receive any further payments under the Contract Documents, except for payments for Work completed prior to such termination for which Contractor has not previously been paid. Company shall be entitled to offset against such amount due to Contractor any amounts due to Company by Contractor. Any

amounts due to Contractor under this Section 15.2(c) shall be paid to Contractor within thirty (30) days after the Final Acceptance Date (as achieved by the substitute contractor).

(d) In the event of termination by Company under this Section 15.2, Contractor shall be responsible for and shall reimburse Company for the following amounts: (i) all costs and expenses incurred by Company to engage a substitute contractor to complete (or cure deficiencies in) the Work, including overhead and legal, engineering and other professional expenses; (ii) all costs and expenses incurred in connection with the termination of the Contract Documents, including costs and expenses incurred in connection with the obligations set forth under Section 15.9; (iii) the amount by which (A) the cost to complete (or cure deficiencies in) the Work, exceeds (B) the balance of the Contract Price unpaid at the time of the termination; and (iv) all actual damages occasioned by reason of said default, except that Contractor agrees that Schedule Liquidated Damages shall apply in lieu of delay damages for late completion.

(e) Upon the occurrence and during the continuance of a Contractor Event of Default and after the expiration of any applicable cure periods but prior to termination of this Agreement by Company, Company may, without prejudice to any of its other rights or remedies available under this Agreement or otherwise at law or equity, (i) seek performance by any guarantor of Contractor's obligations hereunder, (ii) seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Agreement, or to make restitution of amounts improperly received under this Agreement, (iii) make such payments or perform such obligations as are required to cure such Contractor Event of Default, draw on or make a claim against the Letter of Credit or other security provided pursuant to this Agreement and/or offset the cost of such payment or performance against payments otherwise due to Contractor under this Agreement; provided that Company shall be under no obligation to cure any such Contractor Event of Default, or (iv) seek damages as provided in Section 15.2(d), including proceeding against any bond, guarantee, letter of credit, or other security given by or for the benefit of Contractor for its performance under this Agreement.

(f) The rights and remedies available to Company pursuant to this Section 15.2 shall not be exclusive with respect to any other right or remedy of the Company provided for in this Agreement or otherwise available at law or equity.

### 15.3 TERMINATION BY COMPANY FOR CONVENIENCE.

(a) Company may terminate this Agreement at any time for any reason in its sole discretion by giving written notice thereof to Contractor, which termination shall be effective upon the giving of such notice by Company. Upon receiving any such notice of termination, Contractor shall stop performing the Work and, except as otherwise directed by Company, shall cancel as quickly as possible all orders placed by it with Subcontractors and Vendors and shall use all reasonable efforts to minimize cancellation charges and other costs and expenses associated with the termination of this Agreement. Contractor shall also promptly assign all subcontracts and purchase orders which Company wishes to retain in accordance with Section 15.9.

(b) In the event of a termination by Company under this Section 15.3, Contractor shall be entitled to receive a termination payment (the "Termination Payment") equal to the sum of the following, without duplication: (i) that portion of the Contract Price that is applicable to Work completed up to the date of termination that has not previously been paid to Contractor (as determined below); (ii) the expenses reasonably incurred by Contractor in withdrawing Contractor's Equipment and Contractor Personnel from the Job Site and in otherwise demobilizing; (iii) the expenses reasonably incurred by Contractor in terminating contracts with Subcontractors and Vendors pertaining to the Work (excluding fees of any Affiliates of Contractor), except to the extent Company has instructed Contractor not to terminate such contracts, in which event such contract will be assigned to Company, subject to Company's assumption of same and, if required, Company's adequate assurance to such Subcontractors or Vendors regarding Company's ability to pay; and (iv) the expenses incurred in connection with Contractor's obligations set



forth under Section 15.9 (to the extent not otherwise reimbursed pursuant to the preceding clause (i)).

(c) Company and Contractor shall determine the amount due to Contractor pursuant to the preceding clause (b)(i) in accordance with the rates set forth in the Purchase Order for partially completed Work. Contractor shall document the costs claimed under clauses (b)(ii), (b)(iii), and (b)(iv) above to Company's reasonable satisfaction and shall supply Company with copies of the Subcontractor and Vendor invoices and other receipts covering amounts claimed under such clauses. Contractor shall submit an invoice to Company for the Termination Payment with the supporting information and documents referred to above, and Company shall pay such invoice within thirty (30) days after its receipt of same unless it disputes any portion thereof, in which event Company shall only pay the undisputed portion of the Termination Payment within such thirty (30) day period and the dispute over the remainder of the claimed Termination Payment may be resolved pursuant to Article XVII. Contractor shall utilize reasonable commercial efforts to include termination for convenience provision with terms similar to the foregoing in all subcontracts, contracts and purchase orders.

(d) Any amount owed pursuant to Section 15.3(b) shall be subject to adjustment to the extent any Work contains Defects.

#### 15.4 SUSPENSION BY COMPANY FOR CONVENIENCE.

(a) Company may suspend all or a portion of the Work to be performed under the Contract Documents at any time for any reason in its sole discretion by giving written notice thereof to Contractor. Such suspension shall continue for the period specified in the notice of suspension; provided that Contractor agrees to resume performance of the Work promptly upon receipt of notice from Company. Upon receiving any such notice of suspension, unless the notice requires otherwise, Contractor shall: (i) immediately discontinue the Work on the date and to the extent specified in the notice; (ii) place no further orders or subcontracts for Equipment, services or facilities with respect to suspended Work, other than to the extent required in the notice; (iii) promptly make every reasonable effort to obtain suspension, with terms satisfactory to Company, of all orders, subcontracts and rental agreements to the extent they relate to performance of suspended Work; (iv) continue to protect and maintain the Work performed, including those portions on which Work has been suspended; and (v) take any other reasonable steps to minimize costs and expenses associated with such suspension.

(b) Except as provided in Section 15.4(c), as full compensation for any suspension under this Section 15.4, Contractor will be reimbursed by Company for the costs, as reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of the Work and to the extent that they do not reflect reimbursement for Contractor's, Vendors' or Subcontractors' anticipated profit from unperformed Work, including: (i) a standby charge, without mark-up or multiplier, sufficient to compensate Contractor for the direct costs attributable to keeping, to the extent required in the suspension notice, its organization and the Contractor Equipment committed to the Work on a standby basis, as agreed to by Company and Contractor; provided that Contractor shall substantiate such charge with supporting information acceptable to Company; (ii) all necessary and reasonable costs incurred in connection with demobilization and remobilization of Contractor's facility and Labor and the Contractor Equipment; and (iii) an equitable amount to reimburse Contractor for the cost of receiving, maintaining and protecting that portion of Work upon which performance has been suspended, as agreed to by Company and Contractor.

(c) Upon delivery of notice by Company to Contractor to resume suspended Work, Contractor shall immediately resume performance under the Contract Documents to the extent required in the notice. Contractor may request a Change Order as a result of a suspension of Work under this Section 15.4 within fourteen (14) days after receipt of notice to resume the suspended Work; provided that such suspension was not due to Contractor's negligence, willful misconduct or noncompliance with the terms of this Agreement and; provided, further, that during resumption of the Work Contractor shall use reasonable efforts to minimize the affect on the Critical Path of the Work. Contractor shall submit to Company a

request for Changes in accordance with Article VI and such request shall be accompanied by sufficient documentation setting forth the schedule impact and monetary extent of such claim in sufficient detail to permit thorough analysis by Company; provided that if such information is not available within such fourteen (14) day period, Contractor shall notify Company of such circumstance within such fourteen (14) day period and provide an expected date (which shall be as soon as reasonably practicable) for providing such information. If Contractor does not submit a request for Changes within such fourteen (14) day period and provide the information regarding schedule and monetary impact as required above within such fourteen (14) day period (or by the expected date if not possible during such fourteen (14) day period), Contractor shall not be entitled to any additional consideration or other amendments hereto and shall be deemed to have waived all claims and offsets against Company as a result of the suspension of Work. Contractor shall permit access by Company to pertinent records for purposes of reviewing the claims by Contractor of schedule and monetary impact.

(d) No adjustment to the Guaranteed Completion Date, Contract Price or other terms herein shall be made for any suspension of Work under this Section 15.4 to the extent that performance would have been suspended, delayed or interrupted as a result of any Force Majeure Event or Contractor's noncompliance with the requirements of the Contract Documents. Contractor shall use reasonable commercial efforts to include a suspension for convenience provision with terms similar to the foregoing in all subcontracts and purchase orders.

**15.5 TERMINATION DUE TO FORCE MAJEURE EVENT.** If a Force Majeure Event has occurred and continues for a period of at least three hundred sixty-five (365) days, then, notwithstanding that the Parties may by reason thereof have been granted an extension of required dates, either Party may deliver a written notice to the other Party stating its intention to terminate this Agreement. If at the expiration of thirty (30) days after the other Party's receipt of such notice, the Force Majeure Event is continuing, this Agreement shall terminate immediately. In the event of such termination, Contractor shall be entitled to receive payments accrued for Work completed prior to such termination for which Contractor has not previously been paid. The amount of consideration for such completed Work shall be determined by Company in accordance with the rates set forth in the Purchase Order for partially completed Work. Each Party shall bear its own costs and expenses in connection with a termination of this Agreement pursuant to this Section 15.5.

**15.6 COMPANY EVENTS OF DEFAULT.** The occurrence and continuation of any of the following events shall constitute an event of default by Company (each, a "Company Event of Default"):

(a) a failure by Company to make payment of any undisputed amount when due, and such breach is not cured by Company within thirty (30) days after Company's receipt of notice thereof from Contractor;

(b) any breach by Company of any representation or non-monetary obligation herein, and such breach is not cured by Company within thirty (30) days after Company's receipt of notice thereof from Contractor, or if such breach is not capable of being cured within such thirty (30) day period (as determined by Contractor in its reasonable discretion), Company (A) fails to commence to cure such breach within such thirty (30) day period, or (B) fails to thereafter diligently proceed to cure such breach; or

(c) any breach by Company of any representation or warranty contained in Sections 13.1(b)(1) through 13.1(b)(8).

**15.7 TERMINATION BY CONTRACTOR DUE TO COMPANY DEFAULT.**

(a) Subject to Section 15.7(b), upon the occurrence and during the continuance of a Company Event of Default beyond the applicable grace period, Contractor may terminate this Agreement thirty (30) Days after giving written notice thereof to Company (or fifteen (15) Days after giving written notice of a default pursuant to Section 15.6(a)) so long as the amount owed by Company (other than any

amount disputed in accordance with the terms of this Agreement) is not paid within such period.

(b) In the event of such termination, Contractor shall have the rights afforded to it for a termination for convenience pursuant to Section 15.3.

#### 15.8 CONTINUING OBLIGATIONS AND REMEDIES DURING EVENT OF DEFAULT.

In the event of the occurrence of any default hereunder (a) neither Party shall be relieved of any of its liabilities or obligations hereunder, unless and until such liabilities and obligations are terminated in accordance with the provisions hereof, and (b) each Party shall have the right to pursue any right or remedy available to it.

#### 15.9 OBLIGATIONS UPON TERMINATION.

Upon a termination of this Agreement pursuant to this Article XV: (a) Contractor shall leave the Job Site and remove from the Job Site all the Contractor Equipment, waste, rubbish and Hazardous Material (for which Contractor is responsible to remove pursuant to Section 3.22(a)) as Company may request; (b) Company shall take possession of the Job Site and of the Equipment (whether at the Job Site, in transit or otherwise); (c) Contractor shall promptly assign to Company or its designee any contract rights (including warranties, licenses, patents and copyrights) that it has to any and all Equipment and the Work, including contracts with Subcontractors and Vendors, and Contractor shall execute such documents as may be reasonably requested by Company to evidence such assignment, subject to Company's assumption of same; (d) Contractor shall promptly furnish Company with copies of all Drawings and, to the extent available, Final Plans; (e) Contractor shall provide Company and its designee with the right to use, free of charge, all patented, copyrighted and other proprietary information relating to the Work that Company deems necessary to complete the Work, and Contractor shall execute such documents as may be reasonably requested by Company to evidence such right; (f) Contractor shall assist Company in preparing an inventory of all Equipment in use or in storage at the Job Site; and (g) Contractor shall take such other action as required hereunder upon termination of this Agreement.

#### 15.10 TERMINATION AND SURVIVAL OF TERMS.

Upon termination of this Agreement pursuant to this Article XV, the rights and obligations of the Parties hereunder shall terminate, except for (a) rights and obligations accrued as of the date of termination, (b) rights and obligations arising out of events occurring prior to the date of termination and (c) the rights and obligations of the Parties which survive termination, including the rights and obligations forth in Articles VII and XII.

#### 15.11 CURE PERIOD NOT REQUIRED.

Company may issue a notice of termination without first issuing a cure notice or prior to the expiration of a cure period where waiting for the expiration of the cure period would be futile or where the default is deemed not curable as set forth below. In the event Company so terminates the Agreement, Company shall promptly meet with Contractor at Contractor's request to discuss the action taken by Company and whether Company might consider other options. Providing a cure notice does not constitute a waiver and does not give rise to estoppels as to Company's right to subsequently conclude that the reasons for termination are not curable. defaults which are not curable include, but are not limited to, the following:

(a) A Contractor Event of Default under Section 15.1(a).

(b) Submission of information that is false or misleading in itself, or by virtue of the omission of other information or incompleteness, to Company or to any person acting for or on behalf of Company or any Government Authority in connection with any Work performed for or on behalf of Company.

(c) A representation or warranty shall have been incorrect or misleading as of the date such representation or warranty was made or deemed to have been made.

(d) Any deliberate or intentional misconduct or misrepresentation by Contractor in the performance of the Work or in seeking payment for the Work.

(e) Contractor breaches the Cyber Policy.

(f) Contractor breaches any material term or condition of this Agreement on a NERC CIP Project or a project involving BES Cyber System Information.

(g) Any other breach which by its nature is not subject to cure, is not curable within a reasonable time or is part of an ongoing pattern that raises a reasonable doubt as to whether an isolated cure would be satisfactory.

## **ARTICLE XVI. INDEMNIFICATION**

### **16.1 CONTRACTOR INDEMNIFICATION.**

Contractor agrees to indemnify, defend and hold Company and its Affiliates, respective directors, officers, employees, representatives, agents, advisors, consultants, counsel and assigns harmless from and against, on an After-Tax Basis, any and all losses, claims, obligations, demands, assessments, penalties, liabilities, costs, damages and expenses (including attorneys' fees and expenses) (collectively, "Damages") asserted against or incurred by such indemnitees by reason of or resulting from any and all of the following:

(a) Any bodily injury, death or damage to property, including Company's property, caused by any act or omission (including strict liability) relating to or arising out of the performance of the Work, of Contractor or any Affiliate thereof, any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(b) any third party (excluding Affiliates of Company) claims resulting in bodily injury, death or damage to property arising out of defective and/or nonconforming Work relating to or arising out of the performance of the Work;

(c) claims by any Government Authority for any Contractor Taxes;

(d) any pollution or contamination which may originate from sources in Contractor's and its Subcontractors' and Vendors' possession, use and control or caused by the negligent release by Contractor or its Subcontractors or Vendors (excluding Pre-Existing Hazardous Material, other than as provided in (e) below, and Hazardous Material brought to the Job Site by Company), including from Hazardous Material, toxic waste, industrial hazards, sanitary waste, fuel, lubricant, motor oil, paint, solvent, bilge and garbage;

(e) any release or exacerbation of Pre-Existing Hazardous Materials or rendering removal or remediation of Pre-Existing Hazardous Materials more costly, which in any of such events is caused by any negligent act or omission of Contractor or any Affiliate thereof, any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(f) to the extent Company has paid all undisputed amounts due pursuant to the Contract Documents, any Lien, as set forth in Section 3.29, on the Equipment, the Job Site or any fixtures or personal property included in the Work (whether or not any such Lien is valid or enforceable) created by, through or under, or as a result of any negligent act or omission (or alleged act or omission) of, Contractor

or any Subcontractor, Vendor or other Person providing labor or materials in connection with the Work;

(g) any claim, action or proceeding by any Person for unauthorized disclosure, infringement or use of any trade secrets, proprietary rights, intellectual property rights, patents, copyrights or trademarks arising from (i) Contractor's performance (or that of its Affiliates, Subcontractors or Vendors) under the Contract Documents, including the Work, Equipment, Drawings, Final Plans or other items and services provided by Contractor or any Subcontractor or Vendor hereunder, (ii) the design, use or ownership of the Drawings and Final Plans in accordance with the use intended therefore pursuant to the Contract Documents, (iii) the design, construction, use, operation or ownership of the ESS or any portion thereof. Without limiting the provisions of Section 12.3, if Company is enjoined from completing the Project or any part thereof, or from the use, operation or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, Contractor shall promptly use its best efforts to have such injunction removed at no cost to Company;

(h) any vitiation of any insurance policy procured under Article IX as a result of Contractor's failure to comply with any of the requirements set forth in such policy or any other act by Contractor or any Subcontractor or Vendor;

(i) any failure of Contractor to comply with Applicable Laws or the conditions or provisions of Applicable Permits, including any Applicable Laws or Applicable Permits related to endangered species;

(j) any failure of Contractor to comply with the Cybersecurity Policy, if applicable; and

(k) any claims with respect to employer's liability or worker's compensation filed by any employee of Contractor or any of its Subcontractors or Vendors.

#### 16.2 COMPANY INDEMNIFICATION.

Company agrees to indemnify, defend and hold Contractor and its Affiliates and their respective directors, officers, employees, representatives, agents, advisors, consultants and counsel harmless from and against, on an After-Tax Basis, any and all Damages asserted against or incurred by such indemnitees by reason of or resulting from any and all of the following:

(a) claims by any Government Authority for any Company Taxes;

(b) any Pre-Existing Hazardous Material on the Property Site, except to the extent covered by Section 16.1(e); and

(c) Company's or any of its Affiliates' or a contractor's (excluding Contractor) use of Drawings or Final Plans in connection with any other facility to be owned, operated, constructed or developed by Company or any of its Affiliates.

#### 16.3 CONDITIONS OF INDEMNIFICATION.

The respective rights and obligations of the Parties and the other indemnitees under this Article XVI with respect to claims resulting from the assertion of liability by third parties shall be subject to the following terms and conditions:

(a) Notice of Proceedings. Within fourteen (14) days (or such earlier time as might be required to avoid prejudicing the indemnifying Party's position) after receipt of notice of commencement of any legal action or of any claims against such indemnitee in respect of which indemnification will be sought, the Person claiming to be indemnified under the terms of this Section 16.3 (the "Indemnified Person") shall give the Party from which indemnification is sought (the "Indemnifying Party") written notice thereof, together with a copy of such claim, process or other legal pleading. Failure of the Indemnified Person to give such notice will not reduce or relieve the Indemnifying Party of liability hereunder unless and to the extent that the Indemnifying Party was precluded from defending such claim, action, suit or proceeding as a result of the failure of the Indemnified Person to give such notice. In any



event, the failure to so notify shall not relieve the Indemnifying Party from any liability that it may have to the Indemnified Person otherwise than under this Article XVI.

(b) Conduct of Proceedings. Each Party and each other indemnitee shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it arising out of any matter in respect of which it is entitled to be indemnified hereunder and the reasonable costs and expenses thereof (including reasonable attorneys' fees and expert witness fees) shall be subject to the said indemnity; provided that the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense upon its giving written notice thereof to the Indemnified Person. The Indemnified Person shall provide reasonable assistance to the Indemnifying Party, at the Indemnifying Party's expense, in connection with such claim, action, suit or proceeding. Upon such assumption, the Indemnifying Party shall reimburse the Indemnified Person for the reasonable costs and expenses previously incurred by it prior to the assumption of such defense by the Indemnifying Party. The Indemnifying Party shall keep the Indemnified Person informed as to the status and progress of such claim, action, suit or proceeding. Except as set forth in paragraph (c) below, in the event the Indemnifying Party assumes the control of the defense, the Indemnifying Party will not be liable to the Indemnified Person under this Article XVI for any legal fees or expenses subsequently incurred by the Indemnified Person in connection with such defense. The Indemnifying Party shall control the settlement of all claims over which it has assumed the defense; provided, however, that the Indemnifying Party shall not agree to or conclude any settlement that affects the Indemnified Person without the prior written approval of the Indemnified Person, (whose said approval shall not be unreasonably withheld).

(c) Representation. In the event the Indemnifying Party assumes control of the defense, the Indemnified Person shall have the right to employ its own counsel and such counsel may participate in such claim, action, suit or proceeding, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person, when and as incurred, unless: (i) the employment of counsel by such indemnified Person has been authorized in writing by the Indemnifying Party; (ii) the Indemnified Person shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Person in the conduct of the defense of such action; or (iii) the Indemnified Person shall have reasonably concluded and specifically notified the Indemnifying Party either that there may be specific defense available to it which are different from or additional to those available to the Indemnifying Party. If any of the preceding clauses (i) through (iii) shall be applicable, then counsel for the Indemnified Person shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Person and the reasonable fees and expenses of such counsel shall be reimbursed by the Indemnifying Party.

#### 16.4 CONTRIBUTORY NEGLIGENCE.

Except as provided in Section 16.2(b), if the joint, concurring, comparative or contributory fault, negligence or willful misconduct of the Parties gives rise to Damages for which a Party is entitled to indemnification under this Article, then such Damages shall be allocated between the Parties in proportion to their respective degrees of fault, negligence or willful misconduct contributing to such Damages.

#### 16.5 REMEDIES NOT EXCLUSIVE.

The rights of indemnity shall not be exclusive with respect to any other right or remedy provided for in the Contract Documents or otherwise available at law or equity.

#### 16.6 SURVIVAL OF INDEMNIFICATION.

The indemnification provisions of this Article shall survive the Final Acceptance Date and the termination of this Agreement.

## ARTICLE XVII. DISPUTE RESOLUTION

### 17.1 NEGOTIATIONS.

In the event of any dispute, controversy or claim between the Parties arising out of or relating to the Contract Documents, or the breach, termination or invalidity thereof (collectively, a “Dispute”), the Parties shall attempt in the first instance to resolve such Dispute by negotiations between an Executive of Company, or their designee, and an Officer of Contractor. The disputing Party shall give the other Party written notice of the Dispute. Within thirty (30) days after receipt of such notice, the receiving Party shall submit a written response to the disputing Party. The notice and response shall include a statement of the relevant Party’s position and a summary of the evidence and arguments supporting its position. The Executive of Company, or designee, and the Officer of Contractor shall meet at a mutually acceptable time and place within thirty (30) days after the date of the disputing Party’s notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute.

### 17.2 ARBITRATION OF DISPUTE.

(a) If a Dispute has not been resolved through negotiation within ninety (90) days after the date of the notice of Dispute received pursuant to Section 17.1, and Company invokes the provisions of this Section 17.2, the Dispute shall be finally settled and resolved by binding arbitration before a single, neutral arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws. Except as provided for herein, the arbitration shall be conducted by the arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the arbitrator is associated; absent the existence of such rules and procedures, the arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure 1280 *et seq.* Company may exercise its right to arbitrate a Dispute in accordance with this Section 17.2 at any time, and any such dispute shall be thereafter exclusively treated as subject to the arbitration proceeding.

(b) The Parties will cooperate with one another in promptly selecting the arbitrator and shall further cooperate in scheduling the arbitration to commence not later than sixty (60) days from the date of Company’s initial written demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree on a mutually acceptable arbitrator, the arbitrator shall be appointed as provided for in California Code of Civil Procedure Section 1281.6.

(c) The arbitration proceeding shall be conducted in the County of Los Angeles, California, United States of America, or such other location upon which the Parties to the arbitration proceeding may agree, in the English language; and all testimony or documentary evidence shall be submitted in English.

(d) To facilitate the comprehensive resolution of related Disputes, and upon request by either Party, the arbitrator may, at any time before the first oral hearing of evidence, consolidate the arbitration proceeding with any other arbitration proceeding between or among the Parties arising from or out of any other contract or relationship between or among them.

(e) At any hearing of oral evidence, each Party to the arbitration proceeding or its legal counsel shall have the right to present and examine its witnesses and to cross-examine the witnesses of the other Party. No evidence of any Party’s witness shall be presented in written form unless the other Party shall have the opportunity to cross examine such witness, except as the Parties to the arbitration proceeding otherwise agree in writing or except under extraordinary circumstances where the interest of justice requires a different procedure. A Party shall communicate to the arbitrator and the opposing parties the names and addresses of each witness whose written or spoken testimony it intends to present in the arbitration proceeding and the subject matters upon which, and the languages in which, they will testify at



least forty-five (45) days prior to the date of the hearing at which such witness may testify. Furthermore, any Person named by a Party to be a witness shall be made available for deposition by the opposing parties at least twenty (20) days prior to the hearing at which such witness may testify.

(f) If the prevailing Party makes a claim during the arbitration proceeding, the arbitral award in favor of such Party shall include an award for pre-award (pre-judgment) interest and costs for legal representation and assistance.

(g) Any decision or award of the arbitrator shall be final and binding upon the Parties to the arbitration proceeding. The Parties hereby waive, to the extent permitted by any Applicable Law, and agree not to invoke or exercise, any and all rights to appeal, review or impugn such decision or award by any court or tribunal. The Parties agree that the arbitral decision or award may be enforced against the Parties to the arbitration proceeding or their assets wherever they may be found, and that a judgment upon the arbitral decision or award may be entered in any court having jurisdiction thereof.

(h) If any Party to an arbitration proceeding fails or refuses to comply with any arbitral decision or award within twenty (20) days after the date on which it receives notice of the decision or award, the other Party, the arbitrator or their attorneys-in-fact may immediately proceed to request the judicial approval necessary for the execution of such decision or award before a competent judge of the domicile of such refusing Party or before any other court of competent jurisdiction. Any award of monetary damages shall bear interest from and including the award date to but excluding the date of payment in full at the lesser of twenty-five percent (25%) per annum or the maximum contractual interest rate permissible under the applicable laws of the State of California. Further, if any prevailing Party is required to retain counsel to enforce the arbitral decision or award, the Party against which the decision or award is made shall reimburse the prevailing Party for all reasonable fees and expenses incurred and paid to said counsel for such service, together with interest thereon from and including the payment date to, but excluding, the date of reimbursement in full at the lesser of twenty-five percent (25%) per annum or the maximum contractual interest rate permissible under the applicable laws of the State of California.

(i) All deadlines specified in this Section 17.2 may be extended by the written agreement of the Parties to the Dispute.

### 17.3 LITIGATION.

(a) If a Dispute has not been resolved through negotiation within ninety (90) days after the date of the notice of Dispute received pursuant to Section 17.1 and Company has not exercised its right to arbitration of such Dispute pursuant to Section 17.2, the Parties agree that any litigation related to any Dispute shall be brought and enforced in, and each of the Parties hereby submits to the jurisdiction of, the federal courts of the United States for the Central District of California or the courts of the State of California in Los Angeles County. The Parties irrevocably waive any objection which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction. The Parties agree that, if Company exercises its right to arbitrate pursuant to Section 17.2 any Dispute that is the subject of litigation under this Section 17.3, the Parties shall cause such litigation to be dismissed with prejudice.

(b) If the prevailing Party makes a claim during the litigation proceeding, the court's award in favor of such Party shall include an award for pre-award (pre-judgment) interest and costs for legal representation and assistance, including attorneys' fees and costs at the trial court and all appellate levels. Any award of monetary damages in any action or proceeding under this Section 17.3 shall bear interest from and including the award date to but excluding the date of payment in full at the lesser of twenty-five percent (25%) per annum or the maximum contractual interest rate permissible under the applicable laws of the State of California.

17.4 CONTINUING OBLIGATIONS AND RIGHTS.

When any Dispute occurs and is the subject of negotiations or litigation, Contractor shall continue the Work in accordance with the Project Schedule and the terms hereof and Company shall continue to make payments of undisputed amounts in accordance with the Contract Documents, and the Parties shall otherwise continue to exercise their rights, and fulfill their respective obligations, under the Contract Documents.

17.5 TOLLING STATUTE OF LIMITATIONS.

All applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while the procedures specified in this Article XVII are pending. The Parties will take such action, if any, required to effectuate such tolling. Without prejudice to the procedures specified in this Article XVII, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. Despite such action, the Parties will continue to participate in good faith in the procedures specified in this Article XVII.

17.6 COSTS.

The prevailing Party in any action or proceeding shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action or proceeding, including reasonable attorneys' fees and costs at the trial court and all appellate levels.

17.7 SOLE AND EXCLUSIVE PROCEDURES.

The procedures specified in this Article XVII shall be the sole, exclusive procedures for the resolution of Disputes; provided, however, that any Party may seek a preliminary injunction or other preliminary judicial relief if, in its reasonable, good-faith judgment, such action is necessary to avoid irreparable damage. Despite such action, the Parties shall continue to participate in good faith in the procedures specified in this Article XVII.

17.8 CYBER POLICY BREACH.

Notwithstanding anything to the contrary in Article XVII, Company has the right to bring immediate suit in a court of competent jurisdiction against Contractor for breach of the terms in the Cyber Policy by Contractor or any of its Subcontractors, employees, agents, or representatives to whom this policy applies.

**ARTICLE XVIII.  
MISCELLANEOUS**

18.1 ASSIGNMENT.

(a) Except as expressly permitted in the Contract Documents, neither Party shall assign this Agreement, the Contract Documents or any portion hereof, or any of the rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party. This Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the Parties.

(b) Company shall be entitled to assign this Agreement, the Contract Documents and its rights herein without the consent of Contractor to any of Company's Affiliates that has a direct or indirect interest in the Project.

(c) Contractor hereby assigns to Company, subject to acceptance of such assignment by Company, all agreements with the Substantial Vendors and Substantial Subcontractors, to perform any portion of the Work pursuant to this Agreement, together with all other agreements that may be required pursuant to this Agreement, including, NERC CIP Agreements and confidentiality agreements.

## 18.2 GOOD FAITH DEALINGS.

The Parties undertake to act fairly and in good faith in relation to the performance and implementation of the Contract Documents and to take such other reasonable measures as may be necessary for the realization of its purposes and objectives.

## 18.3 CONFIDENTIALITY.

(a) For purposes of this Agreement, “Confidential Information” shall mean (i) the contents of the Contract Documents, (ii) and any information relating to the negotiations or performance of the Contract Documents, and (iii) any information provided pursuant to the Contract Documents relating to the Project, Facilities, Company, Contractor or their Affiliates which (A) the disclosing Party designates in writing as confidential, proprietary or the like and which is received by the other Party; or (B) by its nature is such that the receiving Party should reasonably conclude that possession of such information is of material commercial or competitive value to the disclosing Party; or (C) relates to the configuration, operation, management processes or profitability of the Facilities. All non-public Company Data, including Critical Energy Infrastructure Information, BES Cyber System Information and EPI is Company Confidential Information regardless of whether it is marked as “confidential” or “proprietary.” Information shall be Confidential Information for the purposes hereof regardless of (x) the form in which it is communicated or maintained (whether oral, written, electronic or visual); (y) whether of a business, financial, legal, technical, managerial or other nature; and (z) whether prepared by the disclosing Party or otherwise. Each Party agrees to hold all Confidential Information in confidence and not disclose it other than to its Affiliates, Subcontractors, Vendors, employees, directors, officers, agents, advisors or representatives (collectively, the “Personnel”). Notwithstanding the foregoing, Contractor shall comply with the additional requirements of the Cyber Policy for all Information Systems accessing, using, or storing Company Data in electronic or digital form and all Company Data accessed, received, or maintained by Contractor. Each Party agrees that only Personnel who need to have access to Confidential Information in order to perform their duties will be authorized to receive the same, and then only to the extent needed and provided such Personnel have been advised of the obligations and restrictions set forth in this Section 18.3. Each Party shall be responsible for any breach of this Agreement by its Personnel.

(b) Notwithstanding the foregoing, information shall not be deemed to be Confidential Information where: (i) it is or becomes public information or otherwise generally available to the public through no act of or failure to act by the receiving Party; (ii) it was, prior to the date of this Agreement, already in the possession of the receiving Party and was not received by such Party directly or indirectly from the other Party; (iii) it is rightfully received by the receiving Party from a third party who is not prohibited from disclosing it to such Party and is not breaching any agreement by disclosing it to such Party; (iv) it is independently developed by the receiving Party without benefit of Confidential Information received from the other Party; (v) a license has been granted to the disclosing Party with respect to such information hereunder, (vi) it is necessary or advisable for Company to exercise its Intellectual Property Rights under this Agreement; or (vii) it is necessary or advisable to disclose such information for the purpose of enforcing the disclosing Party’s rights hereunder. Specific information shall not be deemed to be within the foregoing exceptions merely because it is embraced by more general information within such exceptions, nor shall a combination of features be deemed to be within such exceptions merely because the individual features are within such exceptions.

(c) If a Party is required by Applicable Law or any Government Authority to disclose any Confidential Information, such Party shall promptly notify the other Party of such requirement prior to disclosure so that the other Party may seek an appropriate protective order and/or waive compliance with the terms of this Section 18.3. If such protective order or other remedy is not obtained, then such Party shall furnish only that portion of the Confidential Information which is legally required to be furnished by the court order; provided, however, that prior to making any such disclosure, such Party will (i) minimize the amount of Confidential Information to be provided consistent with the interests of the other Party and

(ii) make every reasonable effort (which shall include participation by the other Party in discussions with the Government Authority involved) to secure confidential treatment of the Confidential Information to be provided. If efforts to secure confidential treatment are not successful, the other Party shall have the prior right to revise such information in a manner consonant with its interests and the requirements of the Government Authority involved.

(d) Each Party acknowledges that the other Party would not have an adequate remedy at law for money damages if the covenants contained in this Section 18.3 were breached and that any such breach would cause the other Party irreparable harm. Accordingly, each Party also agrees that in the event of any breach or threatened breach of this Section 18.3 by such Party or its Personnel, the other Party, in addition to any other remedies it may have at law or equity, shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance.

(e) All right and title to, and interest in, Company's Confidential Information shall remain with Company. All Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of Company whether delivered to Company or not. No right or license is granted to Contractor or any third party respecting the use of Confidential Information owned by Company by virtue of this Agreement, except to the extent required for Contractor's performance of its obligations hereunder. At any time upon written request by a disclosing Party, the other Party shall promptly return to such Party all its Confidential Information, including all copies thereof, and shall promptly purge all electronic copies of such Confidential Information; provided that the other Party shall be entitled to keep one (1) copy of such Confidential Information for its legal records; provided, however, Contractor may only keep BES Cyber System Information and Critical Energy Infrastructure Information in Contractor's archives for a maximum of four years after the Work is complete. The return of Confidential Information to the disclosing Party, the purging of electronic copies of Confidential Information or the retention of a copy of Confidential Information for legal records shall not release a Party from its obligations hereunder with respect to such Confidential Information.

(f) In the event of any reasonably suspected disclosure or loss of, or inability to account for, any of disclosing Party's Confidential Information, receiving Party shall promptly and at its own expense: (i) notify disclosing Party in writing; (ii) take such actions as may be necessary or reasonably requested by disclosing Party to minimize the breach; and (iii) cooperate in all reasonable respects with disclosing Party to minimize the breach and any damage resulting therefrom.

(g) Contractor shall coordinate with Company with respect to, and provide advance copies to Company for review of, the text of any proposed announcement or publication that include any non-public information concerning the Work prior to the dissemination thereof to the public or to any Person other than Subcontractors, Vendors, or advisors of Contractor, in each case, who agree to keep such information confidential. If Company delivers written notice to Contractor rejecting any such proposed announcement or publication within two (2) Business Days after receiving such advance copies, Contractor shall not make such public announcement or publication; provided, however, that Contractor may disseminate or release such information in response to requirements of Government Authorities.

(h) Notwithstanding anything to the contrary in this Section 18.3, Company shall not be in violation of the Agreement: (i) if it provides Contractor Confidential Information to the California Public Utilities Commission pursuant to Public Utilities Code Section 583, or to any other regulatory agency or administrative agency, under applicable protective language, if possible, regardless whether the Contractor Confidential Information is formally requested and without notice to Contractor; and (ii) if it provides Contractor Confidential Information to a third party to enable Company to make improvement to Company's internal business operations, including by undertaking performance and post-performance evaluations and assessments, for use in future projects or procurements.

(i) If any of the Work, or portion thereof, contains or is derived from Company

Confidential Information, Contractor shall clearly mark the Work, or portion thereof, as Company Confidential Information. Additionally, if the Work, or portion thereof, contains or is derived from BES Cyber System Information, Contractor shall also clearly mark the Work as “Contains or Derives from Edison BES Cyber System Information.” Company Confidential Information created by Contractor is subject to this Section 18.3 and the Cyber Policy.

(j) Notwithstanding anything to the contrary in this Section 18.3, Contractor agrees that its confidentiality and non-disclosure obligations with respect to the Cyber Policy shall continue according to the terms of that policy, if applicable.

#### 18.4 NOTICE.

Whenever a provision of the Contract Documents requires or permits any consent, approval, notice, request, or demand from one Party to another, the consent approval, notice, request, or demand must be in writing to be effective and shall be deemed to be delivered and received (a) if personally delivered or if delivered by telegram or courier service, when actually received by the Party to whom notice is sent, (b) if delivered by telex or facsimile, on the first Business Day following the day transmitted (with confirmation of receipt), or (c) if delivered by mail (whether actually received or not), at the close of business on the third Business Day following the day when placed in the mail, postage prepaid, certified or registered, addressed to the appropriate Party, at the address and/or facsimile numbers of such Party set forth below (or at such other address as such Party may designate by written notice to the other Party in accordance with this Section 18.4):

If to Contractor:

**Contact**  
**Address**  
**Phone**  
**Fax**

with a copy to:

**Contact**  
**Address**  
**Phone**  
**Fax**

If to Company:

**Contact**  
**Address**  
**Phone**  
**Fax**

With a copy to:

**Contact**  
**Address**  
**Phone**  
**Fax**

Any Party may change its address, facsimile number or e-mail address for the purposes of this Agreement by giving notice thereof to the other Party in the manner provided herein.

#### 18.5 WAIVER.

No delay, failure or refusal on the part of any Party to exercise or enforce any right under



the Contract Documents shall impair such right or be construed as a waiver of such right or any obligation of another Party, nor shall any single or partial exercise of any right hereunder preclude other or further exercise of any right. The failure of a Party to give notice to the other Parties of a breach of the Contract Documents shall not constitute a waiver thereof. Any waiver of any obligation or right hereunder shall not constitute a waiver of any other obligation or right, then existing or arising in the future. Each Party shall have the right to waive any of the terms and conditions of the Contract Documents that are for its benefit. To be effective, a waiver of any obligation or right must be in writing and signed by the Party waiving such obligation or right.

18.6 SEVERABILITY.

If any provision of the Contract Documents is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; the Contract Documents shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Contract Documents; and the remaining provisions of the Contract Documents shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from the Contract Documents. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of the Contract Documents a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

18.7 GOVERNING LAW.

The Contract Documents, and the rights and obligations of the Parties under or pursuant to the Contract Documents, shall be interpreted and construed according to the substantive laws of the State of California (regardless of California's or any other jurisdiction's choice of law rules).

18.8 ENTIRE AGREEMENT; AMENDMENTS.

The Contract Documents contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, arrangements, discussions and undertakings between the Parties (whether written or oral) with respect to the subject matter hereof. The Contract Documents may only be amended by written instrument signed by the Parties.

18.9 EXPENSES AND FURTHER ASSURANCES.

Each Party shall pay its own costs and expenses, without reimbursement hereunder, in relation to the negotiation, preparation, execution and carrying into effect of the Contract Documents. Each Party shall, from time to time on being requested to do so by, and at the cost and expense of, the other Party, do all such acts and/or execute and deliver all such instruments and assurances as are reasonably necessary for carrying out or giving full effect to the terms of the Contract Documents.

18.10 NO THIRD PARTY BENEFICIARY.

Except with respect to the rights of the permitted successors and assigns and as provided above and the rights of indemnitees under Article XVI and Section 18.14(a), (a) nothing in the Contract Documents nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (b) no person that is not a Party shall have any rights or interest, direct or indirect, in the Contract Documents or the services to be provided hereunder, and (c) the Contract Documents are intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to the Contract Documents or the services to be provided hereunder.

18.11 OFFSET.

Notwithstanding any other provision hereof, any and all amounts owing or to be paid by Company to Contractor hereunder or otherwise, shall be subject to offset and reduction in an amount

equal to any amounts that may be owing at any time by Contractor to Company.

#### 18.12 COUNTERPARTS.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

#### 18.13 WAIVER FOR CONSEQUENTIAL DAMAGES.

Except for (1) Liquidated Damages; (2) recovery under any indemnity covering claims by third parties; (3) warranty claims made by the Company; (4) Contractor's obligation to indemnify under Section 9.7; (5) damages or losses arising from or in connection with Contractor's breach of the Cyber Policy or Section 18.3; (6) or damages payable by Contractor to Company pursuant to Section 15.2(d), and notwithstanding anything else in this Agreement to the contrary, Contractor and Company waive claims against each other for any indirect, special or consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

(a) Damages incurred by Company for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity, or the services of such persons;

(b) Damages incurred by Contractor for principal office expenses, including the compensation of personnel stationed there, for loss of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the work; and

(c) This mutual waiver is applicable, without limitation, to all consequential damages due to either Party's termination in accordance with Article XV.

#### 18.14 LIMITS OF LIABILITY.

(a) In no event shall the aggregate damages payable by Company hereunder exceed the Contract Price (as the same may increase from time to time in accordance with the terms of this Agreement); provided, however, such limitation of liability shall not apply to: (1) Company's indemnification obligations under the Contract Documents, including its indemnification obligations set forth in Article XVI; (2) any loss or damage arising out of or connected with Company's gross negligence, fraud, willful misconduct or illegal or unlawful acts; (3) damages or losses arising from or in connection with Contractor's breach of its obligations under the Cyber Policy or Section 18.3; or (4) risks insured through insurance required under this Agreement, it being the Parties' specific intent that the limitation of liability shall not relieve the insurers' or guarantors' obligations for such insured risks. Contractor's sole recourse for any damages or liabilities due to Contractor by Company pursuant to this Agreement shall be limited to the assets of Company (which include the Project) without recourse individually or collectively to the assets of the members or the Affiliates of Company, or their respective officers, directors, employees or agents of Company, its members or their Affiliates.

(b) Releases from and limitation of liability set forth herein shall apply regardless of whether the claim is brought under contract, tort (including negligence, gross negligence and strict liability) or other theory of law, and shall extend to the officers, directors, employees, company affiliates and related entities of such Party and its partners and related entities.

#### 18.15 AUDIT AND RECORDS RETENTION.

(a) Upon request by Company during the period in which this Agreement is in effect, and for a period of three (3) years thereafter, Company, or a third party designated by Company for this purpose, may examine, inspect, or copy any or all of Contractor's, and those of its parent and any Affiliate, books, records, and documents that have been generated as a result of this Agreement or that contain information relating to this Agreement, in whatever form maintained, including Project-related records, including correspondence, reports, estimates, estimating worksheets, change order files, memoranda,



schedules, procurement files, Subcontractor or Vendor files, electronic files or any other documents relating to the design and construction of the Project and all services performed by Contractor, accounting or compliance records, and any supporting documentation (such as records of Contractor's business development and entertainment activities relating to Company) (collectively, "Contractor Records"). Contractor will keep proper financial and accounting records necessary to substantiate the costs of performance and all charges by Contractor, including Work related to any changes in the Work or Changes Orders, in accordance with generally accepted accounting practices consistently applied, and will maintain its other Contractor Records so as to capture and preserve relevant information about Contractor's performance of the Work and all other obligations under this Agreement. Contractor shall include these requirements in its agreements with its Subcontractors and shall require its Subcontractors to make their records available for inspection and copying by Company on the same terms as provided herein and ensure that this Section 18.15 flows down to Subcontractors of every tier. Upon five days' prior notice from Company, Contractor will allow Company and its designated representative(s) access to Contractor Records during normal business hours so Company can audit the Contractor Records and will allow interviews of any employees who might reasonably have information related to the Contractor Records. In the event an audit discloses any material discrepancy in the amounts invoiced to Company from those due, Contractor shall promptly refund any overpayment and reimburse Company for all costs associated with the audit. Company may exercise its right to audit, inspect and copy records to confirm that Contractor has charged Company costs and submitted requests for payment in accordance with the Contract Documents, that Work has been performed in accordance with the Contract Documents or for any other legitimate business reason. The pendency of a Claim or Dispute shall not limit Company's right to exercise its right to audit, inspect or copy Contractor's Records.

(b) In addition to the audit rights in the immediately preceding subsection, if the Agreement involves Special Conditions, then Company has the right to conduct an audit of Contractor for adherence to the terms of the Cyber Policy not more than once per year; or more often upon notification or reasonable belief by Company of any Cyber Incident as described in the policy, or as required to comply with regulatory requirements. Company also has the right to audit any Contractor third party contractor/service provider upon notification of any Cyber Incident involving the third party contractor/service provider. Contractor will cooperate with any audit and require the cooperation of any third party contractor/service provider. Contractor shall also promptly notify Company of any Service Organization Control ("SOC") 2 Type II audit or Statement on Standards for Attestation Engagements ("SAES") audit conducted within one year prior to the date of the relevant Purchase Order through the completion or termination of the Purchase Order. Company encourages all contractors to share the results of industry standard third party audit reports (e.g., SOC 2 Type II audits or SSAE 16 audits) in a timely manner. Where circumstances warrant in Company's reasonable judgment (e.g., independent security assessment), Company may require Contractor to participate in annual security risk assessments of any security systems or environments which store, manage, process, or access Company Confidential Information.

#### 18.16 SUCCESSORS AND ASSIGNS.

Subject to Section 18.1, this Agreement shall be binding on the Parties hereto and on their respective successors and assigns.

#### 18.17 FINANCIAL ASSURANCES.

If Company determines that Contractor's financial condition has deteriorated so as to create a risk of loss to Company, then Company may, in addition to exercising any of its other rights set forth in this Agreement, inform Contractor in writing of such insecurity, and as Company shall direct in its sole discretion, Contractor shall immediately: (a) provide written assurance within five (5) Days that the Contractor is capable of performing and completing the Work and its obligations under the

Contract Documents; (b) increase the forms and/or amounts of security; (c) require direct payment or co-payment to Subcontractors; (d) adjust the amount of Work to be performed by Contractor with corresponding adjustments to the Contract Price; and/or (e) assign to Company any agreement or purchase order with a Subcontractor or Vendor, provided that Contractor shall remain responsible for its obligations under such agreement or purchase order.

18.18 PUBLIC DISCLOSURES.

Contractor shall not use Company, or any Affiliate of Company, either in name or likeness, in any article, press release, promotional material or other published information in any media without the prior written consent of Company's Corporate Communications Department and subject to execution of a separate license agreement with additional terms and conditions.

18.19 SERVICE MARKS.

Neither Party shall, without the prior written consent of the other Party, use the name, service marks or trademarks of the other Party. Contractor shall not use Company's name, service marks or trademarks without the prior written consent from Company's Corporate Communications Department.

18.20 SURVIVABILITY.

All representations, warranties, covenants and agreements made herein shall be considered to have been relied upon by the parties and shall survive the execution and delivery of this Agreement. Notwithstanding anything in this Agreement or implied by law to the contrary, each provision of this Agreement which by its nature is intended to survive the termination, cancellation, completion or expiration of this Agreement, including any express limitations of or releases from liability, warranties, confidentiality obligations, indemnification, insurance, consequential damages, termination rights, and audit rights, shall continue as a valid and enforceable obligation of the Party notwithstanding any such termination, cancellation, completion or expiration. Contractor's obligations under the Cyber Policy will continue for so long as Contractor continues to have access to, is in possession of, or acquires Company Data or has access to Company's Computing Systems.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE.**

**IN WITNESS WHEREOF** the Parties have executed and delivered this Agreement as of the Effective Date first above written.

\_\_\_\_\_,  
a \_\_\_\_\_ [state] [entity]

**SOUTHERN CALIFORNIA EDISON  
COMPANY**, a California corporation

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

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

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

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

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

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

Date Signed: \_\_\_\_\_, 20\_\_

Date Signed: \_\_\_\_\_, 20\_\_

**EXHIBIT B**

**CERTIFICATE OF SUBSTANTIAL COMPLETION**

Project Name: \_\_\_\_\_  
Owner: Southern California Edison  
Contractor: \_\_\_\_\_  
Date of Issuance: \_\_\_\_\_

The Work has been reviewed and found to be substantially complete as that term is defined in the Agreement and Contractor certifies that all of the requirements for Substantial Completion have been met.

The date of Substantial Completion of the Project is hereby established as [INSERT DATE], which is also the date of commencement of applicable warranties provided in the Agreement except as may be noted below.

A Punch List to be corrected by Contractor is attached hereto [ATTACH PUNCH LIST]. The failure to include any item on the Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. The failure to include any item on the Punch List does not constitute a waiver by Company or otherwise stop or limit Company's right to require compliance with Applicable Laws, Applicable Permits or other requirements of the Contract Documents as to any item not on this list.

Dated: \_\_\_\_\_

Company's Representative:

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

\_\_\_\_\_  
Signature of Company Representative

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

\_\_\_\_\_  
(Printed Name)

Dated: \_\_\_\_\_

Contractor Representative:

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

\_\_\_\_\_  
Signature of Contractor Representative

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

\_\_\_\_\_  
(Printed Name)

**EXHIBIT C**

**CERTIFICATE OF FINAL ACCEPTANCE**

Project Name: \_\_\_\_\_  
Owner: Southern California Edison  
Contractor: \_\_\_\_\_  
Date: \_\_\_\_\_

Contractor hereby certifies that the Work has been completed in accordance with Applicable Laws, Applicable Permits and the Contract Documents and that all of the requirements for Final Acceptance as defined in the Agreement have been achieved as of: [INSERT DATE].

Contractor further certifies: (i) that it has met all of the requirements for final payment in the Contract Documents; (ii) payment has been made to all Subcontractors and Vendors and other persons performing any Work for Contractor on the Project; (iii) no outstanding claims have been submitted by Subcontractors or Vendors with respect to the Project; (iv) no liens have been filed with respect to the Project and (v) Contractor has not assigned or pledged any rights or claims in any amount due or to become due from Company. Acceptance of final payment from Company shall constitute a waiver of all claims by Contractor and its Subcontractors and Vendors with respect to any Work performed on the Project, including without limitation all claims and Disputes related to any changes in the Work, additional payments claimed by Contractor, claimed delays or accelerations, cumulative impact claims, lost productivity claims and claims for cardinal change or abandonment [except for the following: \_\_\_\_\_].

Neither this certificate, nor any approval or final payment by Company, constitutes an acceptance of any Work not in accordance with the Contract Documents, a release of Contractor's obligations to complete the Work in accordance with the Contract Documents or a release of any of Contractor's warranty obligations under the Contract Documents. Neither this certificate, nor any approval or final payment by Company, constitutes a waiver or release of any rights and remedies of Company under the Contract Documents.

Dated: \_\_\_\_\_

Company's Representative:

By:

\_\_\_\_\_  
\_\_\_\_\_

Signature of Company Representative

Name:

\_\_\_\_\_  
\_\_\_\_\_

(Printed Name)

Dated:

\_\_\_\_\_

Contractor Representative:

By:

\_\_\_\_\_

\_\_\_\_\_

Signature of Contractor Representative

Name:

\_\_\_\_\_

\_\_\_\_\_

(Printed Name)

## EXHIBIT E

### FORM OF CONTRACTOR CERTIFICATE FOR PARTIAL WAIVER OF LIENS

THIS CONTRACTOR CERTIFICATE FOR PARTIAL WAIVER OF LIENS (this "Contractor Certificate for Partial Waiver of Liens") is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, having a business address at \_\_\_\_\_ ("Contractor"), contractor to Southern California Edison Company, a California corporation, having a business address at \_\_\_\_\_ ("Company"), relating to a Turnkey Engineering, Procurement and Construction Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_, between Contractor and Company, as the same may be amended from time to time (the "Agreement"), for the performance or furnishing of certain work, labor, supervision, services, materials and equipment in connection with the design, engineering, equipping, construction, installation, and testing of the Project. Each term used herein with its initial letter capitalized and not otherwise defined shall have the meaning assigned to such term in the Agreement.

Contractor, on behalf of itself and all Persons claiming any interest in or through Contractor and for Contractor's and their successors and assigns, and those acting by or through any of the foregoing, for and in consideration of \_\_\_\_\_ and \_\_\_\_/100 U.S. DOLLARS (U.S. \$ \_\_\_\_\_), does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit-claim all actions, claims and demands, of any kind whatsoever, for all labor, services, materials and equipment, furnished through the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by or through Contractor to Company for the Project, which Contractor ever had, or now has, against the Project, the property on which the Project is located, or against Company, its parents, subsidiaries and affiliates, at all tiers, and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all Persons acting for any of them (collectively the "Releasee Entities"), including, without limitation, all claims related to, in connection with, or arising out of all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred.

Contractor hereby certifies, represents and warrants that: (a) Contractor has not assigned or pledged any rights or claims in any amount due or to become due from Company; (b) no claims from Subcontractors, Vendors, mechanics or materialmen have been submitted to Contractor with respect to the Project or remain unsatisfied as of the date of this Contractor Certificate for Partial Waiver of Liens; (c) no mechanics or material or materialmen's liens have been filed with respect to the Project; and (d) payment has been made to all consultants, employees, subcontractors, laborers and material suppliers, at all tiers, and all other entities, for all labor, services, materials and equipment furnished by or through Contractor for the Project through the date hereof, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project.

Contractor agrees to defend, indemnify and hold the Releasee Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Releasee Entities may suffer by reason of: (a) any claim made against any of the Releasee Entities or the Project relating to labor, services, materials or equipment furnished by or through Contractor through the date hereof, or (b) any breach of any representation or warranty made by Contractor to the Releasee Entities, including the representations and warranties included herein, any false statement made in this Contractor Certificate for Partial Waiver of Liens, or any misrepresentation or omission made to the Releasee Entities by Contractor.

Contractor acknowledges and agrees that: (a) Company is relying upon the representations and warranties made herein as a material inducement for Company to make payment to Contractor; (b) this Contractor Certificate for Partial Waiver of Liens is freely and voluntarily given by Contractor and Contractor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Contractor Certificate for Partial Waiver of Liens and Contractor has voluntarily accepted the terms of this Contractor Certificate for Partial Waiver of Liens for the consideration recited above; and (c) the tendering of payment by Company and the receipt of payment and the



execution of this Contractor Certificate for Partial Waiver of Liens by Contractor shall not, in any manner whatsoever, release Contractor from: (i) its continuing obligations with respect to the completion of any Work at the Project that remains incomplete, including, Punch List work, warranty work or guaranty work, or the correction of defective or non-conforming Work; (ii) any contractual, statutory or common law obligations of Contractor with respect to any of the Releasee Entities; or (iii) any other obligations of Contractor with respect to any of the Releasee Entities.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE.]**

Contractor hereby certifies, represents and warrants to Company that the undersigned individual (“Signatory”) is duly authorized, and the Signatory hereby represents that he/she has been duly authorized by and on behalf of Contractor to execute this Contractor Certificate for Partial Waiver of Liens as of the date first above written.

[CONTRACTOR],  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

[Notary Seal]

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

My Commission Expires: \_\_\_\_\_

## **EXHIBIT E-1**

### **FORM OF SUBCONTRACTOR CERTIFICATE FOR PARTIAL WAIVER OF LIENS**

THIS SUBCONTRACTOR CERTIFICATE FOR PARTIAL WAIVER OF LIENS (this "Subcontractor Certificate for Partial Waiver of Liens") is made this \_\_\_\_ of \_\_\_\_\_, \_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, having a business address at \_\_\_\_\_ ("Releasor"), subcontractor to \_\_\_\_\_, a \_\_\_\_\_, having a business address at \_\_\_\_\_ ("Contractor"), for the performance or furnishing of certain work in connection with the "turn key" completion of certain electric power transmission facilities, and all services and utilities related thereto, all to be built on sites located in the State of Arizona and State of California (the "Project"). The Project will be owned by Southern California Edison Company, a California corporation, having a business address at \_\_\_\_\_ ("Company").

Releasor, on behalf of itself and all parties claiming any interest in or thorough Releasor and for Releasor's and their successors and assigns, and those acting by or through any of the foregoing, for and in consideration of \_\_\_\_\_ and \_\_\_\_/100 U.S. DOLLARS (U.S. \$ \_\_\_\_\_), does hereby unconditionally and irrevocably waive, release, relinquish and quit-claim all actions, claims and demands, of any kind whatsoever, for all labor, services, materials and equipment, furnished through the \_\_\_\_ day of \_\_\_\_\_, by or through Releasor to Contractor for the Project, which Releasor ever had, or now has, against the Project, the property on which the Project is located, or against Company, Contractor, their partners, parents, subsidiaries and affiliates, at all tiers, and their insurers, sureties, officers, directors, representatives, shareholders, agents, and all parties acting for any of them (collectively the "Releasee Entities"), including, without limitation, all claims related to, in connection with, or arising out of all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred.

Releasor hereby certifies, represents and warrants that: (a) Releasor has not assigned or pledged any rights or claims in any amount due or to become due from Contractor; (b) no claims from sub-subcontractors, vendors, mechanics or materialmen have been submitted to Releasor with respect to the Project or remain unsatisfied as of the date of this Subcontractor Certificate for Partial Waiver of Liens; (c) no mechanics or material or materialmen's liens have been filed with respect to the Project; and (d) payment has been made to all subcontractors, laborers and material suppliers, at all tiers, and all other entities, for all labor, services, materials and equipment furnished by or through Releasor for the Project through the date hereof, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project.

Releasor agrees to defend, indemnify and hold the Releasee Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Releasee Entities may suffer by reason of: (a) any claim made against any of the Releasee Entities or the Project relating to labor, services, materials or equipment furnished by or through Releasor through the date hereof, or (b) any breach of any representation or warranty made by Releasor to the Releasee Entities, including the representations and warranties included herein, any false statement made in this Subcontractor Certificate for Partial Waiver of Liens, or any misrepresentation or omission made to the Releasee Entities by Releasor.

Releasor acknowledges and agrees that: (a) Contractor and Company are relying upon the representations and warranties made herein as a material inducement for Contractor to make payment to Releasor; (b) this Subcontractor Certificate for Partial Waiver of Liens is freely and voluntarily given by Releasor and Releasor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Subcontractor Certificate for Partial Waiver of Liens and Releasor has voluntarily accepted the terms of this Subcontractor Certificate for Partial Waiver of Liens for the consideration recited above; and (c) the tendering of payment by Contractor and the receipt of payment and the execution of this Subcontractor Certificate for Partial Waiver of Liens by Releasor shall not, in any manner whatsoever, release Releasor from: (i) its continuing obligations with respect to the completion of

any Work at the Project that remains incomplete, including, punch list work, warranty work or guaranty work, or the correction of defective or non-conforming Work; (ii) any contractual, statutory or common law obligations of Releasor with respect to any of the Releasee Entities; or (iii) any other obligations of Releasor with respect to any of the Releasee Entities.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE.]**

Releasor hereby certifies, represents and warrants to the Releasee Entities that the undersigned individual (“Signatory”) is duly authorized, and the Signatory hereby represents that he/she has been duly authorized by and on behalf of Releasor to execute this Subcontractor Certificate for Partial Waiver of Liens as of the date first above written.

[RELEASOR],  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

[Notary Seal]

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public



## EXHIBIT F

### FORM OF CONTRACTOR PARENT GUARANTY

1. **Contractor Parent Guaranty.** For valuable consideration, \_\_\_\_\_ [*Contractor Parent Guarantor's legal name*] [legal status] ("**Contractor Parent Guarantor**") unconditionally and irrevocably guarantees to Southern California Edison Company, a California corporation ("**Beneficiary**"), its successors and assigns, the full, prompt and faithful payment and performance when due of all obligations of [*Contractors's legal name*], [*legal status*] ("**Principal**") under that certain Turnkey Engineering, Procurement and Construction Agreement between Beneficiary and Principal dated [*date*], as amended from time to time ("Agreement") (collectively, the "**Obligations**") and agrees that if for any reason Principal shall fail to pay or perform when due any of such Obligations, Contractor Parent Guarantor will pay or perform the same forthwith. The term "Obligations" is used herein in its broadest and most comprehensive sense and shall mean, without limiting the generality of the foregoing, all obligations, liabilities and indebtedness of any kind whatsoever now or hereafter owing by Principal to Beneficiary in respect of or pursuant to the Agreement whether direct or indirect, absolute or contingent, now existing or hereafter arising, including without limitation, any and all covenants, terms and agreements to be performed and observed by Principal under the Agreement and all other present or future agreements and instruments between Beneficiary and Principal in connection with performance of the Agreement. Initially capitalized words that are used but not otherwise defined herein shall have the meanings given them in the Agreement.
2. **Deficiencies in Payment or Performance.** This Guaranty is a guarantee of payment and performance continuing until completion of the Project and expiration of the Warranty Period as set forth in the Agreement. If Principal fails or refuses to pay all or any portion of the Obligations or defaults in the performance of its Obligations, or if any other event of default as set forth in the Agreement occurs, the Beneficiary may make a demand upon the Contractor Parent Guarantor. Such demand shall be in writing and shall state the default or the amount Principal has failed to pay and an explanation of why such payment is due, with a specific statement that Beneficiary is calling upon Contractor Parent Guarantor to pay or perform under this Contractor Parent Guaranty. Contractor Parent Guarantor shall promptly, but in no event less than ten Business Days following demand by Beneficiary, pay such Obligations in immediately available funds or cure the default or failure to perform in accordance with the terms of the Agreement. The obligations of Contractor Parent Guarantor hereunder shall not be subject to any counterclaim, setoff, withholding, or deduction unless required by applicable law. A written demand satisfying the foregoing requirements shall be deemed sufficient notice to Contractor Parent Guarantor that it must pay or perform the Obligations.
3. **Contractor Parent Guaranty Absolute.** Subject to Section 3 of this Contractor Parent Guaranty, Contractor Parent Guarantor agrees that its obligations under this Contractor Parent Guaranty are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor. In furtherance of the foregoing and without limiting the generality thereof, Contractor Parent Guarantor agrees as follows:
  - (a) The liability of Contractor Parent Guarantor under this Contractor Parent Guaranty is a continuing guaranty of payment and performance and not of collectability, and is not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Agreement or the pursuit by Beneficiary of any remedies which it now has or may hereafter have under the Agreement;
  - (b) Beneficiary may enforce this Contractor Parent Guaranty upon the occurrence of a default by Principal under the Agreement notwithstanding the existence of a dispute between Beneficiary and Principal with respect to the existence of the default;
  - (c) The obligations of Contractor Parent Guarantor under this Contractor Parent Guaranty are independent of the obligations of Principal under the Agreement and a separate action or actions may be brought and prosecuted against Contractor Parent Guarantor whether or not any action is brought against Principal or any other guarantors and whether or not Principal is joined in any such action or actions;

(d) Beneficiary may, at its election, foreclose on any security held by Beneficiary, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to Beneficiary without affecting or impairing in any way the liability of Contractor Parent Guarantor under this agreement, except to the extent the amount(s) owed to Beneficiary by Principal have been paid; and

(e) Contractor Parent Guarantor shall continue to be liable under this Contractor Parent Guaranty and the provisions hereof shall remain in full force and effect notwithstanding:

- (i) Any modification, amendment, supplement, extension, agreement or stipulation between Principal and Beneficiary or their respective successors and assigns, with respect to the Agreement or the obligations encompassed thereby;
- (ii) Beneficiary's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Agreement;
- (iii) Any release of Principal or any other guarantor from any liability with respect to the Obligations or any portion thereof;
- (iv) Any furnishing to Beneficiary of collateral for any Obligation or any exchange, release, failure to preserve, waste, deterioration, sale or disposition of any collateral, including any release, compromise or subordination of any real or personal property then held by Beneficiary as security for the performance of the Obligations or any portion thereof, or any substitution with respect thereto;
- (v) Without in any way limiting the generality of the foregoing, if Beneficiary is awarded a judgment in any suit brought to enforce a portion of the Obligations, such judgment shall not be deemed to release Contractor Parent Guarantor from its covenant to pay that portion of the Obligations which is not the subject of such suit;
- (vi) Beneficiary's acceptance and/or enforcement of, or failure to enforce, any other guaranties or any portion of this guaranty;
- (vii) Beneficiary's exercise of any other rights available to it under the Agreement;
- (viii) Beneficiary's consent to the change, reorganization or termination of the corporate structure or existence of the Principal and to any corresponding restructuring of the Obligations;
- (ix) Any insolvency of Principal, or any other guarantor or any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, arrangement, dissolution or liquidation of Principal or any other guarantor or any defense which Principal, or any other guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding, or Principal making a general assignment for the benefit of its creditors or admitting in writing its inability to pay its debts as they become due;
- (x) Any defense based upon any taking, modification or release of any collateral for the Obligations, any failure to perfect or continue perfection of a security interest in any collateral that secures the Obligations;
- (xi) Any defenses, setoffs or counterclaims that Principal may allege or assert against Beneficiary with respect to the Obligations, including, without limitation, failure of consideration, breach of warranty, statute of frauds, statute of limitations and accord and satisfaction;

- (xii) Any rights or defenses based upon an offset by the Contractor Parent Guarantor against any obligation now or hereafter owed to the Contractor Parent Guarantor by Principal; and
- (xiii) Any other act or thing or omission, or delay to do any other act or thing that might in any manner or to any extent vary the risk of Contractor Parent Guarantor as an obligor with respect to the Obligations and, except to the extent expressly set forth herein, any other circumstance which might otherwise constitute a defense against, or a legal or equitable discharge of Contractor Parent Guarantor's liability under this Contractor Parent Guaranty.

(f) Contractor Parent Guarantor will not have any greater liability under this Contractor Parent Guaranty with respect to the Obligations and matters arising under the Agreement than Principal has under the Agreement, and Contractor Parent Guarantor will have the right to avail itself of and reserves the right to assert any and all defenses, counterclaims and setoffs, releases and limitations of liability, including, but not limited to the limitations of liability (subject to the exceptions listed) as set forth in Section 16.2 of the Agreement, that are available to Principal under the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of Principal.

4. **Termination; Reinstatement.** The term of this Contractor Parent Guaranty is continuous until the date on which the Obligations have been fully performed or paid in full. No such notice or termination shall release Contractor Parent Guarantor from any liability as to any amount or performance that is owing under the Agreement as of the termination date. This Contractor Parent Guaranty shall be reinstated if at any time following the termination of this Contractor Parent Guaranty, any payment by Contractor Parent Guarantor under this Contractor Parent Guaranty or pursuant hereto is rescinded or must otherwise be returned by the Beneficiary or other person upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Principal, Contractor Parent Guarantor or otherwise, and is so rescinded or returned to the party or parties making such payment, all as though such payment had not been made. If all or any portion of the Obligations are paid by Principal, the obligations of Contractor Parent Guarantor hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Obligations for all purposes under this Contractor Parent Guaranty.

5. **Bankruptcy; Post-Petition Interest.** So long as any Obligations remain outstanding, Contractor Parent Guarantor shall not, without the prior written consent of Beneficiary, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Principal. The obligations of Contractor Parent Guarantor under this Contractor Parent Guaranty shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Principal or by any defense which Principal may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Any interest on any portion of the Obligations which accrues after the commencement of any such proceeding (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Obligations if said proceedings had not been commenced) shall be included in the Obligations. Contractor Parent Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Beneficiary, or allow the claim of Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

6. **Subrogation.** Contractor Parent Guarantor shall be subrogated to all rights of the Beneficiary against Principal with respect to any amounts paid by the Contractor Parent Guarantor pursuant to the Contractor Parent Guaranty, provided that Contractor Parent Guarantor postpones all subrogation rights until all Obligations have been irrevocably paid in full to the Beneficiary. Beneficiary agrees to take, at the expense of Contractor Parent Guarantor, such steps as Contractor Parent Guarantor reasonably requests to implement such subrogation. If any amount shall be paid to Contractor Parent Guarantor on account of such subrogation, reimbursement, contribution or indemnity rights at any time when all the Obligations guaranteed hereunder shall not have been performed or

indefeasibly paid in full, Contractor Parent Guarantor shall hold such amount in trust for the benefit of Beneficiary and shall promptly pay such amount to Beneficiary.

7. **Waivers of Contractor Parent Guarantor.**

(a) Contractor Parent Guarantor waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under this agreement or the enforcement of this agreement.

(b) Contractor Parent Guarantor waives any right to require Beneficiary to proceed against or exhaust any security held from Principal or any other party acting under a separate agreement and waives any right under Section 2849 of the California Civil Code and any other benefit of or right to participate in any security now or hereafter held by Beneficiary.

(c) Contractor Parent Guarantor waives all of the rights and defenses described in subdivision (a) of Section 2856 of the California Civil Code, including any rights and defenses that are or may become available to the Contractor Parent Guarantor by reason of Sections 2787 to 2855 thereof, inclusive.

(i) The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things: (a) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor; (b) If the creditor forecloses on any real property collateral pledged by the debtor: (1) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; (2) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.

(ii) This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(iii) The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(d) Contractor Parent Guarantor assumes all responsibility for keeping itself informed of Principal's financial condition and all other factors affecting the risks and liability assumed by Contractor Parent Guarantor hereunder, and Beneficiary shall have no duty to advise Contractor Parent Guarantor of information known to it regarding such risks.

(e) Contractor Parent Guarantor waives any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Principal, including, without limitation, any defense based on or arising out of the lack of validity or enforceability of the Obligations or by reason of the cessation of liability of the Principal under the Agreement for any reason but full performance or payment;

(f) Contractor Parent Guarantor waives any defense based upon Beneficiary's errors or omissions in the administration of the Obligations;

(g) Contractor Parent Guarantor waives its right to raise any defenses based upon promptness, diligence, and any requirement that Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(h) Contractor Parent Guarantor waives its right to raise any principles of law, statutory or otherwise, that limit the liability of or exonerates sureties or guarantors, provide any legal or equitable discharge of Contractor Parent Guarantor's obligations hereunder, or which may conflict with the terms of this Contractor Parent Guaranty;

(i) Other than demand for payment or performance, the Contractor Parent Guarantor hereby expressly waives all notices between the Beneficiary and the Principal including without limitation all notices with respect to the Agreement and this Contractor Parent Guaranty, notice of acceptance of this Contractor Parent Guaranty, any notice of credits extended and sales made by the Beneficiary to Principal, any information regarding Principal's financial condition, and all other notices whatsoever; and

(j) Contractor Parent Guarantor waives filing of claims with a court in the event of the insolvency or bankruptcy of the Principal.

8. **No Waiver of Rights by Beneficiary.** No right or power of Beneficiary under this agreement shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise a right or power, or by any delay in doing so, and every right or power of Beneficiary hereunder shall continue in full force and effect until specifically waived or released in a written document executed by Beneficiary.

9. **Assignment, Successors and Assigns.** This Contractor Parent Guaranty shall be binding upon Contractor Parent Guarantor, its successors and assigns, and shall inure to the benefit of, and be enforceable by, the Beneficiary, its successors, assigns and creditors. The Beneficiary shall have the right to assign this Contractor Parent Guaranty to any person or entity without the prior consent of the Contractor Parent Guarantor; *provided, however,* that no such assignment shall be binding upon the Contractor Parent Guarantor until it receives written notice of such assignment from the Beneficiary. The Contractor Parent Guarantor shall have no right to assign this Contractor Parent Guaranty or its obligations hereunder without the prior written consent of the Beneficiary.

10. **Representations of Contractor Parent Guarantor.** Contractor Parent Guarantor hereby represents and warrants that: (a) it is a corporation duly organized, validly existing and in good standing under the laws of [insert jurisdiction of formation] and has full power and authority to execute, deliver and perform this Contractor Parent Guaranty; (b) it has taken all necessary actions to execute, deliver and perform this Contractor Parent Guaranty; (c) this Contractor Parent Guaranty constitutes the legal, valid and binding obligation of Contractor Parent Guarantor, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws effecting creditors' rights generally and to general equitable principles; (d) execution, delivery and performance by Contractor Parent Guarantor of this Guarantee does not conflict with, violate or create a default under any of its governing documents, any agreement or instruments to which it is a party or to which any of its assets is subject or any applicable law, rule, regulation, order or judgment of any Governmental Authority; (e) all consents, approvals and authorizations of governmental authorities required in connection with Contractor Parent Guarantor's execution, delivery and performance of this Contractor Parent Guaranty have been duly and validly obtained and remain in full force and effect; and (f) there are no actions, suits or proceedings pending or, to the best of the knowledge of Contractor Parent Guarantor, threatened against or affecting Contractor Parent Guarantor before any Government Authority of which there is a likelihood that the outcome will materially and adversely affect its ability to perform its obligations hereunder.

11. **Financial Information.** If requested by Beneficiary, Contractor Parent Guarantor, shall: (a) deliver within 120 days following the end of each fiscal year that any Principal's Obligations are outstanding, a copy of its annual report containing its audited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case in comparative form the figures for the previous year and (b) such financial statements shall be [if Contractor Parent Guarantor is an Securities and Exchange reporting company: certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations] or [if Contractor Parent Guarantor is not an Securities and Exchange Commission reporting company: certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments). For purposes of this Section, "Responsible Officer" shall mean the Chief Financial Officer, Treasurer or any Assistant Treasurer of Contractor Parent Guarantor or any employee of Contractor Parent Guarantor designated by any of the foregoing] provided, however, for purposes of subsection (a) if



Contractor Parent Guarantor's financial statements are publicly available electronically on the Securities and Exchange Commission's or Contractor Parent Guarantor's website and otherwise meet the requirements of subsections (a) and (b), then Contractor Parent Guarantor shall be deemed to have met the delivery requirement of subsection (a) upon delivery of a notice to Beneficiary of the availability and location of such filing. In all cases the statements shall be for the most recent accounting period and prepared in accordance with U.S. "GAAP" (generally accepted accounting principles) or International Financial Reporting Standards ("IFRS").

12. **Governing Law.** This Contractor Parent Guaranty is made under and shall be governed in all respects by the laws of the State of California, without regard to conflict of law principles. If any provision of this Contractor Parent Guaranty is held invalid under the laws of California, this Contractor Parent Guaranty shall be construed as though the invalid provision has been deleted, and the rights and obligations of the parties shall be construed accordingly. With respect to any suit, action, or proceedings relating to any dispute arising out of or in connection with this Contractor Parent Guaranty ("Proceeding"), each party irrevocably: (i) submits to the exclusive jurisdiction of the courts of the state of California and the United States District Court located in Los Angeles, California; and (ii) waives any objection which it may have at any time to the laying of venue of any Proceeding brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party. Contractor Parent Guarantor irrevocably appoints the following ("Process Agent") to receive, for it and on its behalf, service of process in any Proceedings: \_\_\_\_\_

If for any reason Contractor Parent Guarantor's Process Agent is unable to act as such, Contractor Parent Guarantor will promptly notify Beneficiary and within 30 days appoint a substitute process agent acceptable to Beneficiary. Contractor Parent Guarantor irrevocably consents to service of process given in accordance with Section 17 of this Contractor Parent Guaranty. Nothing in this Contractor Parent Guaranty will affect the right of either party to serve process in any other manner permitted by applicable law.

13. **Waiver of Jury Trial.** Contractor Parent Guarantor hereby irrevocably and unconditionally waives any and all right to trial by jury in any action, suit or counterclaim arising out of or in connection with this Contractor Parent Guaranty.

14. **Construction.** All parties to this Contractor Parent Guaranty are represented by legal counsel. The terms of this Contractor Parent Guaranty and the language used in this agreement shall be deemed to be the terms and language chosen by the parties hereto to express their mutual intent. This Contractor Parent Guaranty shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Contractor Parent Guaranty. No rule of strict construction will be applied against any party.

15. **Amendment; Severability.** Neither this Contractor Parent Guaranty nor any of the terms hereof may be terminated, amended, supplemented or modified, except by an instrument in writing executed by an authorized representative of each of Contractor Parent Guarantor and Beneficiary. If any provision in or obligation under this Contractor Parent Guaranty shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

16. **Third Party Rights.** This Contractor Parent Guaranty shall not be construed to create any rights in any parties other than Contractor Parent Guarantor and Beneficiary and their respective successors and permitted assigns.

17. **Notices.** Any demand for payment or performance, notice, request, instruction, correspondence or other document to be given hereunder by any party to another shall be made by facsimile to the person and at the address for notices specified below.

Beneficiary:

Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, CA 91770

Attn: [Credit Manager]  
Phone: (626) \_\_\_\_-\_\_\_\_  
Facsimile: (626) \_\_\_\_-\_\_\_\_

With copy to:

Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, CA 91770  
Attn: [\_\_\_\_\_]\_\_\_\_\_  
Phone: (626) \_\_\_\_-\_\_\_\_  
Facsimile: (626) \_\_\_\_-\_\_\_\_

Contractor Parent Guarantor:

[Contractor Parent Guarantor]  
[Street]  
[City, State Zip]  
Attn:  
Phone:  
Facsimile:

Principal:

[Principal]  
[Street]  
[City, State Zip]  
Attn:  
Phone:  
Facsimile:

Such notice shall be effective upon confirmation of the actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if receipt is outside of the recipient's normal business hours. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

IN WITNESS WHEREOF, Contractor Parent Guarantor has executed this Contractor Parent Guaranty as of \_\_\_\_\_, \_\_\_\_.

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

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

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



## **EXHIBIT K**

### **FORM OF CONTRACTOR CERTIFICATE FOR FINAL WAIVER OF LIENS**

THIS CONTRACTOR CERTIFICATE FOR FINAL WAIVER OF LIENS (this "Contractor Certificate for Final Waiver of Liens") is made this \_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, a \_\_\_\_\_, having a business address at \_\_\_\_\_ ("Contractor"), contractor to Southern California Edison Company, a California corporation, having a business address at \_\_\_\_\_ ("Company"), relating to a Turnkey Engineering, Procurement and Construction Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_, between Contractor and Company, as the same may be amended from time to time (the "Agreement"), for the performance or furnishing of certain work, labor, supervision, services, materials and equipment in connection with the design, engineering, equipping, construction, installation, and testing of the Project. Each term used herein with its initial letter capitalized and not otherwise defined shall have the meaning assigned to such term in the Agreement.

Contractor, on behalf of itself and all Persons claiming any interest in or thorough Contractor and for Contractor's and their successors and assigns, and those acting by or through any of the foregoing, for and in consideration of the sum of \_\_\_\_\_ and \_\_\_\_/100 U.S. DOLLARS (U.S. \$ \_\_\_\_\_) and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, as full and final payment on account of all labor, services, materials and equipment, furnished to Company for the Project, does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit-claim all actions, claims and demands, of any kind whatsoever, which Contractor ever had, now has, or may have in the future, known or unknown, against the Project, the property on which the Project is located, or against Company, its subsidiaries and affiliates, at all tiers, and their insurers, sureties, employees, officers, directors, representatives, shareholders, agents, and all Persons acting for any of them (collectively the "Releasee Entities"), including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred.

Contractor hereby certifies, represents and warrants that: (a) Contractor has not assigned or pledged any rights or claims in any amount due or to become due from Company; (b) no claims from Subcontractors, Vendors, mechanics or materialmen have been submitted to Contractor with respect to the Project or remain unsatisfied as of the date of this Contractor Certificate for Final Waiver of Liens; (c) no mechanics or material or materialmen's liens have been filed with respect to the Project; and (d) payment has been made to all consultants, employees, subcontractors, laborers and material suppliers, at all tiers, and all other entities, for all labor, services, materials and equipment furnished by or through Contractor for the Project, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project; and (c) all contracts with consultants and subcontractors employed, used or engaged by Contractor in connection with the Project have been completed or have been terminated.

Contractor agrees to defend, indemnify and hold the Releasee Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Releasee Entities may suffer by reason of: (a) any claim made against any of the Releasee Entities or the Project relating to labor, services, materials or equipment furnished by or through Contractor, or (b) any breach of any representation or warranty made by Contractor to the Releasee Entities, including the representations and warranties included herein, any false statement made in this Contractor Certificate for Final Waiver of Liens, or any misrepresentation or omission made to the Releasee Entities by Contractor.

Contractor acknowledges and agrees that: (a) Company is relying upon the representations and warranties made herein as a material inducement for Company to make payment to Contractor; (b) this Contractor Certificate for Final Waiver of Liens is freely and voluntarily given by Contractor and Contractor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Contractor Certificate for Final Waiver of Liens and Contractor has voluntarily accepted the terms of this Contractor Certificate for Final Waiver of Liens for the consideration recited above; and (c) the tendering of payment by Company and the receipt of payment and the

execution of this Contractor Certificate for Final Waiver of Liens by Contractor shall not, in any manner whatsoever, release Contractor from: (i) its continuing obligations with respect to the completion of any Work at the Project that remains incomplete, including Punch List work, warranty work or guaranty work, or the correction of defective or non-conforming Work; (ii) any contractual, statutory or common law obligations of Contractor with respect to any of the Releasee Entities; or (iii) any other obligations of Contractor with respect to any of the Releasee Entities.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE.]**

Contractor hereby certifies, represents and warrants to Company that the undersigned individual (“Signatory”) is duly authorized, and the Signatory hereby represents that he/she has been duly authorized by and on behalf of Contractor to execute this Contractor Certificate for Final Waiver of Liens as of the date first above written.

[CONTRACTOR],  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

[Notary Seal]

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

## **EXHIBIT K-1**

### **FORM OF SUBCONTRACTOR CERTIFICATE FOR FINAL WAIVER OF LIENS**

THIS SUBCONTRACTOR CERTIFICATE FOR FINAL WAIVER OF LIENS (this "Subcontractor Certificate for Final Waiver of Liens") is made this \_\_\_\_ of \_\_\_\_\_, \_\_\_\_ by \_\_\_\_\_, a \_\_\_\_\_, having a business address at \_\_\_\_\_ ("Releasor"), subcontractor to \_\_\_\_\_, a \_\_\_\_\_, having a business address at \_\_\_\_\_ ("Contractor"), for the performance or furnishing of certain work in connection with the "turn key" completion of certain electric power transmission facilities, and all services and utilities related thereto, all to be built on sites located in the State of Arizona and State of California (the "Project"). The Project will be owned by Southern California Edison Company, a California corporation, having a business address at \_\_\_\_\_ ("Company").

Releasor, on behalf of itself and all parties claiming any interest in or thorough Releasor and for Releasor's and their successors and assigns, and those acting by or through any of the foregoing, for and in consideration of the sum of \_\_\_\_\_ and \_\_\_\_/100 U.S. DOLLARS (U.S. \$ \_\_\_\_\_) and other good and valuable consideration, in hand paid, the receipt and sufficiency of which are hereby acknowledged, as full and final payment on account of all labor, services, materials and equipment, furnished to Contractor for the Project, does hereby unconditionally and irrevocably waive, release, remise, relinquish and quit-claim all actions, claims and demands, of any kind whatsoever, which the Releasor ever had, now has, or may have in the future, known or unknown, against the Project, the property on which the Project is located, or against Company, Contractor, their partners, parents, subsidiaries and affiliates, at all tiers, and their insurers, sureties, officers, directors, representatives, shareholders, agents, and all parties acting for any of them (collectively the "Releasee Entities"), including, without limitation, all claims related to, in connection with, or arising out of, all facts, acts, events, circumstances, changes or extra work, constructive or actual delays or accelerations, interferences and the like which have occurred or may be claimed to have occurred.

Releasor hereby certifies, represents and warrants that: (a) Releasor has not assigned or pledged any rights or claims in any amount due or to become due from Contractor; (b) no claims from sub-subcontractors, vendors, mechanics or materialmen have been submitted to Releasor with respect to the Project or remain unsatisfied as of the date of this Subcontractor Certificate for Final Waiver of Liens; (c) no mechanics or material or materialmen's liens have been filed with respect to the Project; and (d) payment has been made to all subcontractors, laborers and material suppliers, at all tiers, and all other entities, for all labor, services, materials and equipment furnished by or through Releasor for the Project, including, without limitation, all payroll taxes and contributions required to be made and all wages, overtime pay, premium pay, holiday pay, sick pay, personal leave pay, severance pay, fees, fringe benefits, commissions and reimbursable expenses required to be paid and all deductions for dues, fees or contributions required to be made in connection with all collective bargaining agreements in existence, if any, which affect any worker(s) providing services for the Project.

Releasor agrees to defend, indemnify and hold the Releasee Entities harmless from and against any and all actions, causes of action, losses or damages of whatever kind, including, without limitation, reasonable attorneys' fees and costs in arbitration and at the pre-trial, trial and appellate levels, which the Releasee Entities may suffer by reason of: (a) any claim made against any of the Releasee Entities or the Project relating to labor, services, materials or equipment furnished by or through Releasor, or (b) any breach of any representation or warranty made by Releasor to the Releasee Entities, including the representations and warranties included herein, any false statement made in this Subcontractor Certificate for Final Waiver of Liens, or any misrepresentation or omission made to the Releasee Entities by Releasor.

Releasor acknowledges and agrees that: (a) Contractor and Company are relying upon the representations and warranties made herein as a material inducement for Contractor to make payment to Releasor; (b) this Subcontractor Certificate for Final Waiver of Liens is freely and voluntarily given by Releasor and Releasor has had the advice of counsel in connection herewith and is fully informed as to the legal effects of this Subcontractor Certificate for Final Waiver of Liens and Releasor has voluntarily accepted the terms of this Subcontractor Certificate for Final Waiver of Liens for the consideration recited above; and (c) the tendering of payment by Contractor and the receipt of payment and the execution of this Subcontractor Certificate for Final Waiver of Liens by Releasor shall not, in any manner whatsoever, release Releasor from: (i) its continuing obligations with respect to the completion of any Work at the Project that remains incomplete, including punch list work, warranty work or guaranty work, or the correction of

defective or non-conforming Work; (ii) any contractual, statutory or common law obligations of Releasor with respect to any of the Releasee Entities; or (iii) any other obligations of Releasor with respect to any of the Releasee Entities.

Releasor hereby certifies, represents and warrants to the Releasee Entities that the undersigned individual (“Signatory”) is duly authorized, and the Signatory hereby represents that he/she has been duly authorized by and on behalf of Releasor to execute this Subcontractor Certificate for Final Waiver of Liens as of the date first above written.

[RELEASOR],

a \_\_\_\_\_

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

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

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE.]**

STATE OF \_\_\_\_\_

§  
§  
§

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of said \_\_\_\_\_.

[Notary Seal]

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

My Commission Expires: \_\_\_\_\_



**EXHIBIT L**

**FORM OF LETTER OF CREDIT**

ISSUE DATE:  
IRREVOCABLE NON-TRANSFERABLE STANDBY L/C NO.: -----  
ACCOUNT PARTY:  
ACCOUNT NAME  
ADDRESS  
CITY, STATE XXXXX-XXXX

BENEFICIARY  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVE  
RISK CONTROL GO#1, QUAD 1A  
ROSEMEAD, CA 91770

WE HEREBY ESTABLISH THIS IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_ FOR THE AMOUNT OF XXX AND XX/100 DOLLARS (\$ \_\_\_\_\_) (THE "STATED AMOUNT"), EXPIRING AT OUR COUNTERS WITH OUR CLOSE OF BUSINESS ON [ADD DATE] (THE "EXPIRATION DATE").

THIS LETTER OF CREDIT IS AVAILABLE WITH (ISSUING BANK NAME) BY PAYMENT, AGAINST PRESENTATION TO US OF YOUR DRAFT AT SIGHT DRAWN ON (BANK NAME), ACCOMPANIED BY:

- 1) A COPY OF THIS LETTER OF CREDIT AND ALL AMENDMENTS
- 2) A COPY OF THE DRAW CERTIFICATE IN THE FORM OF ATTACHMENT P ATTACHED HERETO AND WHICH FORMS AN INTEGRAL PART HEREOF, DULY COMPLETED AND PURPORTEDLY BEARING THE SIGNATURE OF AN AUTHORIZED REPRESENTATIVE OF THE BENEFICIARY.

PRESENTATION OF THE ABOVE DOCUMENTS MAY BE MADE BY FACSIMILE AT FACSIMILE NUMBER \_\_\_\_\_ ATTENTION TO \_\_\_\_\_. THE FACSIMILE TRANSMITTAL SHALL BE DEEMED DELIVERED WHEN RECEIVED BY US.

BENEFICIARY SHALL BE ENTITLED TO DRAW UNDER THIS LETTER OF CREDIT UP TO THE STATED AMOUNT, IN ONE OR MORE DRAWINGS.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE OR ASSIGNABLE. ANY PURPORTED TRANSFER OR ASSIGNMENT SHALL BE VOID AND OF NO FORCE OR EFFECT.

THIS LETTER OF CREDIT IS ISSUED PURSUANT TO THE TERMS AND CONDITIONS FOR TURNKEY ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT ("AGREEMENT") BETWEEN ACCOUNT PARTY AND BENEFICIARY DATED \_\_\_\_\_. PROVIDED, HOWEVER, THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL NOT SUPERSEDE, AMEND OR OTHERWISE MODIFY THIS LETTER OF CREDIT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE EXPIRATION DATE HEREOF, OR ANY FUTURE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY EXPIRATION DATE WE SEND NOTICE TO YOU BY REGISTERED MAIL THAT WE WILL NOT EXTEND THIS LETTER OF CREDIT.

ALL CORRESPONDENCE AND ANY DRAWINGS HEREUNDER ARE TO BE DIRECTED TO (BANK ADDRESS/CONTACT).

ALL NOTICES TO BENEFICIARY SHALL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED LETTER, OVERNIGHT COURIER OR DELIVERED IN PERSON TO: SOUTHERN CALIFORNIA

EDISON COMPANY, MANAGER OF CREDIT RISK AND COLLATERAL, 2244 WALNUT GROVE AVENUE, GO1 QUAD 1D, ROSEMEAD, CALIFORNIA 91170. ONLY NOTICES SENT TO BENEFICIARY MEETING THE REQUIREMENTS OF THIS PARAGRAPH SHALL BE CONSIDERED VALID. ANY NOTICE TO BENEFICIARY WHICH IS NOT IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE VOID AND OF NO FORCE OR EFFECT.

WE HEREBY AGREE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT WILL BE DULY HONORED. EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY CONDITION OR QUALIFICATION. EXCEPT IN THE CASE OF AN INCREASE IN THE STATED AMOUNT, WE HEREBY UNDERTAKE THAT WE WILL NOT MODIFY, REVOKE OR TERMINATE THIS LETTER OF CREDIT WITHOUT BENEFICIARY'S PRIOR WRITTEN CONSENT. ALL BANK CHARGES, INCLUDING BUT NOT LIMITED TO, FEES OR COMMISSIONS SHALL BE FOR THE ACCOUNT OF APPLICANT AND SHALL NOT BE BORNE BY BENEFICIARY.

THIS IRREVOCABLE STANDBY LETTER OF CREDIT IS ISSUED SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 (ISP98) AND AS TO MATTERS NOT ADDRESSED BY THE ISP98 THIS LETTER OF CREDIT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS. THE PARTIES AGREE THAT ANY LITIGATION RELATED TO THE STANDBY LETTER OF CREDIT SHALL BE BROUGHT AND ENFORCED IN, AND WILL BE UNDER THE EXCLUSIVE JURISDICTION OF, THE COURTS OF THE STATE OF CALIFORNIA IN LOS ANGELES COUNTY OR THE FEDERAL COURTS OF THE UNITED STATES FOR THE CENTRAL DISTRICT OF CALIFORNIA. THE PARTIES IRREVOCABLY WAIVE ANY OBJECTION THEY HAVE NOW, OR MAY SUBSEQUENTLY HAVE, TO THE BRINGING OF ANY ACTION OR PROCEEDING IN THESE RESPECTIVE JURISDICTIONS, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE BASED ON THE GROUNDS OF PRINCIPLES OF CONFLICT OF LAWS AND ANY OBJECTION BASED ON THE GROUNDS OF LACK OF PERSONAL JURISDICTION.

THE NUMBER AND THE DATE OF OUR LETTER OF CREDIT AND THE NAME OF OUR BANK MUST BE QUOTED ON ALL DRAFTS REQUIRED.

AUTHORIZED SIGNATURE FOR BANK

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

Signature: \_\_\_\_\_

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

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

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

**ATTACHMENT L-1**

**SCHEDULE TO LETTER OF CREDIT**

The undersigned hereby certifies to [L.C. issuing bank] (the "Issuer"), with reference to Irrevocable Non-transferable Standby Letter of Credit No. \_\_\_\_\_ (the "Letter of Credit") issued by Issuer in favor of the undersigned ("Beneficiary") (capitalized terms used herein and not defined herein shall have the respective meaning set forth in the Letter of Credit), as follows:

(1) The undersigned is the \_\_\_\_\_ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.

and

(2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary's presentation of the draft accompanying this Certificate, for payment of (U.S.\$ \_\_\_\_\_), such amount, when aggregated together with any amount not drawn down, is not in excess of the Stated Amount (as in effect of the date hereof).

and

(3) Beneficiary is entitled to draw the amount set forth in paragraph 2 hereof because the conditions for a drawing pursuant to the Agreement have been met.

(4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Authorized Signature for Beneficiary

Signature: \_\_\_\_\_

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

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

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

## **EXHIBIT N**

### **DBE SUBCONTRACTING COMMITMENT AND REPORTING REQUIREMENTS**

#### **Women, Minority, Disabled Veteran and Lesbian, Gay, Bisexual and Transgender (LGBT) Business Enterprises (collectively referred to as “DBE”) Subcontracting Program (“DBE TIER 2 Program”)**

##### **1. Overview**

As a matter of company policy, Edison is committed to providing diverse business enterprises, such as women, minority and service-disabled veteran and or LGBT owned businesses, maximum practicable opportunity to participate in providing products and services to Edison. By diversifying its supplier base, Edison enhances competition and innovation among its suppliers, which helps provide customers with safe, reliable, and affordable electricity and services. However, this policy will not be used to exclude qualified non-DBEs from participating in utility contracting.

Annually, Edison sets goals for increasing DBE business participation in its supply chain. Edison achieves this goal through direct contracting opportunities with verified DBEs and through Edison’s prime contractors (hereinafter referred to as “Suppliers”) who subcontract with verified DBEs in support of the California Public Utilities Commission (“CPUC”) General Order 156 (“GO 156”).

As such, Edison expects prospective Suppliers to tailor and implement their own supplier diversity program (within each Supplier’s own supply chain) and agree to use commercially reasonable efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of Supplier’s contract obligations to Edison and applicable law.

##### **2. Utilization of DBE Subcontractors in accordance with Supplier’s Commitment**

Edison’s DBE Subcontracting (“Tier 2”) Commitment and Reporting Requirements (“Tier 2 Reporting Requirements”) is used to track the contractual commitment and performance of prime contractors in using DBEs as subcontractors in performance of the Work or Services (as relevant). Each bidder or direct awardee shall complete the attached DBE Subcontracting Commitment Form as an element of its submittal. Successful bidders or direct awardee(s) will be obligated to comply with the provisions, including the monthly reporting requirements, of the Tier 2 Reporting Requirements, specified herein.

Supplier shall use commercially reasonable efforts to utilize DBE subcontractors in its performance of the Work or Services (as relevant), at least to the extent proposed in Supplier’s Commitment Form submitted to Edison (“Commitment”). Supplier’s description of its plan to exercise good faith efforts to subcontract with verified DBEs is a factor that will be considered in Edison’s bid evaluation process. If a contract is entered into or a Purchase Order issued is for less than Edison’s RFP requirements, and Supplier had submitted a Tier 2 Commitment Form in response to the RFP, Supplier will be given the opportunity to submit, within 10 business days of the contract or Purchase Order (“PO”) date, an amended Tier 2 Commitment Form reflecting any changes to Supplier’s Commitment as a result of the reduction in the actual procurement by Edison. If there are any other changes to the Tier 2 Commitment Form submitted by Supplier, Supplier shall contact (a) the appropriate Supply Management representative designated in the Request for Proposals (“RFP”), or (b) the Procurement Agent designated in the contract or Purchase Order, as applicable, for approval.

Should those DBEs identified in Supplier’s Commitment Form not be available at the commencement of or during the performance of the Work or Services (as relevant), Supplier shall use commercially reasonable efforts to utilize DBEs, at least to the same extent as proposed in Supplier’s Commitment Form.

##### **3. DBE Subcontractor Verification**

Edison recognizes DBE certifications from the following certifying agencies:

- The Supplier Clearinghouse (CPUC) – [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com)
- Central Contractor Registration (SBA 8A Program only) - [www.ccr.gov](http://www.ccr.gov)

- California Department of General Services (DVBE only) - [www.pd.dgs.ca.gov](http://www.pd.dgs.ca.gov)

If a DBE subcontractor is not currently certified with one of the three certifying agencies above and Supplier feels that the DBE subcontractor has the attributes to qualify as a DBE, Supplier may contact Edison's Supplier Diversity Program at [supplierdiversitydevelopment@sce.com](mailto:supplierdiversitydevelopment@sce.com) for assistance in getting a DBE subcontractor certified.

#### **4. Reporting Requirements for Payments to DBE Subcontractors**

If Supplier uses DBE subcontractors in its performance of the Work or Services (as relevant), Supplier shall submit on a monthly basis, unless otherwise notified, within 15 calendar days of the 1<sup>st</sup> day of the month (or the next business day if the 15<sup>th</sup> is a non-working day), and again upon completion of Edison's final Acceptance of the Work or Services, actual DBE subcontracting spend amounts into the online SCE Tier 2 Reporting System. Supplier's use of the Tier 2 Reporting System shall be subject to a System Access Agreement, which each of Supplier's users shall be required to accept when logging onto the Tier 2 Reporting System for the first time.

Supplier shall report only those DBE subcontractors that are paid directly by the Supplier in support of the performance of the Work or Services (as relevant) for Edison. A subcontractor of a subcontractor (Tier 3 subcontracting), or any lower tier of subcontracting is excluded. Additionally, any indirect costs (e.g. office overhead, gardening, etc.) should be excluded from the Supplier's reporting.

If the System Access Agreement is modified by SCE, users shall be required to accept the modified form of System Access Agreement the next time they log onto the Tier 2 Reporting System, and such modified form of System Access Agreement shall be binding upon Supplier and its users. The current form of the System Access Agreement can be found at <http://sce.cvm solutions.com>. The Tier 2 Reporting System is meant to capture payments made to verified DBE subcontractors in support of the Work or Services (as relevant) for Edison's projects.

Upon award of a contract or issuance of a PO, if Supplier is not already reporting in the Tier 2 Reporting System, Supplier will receive an invitation to attend the system training and orientation via email. Training typically takes place in the last week of each month. Supplier must successfully complete system training and orientation to gain access to the Tier 2 Reporting System to report. Supplier also acknowledges and agrees that the Tier 2 dollars and statistics reported by Supplier to Edison shall be included in Edison's Annual DBE Report to the CPUC.

Failure of Supplier to report as specified in this Tier 2 Reporting Requirements as required under a contract or PO with Edison will constitute a breach of the terms of the contract or PO. Supplier shall be subject to audits by Edison or an Edison third-party representative for verification of its Tier 2 reporting, which may include requests of Supplier's proof of payments or any other approved payment types acceptable to SCE for SCE projects (e.g. checks with front and back endorsements, wire transfers with bank statements, or similar proof). Supplier shall use its best effort to have its DBE subcontractors comply with Edison or Edison's third party representative requests.

Additionally, upon completion of the Work or Services (as relevant), if Supplier's spend to verified DBE subcontractors is less than ninety percent (90%) of the amount proposed in Supplier's DBE Tier 2 Commitment Form and the Supplier is unable to account for the deviation to the satisfaction of the Procurement Agent, this deviation will be part of Edison's assessment of the Supplier's overall performance. Supplier's opportunity to participate in future Proposal Requests and transactions with Edison may be negatively impacted.

#### **5. Edison Contacts**

All questions related to these Tier 2 Reporting Requirements shall be directed to the Procurement Agent specified in an applicable PO or Contract issued by Edison to Supplier.

*[Balance of Page Intentionally Left Blank]*



Diverse Business Enterprise (DBE) Subcontracting (Tier 2) Commitment Form

\*Name of Supplier/Contractor: \_\_\_\_\_  
Address: \_\_\_\_\_  
Preparer's Name (Printed): \_\_\_\_\_ \*Preparer's Name (Signed): \_\_\_\_\_  
Preparer's E-Mail Address: \_\_\_\_\_ Telephone Number: \_\_\_\_\_  
\*DBE Reporting Contact Name & Phone Number: \_\_\_\_\_  
\*Edison RFP/ PO/Contract Number: \_\_\_\_\_ RFP/PO/Contract Name: \_\_\_\_\_  
\*Commitment Percentage: \_\_\_\_\_ Date: \_\_\_\_\_  
Please fill out the following:

Work or Services Description	Subcontracting Supplier <small>Name/Contact &amp; Phone Number</small>	Federal Tax <small>ID Number</small>	DBE Category	Certification Agency

\* Mandatory Fields

Notes:

- DBE Category – For WBE, MBE, DVBE and LGBT, please see the following page for further clarification of DBE categories
- Certification Agency – SCE accepts DBE certifications from the following agencies. If the subcontractor is not currently certified through one of these agencies, please contact the subcontractor to have them begin the certification process.
  - The Supplier Clearinghouse/California Public Utilities Commission (CPUC)
  - California Procurement Division of Department of General Services – Service Disabled Veteran Business Enterprise (DVBE) only
  - Central Contractor Registration - Small Business Administration (SBA) 8a program only
  - Commitment - Please provide us with the proposed commitment percentage. The commitment percentage will apply as long as the PO is active, including all change orders.

## **Definitions of DBE Categories and other Key Terms as Defined in GO 156**

**Woman Business Enterprise (WBE):** A business that is at least 51% woman owned; or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. The woman/women owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

**Minority Business Enterprise (MBE):** A business that is at least 51% minority owned by an individual or group; or in case of any publicly owned business, at least 51% of the stock of which is owned by one or more minority groups detailed below, and whose management and daily business operations are controlled by one or more of those individuals. The person(s) owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

- African American – Person(s) having origins in any black racial groups of Africa
- Hispanic American – Person(s) of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin
- Native American – Person(s) having origin in any of the original peoples of North America or the Hawaiian Islands, in particular American Indians, Eskimos, Aleuts, and Native Hawaiians
- Asian Pacific American – Person(s) having origins in Asia or the Indian subcontinent, including but not limited to Japan, China, the Philippines, Vietnam, Korea, Polynesia, Samoa, Guam the U.S Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh
- Other – Members are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act as amended (15 U.S.C. 637(d)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625

**Service-Disabled Veteran Owned Business Enterprise (DVBE):** A business that is at least 51% owned by a disabled veteran individual or group of the United States Military, Naval, or Air Service with a Service-connected disability who is a resident of the State of California or in case of any publicly-owned business, at least 51% of the stock of which is owned by one or more disabled veterans, and whose management and daily business operations are controlled by one or more of those individuals.

**Lesbian Gay Bisexual and Transsexual (LGBT):** “LGBT-owned business” means (1) a business enterprise (a) that is at least 51% owned by a lesbian, gay, bisexual, or transgender person or persons or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and (2) whose management and daily business operations are controlled by one or more of those individuals.

**Acceptance:** As defined in an applicable Edison purchase order or contract issued to Supplier.

**Control:** Exercising the power to make policy decisions.

**Goal:** A target which, when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.

**Operate:** Being actively involved in the day-to-day management and not merely acting as officers or directors.

**Spend:** Verifiable “cash basis” payments made by Supplier to any Tier 2 subcontractor where the actual transfer of monies has already occurred.

**Subcontract:** Any agreement or arrangement between a contractor (or Suppliers as referred to in this document) and any party or person (in which the parties do not stand in the relationship of an employer and an employee):

- For the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or
- Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

**Services:** As defined in an applicable Edison purchase order or contract issued to Supplier.

**Work:** As defined in an applicable Edison purchase order or contract issued to Supplier.



## **EXHIBIT O**

### **ACCESS TO COMPANY'S COMPUTING SYSTEM**

Company and Contractor have entered into a TURNKEY ENGINEERING, PROCUREMENT, INSTALLATION AND MAINTENANCE AGREEMENT as of the Effective Date thereof (the "Agreement"). The terms set forth in this Exhibit O shall be governed by the Agreement and shall be effective as of the Effective Date. Capitalized terms used in this Exhibit but not defined herein shall have the meanings given in the Agreement.

1. **Scope.** This Exhibit applies to and governs any and all access to or use of any of Company's Computing Systems by Contractor, Contractor's Personnel or Subcontractors, as applicable, in connection with the Services or creation of the Deliverables.

2. **Definitions.** In addition to the definitions set forth elsewhere in the Agreement, the following capitalized terms shall have the meanings set forth below:

"Unauthorized Access" means (i) any access, use, reproduction, distribution, transfer, disposition, disclosure, possession, memory input, alteration, erasure, damage or other activity by a person or party other than Company involving Company's Computing Systems that is not expressly authorized under the Agreement; and (ii) any breach, theft or loss involving Contractor's or Subcontractor's Information Systems that may compromise Company's Computing System.

3. **Contractor Obligations.** Before providing Contractor's Personnel or Subcontractors any access to Company's Computing Systems, Contractor shall do the following:

(a) **Company Vendor Security Review.** If requested by Company, Contractor shall undergo and successfully complete Company's security audit and review. As part of that review process, Contractor shall provide Company with sufficient documentation to indicate the manner in which security for Contractor's Information Systems and facilities comply with Applicable Standards and relevant Company Policies. At a minimum, these documents will clearly state Contractor's security protocols, requirements, responsibilities, roles, and risk management practices pertaining to information protection, data security, network security, physical security and general security.

(b) Contractor shall, at its sole cost and expense, train Contractor's Personnel and Subcontractors involved in providing the Services on confidentiality and non-disclosure obligations regarding Company's Computing Systems, as well as appropriate business conduct and protocols directed at compliance with Applicable Laws and any relevant Company policies of which Company has made Contractor aware regarding the use of Company's Computing Systems. Contractor shall provide Contractor's Personnel and Subcontractors with additional training annually thereafter and update such training when Applicable Laws materially change or when Company informs Contractor of material changes in Company's electronic security policies. Contractor shall have the right to provide the training contemplated by this Section 3 at such locations as the Contractor deems appropriate.

4. **Access to Company's Computing Systems.**

(a) **Contractor's Personnel and Subcontractors.**

(i) **Conditions to Access.** Contractor shall not provide or permit access to or use of any of Company's Computing Systems to any of Contractor's Personnel and Subcontractors unless and until: (aa) Contractor has successfully completed the Company Vendor Security Review if requested by Company; (bb) Contractor first notifies Company in writing of its desire to engage specific Contractor's Personnel and Subcontractors to perform Services requiring access to Company's Computing Systems; and (cc) provides Company with all information necessary to evaluate whether such Contractor's Personnel and Subcontractors should be allowed access to Company's Computing Systems; and (dd) Company provides prior, specific written consent to permit such Contractor's Personnel or Subcontractor to access Company's Computing Systems.

(ii) Computing Systems Use Acknowledgment Form. Contractor shall execute, and shall cause Contractor's Personnel and Subcontractors to execute the Computing Systems Use Acknowledgment ("CSUA") form and any other documents Company may deem reasonably necessary to ensure Contractor's compliance with Applicable Standards, Company Policies and this Exhibit. Upon receipt by Company Information Security of Contractor's signed CSUA form, satisfactory results of the background investigation regarding the individual named Contractor's Personnel or Subcontractor employees (as applicable), and any other documents Company may reasonably require, with regard to each person requiring Company's Computing Systems access, Company may issue appropriate computer or e-mail accounts, passwords, or access authorizations to Contractor, and the applicable individual Contractor's Personnel or Subcontractor employee. Contractor acknowledges that these authorizations are for the specifically named individuals only, and Contractor shall ensure that these authorizations shall not be shared or transferred among Contractor's Personnel or Subcontractors. Contractor shall ensure that Company's Computing Systems, any accessed Company information and data (including but not limited to Company Confidential Information), any user accounts, passwords and any other access authorizations remain secure during the Term. All information and data retrieved during the course of or in connection with access to or use of Company's Computing Systems are included within the meaning of Company Confidential Information and shall be subject to the confidentiality and non-disclosure terms set forth in Section 9, "Mutual Non-Disclosure" of the AGREEMENT.

(iii) Disqualification. Contractor shall ensure that only Contractor's Personnel and Subcontractors who have a need to know and who have been given prior written approval by Company may access Company's Computing Systems and no such Contractor's Personnel and Subcontractors access shall be permitted unless:

(aa) such access is only provided to the extent it is necessary for Contractor to fulfill its obligations under the Agreement during any disaster or to comply with a sudden change in Applicable Laws or Applicable Standards whereby obtaining pre-authorization from Company is not feasible under the circumstances; and

(1) such additional Contractor's Personnel or Subcontractor executes the CSUA form and any other documents Company has previously deemed reasonably necessary to ensure Contractor's compliance with Applicable Standards, Company Policies and this Exhibit; and

(2) Contractor contractually requires the additional Contractor's Personnel or Subcontractor to comply with all Applicable Laws, Applicable Standards and relevant Company Policies.

(iv) Access Control Passwords. In order to access the Contractor Information System(s), Contractor shall use access control passwords that, at minimum: (aa) are created in such a way (if algorithmically generated) that no patterns therein may be discerned under ordinary circumstances; (bb) are deactivated promptly when Contractor employees or Subcontractors are no longer authorized to access the controlled resource; and (cc) are deactivated or changed promptly in the event of Unauthorized Access.

(v) Access Logging. Contractor shall (aa) monitor and log both access and use of the Contractor Information System(s) and its access to Company's Computing Systems; (bb) keep a log of each successful and unsuccessful attempt to access the Contractor Information System(s) and Company's Computing Systems; and (cc) record which of Company's Computing Systems have been accessed at what times and by whom.

(vi) Post-Engagement Access. After any Contractor's Personnel and Subcontractors cease to perform obligations that require such individual or entity to have access to Company's Computing Systems (whether due to reassignment, or termination of employment or engagement with Contractor for any reason), Contractor must use at least the same effort, but in no event less than a reasonable amount of effort, to enforce obligations of such Contractor's Personnel and Subcontractors with regard to Company's Computing Systems as Contractor uses with regard to Contractor Confidential Information.

(vii) Responsibility for Contractor's Personnel and Subcontractors. Contractor acknowledges and agrees that it shall be responsible for any breach of this Exhibit by Contractor's Personnel and Subcontractors, or by any other person who obtained access to Company's Computing Systems or Company Confidential Information directly or indirectly from Contractor or any Contractor Party.

5. Notice of Unauthorized Access. Contractor covenants and agrees that if Contractor, Contractor's Personnel or Subcontractors discover or are notified of Unauthorized Access, Contractor shall immediately submit a SIR to Company or its Affiliates, as applicable, by emailing the SIR to [cybersecurity@sce.com](mailto:cybersecurity@sce.com) and calling Cybersecurity at (626) 543-6004. The notice of Unauthorized Access shall include, at a minimum, a summary of the facts and status of Contractor's investigation; (b) provide any information pertinent to Company's understanding of the Unauthorized Access and the exposure or potential exposure of Company's Computing Systems; (c) steps taken to remedy the Unauthorized Access. If requested by Company or its Affiliates, Contractor shall discuss with Company or its Affiliates (as applicable) the cause(s) of the Unauthorized Access, Contractor's response, lessons learned and potential improvements to Contractor's Information System's security processes and policies. Upon receipt of Contractor's notice of Unauthorized Access, Company may immediately revoke Contractor's and Contractor's Personnel and Subcontractors' access to Company's Computing Systems. Such revocation shall not relieve Contractor of its obligations to perform the Services in accordance with the terms of the Agreement.

6. Record Keeping. Company or its authorized representative shall have the right to examine Contractor's and its Subcontractors' records and reports relating to their respective security policies, practices and procedures at any time. These include, without limitation, any internal, external or regulatory audit reports and a review relating to the security of Contractor's or its Subcontractors' Information Systems used to access Company's Computing Systems, and their compliance with all Applicable Standards, Company Policies and the terms of this Exhibit. Contractor shall use its best efforts to ensure that Company and its authorized representatives shall have full access to its Subcontractors' records and reports. Contractor shall maintain all documentation relating to remediation activities and follow on assessments, whether in written or electronic form, including their identification, processing and resolution, for three (3) years after final resolution of the Unauthorized Access, including the final resolution of all claims arising out of the Unauthorized Access.

7. Representations and Warranties. In addition to Contractor's other representations and warranties in the Agreement, Contractor hereby represents and warrants to Company:

(a) Contractor shall comply with all of the terms in this Exhibit throughout the Term; and

(b) Virus Precautions. Contractor represents and warrants that: (i) Contractor's Information Systems utilized to provide the Services were checked with Internet industry standard up-to-date antivirus software, and were determined to be virus-free, before their first use in performance of the Agreement; (ii) Contractor will update its virus definitions no less than monthly to ensure that they use the most up-to-date definitions available, and will conduct at least biweekly virus sweeps of all networks, databases, computers, and software (including archival copies of the foregoing) utilized to provide the Services; (iii) Contractor will promptly use such virus detection software to attempt to purge all viruses discovered during such sweeps; (iv) prior to delivering any digital files to Company, Contractor will scan all files with Internet industry standard up-to-date antivirus software and will determine that they are virus-free; and (v) if Contractor discovers that a virus may have been transmitted to Company or to a Company Customer by Contractor, Contractor will promptly notify Company of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Contractor has used to attempt to purge the virus; and

(c) Contractor will not (and will ensure Contractor's Personnel and Subcontractors do not) access or use any of Company's Computing Systems for any purpose other than that of performing Contractor's obligations under the Agreement, nor shall Company's Computing Systems or any access credentials pertaining thereto be disclosed, sold, assigned, leased or otherwise disposed of or made available to third parties by Contractor or its Subcontractors or commercially exploited by or on behalf of Contractor, Contractor's Personnel or Subcontractors.

8. Indemnification. In addition to Contractor's other indemnification obligations under the Agreement, Contractor covenants and agrees that it will indemnify, defend and hold harmless the Company Indemnitees from and

against any and all claims, damages, costs, expenses, (including attorneys' fees and court costs) and liabilities (including settlements) brought or asserted by any third party against the Company Indemnitees resulting from, arising out of or related to any claim any failure by Contractor or any of Contractor's Personnel or Subcontractors' failure to comply with the terms in this Exhibit. Company may participate in the defense and settlement of any claim for which it is entitled to indemnification hereunder, using attorneys selected by Company, at Contractor's sole cost and expense.

9. Insurance. In addition to its other insurance obligations under Section 11, "Insurance" of the AGREEMENT, Contractor covenants and agrees that Contractor will, throughout the Term, obtain and maintain, at its own expense, for itself and its Subcontractors the following additional insurance as set forth below:

(a) Employee Dishonesty. This policy shall cover any and all actual or alleged acts, errors or omissions committed by the Contractor and Contractor's Personnel. The policy shall also extend to include the intentional, fraudulent or criminal acts of the Contractor and Contractor's Personnel. This insurance shall have limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. If any deductible is applicable, such deductible shall not exceed \$5,000 naming Company as a "Loss Payee", unless such increased deductible or retention is approved in advance by Company in writing. This insurance policy shall be maintained during the Term and for at least two (2) years thereafter; and

(b) Commerce or Internet Security Insurance, covering (a) liability arising from theft, dissemination and/or use of Confidential Information stored or transmitted in electronic form and (b) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network or similar computer related property and the data, software and programs stored thereon. Such insurance will be maintained with limits of no less than \$5,000,000 per claim and in the annual aggregate, and may be maintained on a stand-alone basis, or as part of the required Errors and Omissions coverage. This insurance shall have a retroactive date that equals or precedes the Effective Date of this Agreement. Contractor shall maintain such coverage for a minimum period of three years following termination of the Agreement.

10. Remedies. In addition to Company's rights and remedies under the AGREEMENT, and at law or equity, Contractor and Company agree to the following additional remedies of which Company may elect to avail itself:

(a) Dispute Resolution. Notwithstanding anything to the contrary in the Agreement, the terms and conditions of this Exhibit are not subject to the dispute resolution provision in [Section \[x-ref\]](#) of the Agreement.

(b) Injunctive Relief. Contractor acknowledges that the security of Company's Computing System is of a special, unique and extraordinary character that gives such security a peculiar value, the loss of which cannot be reasonably compensated in damages in an action at law. Contractor's failure to comply with its obligations under this Exhibit will cause Company to suffer irreparable injury for which Company will not have an adequate remedy available at law. Accordingly, Contractor shall not object to Company obtaining injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting a bond or security and without prejudice to such other rights as may be available under the Agreement or Applicable Law.

11. Survival. The terms in this Exhibit will survive the expiration or any termination of the Agreement.

## EXHIBIT P

### CRITICAL INFRASTRUCTURE PROTECTION REQUIREMENTS

1. Applicability of NERC CIP Exhibit: In addition to Contractor's obligations under the Agreement, and unless instructed otherwise in writing by Company, Contractor must also comply with the requirements of this NERC CIP Exhibit if any of the following circumstances apply:
  - (a) Contractor is providing, or will provide, Company with any NERC CIP Bulk Electric System ("BES") Cyber Assets (identified as such by Company) or portion thereof.
  - (b) Contractor has, or will have, access, electronic or physical, to any NERC CIP Cyber Assets, Electronic Security Perimeters or Physical Security Perimeters (identified as such by Company).
  - (c) Contractor has, or will have, access to any BES Cyber System Information (identified as such by Company).
  - (d) Contractor is providing, or will provide, a Service or any Deliverable in connection with Company's compliance with the NERC CIP Standards (identified as such by Company).
2. NERC CIP Overview: As part of the national electrical grid, Company is mandated to comply with the North American Electric Reliability Corporation ("NERC") Cyber Security Standards, also known as Critical Infrastructure Protection ("CIP") Standards, which can be found at [www.nerc.com](http://www.nerc.com) (as may be modified or amended from time to time, "NERC CIP Standards"). These NERC CIP Standards focus on the physical and electronic security of BES Cyber Systems and facilities that, if compromised, would have a significant impact upon Company's ability to serve the electrical needs of its customers for an extended period of time. The NERC CIP Standards involve elements such as training, physical and electronic security, systems security management and controls, information protection, change management, incident reporting and response, and disaster recovery planning and will have an impact upon employees, supplemental workers, and service vendors who have electronic or physical access to the BES Cyber Systems and Associated Protected Cyber assets and facilities noted herein.
3. NERC CIP Definitions: The following definitions shall be used for purposes of this NERC CIP Exhibit.

Agreement: The Agreement entered into between Company and Contractor.

Authorized Reviewing Representative: a person who is: (i) an employee or other representative of Contractor who needs access to BES Cyber System Information to provide goods or services for Company; or, (ii) a Contractor or an employee of a Contractor retained by Contractor and needs access to BES Cyber System Information to assist Contractor provide goods or services for Company. An Authorized Reviewing Representative must also be authorized by Company to access this information.

BES/Bulk Electric System: The electrical generation resources, transmission lines, interconnections with neighboring transmission systems, and associated equipment, generally operated at voltages of 100 kV or higher. This definition is subject to exemptions and inclusion of resources, lines and other things that do not fit the foregoing definition, issued by energy industry regulatory agencies including NERC or the Federal Energy Regulatory Commission.

BES Cyber System: One or more BES Cyber Assets logically grouped by SCE to perform one or more reliability tasks to promote or maintain the reliable operation of the electric grid and/or Company's Bulk Electric System. These include select facilities, systems, and equipment, which, if destroyed, degraded, or otherwise rendered unavailable, would affect the reliability or operability of the electric grid and/or Company's Bulk Electric System.



BES Cyber Assets: A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System and/or Company's Bulk Electric System. This includes, but is not limited to, Cyber Assets operated by, and included in, energy management systems, plant control systems, substation automation, and load shedding.

BES Cyber System Information: Information about the BES Cyber System that could be used to gain unauthorized access or pose a security threat to the BES Cyber System. Examples of BES Cyber System Information may include, but are not limited to, security procedures or security information about BES Cyber Systems, Physical Access Control Systems, and Electronic Access Control or Monitoring Systems that is not publicly available and could be used to allow unauthorized access or unauthorized distribution; collections of network addresses; and network topology of the BES Cyber System.

Certificate of Destruction: Certificate annexed hereto (and as it may be amended from time to time) used by Contractor to certify that Contractor has destroyed BES Cyber System Information as set forth in this NERC CIP Exhibit.

Corporate Security Investigative Support Services Division (CSISS): Company's Corporate Security Investigative Support Services Division.

Cyber Assets: Programmable electronic devices and communication networks including hardware, software, and data.

Cyber Security Incident: Any malicious act or suspicious event that: (a) compromises, or was an attempt to compromise, the Electronic Security Perimeter or Physical Security Perimeter of a BES Cyber System or (b) disrupts, or was an attempt to disrupt, the operation of a BES Cyber System.

Electronic Security Perimeter ("ESP"): The logical border surrounding a network to which BES Cyber Systems are connected using a routable protocol and for which access is controlled.

NERC CIP Access: Authorized cyber access, or authorized Unescorted Physical Access, to a NERC CIP BES Cyber Asset, or to an ESP or PSP containing BES Cyber Asset(s).

NERC CIP Confidential Information: This term shall have the same meaning accorded to the term "BES Cyber System Information". Documents designated as NERC CIP Confidential Information by SCE shall be treated as BES Cyber System Information.

NERC CIP Cyber Assets: Any Cyber Assets to which some or all of the NERC CIP Standards apply, including without limitation: Cyber Assets used in the access control and or monitoring of an Electronic Security Perimeter, and/or a Physical Security Perimeter; other Cyber Assets within identified Electronic Security Perimeters; and BES Cyber Systems.

NERC CIP Exhibit: This Exhibit 4 to the Agreement.

Notes of BES Cyber System Information: Memoranda, analyses, reports, studies, handwritten notes, or any other form of work-product or information in physical or electronic form which copies or discloses BES Cyber System Information. Notes of BES Cyber System Information are subject to the same restrictions as for BES Cyber System Information except as specifically provided in this NERC CIP Exhibit. Unless otherwise instructed by Company, Contractor shall mark, or otherwise identify, Notes of BES Cyber System Information created by Contractor as BES Cyber System Information.

Personnel Risk Assessment (“PRA”): A background check of an individual that consists of, at a minimum, current residence, other locations where, during the seven years immediately prior to the background check, the individual has resided four six consecutive months or more, an examination for criminal convictions and a social security number trace, as well as any other reviews deemed necessary by Company’s Corporate Security Investigative Support Services division in order to grant NERC CIP Access to that individual.

Physical Security Perimeter (“PSP”): The physical border surrounding locations in which BES Cyber Assets, BES Cyber Systems, or Electronic Access Control or Monitoring Systems reside, and for which access is controlled.

Significant Changes: The implementation of security patches, cumulative service packs, vendor releases, and version upgrades of operating systems, applications, database platforms, or other third-party software or firmware, to a NERC CIP Cyber Asset.

Unescorted Physical Access: Physical access to or within a Physical Security Perimeter without continual, uninterrupted physical escort by approved Company personnel.

4. Compliance by Contractor: In connection with Contractor’s performance under an applicable purchase order or other agreement, Contractor will comply, and will cause its, and its Subcontractors’, employees, agents and representatives to comply, with the provisions of these Critical Infrastructure Protection Requirements. If Contractor fails to comply with the provisions of these Critical Infrastructure Protection Requirements, Company shall have the right to terminate the Agreement pursuant to the section titled “Termination for Cause”, of the Agreement.

5. NERC CIP Access Requirements for Access to Company’s NERC CIP BES Cyber Systems, BES Cyber Assets, or to Company’s Physical Security Perimeters and/or Electronic Security Perimeters:

5.1 Compliance with Access Requirements. Contractor shall identify its, and its Subcontractors’, employees, agents and representatives who will have or require NERC CIP Access in connection with performance of the Services. Company may, in its discretion, provide such access. If such access is given, Contractor shall provide Company an updated written list of personnel requiring NERC CIP Access on a quarterly basis, or upon request by Company.

5.2 Consent to Personnel Risk Assessment:

5.2.1 Personnel Risk Assessment. Contractor will allow Company to perform a PRA on all of Contractors’ and Contractors’ Subcontractors’ employees, agents and representatives, at Company’s sole discretion, prior to Company granting NERC CIP Access or physical or electronic access to other systems or areas deemed appropriate by Company to those persons in connection with the security of a PSP or ESP. A PRA may be conducted by Company on Contractors’ personnel at any time, and Company reserves the right to change the requirements of the PRA at its discretion. Contractor understands and agrees that CSISS will communicate PRA findings to Contractor and the Company Representative.

5.3 Reassignment or Termination of Contractor Personnel. When a Contractor or Subcontractor employee, agent or representative with NERC CIP Access is reassigned to non-Company work, or is no longer employed by Contractor or Subcontractor, Contractor shall immediately verbally notify Company if such employee, agent or representative no longer requires access to SCE’s Physical Security Perimeters, SCE’s BES Cyber Systems or BES Cyber Assets. Upon receipt of notification, Company may immediately revoke that person’s NERC CIP Access.



6. Access to BES Cyber System Information:

6.1 Continuation of Access to BES Cyber System Information Under Prior Agreements.

6.1.1 This Section 6.1.1 shall apply where Contractor and Company previously executed a NERC CIP Nondisclosure Agreement relating to the Services and Deliverables to be addressed by this NERC CIP Exhibit. Persons deemed “Authorized Reviewing Representatives” under the prior NERC CIP Nondisclosure Agreement, and who continue to require access rights to BES Cyber System Information, shall be deemed to be Authorized Reviewing Representatives under this NERC CIP Exhibit.

6.1.2 This Section 6.1.2 shall apply where Contractor and Company previously executed a NERC CIP exhibit relating to Versions one through three of the NERC CIP Standards (“Prior NERC CIP Exhibit”). Information identified as “NERC CIP Confidential Information” under the Prior NERC CIP Exhibit shall be deemed BES Cyber System Information under this NERC CIP Exhibit, and shall be subject to the requirements of this NERC CIP Exhibit. Persons granted NERC CIP Access, as defined by the Prior NERC CIP Exhibit shall continue to possess NERC CIP Access under this NERC CIP Exhibit.

6.3 Provision of Access to BES Cyber System Information. Contractor shall provide access to BES Cyber System Information only to a person who has been designated by Company as an Authorized Reviewing Representative. Contractor shall provide Company with a list of proposed Authorized Reviewing Representatives. Upon approval by Company, the persons on Contractor’s list shall become Authorized Reviewing Representatives. In the event that Contractor wishes to designate a person not previously identified to Company as an Authorized Reviewing Representative, Contractor shall seek permission from Company to provide that person with access to BES Cyber System Information. That person shall be an Authorized Reviewing Representative should Company approve that request

6.4 Treatment of Notes of BES Cyber System Information. Contractor shall treat Notes of BES Cyber System Information as BES Cyber System Information. Notes of BES Cyber System Information that Contractor creates shall be included within the definition of BES Cyber System Information.

6.5 Encryption of BES Cyber System Information. All electronic BES Cyber System Information in Contractor’s possession, custody or control that needs to be transported, maintained or stored by Contractor shall be transported, maintained or stored by Contractor using 128 bit, or greater, encryption. All physical BES Cyber System Information in Contractor’s possession, custody or control shall be maintained by Contractor in secured locations and locked, with keys provided only to Authorized Reviewing Representatives, when not in use.

6.6 No Use of Email to Transport or Store BES Cyber System Information. Contractor and its agents shall not use email to transport or store BES Cyber System Information.

6.7 Marking of BES Cyber System Information. All copies of all documents reflecting BES Cyber System Information created by Contractor, as well as Notes of BES Cyber System Information, shall be marked “PROTECTED MATERIALS – Contains BES CYBER SYSTEM INFORMATION,” or shall be marked with words of similar import, as long as the term “BES CYBER SYSTEM INFORMATION” is included in that designation, to indicate that they are BES Cyber System Information. Information designated as “NERC CIP Confidential Information” under the Prior NERC CIP Exhibit shall be deemed BES

Cyber System Information, but may retain the designation of NERC CIP Confidential Information.

- 6.8 Revocation of Access to BES Cyber System Information. In the event that an Authorized Reviewing Representative no longer requires access to BES Cyber System Information, Contractor shall immediately revoke that Authorized Reviewing Representative's physical and electronic access to BES Cyber System Information. Contractor shall also immediately inform Company that the Authorized Reviewing Representative in question no longer requires access to such information.
- 6.9 Return or Destruction of BES Cyber System Information. Upon the termination of the Agreement, or of an applicable purchase order or other agreement, for any reason, Contractor shall, within fifteen (15) days, either: (a) deliver to Company all BES Cyber System Information in the possession of Contractor, Subcontractors, or any of their respective employees, agents, or representatives, or (b) destroy such BES Cyber System Information. Contractor shall destroy physical BES Cyber System Information by shredding it into unreadable portions. Contractor shall destroy electronic BES Cyber System Information by (i) destroying the physical media in which such information is stored such that data retrieval is not possible, or (ii) by using a media sanitization method set forth in NIST SP800-88 (as it may be modified or amended from time to time). The requirements of this Section shall supersede any provisions to the contrary in the Agreement or in an applicable purchase order or agreement.
- 6.10 Execution of the Certificate of Destruction. Should Contractor elect to destroy BES Cyber System Information in its possession, custody or control, Contractor shall certify such destruction, using the attached Certificate of Destruction, that the BES Cyber System Information was in fact destroyed.
- 6.11 No Archiving of NERC CIP Confidential Information. Notwithstanding anything to the contrary contained in the Agreement, the Contractor shall not be entitled to keep any copy of the BES Cyber System Information in its archives. The return or destruction of the BES Cyber System Information shall not release the Contractor from its obligations under Section 9, "Mutual Nondisclosure", of the Agreement.
- 6.12 Disclosure to Third Parties. If Contractor believes it is compelled to disclose BES Cyber System Information pursuant to legal process, Contractor will provide Company with prompt notice so that Company may seek a protective order or other appropriate remedy, with Contractor's reasonable cooperation, if requested by Company. If a protective order or other remedy is not obtained, then Contractor will disclose only that portion of the BES Cyber System Information that it is legally compelled to disclose. Contractor will also exercise reasonable efforts to obtain assurance that BES Cyber System Information that shall be disclosed will be treated as confidential by the recipient.
- 6.13 Treatment Under the California Public Records Act. Contractor and Company agree that the BES Cyber System Information provided to Contractor pursuant to this NERC CIP Exhibit is exempt from production under the California Public Records Act, California Government Code Sections 6250, et seq., under either the exemption provided in Section 6254(e) or 6255(a), or both, and Contractor agrees to withhold production of such materials unless ordered to do so by a court of competent jurisdiction as provided for in Paragraph 6.11 of this Exhibit.
7. NERC CIP Training: Contractor's and Subcontractors' employees, agents and representatives shall complete all NERC CIP training required by Company prior to being granted Unescorted Physical Access to a PSP, electronic access to an ESP or access of any type to a BES Cyber Asset or BES Cyber

System. Further, Contractor shall provide documentation of successful completion of Company-required annual training on the NERC CIP Standards.

8. NERC CIP Reporting:

- 8.1 Cyber Security Incident: Contractor shall report any Company-related Cyber Security Incident to the IT Operations Center (949-587-5534) immediately upon discovery of the incident. Contractor's report shall include the specific details of the matter, individuals involved, and steps taken in response to that incident. Each specific incident may require additional information from the Contractor, depending upon the underlying facts and circumstances of the incident, which shall be provided to Company upon request.

9. NERC CIP Indemnity: In addition to any indemnity obligations set forth in the Agreement, Contractor is also responsible for any breach of these Critical Infrastructure Protection Requirements by its or its Subcontractors' employees, agents or representatives. Contractor shall defend, indemnify and hold harmless Company, its officers, agents, representatives, employees, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, fines, penalties, assessments, causes of action, costs, (including attorney's fees and expenses and all costs or expenses related to increased regulatory or administrative oversight), or any of them, arising out of or relating to the breach of these Critical Infrastructure Protection Requirements by Contractor or its Subcontractors, or any of their respective employees, agents or representatives. The terms of this Section 9 shall supersede any provisions to the contrary in the Agreement.

10. Technical Requirements for Contractor-Provided NERC CIP Cyber Assets or NERC CIP Compliance Services:

- 10.1 Provision of Assets and Significant Changes. If Contractor provides any NERC CIP BES Cyber Assets (identified as such to Contractor by Company) to Company under the Agreement or under an applicable purchase order or other agreement, or makes any Significant Changes to existing Company NERC CIP BES Cyber Assets (identified as such to Contractor by Company), Contractor shall ensure that the NERC CIP BES Cyber Assets and Significant Changes meet the additional requirements of this Section 10.1 of this Exhibit.
- 10.1.1 All NERC CIP BES Cyber Assets provided by Contractor or modified by Contractor with Significant Changes that are provided by Contractor must not adversely affect Company's existing cyber security controls.
- 10.1.2 All NERC CIP BES Cyber Assets and Significant Changes to NERC CIP BES Cyber Assets that are provided by Contractor shall comply with Company's configuration requirements and will only have those ports enabled that are required for normal and emergency operation. Contractor agrees that all other ports and services will be properly disabled prior to use in Company's production environment. Contractor must provide a detailed list of all ports and services required by the NERC CIP BES Cyber Assets for normal and emergency operations.
- 10.1.3 All NERC CIP BES Cyber Assets provided by Contractor must either utilize, or support the utilization of, anti-virus software and other malicious software (malware) prevention tools to detect, prevent, deter, and mitigate the introduction, exposure, and propagation of malware. Anti-virus software utilized or supported must meet or exceed Company's anti-virus requirements.

- 10.1.4 All NERC CIP BES Cyber Assets provided by Contractor must contain authentication and role based security access that can prevent and detect unauthorized access to Company's computing network.
- 10.1.5 All NERC CIP BES Cyber Assets provided by Contractor must have the capability to generate and retain logs of sufficient detail to create historical audit trails of individual user account access activity and events related to Cyber Security.
- 10.1.6 All NERC CIP BES Cyber Assets provided by Contractor must minimize the use of administrator, shared, and other generic account privileges including factory default accounts. Upon installation of all NERC CIP BES Cyber Assets, there shall be no capability for shared user access unless agreed to in writing by Company. Contractor must remove, disable or rename any factory default account prior to the NERC CIP BES Cyber Asset being placed into use by Company. If such accounts remain enabled by Contractor during stabilization and testing, passwords must be changed prior to Contractor transferring any NERC CIP BES Cyber Asset into service in a production environment.
- 10.1.7 All NERC CIP BES Cyber Assets provided by Contractor must enforce the use of complex passwords, containing at least six characters, and must include a combination of letters, numbers, and special characters. If Company requires two factor authentication or biometrics, Contractor must also comply with this requirement as noted in Company's policy.
- 10.1.8 Any Significant Changes made or implemented by Contractor must not cause Company NERC CIP Assets to become noncompliant with this Section 10.1 of this Exhibit.
- 10.2 Provision of Services. If Contractor is engaged to perform Services or provide Deliverables for Company relating to Company's compliance with the NERC CIP Standards, including without limitation, activities such as cyber security vulnerability assessment, procedure documentation, remediation activities, system testing, maintenance, and configuration documentation, Contractor shall ensure that its activities meet the additional requirements of this Section 10.2 of this Exhibit.
  - 10.2.1 Contractor's activities must not adversely affect Company's cyber security controls.
  - 10.2.2 If Contractor performs testing of any NERC CIP BES Cyber Assets, Contractor shall ensure that its activities meet the following requirements.
    - 10.2.2.1 Contractor must conduct its testing in a manner that minimizes adverse effects on Company's production system and its operation.
    - 10.2.2.2 Contractor shall document in writing upon the completion of the system testing that Contractor's testing has been performed in a manner that reflects Company's production environment, and will also provide Contractor's test plan and the results of the testing.
    - 10.2.2.3 Contractor shall consult with Company on the scheduling and conduct of all tests performed pursuant to Company's requirements and policies.
  - 10.2.3 If Contractor provides support or maintenance for Company NERC CIP BES Cyber Assets, Contractor shall grant Company access and rights to configure the assets in accordance with Company's requirements.

10.3 Enhancements to NERC CIP Cyber Assets Pursuant to Agreement. If Contractor has a continuing obligation under the AGREEMENT, or under an applicable purchase order or other agreement, to provide software or firmware updates, upgrades, patches, new versions or other enhancements, including Significant Changes, to any NERC CIP Cyber Assets (identified to Contractor as such by Company) to Company, Contractor must meet the additional requirements of this Section 10.3 of this Exhibit:

10.3.1 Contractor must notify Company of the availability of software security patches and upgrades for such NERC CIP BES Cyber Assets. The notification must be made to Company in writing within fifteen (15) calendar days of the availability of the security related patches or upgrades.

10.3.2 If Contractor provides any third party software in conjunction with Contractor's own product, (i) Contractor shall notify Company of security patches and upgrades pertaining to such other third party software. Such notification shall be made in writing within fifteen (15) calendar days of availability of the security related patches or upgrades.

11. Company Right to Audit. Contractor will maintain records of compliance by itself and all Subcontractors, agents and Representatives, the terms of this NERC CIP Exhibit for three (3) years after the completion of the Agreement, or of an applicable purchase order or other agreement. Company reserves the right to audit and copy any applicable documents related hereto. Company shall, at its discretion, assign the audit and duplication rights of this Section 11 to a governmental agency or entity operating under the authority of a governmental agency.

# ATTACHED CERTIFICATE

GENERAL NERC CIP  
CERTIFICATE OF DESTRUCTION

I am an officer of the company listed below. My company was previously given access to BES Cyber System Information.

This Certificate addresses the following type of BES Cyber System Information:

**Circle One:**

1. *Any of Edison's BES Cyber System Information in the possession, custody or control of my company, or my company's employees, subcontractors and representatives.*
2. *Edison's NERC CIP Confidential Information relating to: (insert Purchase Order number or RFP number, i.e. "PO 1234"):* \_\_\_\_\_

I certify that I have instructed my employees, subcontractors, and representatives to search for all BES Cyber System Information, and Notes of BES Cyber System Information, in their possession, custody, or control. I also instructed them to either send to me (or my authorized representative) all such information, or to destroy that information as set forth in the parties' NERC CIP Exhibit. Based on the results of that search and my instructions, I also certify that, to the best of my knowledge, no one in my organization, either past or present, currently possesses Company's BES Cyber System Information in any form.

Name of Company: \_\_\_\_\_

If Company was a subcontractor, then include name of General Contractor/Primary Employer:

\_\_\_\_\_

Executed on the following date: \_\_\_\_\_, by:



**EXHIBIT S**

**PERFORMANCE LIQUIDATED DAMAGES**

**EXHIBIT T**

**LABOR AGREEMENTS**

Contractor shall comply with the provisions of the attached Construction Maintenance Labor Agreement, Exhibit A, entered into by and between Company and IBEW Local 47, on September 30, 2016 and other applicable labor agreements as listed below (if any):