

[01/06/2026 Version
Subject to SCE Management Review and Approval]

ENERGY EFFICIENCY AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

[IMPLEMENTER'S NAME]

(SCE Agreement No. [Number])

This Energy Efficiency Agreement, together with any attachments and exhibits hereto (“Agreement”), is made and entered into as of the date of the last signature below (“Effective Date”) by **SOUTHERN CALIFORNIA EDISON COMPANY**, a California corporation (“SCE” or “Company”), and **[IMPLEMENTER]**, a **[Implementer's business registration]** (“Implementer”). SCE and Implementer are sometimes referred to herein individually as a “Party” and jointly as the “Parties”.

RECITALS

- A. SCE is an investor-owned electric utility serving customers in central and southern California.
- B. Implementer shall (i) design and implement the Program, (ii) perform the Services, and (iii) sell and deliver the TSB from the Program to SCE.
- C. For the purpose of this Agreement, the Program is a “third-party energy efficiency program” as described in CPUC EE Decisions & Guidance.

[SCE Note: Standard Contract Terms and Conditions set forth in Attachment A of CPUC D.23-02-002 are shown in blue shaded text. Such terms may not be revised by either Party during negotiations.]

[SCE Note: SCE will provide Implementer a copy of the CPUC's Required Modifiable Contract Terms and Conditions set forth in Attachment B of D.23-02-002 prior to negotiations of an Agreement. As such terms are modifiable, this form includes SCE's initial position with respect to such terms and does not reflect the exact terms of Attachment B of D.23-02-002. Where applicable, the SCE term that corresponds to a Required Modifiable Contract Term and Condition is highlighted in green.]

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows.

ARTICLE 1. PROGRAM OVERVIEW AND PROJECT ELIGIBILITY

1.01 Program.

Implementer shall design, create and implement an energy efficiency program that delivers TSB to SCE in accordance with the terms herein and as further described in Exhibit B (Program Requirements) (the “Program Requirements”), Exhibit C (Program Guidelines) (the “Program Guidelines”), and Final Implementation Plan (the “Program”). Implementer shall deliver to and sell, and SCE shall purchase, all TSB and other energy efficiency benefits generated by the Program.

1.02 Program Requirements.

The Program Requirements describe the core aspects of the Program. Implementer shall design, create and implement the Program in accordance with the Program Requirements.

1.03 Program Guidelines.

The Program Guidelines include the description, design, and strategy Implementer shall use to effectuate the Program and shall be fully reflected in Implementer’s Draft Implementation Plan.

1.04 Implementation Plan.

Implementer shall provide SCE its Draft Implementation Plan no later than ten (10) days after the **[Effective Date of this Agreement]** **[date CPUC Approval is received or waived by SCE in its sole discretion]**. The Parties shall work together in good faith to finalize the Draft Implementation Plan in accordance with the Program Guidelines for submission to the CPUC for review and comment and shall thereafter work together in good faith to incorporate appropriate stakeholder feedback as necessary. Upon SCE’s approval of the Draft Implementation Plan, which approval may be withheld in SCE’s sole discretion, SCE shall post the Draft Implementation Plan to the relevant CPUC website, at which time it shall be considered the Final Implementation Plan.

Implementer may from time to time request to update the Final Implementation Plan. The Final Implementation Plan shall not be amended or revised without SCE’s prior written approval, which may be withheld in SCE’s sole discretion. Upon SCE’s approval of any requested changes, SCE shall submit an updated Final Implementation Plan to the CPUC in accordance with applicable CPUC EE Decisions & Guidance.

1.05 [\[Population NMEC M&V Plan.\]](#)

If the Population NMEC Approach is selected, Implementer shall provide SCE its Draft Population NMEC M&V Plan no later than thirty (30) days after the Effective Date. SCE shall either (a) approve or (b) provide comments to Implementer's Draft Population NMEC M&V Plan. If SCE provides comments to Implementer's Draft Population NMEC M&V Plan in accordance with (b) above, Implementer shall have ten (10) Business Days to respond to or otherwise revise such Draft Population NMEC M&V Plan to incorporate SCE's comments and resubmit such revised Draft Population NMEC M&V Plan to SCE for review and approval.

Subject to SCE's approval of the Draft Population NMEC M&V Plan, which approval may be withheld in SCE's sole discretion, SCE shall submit the Draft Population NMEC M&V Plan as part of SCE's request for CPUC Approval set forth in Section 2.03.

Upon CPUC Approval, or waiver of CPUC Approval by SCE in its sole discretion, the Draft Population NMEC M&V Plan shall be deemed the Final Population NMEC M&V Plan.

Notwithstanding the foregoing, the Final Population NMEC M&V Plan must at all times comply with all then-current requirements of the NMEC Rulebook and CPUC EE Decisions & Guidance.] [\[SCE Note: Replace with “Intentionally Omitted” if Program does not utilize a Population NMEC Approach.\]](#)

1.06 [Customer and Project Eligibility.](#)

Notwithstanding any other provision in this Agreement, each Customer and Project must meet the following eligibility requirements:

- (a) Customer must [\[have an active SCE service account or receive electric services from SCE\]](#) [\[have an active service account with a Participating IOU or receive electric or gas services from a Participating IOU\]](#) at the Site[\[SCE Note: Orange bracketed language to be used for Statewide Programs\]](#);
- (b) To ensure accurate measurement and verification of TSB, during the performance period for any Project utilizing an NMEC-Based Site Specific Approach, Population NMEC Approach, SEM Approach, or other meter-based approach, no other Project and no other energy efficiency, demand response, or similar program may be implemented at or utilize any portion of the Site;
- (c) Each Measure that is part of a Project and includes equipment requiring physical Installation must be a new Measure that has not been previously installed or utilized in any manner;
- (d) Each Measure that is part of a Project and includes equipment requiring physical Installation must be purchased and Installed at a Site after the Effective Date.

- (e) Each Measure that is part of a Project must be Installed prior to the expiration of the Installation Term.
- (f) All Measures that are part of a Project must be Eligible Measures.
- (g) Each Project may only utilize one Approach;
- (h) Customers that participate in the Program must be classified [under one of the Eligible NAICS Codes] [as an SCE residential customer];
- (i) The place of business of Implementer, Subcontractor, or any of its or their Affiliates, may not be the Site of a Project; and
- (j) The residence of any employee or immediate family member of an employee of Implementer, Subcontractor, SCE, or any of their respective Affiliates, may not be the Site of a Project.

1.07 **Exclusive Rights.**

SCE shall have exclusive rights to the TSB and all other energy efficiency benefits derived from the Program. Implementer shall not sell, assign, attribute, claim, or otherwise transfer the TSB or other energy efficiency benefits to any party other than SCE.

1.08 **Double Incentives.**

Neither Implementer nor any Customer may use, submit, claim, or receive any rebates, discounts, incentives, or services from any other CPUC-directed or California Energy Commission-directed energy efficiency program (i.e., no “double incentives”) for the same Project. Notwithstanding the foregoing, Implementer may pursue incentive layering in accordance with CPUC EE Decisions & Guidance; provided however, Implementer may not layer incentives beyond the full cost of equipment plus installation unless specifically permitted by the CPUC.

ARTICLE 2. TERM

2.01 **Term.**

The “Term” of this Agreement shall commence upon the Effective Date and shall continue until the Parties’ respective obligations are fully performed and discharged.

2.02 Installation Term.

The “Installation Term” shall commence on the date of [posting of the Final Implementation Plan][CPUC Approval] and shall continue until [].

2.03 [CPUC Approval.]

Within sixty (60) days after the Effective Date, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. As requested by SCE, Implementer shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE has no obligation to seek rehearing or to appeal a CPUC decision that does not provide CPUC Approval.

Either Party has the right to terminate this Agreement on Notice, if (a) CPUC Approval has not been obtained or waived by SCE in its sole discretion within ninety (90) days after SCE files its request for CPUC Approval and (b) a Notice of termination is given on or before the date CPUC Approval is obtained.

Failure to obtain CPUC Approval in accordance with this Section 2.03 shall not be an Event of Default by either Party.] [SCE Note: delete if CPUC Approval is not required]

ARTICLE 3. PAYMENTS

3.01 Maximum Obligations.

The total compensation paid by SCE to Implementer pursuant to this Agreement shall not exceed [\$] (the “Payment Cap”). SCE has no obligation to pay Implementer any amount beyond the Payment Cap.

[SCE Note: To be used for Deemed Measures paid for on a per-widget basis only] [SCE shall have no obligation to pay for Measures utilizing a Deemed Approach in excess of the measure cap for the applicable Measure Code identified in Section 3.02(e) (each, a “Measure Cap”).]

3.02 Calculation of Payments.

As full and complete compensation for the Services, TSB and all other benefits delivered to SCE hereunder, SCE shall make the following payments to Implementer:

- (a) For each Project utilizing a Deemed Approach, Customized Calculated Approach, or SEM Approach:
 - (i) “Final Payment” = (A) Actual TSB multiplied by (B) the TSB Price.
- (b) For each Project utilizing an NMEC-Based Site-Specific Approach:

- (i) “Installation Payment” = (A) 50% multiplied by (B) the TSB Price multiplied by (C) the Expected TSB.
- (ii) “Final Payment” = (A) (x) the TSB Price multiplied by (y) the Actual TSB, minus (B) the Installation Payment.
- (c) For each Project utilizing a Population NMEC Approach:
 - (i) “Installation Payment” = (A) 50% multiplied by (B) the TSB Price multiplied by (C) the Expected TSB.
 - (ii) “Interim Payment” = (A) (x) the TSB Price multiplied by (y) the Actual TSB measured during the first six (6) to nine (9) months after Installation, minus (B) the Installation Payment.
 - (iii) “Final Payment” = (A) (x) the TSB Price multiplied by (y) the Actual TSB measured during the first twelve (12) months after Installation, minus (B) the Installation Payment, minus (C) the Interim Payment.
- (d) Other Payments:
 - (i) *[SCE Note: To be discussed with Implementer]*
- (e) *[SCE Note: To be used for Deemed Measures paid on a per-widget basis only]*
[For each Measure Installed utilizing a Deemed Approach:
 - (i) “Final Payment” = The amount identified as “Payment Rate” in the table below for the applicable Measure Code.

#	Measure Code	Payment Rate	Measure Cap
1			
2			
3			

3.03 Payment Date.

Payments pursuant to Section 3.02 shall be made no later than ten (10) Business Days from the applicable Invoice Date by ACH or similar method, or by other mutually agreed methods, to the account designated by Implementer.

3.04 Invoicing Process.

(a) SCE shall issue an invoice authorization to Implementer (“Invoice Authorization”) no later than twenty (20) days after the end of the month in which one (1) or more of the following occurs:

- (i) For Projects utilizing an NMEC-Based Site-Specific Approach:
 - (A) Installation Payment. SCE’s approval of the Post Installation Report.
 - (B) Final Payment. SCE’s approval of the Second Post Installation Report.
- (ii) For Projects utilizing a Custom Calculated Approach:
 - (A) Final Payment. SCE’s approval of either the Second Installation Report or, if no Second Post Installation Report is required for the Project, the Post Installation Report.
- (iii) For Projects utilizing a Deemed Approach:
 - (A) Final Payment. SCE’s approval of a Deemed Post Installation Package.
- (iv) For Projects utilizing a Population NMEC Approach:
 - (A) Installation Payment. SCE’s approval of a Population NMEC Post-Installation Package.
 - (B) Interim Payment. SCE’s approval of the applicable Population NMEC Quarterly Report that includes data for the period ranging from six (6) to nine (9) months after Installation.
 - (C) Final Payment. SCE’s approval of the applicable Population NMEC Quarterly Report that includes data for the first twelve (12) months after Installation.
- (v) For Projects utilizing an SEM Approach:
 - (A) Final Payment. SCE’s approval of an SEM Reporting Period Performance Report.

Such Invoice Authorization shall identify all amounts approved for payment by SCE pursuant to the applicable report.

- (b) Within five (5) Business Days after receiving an Invoice Authorization, Implementer shall submit to SCE an invoice, which shall be consistent with the Invoice Authorization and include all data required by SCE, through a software management tool provided by SCE. Such submittal date shall be the “Invoice Date”, provided that, for avoidance of doubt, the Invoice Date shall not occur until Implementer has accurately input all SCE-required data into such software management tool.
- (c) If an invoice required to be rendered by Implementer is not rendered, or if SCE is incapable of rendering an Invoice Authorization due to the actions or inactions of Implementer, within twelve (12) months after the close of a month, the right to any payment for that month is waived.
- (d) If an error is discovered, an invoice can only be adjusted or amended within twelve (12) months after it was originally rendered.

3.05 Netting Rights.

SCE reserves the right to net amounts that would otherwise be due to Implementer under this Agreement in payment of any amounts:

- (a) Owed to SCE by Implementer arising out of, or related to, this Agreement, any other SCE agreement, tariff, obligation or liability.
- (b) If the Final Payment is less than zero (0) or if a Project fails or is otherwise terminated prior to calculation of the Final Payment, SCE may, in its sole discretion, net the applicable portion of the Installation Payment or Interim Payment (which, for clarity, may be up to 100% of the applicable Installation Payment or Interim Payment) (the “Installation Overpayments”). If, upon the end of the Installation Term, SCE has not recouped 100% of the Installation Overpayments, then Implementer shall promptly pay SCE any such unrecouped amounts.

ARTICLE 4. WORK AND SAFETY STANDARDS

4.01 Description of Services.

This Agreement describes the Program and Services to be performed and delivered by Implementer. Implementer shall promptly and fully inform SCE of any errors, omissions or inconsistencies in the Agreement, defects or deficiencies in the Services, and any inconsistencies between the Agreement and Applicable Law of which they become aware. If Implementer discovers any inconsistencies in the Agreement, or discovers any defects or deficiencies in the Services, and proceeds without resolution with SCE, Implementer acknowledges and agrees that it proceeds at Implementer’s own risk and expense and waives all rights to claim against SCE for the same.

4.02 Notice of Subcontractors and Affiliates.

Implementer shall be responsible and liable for the acts and omissions of Subcontractors and Personnel as though the acts or omissions were those of Implementer. Implementer shall be solely responsible for the payment of any compensation, monies, wages, or other payment due or allegedly due to Subcontractors. Implementer shall provide SCE with Notice of the name and address of any Subcontractor or Affiliate engaged by Implementer to perform any Services by the fifth (5th) Business Day after Implementer engages such entity.

4.03 Permits

Implementer shall be responsible for (a) obtaining and maintaining all Implementer Permits, (b) ensuring all Customers obtain and maintain all Customer Permits, and (c) designing and implementing the Program, and Installing, or ensuring Installation of, each Project in compliance with all Applicable Laws, including any new or revised Implementer Permits, Customer Permits, or Applicable Laws that become effective during the Term. If these requirements conflict, Implementer shall comply with the most stringent requirement of the Governmental Authorities.

4.04 Coordination with other Program Administrators.

Implementer shall coordinate with other Program Administrators administering energy efficiency programs in the same geographic area as [SCE] [\[the Participating IOUs\]](#). The CPUC may develop further rules related to coordination between Program Administrators in the same geographic area, and Implementer is required to comply with such rules. [\[SCE Note: Orange bracketed language to be used for Statewide Programs\]](#)

4.05 Access to Customer Sites.

Implementer shall be responsible for obtaining any and all access rights from Customers and other third parties to the extent necessary to implement the Program or perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, Customers and other third parties in order for SCE and CPUC employees, representatives, designees and contractors to inspect the Program or the Services.

4.06 Quality Assurance Procedures.

Implementer shall comply with the quality assurance procedures set forth in the Final Implementation Plan or, to the extent the Final Implementation Plan is not posted, the Program Guidelines.

4.07 Workforce Standards.

At all times during the term of the Agreement, Implementer shall comply with, and shall cause Implementer Parties to comply with, the workforce qualifications, certifications,

standards and requirements set forth in this Section (“Workforce Standards”). The Workforce Standards shall be included in their entirety in the Final Implementation Plan. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by SCE, Implementer shall provide all documentation necessary to demonstrate to SCE’s reasonable satisfaction that Implementer has complied with the Workforce Standards.

(a) For Heating, Ventilation, and Air Conditioning (HVAC) Energy Efficiency Programs or Projects.

For all Projects and for each Measure, installed, modified, or maintained in a non-residential setting where the project is seeking an energy efficiency incentive of Three Thousand Dollars (\$3,000) or more, Implementer shall ensure that each worker or technician involved in the project meets at least one of the following criteria:

- (i) Completed an accredited HVAC apprenticeship.
- (ii) Is enrolled in an accredited HVAC apprenticeship.
- (iii) Completed at least five (5) years of work experience at the journey level according to the Department of Industrial Relations definition, Title 8, Section 205, of the California Code of Regulations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed.
- (iv) Has a C-20 HVAC contractor license issued by the California Contractor’s State Licensing Board.

This standard shall not apply where an incentive is paid to any manufacturer, distributor, or retailer of HVAC equipment, unless the manufacturer, distributor, or retailer installs or contracts for the installation of the equipment.

(b) For Advanced Lighting Control Programs or Projects.

For all Projects and for each Measure, installed in a non-residential setting where the project is seeking an energy efficiency incentive of Two Thousand Dollars (\$2,000) or more, Implementer shall ensure that all workers or technicians involved in the project are certified by the California Advanced Lighting Controls Training Program (CALCTP). This requirement shall not apply where the incentive is paid to a manufacturer, distributor, or retailer of lighting controls unless the manufacturer, distributor, or retailer installs or contracts for installation of the equipment.

4.08 Safety.

(a) During the term of this Agreement, Implementer represents, warrants and covenants that it shall, and shall cause each Implementer Party to:

- (i) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- (ii) abide by all applicable Company security procedures, rules and regulations and cooperate with Company security personnel whenever on Company's property;
- (iii) abide by Company's standard safety program contract requirements as may be provided by Company to Implementer from time to time;
- (iv) provide all necessary training to its employees, and require subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement; and
- (v) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code.

Additional safety requirements (including Company's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in Company's safety handbooks as may be provided by Company to Implementer from time to time. [SCE Note: Non-Modifiable Term]

4.09 Additional Safety Requirements.

- (a) Implementer shall comply with the Contractor Safety Requirements Standard which is hereby incorporated by reference into this Agreement and may be updated from time to time upon Notice from SCE to Implementer. Implementer shall immediately Notify SCE if it knows or reasonably believes that it is not in compliance with the Contractor Safety Requirements Standard.
- (b) If the Services are classified as "Safety Tier 1", "Safety Tier 1 Higher-Risk", or "Safety Tier" 2 in the Contractor Safety Requirements Standard, Implementer shall complete SCE's Contractor Orientation and Safety Plan as described in the Contractor Safety Requirements Standard. The Contractor Orientation and Safety Plan shall be populated in accordance with the Contractor Safety Requirements Standard with all known and existing hazards related to the Services and Implementer's applicable mitigation measures.

(c) As between SCE and Implementer, Implementer 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 Services.

4.10 Background Checks, Fitness for Duty.

(a) Background Checks.

(i) Implementer hereby represents, warrants and certifies that any personnel of Implementer or Implementer Party, and their representatives and agents, having or requiring access to Company's assets, premises, or customer property ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to the project.

(ii) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Implementer permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to the project, or at any time after the individual's date of assignment to the project, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations (RICO) Statute (18 U.S.C. Sections 1961 - 1968)).

(iii) To the maximum extent permitted by applicable law, Implementer shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to Company for audit if required pursuant to the audit provisions of this Agreement.

(iv) To the extent permitted by applicable law, Implementer shall notify Company if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Implementer

will also immediately prevent that employee, representative, or agent from performing any Services. [SCE Note: Non-Modifiable Term]

(b) Fitness for Duty.

Implementer shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform their work properly and safely. Implementer shall, and shall cause its subcontractors to, have policies in place that require their employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness. [SCE Note: Non-Modifiable Term]

(c) Removal of Personnel.

SCE may direct Implementer to remove Personnel from performing the Services if, in SCE's reasonable discretion, such Personnel does not perform its duties in a competent, workmanlike manner in accordance with this Agreement and Applicable Standards.

4.11 Billing, Energy Use, and Program Tracking Data.

Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program, including Project evaluation, measurement, and verification. Implementer shall make available to SCE, upon demand, detailed descriptions of the Program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts. Implementer shall make available to SCE any revisions to Implementer's program theory and logic model and results from its quality assurance procedures, and comply with all SCE evaluation, measurement, and verification requirements, including reporting of progress and evaluation metrics.

4.12 Artificial Intelligence.

Implementer shall not (1) incorporate an AI Tool or AI Tool-generated content into any deliverable provided to SCE hereunder or (2) input SCE Data into, or use SCE Data to train, develop, or improve, an AI Tool.

ARTICLE 5. PROJECT INSTALLATION AND REVIEW

5.01 Submission Requirements for all Projects.

All Projects submitted to SCE for review and approval must be consistent with all CPUC EE Decisions & Guidance. Notwithstanding any other provision in this Agreement, Implementer shall not begin any Installation activities prior to receipt of the Data Transfer

Specifications from SCE. Implementer acknowledges and agrees that the Installation of Measures prior to receipt of the Data Transfer Specifications is at its own risk.

5.02 NMEC-Based Site-Specific Approach Evaluation and Testing.

Each Project utilizing an NMEC-Based Site-Specific Approach must be submitted to SCE in accordance with this Section 5.02.

- (a) Project Feasibility Study Submission. Implementer must submit and receive SCE approval of a Project Feasibility Study prior to any Installation activities.
- (b) Review and Approval of Project Feasibility Study. SCE shall provide written notice to Implementer of one of the following within sixty (60) days of receipt from Implementer of a Project Feasibility Study: (i) SCE approval of the Project Feasibility Study, (ii) SCE determined all or any portion of the Project Feasibility Study is materially deficient or inaccurate in any manner, or (C) SCE rejection of the Project Feasibility Study as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Project Feasibility Study.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Project Feasibility Study within thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (c) NMEC Installation Requirements. Implementer must Install the Project within one hundred eighty (180) days of SCE approval of the Project Feasibility Study. Implementer shall notify SCE of any changes to the Project Feasibility Study that occur after SCE approval of the Project Feasibility Study but prior to Installation. If changes to the Project Feasibility Study occur after initial approval by SCE but prior to Installation, SCE in its sole discretion may require Implementer to resubmit a revised Project Feasibility Study for review and approval in accordance with this Section. All Projects must be Installed in a manner consistent with this Agreement and in accordance with all CPUC EE Decisions & Guidance, including but not limited to the Project Feasibility Study, NMEC Rulebook, Site-Level NMEC Technical Guidance Document and Statewide Custom Project Guidance Document.
- (d) Post Installation Report Submission. Implementer shall submit to SCE a Post Installation Report within fifteen (15) days of Installation of the Project.
- (e) Review and Approval of Post Installation Report. SCE shall provide written notice to Implementer of one of the following within 60 days of receipt from

Implementer of a Post Installation Report,: (i) SCE approval of the Post Installation Report, (ii) SCE determined all or any portion of the Post Installation Report is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the Post Installation Report as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Post Installation Report.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Post Installation Report within the thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

(f) Second Post Installation Report Submission. Implementer shall submit to SCE a Second Post Installation Report after the Post Implementation Performance Monitoring Period ends.

(g) Review and Approval of Second Post Installation Report. SCE shall provide written notice to Implementer of one of the following within sixty (60) days of receipt from Implementer of a Second Post Installation Report: (i) SCE approval of the Second Post Installation Report, (ii) SCE determined all or any portion of the Second Post Installation Report is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the Second Post Installation Report as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Second Post Installation Report.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Second Post Installation Report within the thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

5.03 Customized Calculated Approach Evaluation and Testing.

Each Project utilizing a Customized Calculated Approach must be submitted to SCE in accordance with this Section 5.03.

- (a) Project Feasibility Study Submission. Implementer must submit and receive SCE approval of a Project Feasibility Study prior to any Installation activities.
- (b) Review and Approval of Project Feasibility Study. SCE shall provide written notice to Implementer of one of the following within sixty (60) days of receipt

from Implementer of a Project Feasibility Study: (i) SCE approval of the Project Feasibility Study, (ii) SCE determined all or any portion of the Project Feasibility Study is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the Project Feasibility Study as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Project Feasibility Study.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Project Feasibility Study within thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (c) Custom Installation Requirements. Implementer must Install the Project within one hundred eighty (180) days of SCE approval of the Project Feasibility Study. Implementer shall notify SCE of any changes to the Project Feasibility Study that occur after SCE approval of the Project Feasibility Study but prior to Installation. If changes to the Project Feasibility Study occur after initial approval by SCE but prior to Installation, SCE in its sole discretion may require Implementer to resubmit a revised Project Feasibility Study for review and approval in accordance with this Section. All Projects must be Installed in a manner consistent with this Agreement and in accordance with all CPUC EE Decisions & Guidance, including but not limited to the Project Feasibility Study and Statewide Custom Project Guidance Document.
- (d) Post Installation Report Submission. Implementer shall submit to SCE a Post Installation Report within fifteen (15) days of Installation of the Project. If required by the approved Project Feasibility Study, a Second Post Installation Report may be required and such Second Post Installation Report shall be subject to the same submission and review requirements of a Post Installation Report included in this Section.
- (e) Review and Approval of Post Installation Report. SCE shall provide written notice to Implementer of one of the following within sixty (60) days of receipt from Implementer of a Post Installation Report: (i) SCE approval of the Post Installation Report, (ii) SCE determined all or any portion of the Post Installation Report is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the Post Installation Report as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Post Installation Report.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a

revised Post Installation Report within the thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

5.04 Deemed Approach Evaluation and Testing.

Each Project utilizing a Deemed Approach must be submitted to SCE in accordance with this Section 5.04.

(a) Required Specifications and Checklists.

(i) **Measure Checklist.** Notwithstanding any other provision in this Agreement, Implementer may only begin Installation activities for Measures for which a Measure Checklist has been provided by SCE. Implementer may request changes to a Measure Checklist at any time by submitting an Alternate Verification Requirement to SCE for review and approval. SCE may reject or approve the Alternate Verification Requirement in its sole discretion.

If the Alternate Verification Requirement is approved by SCE, SCE shall update the applicable Measure Checklist in accordance with the Alternate Verification Requirement.

(ii) **Installation Prior to Checklist Development.** Implementer acknowledges and agrees that the Installation of Measures prior to receipt the applicable Measure Checklist is at its own risk. SCE may in its sole discretion reject any Project that includes Measures that were Installed prior to Implementer's receipt or posting of the applicable Measure Checklist.

(b) **Deemed Pre-Installation Package Submission.** If required by the applicable Measure Checklist, Implementer must submit and receive SCE approval of a Deemed Pre-Installation Package prior to any Installation activities at a Site.

(c) **Review and Approval of Deemed Pre-Installation Package.** Within twenty (20) days of receipt from Implementer of a Deemed Pre-Installation Package, if required, SCE shall provide written notice to Implementer of one of the following: (i) SCE approval of the Deemed Pre-Installation Package, (ii) SCE determined all or any portion of the Deemed Pre-Installation Package is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the Deemed Pre-Installation Package as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Deemed Pre-Installation Package.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Deemed Pre-Installation Package within thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (d) **Deemed Installation Requirements.** If a Deemed Pre-Installation Package is required, Implementer must Install the Project within one hundred eighty (180) days of SCE approval of the Deemed Pre-Installation Package. All Deemed Projects must be Installed in a manner consistent with this Agreement and in accordance with all CPUC EE Decisions & Guidance, including but not limited to (i) the applicable Measure Checklist and (ii) applicable Measure Package.
- (e) **Deemed Post-Installation Inspection.** After Installation, Implementer shall conduct a Deemed Post-Installation Inspection to verify that (i) all Measures in the Project are operating or otherwise being implemented as planned and designed and (ii) the Project was installed consistent with the (x) the applicable Measure Checklist, and (y) the applicable Measure Package.
- (f) **Deemed Post-Installation Package Submission.** Implementer shall submit to SCE a Deemed Post-Installation Package within fifteen (15) days of completion of the Deemed Post-Installation Inspection.
- (g) **Review and Approval of Deemed Post-Installation Package.** SCE shall provide written notice to Implementer of one of the following within 20 days of receipt from Implementer of a Deemed Post Installation Package,: (i) SCE approval of the Deemed Post Installation Package, (ii) SCE determined all or any portion of the Deemed Post Installation Package is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the Deemed Post Installation Package as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Deemed Post-Installation Package.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Deemed Post Installation Package, within thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

5.05 Population NMEC Approach Evaluation and Testing

Each Project utilizing a Population NMEC Approach must be submitted to SCE in accordance with this Section 5.05.

- (a) Population NMEC M&V Plan. CPUC Approval of the Final Population NMEC M&V Plan must be obtained or waived by SCE in its sole discretion prior to any Installation activities.
- (b) Program Verification Checklist Submission. Implementer must submit and receive SCE approval of a Program Verification Checklist for each Project prior to including such Project in a cohort and the submission of a Population NMEC Post Installation Package.
- (c) Review and Approval of Program Verification Checklist. SCE shall provide written notice to Implementer of one of the following within ten (10) Business Days of receipt from Implementer of a Program Verification Checklist: (i) SCE approval of the Program Verification Checklist, (ii) SCE determined all or any portion of the Program Verification Checklist is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the Program Verification Checklist as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency.

Upon notice to Implementer prior to expiration of the review period set forth herein, SCE may extend any review of a Program Verification Checklist for up to an additional ten (10) Business Days from the original deadline for such review. If SCE fails to provide Implementer written notice under subsection (i), (ii), or (iii) above within the timeframe set forth herein, as such timeframe may be extended, the Program Verification Checklist shall be deemed approved unless the applicable Project is subject to a deadline extension under Section 6.02 or 6.03 below.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Program Verification Checklist within the thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (d) Population NMEC Installation Requirements. All Projects utilizing a Population NMEC Approach must be Installed within two hundred seventy (270) days of SCE approval of the applicable Program Verification Checklist, unless otherwise approved by SCE in writing in advance, and in a manner consistent with this Agreement and in accordance with all CPUC EE Decisions & Guidance, including but not limited to the (i) NMEC Rulebook, (ii) Final Population NMEC M&V Plan, (iii) the applicable Population NMEC Post Installation Package, and (iv) the approved Program Verification Checklist. Implementer acknowledges and agrees that the Installation of Measures prior to SCE approval of the applicable Program Verification Checklist is at Implementer's own risk. SCE may in its sole discretion reject any Project that

includes Measures that were Installed prior to SCE approval of the applicable Program Verification Checklist.

(e) Population NMEC Post-Installation Package Submission. Implementer shall submit to SCE a Population NMEC Post-Installation Package within twenty (20) Business Days of Installation of the Project and prior to the submission of the applicable Population NMEC Quarterly Report.

(f) Review and Approval of Population NMEC Post-Installation Package. SCE shall provide written notice to Implementer of one of the following within twenty (20) Business Days of receipt from Implementer of a Population NMEC Post Installation Package (which is inclusive of the Population NMEC design characterization set forth in the applicable Program Verification Checklist): (i) SCE approval of the Population NMEC Post Installation Package, (ii) SCE determined all or any portion of the Population NMEC Post Installation Package is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the Population NMEC Post Installation Package as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency.

Upon notice to Implementer prior to expiration of the review period set forth herein, SCE may extend any review of a Population NMEC Post Installation Package for up to an additional twenty (20) Business Days from the original deadline for such review. Subject to Sections 6.02 and 6.03 below, if SCE fails to provide Implementer written notice under subsection (i), (ii), or (iii) above within the timeframe set forth herein, as such timeframe may be extended, the Population NMEC Post Installation Package shall be deemed approved.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Population NMEC Post Installation Package within the thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

(g) Population NMEC Quarterly Report. Within sixty (60) days of the end of each calendar quarter Implementer shall submit to SCE a Population NMEC Quarterly Report.

(h) Review and Approval of Population NMEC Quarterly Report. SCE shall provide written notice to Implementer of one of the following within twenty (20) Business Days of receipt from Implementer of a Population NMEC Quarterly Report (which shall be in compliance with the applicable section of the Program Verification Checklist): (i) SCE approval of the Population NMEC Quarterly Report, (ii) SCE determined all or any portion of the Population NMEC Quarterly Report is materially deficient or inaccurate in any manner, or (iii) SCE

rejection of the Population NMEC Quarterly Report as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency.

Upon notice to Implementer, SCE may extend any review of a Population NMEC Quarterly Report. SCE's failure to provide written notice under subsection (i), (ii), or (iii) above in the timeframe set forth herein shall in no case constitute deemed approval of the Population NMEC Quarterly Report.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Population NMEC Quarterly Report, within thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (i) **Additional Documentation.** Implementer shall maintain and make readily available to SCE, and to the CPUC upon request, all supporting documentation and data utilized in the development of regression models and energy savings estimates. This includes but is not limited to energy estimation code and scripts including regression model specifications and coefficients, granular profiles or control group definitions, weather datasets, AMI data, and any other relevant inputs necessary to facilitate a thorough program evaluation by SCE and/or the CPUC.

5.06 SEM Approach Evaluation and Testing.

Each Project utilizing an SEM Approach must be submitted to SCE in accordance with this Section 5.06. For purposes of this Section 5.06 each capitalized and undefined term has the meaning described in the California SEM M&V Guide.

- (a) **Mid-Year Reports Submission.**
 - (i) **First Time Mid-Year Reports.** In each calendar year of the Installation Term and in accordance with the California SEM M&V Guide, Implementer shall submit to SCE a mid-year report for each Site that contains all information required in the California SEM M&V Guide for a First Time Mid-Year Review (a "First Time Mid-Year Report").
 - (ii) **Subsequent Year Mid-Year Report.** In accordance with the California SEM M&V Guide, Implementer shall submit a subsequent year mid-year report for each Site that contains all information in the California SEM M&V Guide for a Subsequent Year Mid-Year Review (a "Subsequent Year Mid-Year Report").

(b) Review and Approval of Mid-Year Reports. SCE shall provide written notice to Implementer of one of the following within forty-five (45) Business Days of receipt from Implementer of a First Time Mid-Year Report or Subsequent Year Mid-Year Report: (i) SCE approval of the report, (ii) SCE determined all or any portion of the report is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the report as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the report.

If SCE provides written notice under subsection (ii) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised report, within thirty (30) days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

(c) SEM Reporting Period Performance Report Submission. Within thirty (30) Business Days of the conclusion of the SEM Reporting Period for a Site, Implementer shall submit to SCE an SEM Reporting Period Performance Report.

(d) Review and Approval of SEM Reporting Period Performance Report. SCE shall provide written notice to Implementer of one of the following within forty-five (45) Business Days of receipt from Implementer of SEM Reporting Period Performance Report: (i) SCE approval of the SEM Reporting Period Performance Report, (ii) SCE determined all or any portion of the SEM Reporting Period Performance Report is materially deficient or inaccurate in any manner, or (iii) SCE rejection of the SEM Reporting Period Performance Report as materially deficient or inconsistent with the Agreement, without the ability to cure such deficiency or inconsistency. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the SEM Reporting Period Performance Report.

If SCE provides written notice under subsection (B) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised SEM Reporting Period Performance Report, within 30 days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

(e) Removal from SEM. Upon Implementer's written request and SCE's prior written consent, which may be granted or withheld in SCE's sole discretion, a Project utilizing an SEM Approach may be converted to a Project utilizing a Customized Calculated Approach if, during implementation, it is determined that the Project includes measures or savings opportunities that require engineering analysis beyond the scope of an SEM Approach. Upon conversion, such Project shall be subject to all requirements, documentation, and incentive

structures applicable to Projects utilizing a Customized Calculated Approach and any TSB previously estimated or paid for a Project utilizing an SEM Approach shall be adjusted to reflect the Customized Calculated Approach.

ARTICLE 6. REPAIRS AND INSPECTIONS

6.01 Repairs.

Implementer shall notify SCE of any malfunction, equipment failure, or other condition that could impact SCE's ability to claim TSB for a Project within five (5) Business Days after discovery thereof. Implementer shall, or shall cause the applicable Customer to, complete all maintenance and repairs necessary for SCE to claim TSB in a timely manner.

6.02 SCE Inspections.

SCE may, in its sole discretion, request to conduct an onsite or virtual audit or inspection of a Site or Project (an "SCE Inspection"). If a Site or Project is selected by SCE for an audit or inspection, such Site or Project (an "SCE Inspected Project") may not proceed to the next phase of review and any review timelines in Article 5 shall be deemed extended for as long as needed for SCE to complete and review the results of such SCE Inspection. Within five (5) days of SCE's notice, Implementer shall obtain any and all access rights from Customers and other third parties to the extent necessary for SCE to conduct an SCE Inspection. If the results of any SCE Inspection reveal that the SCE Inspected Project fails to satisfy the requirements of this Agreement, or any information provided by Implementer is materially inaccurate, incomplete, or inconsistent with this Agreement, or otherwise deficient in any manner, then (a) if such deficiencies are capable of being cured, Implementer shall remedy the deficiencies within thirty (30) days of receipt of SCE's notice identifying such deficiencies, which shall again be subject to SCE's review in accordance with this Agreement, or (b) if such deficiencies are not capable of being cured or Implementer fails to timely cure such deficiencies, such SCE Inspected Project shall not be a Site or Project under this Agreement.

6.03 CPUC Inspections.

The Parties acknowledge and agree that the CPUC may at any time review, audit, inspect, modify or otherwise determine the eligibility, or the results of any process, inspection, document, report, for any Project or Site (the "CPUC Inspection"). If a Site or Project is selected by the CPUC for an audit or inspection (a "CPUC Inspected Project"), SCE shall notify Implementer of such CPUC Inspection and such CPUC Inspected Project may not proceed to the next phase of review and any review timelines in Article 5 shall be deemed extended for as long as needed for the CPUC to complete such CPUC Inspection. The CPUC Inspection results shall take precedence over any documents submitted by Implementer and all impacted documents, inspections, or processes shall be updated to reflect the CPUC Inspection results. If the results of any CPUC Inspection reveal that the CPUC Inspected Project fails to satisfy the requirements of this Agreement or any CPUC

EE Decisions & Guidance, or any information provided by Implementer is materially inaccurate, incomplete, or inconsistent with this Agreement, or otherwise deficient in any manner, then (a) if such deficiencies are capable of being cured, Implementer shall remedy the deficiencies within thirty (30) days of receipt of notice identifying such deficiencies, which shall again be subject to CPUC's review, or (b) if such deficiencies are not capable of being cured or Implementer fails to timely cure such deficiencies, such CPUC Inspected Project shall not be a Site or Project under this Agreement.

ARTICLE 7. REPORTS AND AUDITS

7.01 SCE Requested Reports.

Within ten (10) Business Days of SCE's request, Implementer shall provide SCE copies of the following utilizing SCE's web-based reporting tool or other method designated by SCE:

- (a) All documentation and data needed to calculate Actual TSB, including but not limited to data in support of sector-level and portfolio-level metrics;
- (b) Any documents, information, and records related to Implementer's obligations under this Agreement (including documents, information or records of an Affiliate, Customer, or Subcontractor);
- (c) Internal Revenue Service Tax Form W-9 and California tax Form 590 (or their equivalent), completed with Implementer's information, and any other documentation necessary for SCE to comply with its tax reporting or withholding obligations with respect to Implementer; and
- (d) Any information needed to respond to any CPUC data request or regulatory filing related to this Agreement (including documents, information or records of an Affiliate, Customer, or Subcontractor).

7.02 Change in Organization.

Implementer shall provide Notice to SCE within five (5) Business Days after a change in the status of Implementer's exact and complete name, form of organization, direct or indirect ownership and state of incorporation or organization, or address of Implementer's principal place of business. No Notice provided pursuant to this Section constitutes or substitutes for any consent required pursuant to Sections 16.05.

7.03 Annual Forecast Report.

By January 31st of each calendar year of the Term, Implementer shall deliver to SCE, via a secure method designated by SCE, a report substantially in the form of Exhibit G (Form of Forecast Report) that includes Program forecasts for each of the upcoming twelve (12) months.

7.04 Monthly Rolling Three-Month Forecast.

By the 5th Business Day of each month of the Installation Term, Implementer shall deliver to SCE, via a secure method designated by SCE, a report substantially in the form of Exhibit G (Form of Forecast Report) that includes Program forecasts for the upcoming three (3)-month period.

7.05 Corrective Action Plan.

If, (a) after [] months from the start of Installation Term, the Program has delivered less than []% of the Total Expected TSB or (b) the Annual TRC Ratio for the first full calendar year of the Installation Term is less than 1.0, then SCE may require Implementer to submit a written corrective action plan (the “Corrective Action Plan”) that includes steps to address and mitigate any challenges affecting the Program’s performance and to ensure delivery of the Total Expected TSB within the Installation Term. Implementer shall deliver the Corrective Action Plan to SCE within ten (10) Business Days following receipt of written Notice from SCE. The Corrective Action Plan shall, at a minimum, include: (i) a detailed explanation of the issues impacting TSB delivery; (ii) a proposed timeline for achieving the Total Expected TSB; (iii) strategy to improve the Annual TRC Ratio; and (iv) comprehensive information regarding both prospective and currently enrolled Customers participating in the Program.

7.06 Diverse Business Enterprises.

In accordance with CPUC General Order 156, upon SCE request, Implementer shall provide SCE a report listing all payments made to diverse business enterprises, as more particularly set forth in CPUC General Order 156, that supplied goods or services to Implementer in connection with the Program during the time period specified in such request. SCE has the right to disclose to the CPUC all such information provided by Implementer pursuant to this Section.

7.07 Financial Statements.

Implementer shall deliver financial statements on an annual basis or as may be reasonably requested by Company from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles. Company shall keep such information confidential if requested by Implementer, except provision to the Commission may be required from time to time under confidentiality procedures, where applicable.

7.08 Document Retention.

Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement and each Project for the applicable time periods required by,

Applicable Law, but in no event less than four (4) years after final payment is made under this Agreement.

7.09 Audit Rights.

Upon five (5) days' prior notice and not more than once per year, unless otherwise required by Applicable Laws, during the Term and for three (3) years thereafter, SCE or its third-party designee may, during regular business hours and without unreasonable disruption to Implementer's business, (a) examine, inspect, or copy any or all of Implementer's books, records, and documents that have been generated as a result of the Agreement or that contain information relating to the Agreement, in whatever form maintained, including project-related records, accounting or compliance records, third-party audit reports, and any supporting documentation (such as records of Implementer's business development and entertainment activities relating to SCE) (collectively, "Implementer Records") and (b) interview any employees who might reasonably have information related to the Implementer Records. Implementer shall maintain its other Implementer Records to capture relevant information about Implementer's performance of the Services. If an audit discloses any material discrepancy in the amounts invoiced to SCE from those due, Implementer shall promptly refund any overpayment and reimburse SCE for all costs associated with the audit.

7.10 Credit and Collateral. Intentionally Omitted.

ARTICLE 8. REPRESENTATIONS, WARRANTIES AND COVENANTS

8.01 Representations and Warranties of Both Parties.

As of the Effective Date, each Party represents and warrants to the other Party that:

- (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Laws and this Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with the terms of this Agreement, subject to any equitable defenses;
- (b) it is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (c) there is no pending, or to its knowledge, threatened legal proceedings against it, that could materially and adversely affect its ability to perform under this Agreement; and
- (d) it is acting for its own account and its decision to enter into this Agreement is based upon its own judgment, not in reliance upon the advice or

recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement.

8.02 Implementer Representations, Warranties, and Covenants.

- (a) **Licensing.** At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall, and shall cause each of its employees, agents, representatives, and subcontractors and all other persons performing the Services on behalf of the Implementer (“Implementer Party”) to, obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of the Services. Implementer shall promptly provide copies of such licenses and registrations to Company at the request of Company. [SCE Note: Non-Modifiable Term]
- (b) **Bonding.** At all times during the performance of the Services, Implementer providing any direct installation services represents, warrants and covenants that it has and shall, and shall cause each Implementer Party, to obtain and maintain, at its sole cost and expense, all bonding requirements of the California State License Board, as may be applicable. [SCE Note: Non-Modifiable Term]
- (c) **Insurance.** At all times during the performance of the Services, Implementer represents, warrants and covenants that it has and shall, and shall cause each Implementer Party to, obtain and maintain, at its sole cost and expense, the insurance coverage requirements specified in Exhibit F (Insurance Requirements). [SCE Note: Non-Modifiable Term]
- (d) **Good Standing.** Implementer represents and warrants that (a) it is a [corporation/limited liability company/partnership] duly organized, validly existing and in good standing under the laws of the State of [Insert State of organization], and (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder. [SCE Note: Non-Modifiable Term]
- (e) As of the Effective Date and continuing throughout the Term, Implementer represents, warrants, and covenants that:
 - (i) neither Implementer, nor any of its Subcontractors, consultants, or Affiliates, is an Affiliate of SCE, Pacific Gas & Electric Company,

Southern California Gas Company, or San Diego Gas and Electric Company;

- (ii) neither Implementer nor its Subcontractors, consultants, or Affiliates have conducted studies or evaluations for the CPUC that assess energy efficiency program results, including measurement and verification work, as described in D.05-01-055 and D.18-01-004 for the CPUC; [\[SCE Note: If there is a conflict, Implementer should raise if firewall needed.\]](#)
- (iii) neither Implementer nor its Subcontractors, consultants, or Affiliates have conducted studies or evaluations for SCE that assess energy efficiency program results, including measurement and verification work;
- (iv) Implementer's administrative costs are less than or equal to ten percent (10%) of Implementer's expected payments hereunder and are otherwise in compliance with the requirements set forth in CPUC EE Decisions & Guidance;
- (v) Implementer does not have any business interest, any financial interest, or any personal interest that would be reasonably likely to affect its judgment or conduct to implement the Program;
- (vi) all Services shall be delivered to SCE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person;
- (vii) all Services shall be free from defects, rendered with promptness and diligence and executed in a competent, workmanlike manner in accordance with all Applicable Laws, Applicable Standards, Contractor Safety Requirements Standards, and this Agreement;
- (viii) Neither Implementer nor its Subcontractors or Affiliates have accepted and shall not accept any form of donation (monetary, equipment, or otherwise) from third parties in connection with the Program; and
- (ix) Implementer shall immediately notify SCE if Implementer knows or reasonably believes that Implementer is not compliant with any term of this Agreement.

ARTICLE 9. MARKETING AND CUSTOMER PARTICIPATION

9.01 Advertising and Marketing.

Implementer is solely responsible for all marketing activities related to the Program. All

marketing materials must be accurate, not misleading, and comply with all Applicable Laws. Implementer shall not, nor shall Implementer permit any of its Subcontractors, Affiliates, or independent contractors, without SCE's prior written consent which may be withheld by SCE in its sole discretion, to use SCE's [or any Participating IOU's] corporate name, trademark, trade name, logo, identity or any affiliation for any reason. Any and all marketing materials that reference SCE [a Participating IOU] or any SCE [or Participating IOU] program shall be subject to written approval from SCE prior to any distribution, circulation or publication. Notwithstanding the foregoing, SCE in its sole discretion may at Implementer's request assist Implementer with advertising or marketing to SCE's customers. [Participating IOU's other than SCE shall have the same approval rights as SCE does under this Section 9.01 with respect to materials that reference such Participating IOU.] [SCE Note: Orange bracketed language to be used for Statewide Programs]

9.02 Program Website.

Implementer shall maintain a website dedicated to the Program containing all necessary disclosures about the Program.

9.03 Toll-Free Number.

Implementer must establish a toll-free number and create a call script for all customer service representatives. Implementer's customer service representatives must be able to provide Customers and prospective Customers all information regarding the disclosures identified in Section 9.04.

9.04 Customer Disclosures.

Implementer must provide all disclosures necessary for a prospective Customer to make an informed decision to enroll in the Program in a clear and coherent manner before such prospective Customer commits to enrolling in the Program. Such disclosures shall include, but not be limited to, the following:

- (a) Implementer is not a representative of [SCE][any Participating IOU] or otherwise affiliated with [SCE][any Participating IOU] SCE Note: Orange bracketed language to be used for Statewide Programs];
- (b) [SCE has no liability to Customer and will not be a party to any agreement between a Customer and Implementer][Each Participating IOU shall have no liability to Customer nor will any Participating IOU be a party to any agreement between a Customer and Implementer] SCE Note: Orange bracketed language to be used for Statewide Programs];
- (c) Customer is not guaranteed any energy or cost savings; and

(d) All relevant information regarding available enrollment options, available measures, financing options, incentive options, costs, interest rates, the identity of potential financing parties, the ability to decline financing, and any other terms necessary for Customer to make an informed decision to enroll in the Program.

9.05 Customer Implementer Agreement

Implementer and Customers must enter into a Customer-Implementer Agreement in order for Customer to participate in the Program. Implementer shall be required to include the following provisions in each such Customer-Implementer Agreement:

- (a) all of the disclosures set forth in Section 9.04;
- (b) cancellation policy, process, and any fees;
- (c) disclaimer that [SCE makes no representations or warranties regarding the Program] [the Participating IOUs make no representations or warranties regarding the Program] [SCE Note: Orange bracketed language to be used for Statewide Programs];
- (d) requirement that Customer shall ensure every Measure remain installed at the Site(s) for the life of the Measure; and
- (e) Implementer shall indemnify Customers for claims arising from or related to Implementer's design or implementation of the Program, including liens of any type, mortgages, stop notices, and claims for bodily injury, death or property damage or destruction.

9.06 Consumer Protection.

If the Services involve communication with individuals via telephone, SMS text messages, facsimile, or electronic mail, which communication is subject to one or more consumer protection requirements under Applicable Laws (collectively, “Consumer Protection Requirements”), Implementer represents and warrants that Implementer shall (a) comply with Consumer Protection Requirements and (b) upon SCE’s request, submit reports, including call records, opt-out requests, and do-not-call lists, of Implementer’s compliance with Consumer Protection Requirements.

ARTICLE 10. EVENTS OF DEFAULT; TERMINATION

10.01 Events of Default.

An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

(a) With respect to either Party:

- (i) the failure to perform any material covenant, obligation, term or condition of this Agreement (except to the extent constituting a separate Event of Default), including without limitation the failure to make, when due, any undisputed payment required to be made by such Party, if such failure is not remedied within thirty (30) calendar days of Notice of such breach by the Non-Defaulting Party;
- (ii) such Party becomes insolvent, generally does not pay its debts as they become due, makes a general assignment for the benefit of creditors, or commences any action seeking reorganization or receivership under any bankruptcy, insolvency, reorganization or similar law for the relief of creditors or affecting the rights or remedies of creditors generally; or

such Party disaffirms, disclaims, rejects (in whole or in part), or challenges the validity of this Agreement. [SCE Note: Non-Modifiable Term]

(b) With respect to Implementer:

- (i) any representation or warranty made by Implementer or Implementer Party to any person or entity (including, without limitation, a member of the public, a customer of Company, or a governmental authority) or in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature;
- (ii) any legal action is made or commenced against Implementer or Implementer Party which, in Company's opinion, may interfere with the performance of the Services;
- (iii) Implementer or any Implementer Party commits any material act of dishonesty, fraud, misuse of funds, or misrepresentation of Company's administration of this Agreement;
- (iv) Company becomes aware of a public safety issue arising out of or related to Implementer's or Implementer Party's administration or performance of this Agreement;
- (v) Implementer assigns, subcontracts, or transfers this Agreement or any right or interest herein except in accordance with Section 16.05;
- (vi) Implementer fails to maintain the insurance coverage required of it in accordance with Exhibit F (Insurance Requirements);

- (vii) Implementer fails to satisfy the collateral requirements set forth in Section 7.10 including failure to post and maintain the performance assurance requirements set forth in this Agreement;
- (viii) Implementer breaches any obligation of confidentiality or its obligations under Article 15; or
- (ix) Implementer fails to achieve [Insert Minimum Performance Requirements] the minimum performance requirements described herein, provided that such failure continues for sixty (60) days following receipt of written notice of such failure. [SCE Note: Non-Modifiable Term];
- (x) the Annual TRC Ratio in any full calendar year of the Installation Term is less than one (1.0);
- (xi) the aggregate TSB delivered to SCE during the time period beginning on the start of the Installation Term and continuing for eighteen (18) months thereafter is less than [] % of the Total Expected TSB; or
- (xii) [SCE Note: Deemed Measures on widget basis only] [the aggregate number of Measures Installed for each Measure Code during the time period beginning on the start of the Installation Term and continuing for eighteen (18) months thereafter is less than [] % of the applicable Measure Cap.]

10.02 Termination for Cause.

If an Event of Default shall have occurred with respect to a Party, the other Party (the “Non-Defaulting Party”) shall have one or more of the following rights:

- (a) To designate by Notice, which will be effective no later than twenty (20) calendar days after the Notice is received, the early termination of this Agreement (an “Early Termination Date”);
- (b) Withhold any payments due to the Defaulting Party under this Agreement;
- (c) Suspend performance of Services under this Agreement (but excluding, for the avoidance of doubt, the obligation to post and maintain performance assurance in accordance with Article NA and the obligation to obtain and maintain the insurance requirements in accordance with Exhibit F (Insurance Requirements)); and
- (d) To pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement. [SCE Note: Non-Modifiable Term]

10.03 Termination/Modification by CPUC Order.

This Agreement shall be subject to changes, modifications, or termination by order or directive of the California Public Utilities Commission (“CPUC”). The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case Company shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such CPUC order or directive.

- (a) Company shall be liable to Implementer for the compensation earned on services satisfactorily performed prior to the effective date of termination, plus documented and verifiable costs (such as demobilization costs) reasonably incurred by Implementer in terminating the services. Implementer shall mitigate its damages to minimize its claim, if any, against Company.
- (b) Notwithstanding anything contained in this Section 10.03, in no event shall Company be liable for lost or anticipated profits or overhead on uncompleted portions of the Services. Implementer shall not enter into any agreement, commitments or subcontracts that would incur significant cancellation or termination costs without prior written approval of Company, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by Company under this Section 10.03. Also as a condition precedent to the payment of any cancellation or termination charges by Company under this Section 10.03, Implementer shall have delivered to Company any and all reports, drawings, documents and deliverables prepared for Company before the effective date of such cancellation or termination.
- (c) Implementer shall have right to request arbitration or mediation to resolve particulars of the above provisions should they not result in reasonable compensation based on terms of original Agreement and Company shall be required to engage in mediation or arbitration in good faith upon such a request. [SCE Note: Non-Modifiable Term]

10.04 Conclusion of Services.

Upon Company's termination of this Agreement for any reason, Implementer shall, and shall cause each Implementer Party to, bring the Services to an orderly conclusion as directed by Company. Implementer and each Implementer Party shall vacate the worksite but shall not remove any material, plant or equipment thereon without the approval of Company. Company, at its option, may take possession of any portion of the Services paid for by Company. [SCE Note: Non-Modifiable Term]

10.05 Calculation of Termination Payment.

In the event of an Early Termination Date, the Defaulting Party must pay the Non-Defaulting Party a termination payment calculated as follows (the “Termination Payment”):

- (a) all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement less any amounts owed by the Non-Defaulting Party to the Defaulting Party as of the Early Termination Date; plus
- (b) the damages incurred by the Non-Defaulting Party as a result of the Defaulting Party’s breach and early termination of this Agreement. If SCE is the Non-Defaulting Party, the calculation of damages incurred shall include but not be limited to **[\$]** representing the reasonably estimated cost for SCE to solicit for and negotiate a replacement agreement. Each Party agrees that the fixed portion of damages related to the costs for SCE to solicit for and negotiate a replacement agreement is not a penalty, and is reasonable considering the damages SCE would likely sustain, and that these amounts are agreed upon and fixed because of the difficulty of ascertaining the exact amount of damages that would be sustained by SCE.

The Parties acknowledge and agree that if SCE is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CPUC, or any other Governmental Authority related to the performance of this Agreement, then SCE may estimate the amount of those penalties and fines at the time of the calculation of the Termination Payment and include them in its calculation of damages incurred as a result of the Defaulting Party’s breach and early termination of this Agreement; provided, if the actual amount of penalties and fines is greater than the estimated amount, Implementer shall owe SCE such excess amount, and if the actual amount of penalties and fines is less than the estimated amount, SCE shall remit such over collected amount to Implementer.

10.06 Notice of Termination Payment.

After declaring an Early Termination Date, the Non-Defaulting Party shall promptly send written Notice to the Defaulting Party setting forth and detailing the calculation of the Termination Payment. The Defaulting Party must pay such Termination Payment within five (5) Business Days of receiving such Notice.

10.07 No-Fault Termination.

For clarity, (a) if either Party exercises a termination right as set forth in Sections 2.03 or 11.03, there shall be no Termination Payment and (b) if the CPUC or SCE exercises a termination right as set forth in Sections 10.03, the Termination Payment shall be calculated in accordance with Section 10.03.

10.08 Other Remedies.

The Termination Payment shall be in addition to any other remedies the Non-Defaulting Party may have available at law or in equity against the Defaulting Party.

ARTICLE 11. FORCE MAJEURE

11.01 Force Majeure Claim.

If either Party is unable to perform its obligations under this Agreement due to a Force Majeure Event, such Party shall be excused from whatever performance is affected by the Force Majeure Event only to the extent so affected; provided:

- (a) the claiming Party, no more than fourteen (14) days after the initial occurrence of the claimed Force Majeure Event, gives the other Party Notice describing the particulars of the occurrence;
- (b) the claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure Event as defined in this Agreement;
- (c) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure Event; and
- (d) as soon as the claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption;

provided further, a failure to make payments when due that accrued prior to the Force Majeure Event shall not be excused.

11.02 SCE's Mitigation Rights.

If Implementer is unable to perform its obligations, in whole or in part, under the Agreement because of a Force Majeure Event, then SCE may, with notice to Implementer, take all action as is reasonably necessary to restore the impacted Service, including taking control of the impacted Service or engaging a third-party service provider to provide services, and payment for the Services shall be equitably adjusted.

11.03 Termination Due to Force Majeure Event.

Either Party may terminate this Agreement on Notice, if a Force Majeure Event extends for more than one hundred eighty (180) consecutive days.

ARTICLE 12. INDEMNIFICATION

12.01 Implementer's Indemnification Obligations.

With respect to any third-party claim, suit, action, or proceeding, Implementer shall indemnify, defend, and hold harmless each SCE Indemnitee **[and any other Participating IOU and such Participating IOU's Affiliates, and their respective officers, directors, employees, agents, representatives, successors, and assigns]** from and against any and all causes of action, demands, losses, liabilities, damages and claims, and all related costs and expenses (including any costs or expenses related to increased regulatory or administrative oversight), fines, penalties, or interest, including reasonable legal fees and costs, directly or indirectly arising out of, in connection with, resulting from, relating to, or involving in any way, in whole or in part, any of the following: **[SCE Note: Orange bracketed language to be used for Statewide Programs]**

- (a) Any breach by Implementer of its material obligations under the Agreement;
- (b) That the Services, in whole or in part, or use of the Services in accordance with the Agreement, result in an actual or claimed infringement upon, or violation of, any Proprietary Right or other right of any third party;
- (c) Any bodily injury (including death, disease, illness, sickness, or exposure to any toxic or harmful chemical, material, biological agent, fungus, mold, germ, bacteria, or virus), personal injury, or property damage actually or allegedly resulting, in whole or in part, from Implementer's implementation of the Program and any acts or omissions related to the Program;
- (d) Any violation of Applicable Laws, Applicable Standards or Contractor Safety Requirements Standards by Implementer;
- (e) Any (i) release of a Hazardous Material; (ii) enforcement or compliance proceeding relating to or in connection with any violation of any environmental law; or (iii) action reasonably necessary to abate, investigate, remediate, or prevent a violation or threatened violation of any environmental law by Implementer;
- (f) That SCE is liable as an employer or joint employer, or as a client employer within the meaning of California Labor Code § 2810.3 (as may be amended from time to time), or as the hirer of an independent contractor, with respect to any Personnel, or the failure of any Personnel to be recognized as exclusively employed by Implementer or Subcontractor and not by SCE, including any claims relating to immigration status, payment or non-payment of any statutory withholding charges, SCE employee benefits, or other legal or financial obligations, including any wage and hour-related claim such as overtime, minimum wage, meal/rest break, wage statement, waiting time or other wage penalties, claims for enforcement of wage and hour-related claims, unfair business practices/unfair competition, the California Private Attorneys General

Act, paid or unpaid medical or family leave, reimbursement of necessary work expenses, contribution taxes, benefits and penalties payable under Workers' Compensation (including the Workers' Compensation Reform Act of 1989), unemployment compensation, disability benefit, accommodation of a disability, old age benefit, tax withholding laws, discrimination, harassment, or retaliation;

(g) Any payments to any Subcontractors arising from, or in connection with, the Agreement, including any demands for payment, invoices, or liens, or Implementer's delay or failure to pay any Subcontractors the compensation, monies, wages, or other payment due or allegedly due such Subcontractors with regard to any Services performed hereunder;

This indemnity shall not apply to any third-party claim to the extent such claim results from the sole negligence, active negligence, or willful misconduct of the SCE Indemnitee, as determined by a lawful authority or admitted by the SCE Indemnitee, nor shall this indemnity apply to the extent prohibited by, or made void or unenforceable under, Applicable Laws (including California Civil Code § 2782).

12.02 No Limitation and No Condition Precedent.

The indemnity obligations set forth in Section 12.01 shall be separate from, and shall not be limited by, the insurance requirements set forth in Exhibit F (Insurance Requirements). Insurance coverage provided under any of Implementer's or Subcontractors' policies for any loss, amount, or matter Implementer is required to indemnify shall reduce Implementer's indemnity obligations under the Agreement only if, and to the extent, the insurer(s) for such insurance coverage promptly accepts liability and unconditionally pays for such loss, amount, and liability. If any SCE Indemnitee brings suit or initiates any other legal proceeding against any insurer in connection with any insurance that is subject to the Agreement, Implementer shall advance and indemnify the SCE Indemnitee's reasonable costs and expenses (including attorneys' fees) in bringing or maintaining such suit or legal proceeding. The obligations of Implementer under Section 12.01 shall arise at such time, if any, that any claim is first made against, or any loss is incurred by, any SCE Indemnitee. The entry of judgment or finding or the initiation of arbitration, litigation, or any formal legal action of any claim shall not be a condition precedent to the obligations of Implementer hereunder.

12.03 Claims.

Implementer shall be entitled to have sole control over the defense and settlement of any claim or portion of a claim for which Implementer is indemnifying any SCE Indemnitee, except any action by an SCE Indemnitee against any of Implementer's or Subcontractor's insurers as provided in Section 12.02, provided that (a) the SCE Indemnitee shall be entitled to participate in the defense of the claim and to employ counsel at their own expense to assist in the handling of the claim and (b) Implementer shall not settle any claim in a manner which would involve an admission of guilt or wrong-doing, would

impose liability or any obligation on SCE, or restrict SCE's right, title, or interest in any property or the Services, including all intellectual property and other Proprietary Rights, without SCE's prior written consent.

ARTICLE 13. CONSEQUENTIAL DAMAGES

WITH THE EXCEPTION OF DAMAGES (A) ARISING FROM, OR IN CONNECTION WITH, THE UNLAWFUL, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY; (B) THAT ARE THE SUBJECT OF IMPLEMENTER'S INDEMNIFICATION OBLIGATIONS PURSUANT TO ARTICLE 12; (C) ARISING FROM, OR IN CONNECTION WITH, EITHER PARTY'S BREACH OF ITS OBLIGATIONS UNDER THE AGREEMENT WITH RESPECT TO CONFIDENTIAL INFORMATION; OR (D) ARISING FROM, OR IN CONNECTION WITH BREACH OF OBLIGATIONS UNDER EXHIBIT E (CYBERSECURITY AND DATA PROTECTION EXHIBIT) OR EXHIBIT D (CUSTOMER DATA), NEITHER PARTY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS, OR ASSIGNS SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, WHETHER IN CONTRACT (INCLUDING INSURANCE) OR TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), INCLUDING LOSS OF USE, OR UNDER-UTILIZATION, OF LABOR OR FACILITIES, OR LOSS OF REVENUE OR ANTICIPATED PROFITS, ARISING OUT OF, IN CONNECTION WITH, OR RELATING TO THE AGREEMENT.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 14. INTELLECTUAL PROPERTY

14.01 SCE Data.

SCE shall retain all rights, title and interest in SCE Data.

14.02 Program Intellectual Property

All patent rights, copyrights, trademark rights, trade secret rights, services marks, database rights, design rights, or other intellectual property or proprietary rights of any sort throughout the world ("Proprietary Rights") created, conceived, developed, or reduced to practice during the performance of the Services shall be "works for hire" and the property of SCE. If any such rights are deemed not to be a "work for hire", Implementer hereby irrevocably assigns, transfers, and conveys to SCE all right, title, and

interest to such rights throughout the world. Upon SCE request, Implementer shall, at its expense, execute all documents and take all actions necessary to further evidence, record, and perfect such assignments, or to obtain, maintain, enforce, or defend any such rights. Each Party retains all right, title, interest, and sole ownership rights in the Proprietary Rights created, conceived, developed, or reduced to practice prior to the performance of the Services or that Implementer can demonstrate were developed by Implementer independently of the Services and without use of any amounts paid by SCE hereunder. If the Services use or include the Proprietary Rights of Implementer or others, or such Proprietary Rights are necessary for the use or enjoyment of the Services, Implementer hereby grants to SCE a fully-paid, worldwide, non-exclusive, irrevocable, perpetual, transferable, sublicensable, royalty-free license to use, reproduce, publish, modify, or create derivative works of such Proprietary Rights.

ARTICLE 15. CONFIDENTIALITY AND PRIVACY

15.01 Confidentiality Obligation.

Each Party shall only use Confidential Information to perform its obligations and exercise its rights under the Agreement. Each Party shall and shall cause its Representatives to keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information. A Party may disclose Confidential Information to those of its Representatives who need to know such information if, (a) prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and are subject to confidentiality duties or obligations that are not less restrictive than this Agreement and (b) to the extent any Representative is also a competitor of Implementer in the energy efficiency market, appropriate precautions have been taken to prevent such Representative from gaining an undue competitive advantage in such market as a result of such access. Each Party shall be responsible for any breach of this Agreement by its Representatives.

15.02 Permitted Disclosures.

- (a) SCE and Implementer may disclose Confidential Information to the “Independent Evaluator,” as defined in CPUC Decision 18-01-004. SCE and the Independent Evaluator may disclose Confidential Information to Governmental Authorities, SCE’s Procurement Review Group established by the CPUC in Decision 18-01-004 (“PRG”), or any discovery or data request of a party to any proceeding before the CPUC, Federal Energy Regulatory Commission or California Energy Commission. Neither SCE nor the Independent Evaluator shall have any liability whatsoever to Implementer in the event of any unauthorized use or disclosure by any Governmental Authority or the PRG, of any Confidential Information or other information disclosed to any of them by SCE or the Independent Evaluator.

- (b) The Parties may disclose Confidential Information to the extent necessary to comply with Applicable Laws, any accounting rule or standard, and any applicable summons, subpoena or order of a Governmental Authority, and any exchange rule.
- (c) Either Party shall be permitted to disclose the terms of this Agreement when they become “public” consistent with the CPUC’s “Confidentiality Matrix,” in Exhibit C of D.23-02-002 or as otherwise ordered by the CPUC.
- (d) SCE may disclose the terms of the Draft Implementation Plan in seeking CPUC Approval.
- (e) Implementer may disclose non-price information to Customers, or bona fide potential Customers, for the sole purpose, and only to the extent necessary, for proper performance of this Agreement.

15.03 Duty to Seek Protection.

- (a) In connection with requests or orders to produce Confidential Information protected by this Agreement and in accordance with a summons, subpoena, order or similar request of a Governmental Authority, or pursuant to any discovery or data request of a party to any proceeding before a Governmental Authority, each Party, to the extent permitted by Applicable Laws, (i) shall promptly notify the other Party of the existence, terms, and circumstances of such requirement(s) so that such other Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement, and (ii) shall, and shall cause its Representatives to, cooperate fully with such other Party, to the extent permitted by Applicable Laws, in seeking to limit or prevent such disclosure of such Confidential Information. Notwithstanding the preceding sentence, the requirements under this Section 15.03(a) do not apply to Section 15.02(a).
- (b) If a Party or its Representatives are compelled to make disclosure in response to a requirement described in Section 15.03(a), the compelled person may disclose only that portion of the Confidential Information protected by this Agreement which its counsel advises that it is legally required to disclose and shall exercise reasonable efforts to obtain assurance that confidential treatment will be accorded to the disclosed Confidential Information protected by this Agreement.

15.04 Privacy.

All capitalized terms used in this Section 15.04 but not defined in this Agreement shall have the meanings set forth in the CCPA. With respect to Personal Information Implementer obtains in connection with performing the Services, the following shall apply:

- (a) The Personal Information made available to Implementer is solely for the limited and specified purpose of performing the Services. SCE has the right to take reasonable and appropriate steps (i) to ensure that Implementer retains, uses, and discloses Personal Information in a manner consistent with SCE's obligations under Applicable Privacy Laws and (ii) upon reasonable notice to Implementer, to stop and remediate the unauthorized use of Personal Information;
- (b) Implementer represents, warrants, and covenants that Implementer shall comply with Applicable Privacy Laws and provide the same level of privacy protections as required of SCE under Applicable Privacy Laws;
- (c) Implementer shall promptly notify SCE if it can no longer meet its obligations under Applicable Privacy Laws;
- (d) Implementer shall not retain, use, or disclose Personal Information except as permitted by SCE and Applicable Privacy Laws (i) for any purpose other than performing the Services or (ii) outside of the direct business relationship between SCE and Implementer;
- (e) Implementer shall not Sell or Share Personal Information;
- (f) Implementer may not combine Personal Information with "personal information" (as defined under the CCPA) that Implementer receives from, or on behalf of, another Person, or Collects from its own interactions with a Consumer unless such combination is necessary to perform any Business Purpose to perform the Services, and is allowed under the Agreement and Applicable Privacy Laws;
- (g) Implementer shall enable SCE to comply with consumer requests made pursuant to Applicable Privacy Laws; and
- (h) Implementer agrees that SCE may monitor its compliance with Section 15.04, including through manual reviews, automated scans, regular assessments, audits, or other technical and operational testing, at least once every twelve (12) months.

If Deidentified Information is made available to Implementer in connection with performing the Services, Implementer agrees to (i) take reasonable measures to ensure that the information cannot be associated with a Consumer or Household, (ii) publicly commit to maintain and use the information in deidentified form and not to attempt to reidentify the information except as permitted under Applicable Privacy Laws, and (iii) contractually obligate any further recipient to comply with these requirements.

If Implementer is deemed a “Contractor” under the CCPA, Implementer certifies that it understands the restrictions regarding Personal Information set forth in this Section 15.04 and agrees that it shall comply with them.

ARTICLE 16. MISCELLANEOUS

16.01 Governing Law.

Governing Law. This Agreement shall be governed by the internal laws of the State of California, with reference to its conflict of laws principles. [SCE Note: Non-Modifiable Term].

16.02 Venue.

In the event of any litigation to enforce or interpret any terms of this Agreement, such action shall be brought in a Superior Court of the State of California located in Los Angeles County (or if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the Central District of California), and the parties hereby submit to the exclusive jurisdiction of such courts. [SCE Note: Non-Modifiable Term]

16.03 Disputes.

(a) Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Implementer’s contract representative and Company’s contract representative by good faith negotiation efforts shall be referred to a vice president of Company and an officer of Implementer for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If Company and Implementer cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), Company and Implementer shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Implementer shall have right to request arbitration or mediation to resolve the dispute and Company shall be required to participate in arbitration or mediation in good faith. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated

as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference. [SCE Note: Non-Modifiable Term]

(b) Any dispute that is not resolved in accordance with Section 16.03(a) and in which arbitration, mediation, or litigation is pursued shall be resolved in accordance with the process and procedures set forth in Exhibit H (Dispute Resolution).

16.04 Provisional Relief.

In addition to any other remedy a Party may have at law or in equity, either Party may seek immediate preliminary injunctive relief or other preliminary judicial relief if, in its reasonable, good-faith judgment, such action is necessary to avoid irreparable harm. Despite such action, the Parties shall continue to participate in good faith in the Dispute Resolution procedures specified in Section 16.03. The Parties agree that irreparable harm will occur if Article 15 (Confidentiality and Privacy), Section 7.08 (Document Retention), Section 7.09 (Audit Rights), Exhibit D (Customer Data), or Exhibit E (Cybersecurity and Data Protection Exhibit) are breached or are attempted or threatened to be breached. The preceding list is not exhaustive; irreparable harm may occur in other circumstances.

Such a request for provisional relief does not waive a Party's right to seek other remedies for the breach of the provisions specified above in this Section 16.04, notwithstanding any prohibition against claim-splitting or other doctrine.

16.05 Assignment.

This Agreement is binding on each Party's successors and permitted assigns. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect change of control of Implementer (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of SCE, which consent shall not be unreasonably withheld. Any requests for consent to assignment shall be provided at least forty-five (45) days in advance of the assignment date.

16.06 Entire Agreement.

The Agreement contains the complete understanding between the Parties and merges and supersedes all prior representations and discussions pertaining to the Agreement. Any link included herein or attachment or exhibit attached hereto are made a part of the Agreement; provided, however, in no event will any of Implementer's shrink-wrap or click-through terms or agreement (or other electronic agreement), or terms set forth or referenced online or in any documentation or acknowledgement provided by Implementer, constitute a part of the Agreement or a binding agreement with respect to

the Services, even if a user or officer of SCE purports to have affirmatively accepted such terms.

16.07 Amendment.

This Agreement can only be amended by a writing signed by both Parties.

16.08 Order of Precedence.

The terms in the Agreement are to be treated as cumulative or additive. However, to the extent inconsistent provisions in the Agreement render it impossible to perform both terms, the documents shall have the following priority: (a) amendments to this Agreement, from the most recent to the earliest; (b) exhibits or attachments to this Agreement other than Exhibit C (Program Guidelines); (c) the remainder of this Agreement; and (d) the then controlling Exhibit C (Program Guidelines) or Final Implementation Plan. Notwithstanding the foregoing, to the extent there is a conflict between the Standard Contract Terms and Conditions set forth in Attachment A of CPUC decision D.23-02-002 and another term in the Agreement, the Standard Contract Terms and Conditions shall control.

16.09 Third-Party Beneficiaries.

This Agreement shall not impart any rights enforceable by any third party; other than a permitted successor or assignee bound to this Agreement; [\[provided, each Participating IOU \(other than SCE\) shall be a third party beneficiary to this Agreement, and is entitled to the rights and benefits hereunder and shall have the right to enforce this Agreement as if it were a party hereto\].](#) [\[SCE Note: Orange bracketed language to be used for Statewide Programs\]](#)

16.10 Independent Contractors.

- (a) The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, or partnership relationship between the Parties or to impose any partnership obligations or liability on either Party in any way.
- (b) The Services shall be performed using Implementer's own manner and means of performance of the work. SCE does not retain the right or authority to direct the manner and means of the performance of the work.
- (c) SCE shall have no duty, liability, or responsibility of any kind for the acts or omissions of Personnel. No Personnel will be entitled to any benefits afforded to SCE's employees, including workers' compensation, disability insurance, vacation, health benefits, or retirement benefits or contributions. Implementer shall be solely responsible for providing to their respective Personnel, at their sole expense, wages, salaries, or other remuneration, state disability insurance,

workers' compensation or any other required insurance, benefits, wages, or minimum labor standards under federal, state, or local rule, as well as all licenses and permits usual and/or necessary for performing the Services.

(d) Implementer shall have sole responsibility for payment of any and all taxes incurred as a result of Implementer's performance of the Services and compensation hereunder, including estimated foreign, federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, and for filing all required tax forms with respect to any amounts paid by SCE to Implementer hereunder.

16.11 Waiver.

The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

16.12 California Commercial Code Waiver.

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral, financial assurances and adequate assurances. Except as expressly set forth in this Agreement, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of this Agreement; and all implied rights relating to financial assurances arising from Section 2609 of the California Commercial Code or case law applying similar doctrines, are hereby waived.

16.13 Section Headings; Technical Terms.

The headings used in this Agreement are for convenience and reference purposes only. Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.

16.14 Survival.

Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including representations, warranties, covenants and rights and obligations with respect to audits, indemnification, payment, settlement, confidentiality, remedies, limitation of liabilities, dispute resolution, and limitations on third party sales, shall so survive.

16.15 Severability.

If any term, section, provision or part of this Agreement, or the application of any term, section, provision or part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

16.16 Rules of Construction.

- (a) The term “including” when used in this Agreement is by way of example only and may not be considered in any way to be in limitation.
- (b) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (c) Where days are not specifically designated as Business Days, they shall be considered as calendar days.
- (d) Any reference to any Applicable Laws, tariff, government department or agency, regional reliability council, or accounting standard includes any successor thereof.

16.17 Multiple Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

16.18 Notices.

All notices, requests, demands, and determinations under the Agreement (other than routine operational communications) shall be in writing, with a copy sent by electronic mail, and shall be deemed duly given to the appropriate address(es) set forth below (a) when delivered by hand; (b) one (1) day after being given to an overnight courier with a reliable system for tracking delivery; (c) three (3) days after the day of mailing, when mailed by registered or certified United States mail with return receipt requested and postage prepaid; or (d) if by e-mail with PDF copy attached at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be deemed given at the close of business on the next Business Day. A Party may, from time to time, change its address or designee for notice purposes by giving the other Party notice in accordance with this Section 16.18 of the new address or designee and the date upon which the new address or designee shall become effective.

If to SCE:

[REDACTED]

If to Implementer:

[REDACTED]

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have read this Agreement, understand it, and agree to be bound by its terms as of the Effective Date.

[IMPLEMENTER'S NAME],

a *[Implementer's jurisdiction of organization and type of organization]*.

By:

[Name]

[Title]

Date: _____

SOUTHERN CALIFORNIA EDISON COMPANY,

a California corporation.

By:

[Name]

[Title]

Date: _____

EXHIBIT A DEFINITIONS

“Actual TSB” means the TSB actually delivered for each Project calculated using the CET, as determined by SCE using the applicable Project’s gas savings, demand savings, energy savings, actual equipment costs, actual labor costs, and other CET required values and which is confirmed by SCE in connection with:

- (a) an approved Post Installation Report for a Project utilizing a Customized Calculated Approach;
- (b) an approved Second Post Installation Report for a Project Utilizing an NMEC-Based Site-Specific Approach;
- (c) an approved Deemed Post-Installation Package for a Project utilizing a Deemed Approach; [or]
- (d) an approved SEM Reporting Period Performance Report for a Project utilizing an SEM Approach[; or]
- (e) an approved Population NMEC Quarterly Report for a Project utilizing a Population NMEC Approach].

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

“Agreement” has the meaning set forth in the preamble.

“AI Tool” means any platform, application, or system that incorporates artificial intelligence, including machine learning technology, large language models, neural networks, or statistical learning algorithms.

“Alternate Verification Requirement” means a document submitted by Implementer that presents alternative documentation (such as data, photographs, or other materials) that deviates from the applicable Measure Checklist, but is intended to satisfy the Measure Package requirements for a specific Measure that utilizes a Deemed Approach.

“Annual TRC Ratio” means the net benefit-cost ratio located in the CET output file and results from applying the methodology set forth in CPUC EE Decisions & Guidance, the EE Policy Manual, and the Standard Practices Manual, which measures the net costs of a demand-side management program, as further described in the Standard Practices Manual, and which is the primary indicator of energy efficiency cost effectiveness determined by SCE at the conclusion of each calendar year.

“Applicable Law(s)” means any and all acts, codes, statutes, laws, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, directives, permits, guidelines, policies, and interpretations (to the extent mandatory) (as any of them may be amended from time to time) of any Government Authority, or any department or agency of any government authority, to the extent having jurisdiction over Implementer, SCE, or either of their respective Affiliates, the performance of the Services, the Agreement, or in connection with testing, operation, or maintenance of the Services, including Applicable Privacy Laws, and CPUC EE Decisions & Guidance.

“Applicable Privacy Laws” means any Applicable Laws applicable to a Party’s collection, use, storage, distribution, or processing of Personal Information, including the California Consumer Privacy Act, California Civil Code § 1798.100 et seq. (as may be amended from time to time), and its implementing regulations (collectively, “[CCPA](#)”).

“Applicable Standards” means those practices, methods, specifications, codes, acts, equipment, and standards set forth or referenced in the Agreement; provided that, if no specific practice, method, specification, code, acts, equipment, or standard is set forth or referenced in the Agreement for a particular portion of the Services, then the practices, methods, specifications, codes, acts, equipment, and standards for those Services shall be those sound and prudent practices, methods, specifications, codes, acts, equipment and standards generally engaged in or observed by professional firms regularly involved in services similar to the Services as well as those industry standards and best practices of Implementer’s industry.

“Approach” means either a (a) Customized Calculated Approach, (b) Deemed Approach, (c) NMEC-Based Site-Specific Approach, (d) Population NMEC Approach, or (e) SEM Approach.

“Bankrupt” means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday or the Friday immediately following Thanksgiving. A Business Day begins at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.

“California SEM Design Guide” means the California SEM Design Guide For: Cycle 1, 2 and 3, Version 1.01 prepared by Sergio Dias Consulting LLC dated July 5, 2022, or successor thereof, currently found at the following link: [CA SEM Design Guide For: Cycle 1, 2, and 3 Version 1.01, July 5, 2022](#).

“California SEM M&V Guide” means the California SEM M&V Guide, Version 3.02 prepared by Sergio Dias Consulting LLC dated July 6, 2022, or successor thereof, currently found at the following link: [CA SEM M&V Guide Version 3.02, July 06, 2022](#).

“CET” means the methodology established by the CPUC for evaluating the cost-effectiveness of energy efficiency programs.

“Company” has the meaning set forth in the preamble.

“Confidential Information” means all information in any format or medium (a) provided or made available by the disclosing party to the receiving party in connection with the Agreement or (b) prepared by receiving party to the extent containing or based upon disclosing party’s Confidential Information. Confidential Information does not include information (i) that is available to the public other than as a result of a disclosure by receiving party, (ii) available to receiving party on a non-confidential basis from a third party who had a lawful right to disclose this information without obligation to restrict its further use or disclosure, or (iii) receiving party can demonstrate has been independently developed without a violation of the Agreement. For purposes of this Agreement, Personal Information shall be treated as Confidential Information regardless of whether such information may be available in the public domain so as to prevent the further proliferation of such information.

“Contractor Safety Requirements Standard” means the handbook located on SCE’s website, currently at the following website address: <https://on.sce.com/CSRS>, which may be modified from time to time throughout the Term.

“Corrective Action Plan” means a plan submitted by Implementer, upon request by SCE, outlining steps to address underperformance in Program delivery or cost-effectiveness, including issue analysis, a timeline to meet targets, strategies for improvement, and customer participation details.

“Covered Personnel” has the meaning set forth in Section 4.10(a)(i). [SCE Note: Non-Modifiable Term]

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means a decision of the CPUC or a disposition of the CPUC’s Energy Division that (a) is final and no longer subject to appeal or no longer subject to a request for CPUC review of an Energy Division disposition, which approves this Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion; and (b) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion..

“CPUC EE Decisions & Guidance” means any existing or subsequent decisions, resolutions, rulings or guidance documents related to energy efficiency, including, without limitation, the EE

Policy Manual, the Standards Practice Manual, in each case as may be amended from time to time by the CPUC.

“CPUC Inspection” has the meaning set forth in Section 6.03.

“CPUC Inspected Project” has the meaning set forth in Section 6.03.

“Customer-Implementer Agreement” means an agreement executed between a Customer and Implementer in order for Customer to participate in the Program. For the avoidance of doubt, SCE shall not be a party to the Customer-Implementer Agreement.

“Customer(s)” means a person or entity that is participating in the Program.

“Customer Permits” means all applications, approvals, authorizations, clearances, consents, filings, licenses, orders, or permits required by Applicable Law, or any Governmental Authority, for the Installation of any Measure(s) at a Site.

“Customer Provided Customer Data” has the meaning set forth in Section 7 of Exhibit D (Customer Data).

“Customized Calculated Approach” means a method for determining TSB for Measures without a Measure Package conducted pursuant to a uniquely determined engineering calculation.

“Cyber Incident” means (a) any accidental or unauthorized access to, use of, or other breach in the security of SCE Computing Systems or Implementer’s computing systems that contain SCE Data or causes any disruption to the business operations of SCE or (b) any accidental or unauthorized access, interception, disclosure, acquisition, use, modification, loss, damage, or destruction of SCE Data.

“Data Transfer Specifications” means the excel template prepared by SCE that will be used to upload Project data and attachments to SCE’s energy efficiency system. SCE may update the Data Transfer Specifications from time to time in accordance with CPUC EE Decisions & Guidance

“Deemed Approach” means a method for determining TSB for Measures that have a Measure Package.

“Deemed Post-Installation Inspection” means the inspection by Implementer of all or any portion of a Project to determine if (a) all Measures in the Project are operating or otherwise being implemented as planned and designed and (b) the Project was installed consistent with (i) the applicable Measure Checklist and (ii) the applicable Measure Package.

“Deemed Post-Installation Package” means a report submitted by Implementer to SCE, setting forth the findings from the applicable Deemed Post-Installation Inspection, that includes documentation necessary to demonstrate Installation of a Measure in compliance with the

applicable Measure Checklist and the applicable Measure Package, as well as all other applicable CPUC EE Decisions & Guidance including but not limited to all the Statewide Deemed Workpaper Rulebook.

“Deemed Pre-Installation Package” means, if required by the applicable Measure Checklist, the compilation of documents required by the Data Transfer Specifications and/or Measure Checklist setting forth the findings from an inspection conducted by Implementer consistent with the applicable Measure Package.

“Defaulting Party” has the meaning set forth in Section 10.01.

“Draft Implementation Plan” means the draft implementation plan prepared by Implementer that is based on the Program Guidelines, but does not yet incorporate stakeholder feedback.

“Draft Population NMEC M&V Plan” means the detailed plan prepared by Implementer describing the process for the evaluation and estimation of TSB for Projects using a Population NMEC Approach. The Draft Population NMEC M&V Plan must comply with all requirements of the NMEC Rulebook and CPUC EE Decisions & Guidance.

“Early Termination Date” has the meaning set forth in Section 10.02(a).

“EE Policy Manual” means the Energy Efficiency Policy Manual, or successor thereof, published by the CPUC that provides policies, rules, reference documents, CPUC decisions and CPUC resolutions that govern the administration of energy efficiency programs, as modified from time to time.

“Effective Date” has the meaning set forth in the preamble.

“Eligible Measures” means the list of Measures eligible for use as part of the Program. The Eligible Measures are set forth in the Program Requirements.

“Eligible NAICS Codes” means the list of NAICS Codes eligible for inclusion in the Program. The Eligible NAICS Codes are set forth in the Program Requirements.

“Event of Default” has the meaning set forth in Section 10.01.

“Expected TSB” means the TSB Implementer expects to provide to SCE for a Project as calculated using the CET, as determined by SCE using the applicable Project’s expected gas savings, demand savings, energy savings, equipment costs, labor costs, and other CET required values.

“Final Implementation Plan” means the then-current version of the implementation plan that is publicly posted to the relevant CPUC website by SCE in accordance with Section 1.04.

“Final Payment” has the meaning set forth in either Section 3.02(a)(i), Section 3.02(b)(ii), [or] Section 3.02(c)(iii), [or Section 3.02(e)(i)] as applicable, based on the approach utilized by the Project.

“Final Population NMEC M&V Plan” means the Draft Population NMEC M&V Plan that is approved by the CPUC for the Program.

“First Time Mid-Year Report” has the meaning set forth in Section 5.06(a)(i).

“Force Majeure Event” means any unforeseeable event or circumstance, or unforeseeable combination of events or circumstances, that arises after the Effective Date, is beyond the reasonable control of, and not the result of the negligent or intentional actions or omissions of, or caused by, the claiming party, and is unavoidable or could not be prevented or overcome by the reasonable efforts and due diligence of the Party claiming the event of 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 of extraordinary magnitude, Unusually Severe Weather, lightning, floods, Disasters, 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.

Force Majeure Event shall not include weather conditions other than Unusually Severe Weather; strikes or other labor actions; any late deliveries, shortages, or unavailability of labor, equipment, or materials or events that affect the cost of labor, equipment or materials; insolvency or economic hardship (including lack of money); delays in transportation (including delays in clearing customs) other than delays in transportation resulting from Force Majeure Events; changes in Applicable Laws; actions of a government authority with respect to Implementer’s compliance with Applicable Laws or permits; any failure by Implementer to obtain or maintain permits it is required to obtain or maintain; and any other act, omission, delay, default, or failure (financial or otherwise) of any other entity.

“Governmental Authority” means:

- (a) Any federal, state, local, municipal or other government;
- (b) Any governmental, regulatory or administrative agency, commission, the system operator or similar entity, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or
- (c) Any court or governmental tribunal.

“Hazardous Material” means any substance, waste, water, or material which has been designated as hazardous or toxic by the U.S. Environmental Protection Agency, Occupational Safety and

Health Administration, California Environmental Protection Agency, or any other environmental agency now or subsequently authorized to regulate materials in the environment or workplace.

“HVAC” means heating, ventilation, and air conditioning.

“Implementer” has the meaning set forth in the preamble.

“Implementer Party” has the meaning set forth in Section 8.02(a).

“Implementer Permits” means all applications, approvals, authorizations, clearances, consents, filings, licenses, orders, or permits required by Applicable Law or any Governmental Authority, that Implementer is required to obtain in order to design and implement all aspects of the Program.

“Industry Best Practices” means those practices, methods, and standards which are expected from a skilled and experienced contractor with respect to the cybersecurity and privacy of data, systems, and other similar assets, and which are implemented in a prudent and effective manner. These include those consistent with leading technology, cybersecurity, and privacy industry standards and frameworks, such as the National Institute of Standards and Technology (NIST) Cybersecurity Framework, NIST Privacy Framework, NIST 800 series, and the International Organization for Standardization (ISO) 27000 series.

“Injury and Illness Prevention Program” means a set of safety policies and procedures that meets the requirements of all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code.

“Install”, “Installation”, “Installed” means the activities necessary to effectuate a Project, which may include development, construction, installation, implementation, or other activity necessary to effectuate a Measure, and may include removal of or reconfiguration of a facility or of certain existing equipment.

“Installation Overpayments” has the meaning set forth in Section 3.05(b).

“Installation Payment” has the meaning set forth in either Section 3.02(b)(i) or Section 3.02(c)(i), as applicable, based on the approach utilized by the Project.

“Installation Term” has the meaning set forth in Section 2.02.

“Interim Payment” has the meaning set forth in either Section 3.02(c)(ii) based on the approach utilized by the Project.

“Invoice Authorization” has the meaning set forth in Section 3.04(a).

“Invoice Date” has the meaning set forth in Section 3.04(b).

“Measure” means a service, product, technology or behavior whose installation and operation, or effectuation, as applicable, at a Site results in (a) a reduction in on-site energy or capacity use, compared to what would have happened without the service or product installation or (b) the replacement of fossil-fuel-based end uses with electric alternatives.

[“Measure Cap” has the meaning set forth in Section 3.01.] *[SCE Note: Deemed Measures on widget basis only]*

“Measure Checklist” means a document that identifies the documents, data, photographs, and other materials required for (a) SCE to claim TSB in accordance with CPUC EE Decisions & Guidance and (b) a particular Measure to meet its Measure Package requirements. As of the Effective Date all eligible Measure Checklists are posted on SCE’s Trade Ally Connect Website.

[“Measure Code” means the list of Measures identified by measure code in Section 3.02(e).] *[SCE Note: Deemed Measures on widget basis only]*

“Measure Package” means the CPUC approved document establishing the claimable energy efficiency savings for a Measure, the process and requirements to claim such savings, and eligibility requirements for such Measure to qualify.

“NAICS Code” means the numerical code assigned under the North American Industry Classification System to identify and classify a business by its primary economic activity.

“NMEC” means normalized metered energy consumption.

“NMEC-Based Site-Specific Approach” means an NMEC method for determining TSB for Measures without a Measure Package conducted pursuant to a uniquely determined engineering calculation at the Site level and such TSB are based on actual metered amounts at the Site, without reference to a control group or a treatment group.

“NMEC Rulebook” means that certain rulebook, or successor thereof, published by the CPUC that summarizes the CPUC’s requirements for programs and projects based on normalized metered energy consumption, which, as of the Effective Date, is located at the following website address: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/energy-efficiency/rolling-portfolio-program-guidance/nmec-rulebook-21-march-2025.pdf>

“Non-Defaulting Party” has the meaning set forth in Section 10.02.

“Notice” means any written communication, demand, or other formal notification required or permitted under this Agreement.

[“Participating IOU(s)” means each of SCE, San Diego Gas and Electric Company, Southern California Gas Company, and Pacific Gas and Electric Company.] *[SCE Note: Orange bracketed language for Statewide Programs. Revise based on IOU’s co-funding the program]*

“Party” or “Parties” has the meaning set in the preamble.

“Payment Cap” has the meaning set forth in Section 3.01.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Personal Information” means any information that identifies, relates to, describes, is capable of being associated with, or can reasonably be linked with, directly or indirectly, a particular natural person or household, or is otherwise defined as “personal information,” “personal data”, or “personally identifiable information” by Applicable Laws, including information regarding electric energy usage or electric service, including service account number, electricity demand, monthly billed revenue, credit history, rate schedule(s), meter data, or number or type of meters at a premise.

“Personnel” means Implementer’s or Subcontractor’s owners, principals, employees, temporary personnel, day laborers, agents, and representatives involved in the performance of the obligations under the Agreement.

“Population NMEC Approach” means an NMEC energy savings calculation approach to calculate TSB in which results are based on pre- and post-intervention energy usage data observed at the meter and calculated across a group of sites, rather than a modeled engineering forecast or deemed value (or a Site-level metered savings calculation). For Population NMEC Approach, measurement methods are fixed before the Program starts and apply to all Sites in the group in a uniform fashion, as opposed to NMEC-Based Site-Specific Approach measurement methods which may differ on a site-by-site basis.

“Population NMEC Measure Checklist” means a document that identifies the documents, data, photographs, and other materials required for SCE to claim TSB for Projects utilizing a Population NMEC Approach in accordance with CPUC EE Decisions & Guidance, the NMEC Rulebook and the Final Population NMEC M&V Plan.

“Population NMEC Post-Installation Inspection” means an inspection by Implementer of all or any portion of a Project to determine if (a) all Measures in the Project are operating or otherwise being implemented as planned and designed and (b) the Project was installed consistent with the (i) the applicable Population NMEC Post-Installation Package, (ii) the approved Program Verification Checklist, (iii) Final Population NMEC M&V Plan, and (iv) the NMEC Rulebook.

“Population NMEC Post-Installation Package” means a report submitted by Implementer to SCE, that includes documentation necessary to demonstrate Installation of a Measure in compliance with the applicable Population NMEC Measure Checklist, Final Population NMEC M&V Plan, Program Verification Checklist, Data Transfer Specifications, and the NMEC Rulebook, as well as all other applicable CPUC EE Decisions & Guidance. The Population NMEC Post-Installation

Package shall include the (a) Project and Measure descriptions, (b) Project costs and financial analysis, (c) Population NMEC Approach design and measure savings characterizations, (iv) final Project parameters for utility energy efficiency programs, (v) final Project cost and paid invoices and (d) any other supporting documentation for the Project and as required by SCE. The Population NMEC Post-Installation Package shall clearly identify if Implementer conducted a Population NMEC Post-Installation Inspection and if conducted include the findings thereof.

“Population NMEC Quarterly Report” means a report that among other things includes the evaluation and estimation of hourly TSB and both counterfactual and actual hourly energy (kWh) for pre (12 month) and post (completed) performance periods, per population/cohort and for each associated Site. The Population NMEC Quarterly Report must comply with and be prepared in accordance with all CPUC EE Decisions & Guidance, the NMEC Rulebook, the Final Population NMEC M&V Plan, the Data Transfer Specifications and the Program Verification Checklist.

“Post Implementation Performance Monitoring Period” means for Projects utilizing an NMEC-Based Site-Specific Approach, the period of time over which the TSB from energy efficiency interventions and retrofits are measured as set forth in the NMEC Rulebook, or successor thereof.

“Post Installation Report” means a report in the form of the Post Installation Report Template that includes, among other things, the (a) Project and Measure description, (b) measurement and verification plan, (c) Project cost and financial analysis, (d) post measurement and verification data analysis, (e) final project parameters for utility energy efficiency programs, (vi) final project cost and paid invoices, (f) final estimated TSB calculations, and (g) supporting documentation referenced in the appendix to the Post Installation Report Template.

“Post Installation Report Template” means that certain document published by the CPUC and titled “Post Installation Report Template” included in the Statewide Custom Project Review Guidance Documents, or successor thereof. The CPUC may update the Post Installation Report Template from time to time.

“Program” has the meaning set forth in Section 1.01.

“Program Administrators” means an entity that performs portfolio management of energy efficiency programs and program choice, as determined by the CPUC and as more fully described in the EE Policy Manual.

“Program Guidelines” has the meaning set forth in Section 1.01.

“Program Requirements” has the meaning set forth in Section 1.01.

“Program Verification Checklist” means a checklist prepared by SCE that identifies the Customer and Program level tracking requirements that Implementer must collect and provide to SCE. SCE

may update the Program Verification Checklist from time to time in accordance with CPUC EE Decisions & Guidance.

“Project” refers to the defined set of one or more Measures designed, Installed, implemented, or otherwise effectuated at a Site utilizing the same Approach in accordance with this Agreement.

“Project Feasibility Study” means a report in the form of the Project Feasibility Study Template that includes the (a) Project and Measure description, (b) measurement and verification plan, (c) Project cost and financial analysis, (d) Project eligibility, (e) Project driver, (f) estimated TSB calculation, and (g) supporting documentation referenced in the appendix to the Project Feasibility Study Template.

“Project Feasibility Study Template” means that certain document published by the CPUC and titled “Project Feasibility Study Template” included in the Statewide Custom Project Review Guidance Documents, or successor thereof. The CPUC may update the Project Feasibility Study Template from time to time.

“Proprietary Rights” has the meaning set forth in Section 14.02.

“Representatives” means the Party’s, or the Party’s Affiliates’, Subcontractor’s, officers, directors, employees, rating agencies, counsel, accountants and advisors.

“SCE” has the meaning set forth in the preamble.

“SCE Computing Systems” means SCE’s and its Affiliates’ respective electronic computing and information systems, computers, servers, applications, files, electronic mail, electronic equipment, wireless devices, databases, data storage and other data resources, and SCE-sponsored connections to the internet communications network.

“SCE Data” means any information provided or made available to Implementer or its Subcontractors by SCE, its customers or its or their representatives, including SCE Provided Customer Data and Customer Provided Customer Data, and all information Implementer or a Subcontractor derives from such information.

“SCE Indemnitee” means SCE and its Affiliates, and their respective officers, directors, employees, agents, representatives, successors, and assigns.

“SCE Inspection” has the meaning set forth in Section 6.02.

“SCE Inspected Project” has the meaning set forth in Section 6.02.

“SCE Provided Customer Data” means any data delivered or made available to Implementer, or a Subcontractor by SCE or its representatives pursuant to Exhibit D (Customer Data). SCE Provided Customer Data shall retain its classification as SCE Data regardless of any transformations applied

to convert raw data into a more usable format, including but not limited to, data visualization, aggregation, normalization, modeling, or analysis of SCE Provided Customer Data.

“Second Post Installation Report” means a second Post Installation Report prepared by Implementer for (a) all Projects that utilize an NMEC-Based Site-Specific Approach and (b) if required by the applicable Project Feasibility Study for Projects that utilize a Customized Calculated Approach.

“SEM Approach” means a Strategic Energy Management approach to calculate TSB that utilizes an NMEC methodology for a whole Site with Customer cohorts and which is conducted pursuant to an engineering calculation at the Site level based on actual metered amounts of the Site without reference to a control group or a treatment group. The SEM Approach methodology is set forth in the California SEM M&V Guide.

“SEM Reporting Period Performance Report” has the meaning given to such term in the California SEM M&V Guide.

“Serious Offense” has the meaning set forth in Section 4.10(a)(ii). [SCE Note: Non-Modifiable Term]

“Services” means collectively, all of the work to be performed by Implementer, either directly or through Subcontractors, including the design, marketing, advertising, outreach, Installation, purchase or effectuation of a Measure to implement the Program and deliver TSB to SCE in a manner consistent with the Agreement.

“Site” means the real property on which a Project is or will be located.

“Site-Level NMEC Technical Guidance Document” means that certain guidance published by the CPUC that summarizes the CPUC’s guidance on considerations for measurement and verification plans for site-level NMEC programs that intend to use NMEC to determine TSB, which may be updated from time to time and as of the Effective Date is located at the following website address: <https://www.cpuc.ca.gov/-/media/cpuc-website/files/legacyfiles/n/6442463694-nmec-rulebook2-0.pdf>.

“Statewide Custom Project Guidance Document” means that certain document, or successor thereof, published by the CPUC and titled “Statewide Custom Project Guidance Document” that provides guidelines for stakeholders to prepare custom energy efficiency project documentation and quality assurance.

“Subcontractor” means an entity chosen by Implementer to perform any work, services or activities for the Program.

“Subsequent Year Mid-Year Report” has the meaning set forth in Section 5.06(a)(ii).

“Term” has the meaning set forth in Section 2.01.

“Termination Payment” has the meaning set forth in Section 10.05.

“Total Expected TSB” means the total TSB expected to be delivered to SCE hereunder as set forth in Section 2 of the Program Requirements.

“TSB” means the sum of all electric system benefits (including ancillary services, capacity, transmission, and distribution benefits) and natural gas system benefits that a Measure or Project provides expressed as an avoided cost (in \$), as further described in CPUC Rulemaking 13-11-005 calculated using the CET.

“TSB Price” means the amount identified as “TSB Price” in the Program Requirements.

“Unusually Severe Weather” means (a) tornadoes, tidal waves, and named storms, in each case, affecting a location where Services are being performed or (b) any other weather event for which local officials call for mandatory public evacuations at a location where Services are being performed.

“Workforce Standards” has the meaning set forth in Section 4.07.

*** End of EXHIBIT A ***

EXHIBIT B
PROGRAM REQUIREMENTS

1. Program Name: [REDACTED]
2. Program Type: the Program is a “Resource” program, as described in CPUC EE Decisions & Guidance, that directly produces measurable and verifiable energy savings or demand reductions in the form of TSB.
3. Total Expected TSB: [REDACTED]
4. TSB Price: [\$REDACTED]
5. Approach to Attaining TSB:
 - Customized Calculated Approach
 - Deemed Approach
 - NMEC-Based Site-Specific Approach
 - Population NMEC Approach
 - SEM Approach

6. Target Customer:

[SCE residential customers.]

[Eligible NAICS Codes:]

Sector	Segment	NAICS Code	NAICS Code Vintage	Description of Segment
[SCE Note: edit based on Offer]				
[SCE Note: edit based on Offer]				

[SCE Note: edit based on Offer]				
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7. Eligible Measures.

#	Measure Package Name	Short Description	URL link or location name
1			
2			
3			

Notwithstanding anything to the contrary in this Agreement, Implementer may propose modifications to the list of Eligible Measure by providing written Notice to SCE clearly describing any proposed modifications. SCE may in its sole discretion accept or reject in whole or part any proposed revisions. Upon SCE's acceptance of any proposed modifications to the list of Eligible Measures, such approved Measures shall be deemed Eligible Measures.

*** End of EXHIBIT B ***

EXHIBIT C
PROGRAM GUIDELINES

The purpose of Exhibit C (Program Guidelines) is to further describe the Program that Implementer shall design and implement in accordance with the Agreement. This Exhibit C (Program Guidelines) shall be superseded by the Final Implementation Plan.

1. Program Attributes.

Budget and Savings		Information
1	Program Name	[enter program name here]
2	Program ID Number	[enter program ID number here]
6	Portfolio Segment (Resource Acquisition, Equity, Market Support, or Codes and Standards) ¹	[enter segment here]
7	Total Program Budget	[\$X,XXX,XXX]
9	Program Duration (Start Date – End Date)	[mm/dd/yy – mm/dd/yy]
18	Program Type (i.e., Non-Resource, Resource)	[enter program type here]
19	Delivery Type(s) (i.e., Upstream-Manufactured, Midstream-Distributor, Midstream-Retail, Downstream, Downstream - Direct Install, ² Codes & Standards ³)	[enter delivery type(s) here]
20	Intervention Strategies (e.g., Strategic Energy Management [SEM], Market Access Program [MAP], Direct Install, Incentive, Finance, Audit, Technical Assistance, Advocacy, Training, Marketing and Outreach, etc.)	[enter intervention strategies here]

¹ D.21-05-031 Ordering Paragraph 2.

² <https://cedars.sound-data.com/deer-resources/deemed-measure-packages/guidance/>.

³ Database for Energy Efficiency Resources (DEER) 2026 Delivery Types.

Budget and Savings		Information
21	M&V Methods (e.g., Deemed, Custom, NMEC – Population, NMEC – Site, SEM M&V, Randomized Controlled Trial [RCT], Other [if applicable, describe other M&V method])	[enter M&V methods here]

2. Implementer Plan Narrative

a. Program Description

[Enter program description here.]

b. Performance Tracking

[Examples of primary performance metrics:

- Total System Benefit (TSB) (\$)
- Total Resource Cost (TRC) Ratio]

[Examples of indicators used to track program progress:

- Forecasted TSB to date (\$)
- Actual/forecasted peak demand savings (kW)
- Actual/forecasted energy savings (kWh)
- Total incentive budget reserved (\$)
- Payments to aggregators to date (\$)]

c. Program Delivery and Customer Services

[Enter description of program delivery and customer services here]

d. Program Design and Best Practices

[Enter description of program design and best practices here]

e. Innovation

[Enter description of how innovation measures are incorporated into the program, as applicable.]

f. Pilots

[Enter information on program pilots, as applicable.]

g. Workforce Education and Training (WE&T)⁴

⁴ D.18-05-041, Page 20-21 and Ordering Paragraph 7.

[If this program includes WE&T, enter description here.]

h. Workforce Standards⁵

[HVAC Measures: Participating aggregators must adhere to all requirements for workforce standards established by the Commission. As part of the program participation agreement process, aggregators affirm qualifications and licensure to perform the proposed work.]

[Advanced Lighting Control Measures: Participating aggregators must adhere to all requirements for workforce standards established by the Commission. As part of the program participation agreement process, aggregators will affirm qualifications and licensure to perform the proposed work.]

i. Disadvantaged Worker Plan⁶

[Enter description of how the program will encourage aggregators to implement projects that can demonstrate they are using Disadvantaged Workers (DAWs) to install the project here.]

j. Market Access Programs

[Enter market access program information here, as applicable.]

k. Additional Information

[Enter additional information here, as applicable.]

3. Supporting Documents

a. Example of Program Theory and Program Logic Model

[Enter program theory information and insert program logic model here.]

b. Example of Process Flowchart

[Insert process flowchart here.]

c. Measures and Incentives

Measure Category	Expected Percentage of Total TSB
[_____]	XX%

⁵ D.18-10-008, Ordering Paragraph 1-2 and Attachment B, Section A-B, Page B-1.

⁶ D.18-10-008, Attachment B, Section D, page B-9.

[]	XX%
[]	XX%

Incentive rates will be posted on the program website and included in various program materials. Incentive rates may be updated from time to time.

d. Example of Diagram of Program

[Insert program diagram here.]

e. Program Measurement and Verification (M&V)

[Enter program M&V information here, as applicable]

f. Normalized Meter Energy Consumption (NMEC) Program M&V Plan

[Enter program M&V information here, as applicable]

g. Multi-DER IDSM Pilots Only⁷

[Enter information here, as applicable.]

h. SEM Programs Only

[Enter information here, as applicable.]

*** End of EXHIBIT C *

⁷ D.23-06-055, pages 77-80.

EXHIBIT D CUSTOMER DATA

1. **SCE Provided Customer Data.** Pursuant to CPUC Decision 23-02-002, Implementer may request SCE Provided Customer Data from SCE to assist with Program implementation. Subject to Section 2 of this Exhibit D (Customer Data), at least once a month from the date of [CPUC Approval of the Agreement][posting of the Final Implementation Plan] through the end of the Installation Term, SCE shall deliver to Implementer through a secure encrypted method to be designated by SCE, the segments of SCE Provided Customer Data set forth in Section 8 of this Exhibit D (Customer Data) for potential customers classified [under Eligible NAICS Codes][as an SCE residential customer].
2. **Conditions to Providing Customer Data.** SCE's obligation to deliver SCE Provided Customer Data shall be subject to the following:
 - a. Implementer's ability to receive a secure encrypted data transmission of SCE Provided Customer Data in the method designated by SCE. Implementer shall provide, at Implementer's expense, any information or technical resources reasonably requested by SCE to facilitate the secure encrypted delivery of SCE Provided Customer Data.
 - b. Implementer passing its most recent cyber security review by SCE, which review may be conducted once a year or anytime after the occurrence of a Cyber Incident.
 - c. Implementer's compliance with SCE's tariffs, including data minimization requirements.
 - d. Implementer is not subject to an ongoing or potential Event of Default.
3. **No Warranty of SCE Provided Customer Data.** SCE makes no representations or warranties that the SCE Provided Customer Data is accurate or complete and SCE has no obligation to verify the accuracy of any SCE Provided Customer Data. Implementer cannot rely on the SCE Provided Customer Data for any particular purpose, Implementer's use of the SCE Provided Customer Data is at its own risk, and Implementer releases SCE from any claims related to SCE's provision of SCE Provided Customer Data.
4. **Destruction.** Within five (5) Business Days after the end of the Installation Term, Implementer shall (a) delete, destroy, and render unrecoverable any and all (i) SCE Provided Customer Data and (ii) other reports, documents, memoranda, notes, summaries, analyses, extracts, compilations, studies or other material whatsoever that is based on such SCE Provided Customer Data and (b) deliver to SCE a certificate executed by an officer of Implementer certifying that all such materials have been deleted, destroyed, and

rendered unrecoverable consistent with the above.

5. **Permitted Use of SCE Provided Customer Data.** Implementer may use SCE Provided Customer Data solely for (a) Customer targeting, (b) Customer eligibility checks, (c) execution of the Program for enrolled Customers, (d) measurement and evaluation of Measures or Projects, (e) and eliminating participant double-dipping and/or double-counting of TSB, in each case solely for the Program. Implementer is prohibited from utilizing SCE Provided Customer Data for any purpose other than as expressly permitted in this Section, including for any other programs, services, or offerings.
6. **Subcontractor's Receipt and Use of SCE Provided Customer Data.** Implementer may share SCE Provided Customer Data with a Subcontractor only: (a) to the extent such sharing is necessary for Implementer to perform its obligations under the Agreement and (b) subject to such Subcontractor's prior completion and approval of a cybersecurity review by SCE, which approval may be withheld by SCE in its sole discretion. For the avoidance of doubt, Subcontractors shall be prohibited from sharing SCE Provided Customer Data with any third party.
7. **Information Provided by or on Behalf of Customers.** A Customer or potential Customer may (a) provide data regarding the Customer (potential Customer), Site (potential Site), or Program (including but not limited to energy usage data, account information, site characteristics, equipment, energy efficiency participation history) to Implementer or (b) authorize or permit Implementer to collect such data directly (each instance, such data, "Customer Provided Customer Data"). SCE is not responsible for the accuracy of any Customer Provided Customer Data. Any Customer Provided Customer Data in connection with this Agreement shall constitute SCE Data. Notwithstanding anything in the Agreement to the contrary, SCE may disclose and use Customer Provided Customer Data for purposes reasonably necessary to support or enhance SCE's business operations, including in the furtherance of services provided to its customers not related to this Program.
8. **Data Elements:**

#	Data Element	Data Element Description
1		
2		
3		
4		
5		

9. **[Participating IOU Data.** For any Participating IOU other than SCE, Implementer shall be solely responsible for initiating and managing requests for Customer or potential Customer data from such Participating IOU. If requested by the Participating IOU, Implementer shall negotiate in good faith any necessary agreements or data-sharing terms directly with such Participating IOU, in accordance with all Applicable Laws. SCE shall not be responsible or liable in any way for the availability, accuracy, completeness, or timeliness of any data requested from or provided by a Participating IOU. Furthermore, SCE shall have no obligation to facilitate, mediate, or otherwise support the exchange or transfer of such data.]
[SCE Note: Orange bracketed language to be used for Statewide Programs].

EXHIBIT E

CYBERSECURITY AND DATA PROTECTION EXHIBIT⁸

Implementer will, at its own expense, follow Industry Best Practices to comply with this Cybersecurity and Data Protection Exhibit throughout the Term and so long as Implementer has access to, or custody or control of, SCE Computing Systems or SCE Data, and will cause Subcontractors with access to, or custody or control of, SCE Computing Systems or SCE Data to do the same. Implementer will (1) implement and maintain appropriate measures, no less rigorous than Industry Best Practices, to protect its electronic network and systems and SCE Data from Cyber Incidents; (2) regularly review and revise those measures to address new or ongoing risks; and (3) cooperate with SCE to minimize risks to SCE Computing Systems and SCE Data. Implementer acknowledges that the requirements herein are in addition to the requirements in the Agreement.

The Parties acknowledge that to the extent expressly relating to access to SCE Computing Systems the requirements herein will only become applicable when and to the extent Implementer is given access to SCE Computing Systems.

1. CYBERSECURITY

- 1.1 **Information Security.** Implementer will implement and maintain a comprehensive information security program that contains appropriate administrative, technical, and physical safeguards to (1) protect its electronic network and systems from Cyber Incidents and (2) protect SCE Computing Systems and SCE Data in its possession, custody, or control from accidental or unauthorized access, acquisition, disclosure, use, modification, loss, damage, or destruction. Implementer will review, and update if needed, its information security program for adequacy at least annually and whenever there is a change in Implementer's practices that may affect the security of SCE Computing Systems or SCE Data. Implementer will not modify its information security program in any way that will weaken or compromise SCE Computing Systems or SCE Data. Implementer will use codes of conduct, ethics policies, and confidentiality agreements to promote awareness and compliance with its information security program.
- 1.2 **Training.** Implementer will (1) implement and maintain a training program to train Personnel to comply with its information security and privacy program prior to allowing Personnel access to SCE Computing Systems or SCE Data and at least annually thereafter; (2) require its Personnel to complete any supplemental training and review materials provided by SCE; (3) review, and update if needed, its training program for adequacy at least annually; (4) require its internal and

⁸ SCE Note: Exhibit may not be used is access being given to BCSI, CEII, or BES Cyber System.

third-party software developers to remain current on application security and secure coding Industry Best Practices; and (5) maintain records of its training program and, upon SCE's request, certify compliance with the training requirements herein.

1.3 **Security Incident Management**. Implementer will implement and maintain a security incident management program that (1) details the procedures for detecting, reporting, escalating, and remediating a security incident, Cyber Incident, or vulnerability and (2) identifies Implementer's response teams and defines their roles and responsibilities. Implementer will review, and update if needed, its security incident management program for adequacy at least annually. Upon reasonable suspicion or confirmation of a Cyber Incident, Implementer will:

- (A) As soon as possible, but in no event later than within one (1) business day, or sooner if required by Applicable Laws, notify SCE of the Cyber Incident;
- (B) Include in Implementer's notice the nature of the event, date and time of the event, suspected amount and type of information (e.g., Personal Information) exposed, and steps being taken to investigate the circumstances of the exposure;
- (C) Take all necessary steps to eliminate or contain the Cyber Incident and cooperate with and assist SCE in the investigation, analysis, and resolution of the Cyber Incident, including, if requested by SCE, providing breach notifications and identity theft prevention and mitigation services to individuals and regulatory and law enforcement agencies at Implementer's expense; and
- (D) Provide SCE with details of the investigation and final disposition of the Cyber Incident.

1.4 **Vulnerability Management**. Implementer will implement and maintain a vulnerability management program that (1) describes how Implementer manages networks, servers, workstations, portable devices, and other devices that may be (a) provided to SCE, (b) used to access SCE Computing Systems, or (c) used to transmit, access, use, or store SCE Data and (2) details the procedures for detecting, reporting, escalating, and remediating a vulnerability internally and to affected external parties. Implementer will regularly scan its systems and computing services and assess any materials or goods (including all software, firmware, hardware, and any third-party components) provided under the Agreement for vulnerabilities. Implementer will rank all vulnerabilities, and upon detection of any critical, high, or medium vulnerability, comply with the following:

- (A) Promptly remediate the vulnerability;
- (B) For vulnerabilities to Implementer's systems or computing services, if the vulnerability affects the security of SCE Computing Systems or SCE Data and cannot be remediated within thirty (30) days, notify SCE within one (1) business day of the vulnerability and ranking;
- (C) For vulnerabilities to Implementer's materials or goods, notify SCE within one (1) business day of the vulnerability and ranking;
- (D) Notify and securely deliver to SCE updates, patches, or any other technical remediation developed to address the vulnerability within thirty (30) days of detecting the vulnerability; and
- (E) If Implementer determines that it cannot remediate the vulnerability within thirty (30) days, promptly notify SCE with detailed information describing controls used by Implementer and/or recommended for SCE to mitigate the vulnerability.

2. DATA AND INFORMATION GOVERNANCE

- 2.1 Data Management. Implementer will (1) minimize the collection, processing, disclosure, use, and storage of SCE Data to what is directly relevant and necessary to perform its obligations under the Agreement and (2) encrypt SCE Data at rest and in transit.
- 2.2 Data and System Recovery. Implementer will back up SCE Data and Implementer-managed systems that access, use, or store SCE Data. Implementer's backup and recovery procedures will be tested at least once annually to ensure the availability and integrity of SCE Data in case of a system failure or disaster.
- 2.3 Return or Destruction of SCE Data. All SCE Data is the property of SCE and may only be used as set forth in the Agreement. Upon written request by SCE or within thirty (30) days of expiration or termination of the Agreement, in whole or in part, or, if applicable, any transition services period, Implementer will (1) promptly destroy, permanently delete, render irretrievable, or return to SCE all SCE Data in Implementer's possession or under its control, together with all copies thereof, and (2) if so directed, have an executive certify in writing to SCE the destruction or permanent deletion of such materials; provided, however, that Implementer may keep SCE Data in a secured archival system so long as such information will be overwritten in due course during normal operations.

3. OFF-SHORING

Implementer will not (1) access SCE Computing Systems outside the United States nor (2) transmit, access, use, or store SCE Data outside the United States.

4. NETWORK AND OPERATIONS MANAGEMENT

Implementer will prevent the unauthorized use of Implementer's systems with network security controls, such as Intrusion Detection System/Intrusion Prevention System (IDS/IPS), signature updates, firewalls, malware protection, wireless network management and encryption, and change control.

- 4.1 Network Logging. Implementer will maintain and review system and network audit logs, including access logs, for anomalies. Implementer will retain such logs for at least one (1) year after the Services are complete to allow for the effective auditing of historical events, to meet legal or regulatory requirements, and for law enforcement and forensic purposes.
- 4.2 Email Security. Implementer will secure access and prevent misuse of its email resources, including phishing attacks, and notify SCE of any confirmed or suspected incident involving the unauthorized use of Implementer's email resources.
- 4.3 Mobile and Removable Device Security. Implementer's devices and any personally-owned but Implementer-managed devices, including cell phones, tablets, or laptops, may not be used to access or store SCE Data unless such devices have been configured with Implementer-managed security and encryption features, which, at a minimum, will include remote wipe and remote shutdown capabilities. Implementer Personnel shall not share or back up SCE Data to a personal email account, personal cloud storage repository, or portable storage device. Implementer will maintain processes and procedures for the secure handling, storage, and transportation of physical media to protect SCE Data from unauthorized access and/or disclosure.

5. IDENTITY AND ACCESS MANAGEMENT

Implementer will control access to its technology assets, SCE Computing Systems, and SCE Data, including implementing password controls and multifactor authentication for remote access.

- 5.1 Administrative Activity. Implementer will minimize administrative privileges and allow Personnel to only use administrative accounts when required. Implementer will log and monitor network, server, and workstation activities, including log-in attempts, to record administrative activity for accountability and audit purposes.
- 5.2 Logical and Physical Access. Implementer will coordinate with SCE and limit logical and physical access to SCE Computing Systems and SCE Data only to Personnel requiring such access to perform the Services. When any Personnel are reassigned to non-SCE work, or no longer employed by Implementer or Subcontractor, Implementer will (1) immediately inform SCE and (2) when

access is controlled by Implementer, terminate such person's logical and physical access within seven (7) days.

6. CONFIRMATION OF SECURE DELIVERY AND AUTHENTICITY

Implementer will implement and maintain a risk management plan to securely deliver hardware, software, and firmware, including patches, to SCE.

Within fifteen (15) days of SCE's request, Implementer will provide documentation, demonstrating the integrity and authenticity of hardware, software, and firmware provided by Implementer to SCE and describing Implementer's (1) chain of custody practices, (2) inventory management program (including the location and protection of spare parts), (3) patch management processes, and (4) confirmation that Implementer has implemented appropriate updates and patches to hardware, software, firmware, and services, including any third-party components, provided to SCE under the Agreement.

7. NOTICES; AUDIT

- 7.1 Notices. All notices required under this Exhibit will be sent to cybersecurity@sce.com.
- 7.2 Audit. Upon five (5) days' prior notice and not more than once per year, unless otherwise required by Applicable Laws, or upon notification or reasonable belief by SCE of the occurrence of a Cyber Incident, SCE may audit Implementer and its Subcontractors of any tier for adherence to this Exhibit. Implementer will cooperate with any such audit at Implementer's or its Subcontractor's sole expense, other than the fees of any third-party auditor retained by SCE to conduct the audit.

EXHIBIT F

INSURANCE REQUIREMENTS

1. **Required Insurance.** During the Term and for such additional periods as may be specified below, Implementer will, at its own expense, provide and maintain in effect those insurance policies as specified below, with limits of liability that are not less than the limits specified below and such additional coverage as may be required by Applicable Laws, with insurance companies authorized to do business in the state in which the Services are to be performed with an A.M. Best's Insurance Rating of not less than A-:VII ("Implementer Insurance"). Implementer will require each Subcontractor, at its own expense, to provide and maintain those coverages consistent with good practices for firms in each Subcontractor's industry for the portion of the Services performed by each Subcontractor ("Subcontractor Insurance"). In the event of the reduction or exhaustion of any of the limits of liability for any insurance for Implementer or any Subcontractor that is subject to the Agreement, Implementer will acquire, or will cause Subcontractor to acquire, insurance to replace such reduced or exhausted limits.

In no way do these insurance requirements, or the amount of insurance available to SCE or its Affiliates as additional insureds pursuant to this Section 1 of Exhibit F (Insurance Requirements), limit or relieve Implementer of the obligations assumed elsewhere in the Agreement, including Implementer's defense and indemnity obligations. Implementer and each Subcontractor will be responsible for all deductibles and retentions under Implementer-required and Subcontractor-required insurance as against SCE, with no recourse against SCE.

- (A) **Workers' Compensation Insurance** with statutory limits, as required by the state having jurisdiction over Implementer's employees, and **Employer's Liability Insurance** with limits not less than:
 - (1) Bodily Injury by accident - \$1,000,000 each accident;
 - (2) Bodily Injury by disease - \$1,000,000 policy limit; and
 - (3) Bodily Injury by disease - \$1,000,000 each employee.
- (B) **Commercial General Liability Insurance** written on an "occurrence" (not claims-made) basis, covering all operations by or on behalf of Implementer arising out of or connected with the Agreement, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance will bear a per occurrence limit not less than \$[]*,000,000* and an annual aggregate limit not less than \$[]*,000,000*, exclusive of defense costs, for all coverages. Such insurance will contain standard cross-liability and severability of interest provisions.

(C) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit not less than \$2,000,000 each accident. Such insurance will cover liability arising out of the use of Implementer's owned, non-owned, and hired automobiles in the performance of the Services.

(D) Pollution Liability Insurance, written on an "occurrence" or a "claims-made" policy form with limits equal or exceeding [] Million dollars (\$[],000,000), covering losses involving Hazardous Material(s) and caused by pollution incidents or conditions that arise from the Project, including coverage for bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically damaged or destroyed, and defense costs. If Implementer elects, with SCE's written concurrence, to use a "claims made" form of Pollution Liability Insurance, then the following additional requirements apply:

- (1) The retroactive date of the policy must be prior to the Effective Date; and
- (2) Either the coverage must be maintained for a period equal or exceeding three (3) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period equal or exceeding three (3) years after this Agreement terminates.

(E) Umbrella/Excess Liability Insurance written on a following form occurrence (not claims-made) basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits not less than \$[],000,000 per occurrence.

(F) If Implementer is to perform any customized software programming or hardware design services or to provide professional services, advice or opinions (including accounting, legal, advertising/marketing, architectural, engineering, design, project management or similar professional services), Professional Liability (Errors and Omissions) Insurance covering negligent acts, errors and omissions and wrongful acts in the performance of the Services. Such insurance will have limits not less than \$[],000,000 per claim and in the annual aggregate. This insurance will have a retroactive date that equals or precedes the Effective Date. Implementer will maintain such coverage for a minimum period of three (3) years after expiration or termination of the Agreement, or such coverage will include a supplemental extended reporting period of not less than three (3) years after expiration or termination of the Agreement.

(G) Cyber Insurance covering (1) liability arising from theft, dissemination, and/or use of Confidential Information stored or transmitted in electronic form and (2) 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 not less than \$[][,000,000](#) per claim and in the annual aggregate, and may be maintained on a stand-alone basis, or as part of the required Professional Liability (Errors and Omissions) coverage. This insurance will have a retroactive date that equals or precedes the Effective Date. Implementer will maintain such coverage until the later of (a) three (3) years after expiration or termination of the Agreement and (b) when Implementer has returned or destroyed all Confidential Information in its possession, custody, or control, including any copies maintained for archival or record-keeping processes.

2. **Additional Insured; Primary Insurance; Waiver of Subrogation.** All Implementer Insurance, other than any Professional Liability (Errors and Omissions) Insurance, that is maintained by or on behalf of Implementer will name SCE, its Affiliates, and their respective officers, directors, shareholders, agents, and employees (together with SCE and its Affiliates, "Insured Parties") as additional insureds with coverage up to the full limits of liability provided for Implementer under the applicable insurance policy for liability directly or indirectly arising out of, or in any way involving, in whole or in part, the acts or omissions of Implementer, its employees, or agents, Implementer's products, or the Services, for both ongoing operations and completed operations. Implementer will require each Subcontractor to have all Subcontractor Insurance, other than any Professional Liability (Errors and Omissions) Insurance, that is maintained by or on behalf of the Subcontractor to name the Insured Parties as additional insureds with coverage up to the full limits of liability provided for the Subcontractor under the applicable insurance policy for liability directly or indirectly arising out of or in any way involving, in whole or in part, the acts or omissions of Subcontractor, its employees, or agents, Subcontractor's products, or the Services, for both ongoing operations and completed operations. The insurance required in Section 1 of Exhibit F (Insurance Requirements), including all insurance that names the Insured Parties as additional insureds, will apply as primary insurance to, and without a right of contribution from, any other insurance or self-insurance maintained by or afforded to the Insured Parties ("SCE Insurance"), regardless of any provision in Implementer's and any Subcontractor's policies to the contrary. Any provision in any insurance policy that is subject to these provisions that has an "other insurance" provision that purports to state that such insurance will apply excess to, in combination with or on a pro-rata basis with any of SCE Insurance must be overridden and/or nullified with respect to SCE Insurance by a written endorsement or rider. To the extent permitted by Applicable Laws, and except with respect to any applicable Professional Liability (Errors and Omissions) Insurance, Implementer, Subcontractor, and their insurers will be required to waive all rights of recovery from or subrogation against the Insured Parties and their insurers. The full limits of liability for all insurance policies of the types specified in Section 1 of Exhibit F (Insurance Requirements) purchased by or on behalf of Implementer

or any Subcontractor, including any excess policies, with limits of liability in excess of the amounts specified in Section 1 of Exhibit F (Insurance Requirements), will be considered required insurance for purposes of any insurance policy provision seeking to limit coverage for the Insured Parties as additional insureds.

3. **Insurance Certificates and Policies; Notice Requirements.** On the Effective Date, or as soon as possible and not to exceed thirty (30) days thereafter, and as soon as possible and not to exceed thirty (30) days after coverage is renewed or replaced, Implementer will furnish, and cause any Subcontractor to furnish, certificates of insurance evidencing the coverage required or referenced above, naming SCE as an additional insured and noting the waiver of subrogation, written on forms and with deductibles reasonably acceptable to SCE. By issuing a certificate of insurance, the insurance broker or agent (1) confirms that the insurance referenced meets the requirements of the Agreement and (2) acknowledges that SCE relies on all statements made and information provided in the certificate of insurance. In addition, Implementer will disclose to SCE all deductibles, retentions, self-insured retentions, co-insurance, or reimbursement obligations to the insurer by the named insured under any of the insurance policies obtained pursuant to the Agreement that are greater than \$250,000. All deductibles, co-insurance, self-insured retentions, or reimbursement requirements applicable to the insurance above will be paid by Implementer or each respective Subcontractor. Implementer will furnish and cause any Subcontractor to furnish full copies of all insurance policies that fulfill the requirements of or are subject to Section 1 or 2 of Exhibit F (Insurance Requirements) within thirty (30) days of the Effective Date or within thirty (30) days of Implementer's or Subcontractor's receipt of such insurance policies. Implementer will provide and require each Subcontractor to provide SCE with at least thirty (30) days' prior notice in the event of the cancellation of or any material change to any insurance (including any exhaustion or reduction of limits) that is subject to the Agreement. SCE's receipt of certificates or insurance policies that do not comply with the requirements of this Exhibit F (Insurance Requirements), or Implementer's or any Subcontractor's failure to provide certificates or insurance policies as required will not limit or relieve Implementer of the duties and responsibility of maintaining insurance and requiring each Subcontractor to maintain insurance in compliance with the requirements in Exhibit F (Insurance Requirements) and will not constitute a waiver of any of the requirements in Exhibit F (Insurance Requirements). SCE's receipt of certificates of insurance, copies of insurance policies, and any other insurance-related documentation from Implementer or any Subcontractor will not be deemed an agreement or acknowledgement by SCE that Implementer or any Subcontractor has fulfilled its obligations under this Section, nor will it relieve Implementer or any Subcontractor of such obligations, which obligations will remain in full force.
4. **Duty to Cooperate.** Implementer will reasonably cooperate, and cause any Subcontractor to reasonably cooperate, with and assist SCE in enforcing any of its rights under any of the insurance policies required under the Agreement.

5. **Non-Compliance Remedies.** If Implementer fails to comply with Exhibit F (Insurance Requirements), Implementer, among other things and without restricting SCE's remedies under the law or otherwise, will, at its own cost and expense, provide SCE with the same protections and benefits that an insurer would have, had the insurance been maintained in accordance with Exhibit F (Insurance Requirements). Implementer will provide a current, full, and complete defense to the Insured Parties, and their successors and assigns, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with Exhibit F (Insurance Requirements). Without limiting any of its rights or remedies, SCE will have the right to withhold payment otherwise due Implementer if Implementer or its Subcontractors are not in compliance with their insurance obligations.

EXHIBIT G
FORM OF FORECAST REPORT

Month		Forecasted Value	Assumptions <i>(Please include any relevant assumptions to support the forecast values for each month, including details about pipeline development, seasonality, etc.)</i>
[]	Projects in Pipeline		
	Projects in Process		
	Projects Installed		
	First year net kWh		
	Net KW		
	First year net Therms		
	TSB		
	Expenditure		
Description of circumstances which could materially impact forecasts: []			

EXHIBIT H DISPUTE RESOLUTION

1. **Mediation.** If Implementer desires to submit a dispute to mediation, Implementer shall send a written Notice requesting mediation to Company, setting forth a description of the dispute and the relief requested, within 30 days of the conclusion of negotiations between the Company's Vice President and the Implementer's Officer. The Parties will cooperate with one another in selecting the mediator from the panel of neutrals from Judicial Arbitration and Mediation Services, Inc. ("JAMS"), its successor, or any other mutually acceptable non-JAMS mediator, and in scheduling the time and place for the mediation. Such selection and scheduling shall be completed within forty-five (45) days of the Notice requesting mediation. Unless otherwise agreed to by the Parties in writing, the mediation shall be scheduled for a date not later than one-hundred twenty (120) days from the date of the Notice of the request for mediation. The Parties will share equally in the cost of the mediation (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be born by each individual Party).
2. **Arbitration.** If Implementer has not requested mediation within 30 days of the conclusion of negotiations between the Company's Vice President and the Implementer's Officer, or if a mediation session was held and did not result in a full resolution of the dispute, Implementer may initiate binding arbitration before a single, neutral arbitrator ("the Arbitrator") by providing Notice to Company demanding binding arbitration within 90 days of the conclusion of the mediation or the conclusion of the negotiations between the Company's Vice President and the Implementer's Officer if no mediation was requested, or Implementer may elect to proceed with litigation in lieu of arbitration as described in Section 3 of this Exhibit H (Dispute Resolution) below.

Upon receipt of a Notice demanding binding arbitration in accordance with this Section, the Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days of the Notice. The Parties will further cooperate with the Arbitrator to schedule the initial arbitration conference to occur no later than forty-five (45) days from the selection of the Arbitrator. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court. Unless otherwise agreed to by the Parties, the individual acting as the mediator will be disqualified from serving as the Arbitrator, although the Arbitrator may be another member of the panel of neutrals from which the Parties selected the mediator. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6.

Upon Notice of an Implementer's demand for binding arbitration pursuant to this Section, the arbitrability of the dispute, including disputes over the validity, interpretation, applicability, or scope of the agreement to arbitrate shall be decided by the Arbitrator, not the courts, in

accordance with the laws of the State of California, without regard to its conflict of laws principles.

Except as provided for herein, the arbitration will 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 will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Unless the Parties agree to a different arrangement in writing, the arbitration will be conducted in Los Angeles County, California.

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, unless the Parties agree in writing to a different arrangement, discovery will be limited as follows:

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such other time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admission;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the dispute or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;

- (h) Within thirty (30) days after the initial expert disclosure, the Parties may each designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

The Arbitrator shall have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California Superior Court judge to resolve in advance of trial.

The Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Arbitrator must, in any award, allocate all the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party) including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail. Until such an award is made, however, the Parties will share equally in paying the costs of arbitration.

Judgment on the Arbitrator's award may be entered in any court having jurisdiction.

3. **Litigation.** If Implementer has not requested mediation within 30 days of the conclusion of negotiations between the Company's Vice President and the Implementer's Officer in accordance with Section 1 of this Exhibit H (Dispute Resolution), or if a mediation session was held and did not result in a full resolution of the dispute, and provided that Implementer has not sent a timely Notice demanding binding arbitration in accordance with Section 2 of this Exhibit H (Dispute Resolution), litigation of any dispute may be brought by either Party and enforced in the courts specified in Section 16.02. However, if Company initiates litigation pursuant to this Section, the Implementer may demand arbitration within sixty (60) days of receiving service of a filed complaint initiating litigation. If Company receives such an arbitration demand within the specified time limit, Company must dismiss the litigation and participate in arbitration. If no such Notice demanding arbitration is made within the time limit specified herein, the Implementer must participate in the litigation in good faith and will be deemed to have waived its right to arbitrate any dispute, claim, controversy, or compulsory counterclaim that falls within the subject matter of the complaint.
4. **Consolidation of Matters.** The Parties shall make diligent, good faith efforts to consolidate any mediation, arbitration or other dispute resolution proceedings arising pursuant to this Exhibit H (Dispute Resolution) that arise from or relate to the same act, occurrence, omission or issue.