



SOUTHERN CALIFORNIA
EDISON

An *EDISON INTERNATIONAL* Company

*[04/22/2024] Version
Subject to SCE Management Review and Approval]*

ENERGY EFFICIENCY PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

[IMPLEMENTER]

(SCE Agreement No. **[Number]**)

[SCE Note: **NON-MODIFIABLE STANDARD CONTRACT TERMS AND CONDITIONS PURSUANT TO CPUC D.23-02-002 ARE SHOWN IN BLUE SHADED TEXT**]

[SCE Note: SCE has included, as Appendix B to the Request For Proposals (RFP) Instructions, the Commission's modifiable terms set forth in Attachment B of D.23-02-002. In this Agreement, where applicable, SCE references the Commission's modifiable term that corresponds to the relevant Agreement term. Modified terms are identified in **green highlighted text**. Other than the **blue highlighted text**, all terms are modifiable and subject to negotiation].

[SCE Note: *SCE Comments and Notes in blue italicized text should be removed, as applicable.*]

Table Of Contents

Section		Page
ARTICLE 1.PURCHASE AND SALE OF PRODUCT.....		2
1.01	Product.....	2
1.02	Program.....	2
1.03	Expected Quantities and Price.	4
1.04	Exclusive Rights.	6
ARTICLE 2.TERM AND DELIVERY TERM		6
2.01	Term.....	6
2.02	Delivery Term.....	7
2.03	Initial Project Approval Deadline.....	7
2.04	Initial Project Approval Requirements.	7
2.05	[CPUC Approval.....	7
ARTICLE 3.BILLING AND PAYMENTS.....		8
3.01	Invoicing Process.....	8
3.02	Timeliness of Payment.....	8
3.03	Disputes and Adjustments of Invoices.	9
3.04	Netting Rights.....	9
3.05	Savings Payments.	10
3.06	Deliverable Payments.	10
ARTICLE 4.DESIGN AND IMPLEMENTATION OF THE PROGRAM AND EFFECTUATION OF THE RESULTING PROJECT.....		11
4.01	Implementer’s Additional Obligations.	11
4.02	Cyber Audit Rights.	11

Table Of Contents

Section	Page
4.03 Changes in Customer Characteristics or Measure.	12
4.04 Contractors, Subcontractors, Affiliates.....	12
4.05 Provision of Information.....	12
4.06 Workforce Standards.	14
4.07 Progress Report.....	16
4.08 Key Performance Indicators.	16
4.09 Implementation Plan.....	16
4.10 Quality Assurance Procedures; Disadvantaged Workers.	17
4.11 Measure List Revisions.....	17
4.12 Population NMEC M&V Plan.....	18
ARTICLE 5.EVALUATION AND TESTING	18
5.01 Submission Requirements for all Projects.....	18
5.02 NMEC-Based Site-Specific Approach Evaluation and Testing.	18
5.03 Customized Calculated Approach Evaluation and Testing.	20
5.04 Deemed Approach Evaluation and Testing.	22
5.05 Population NMEC Approach Evaluation and Testing.....	24
5.06 SCE Audits and Inspections.	27
5.07 CPUC Review.....	27 ²⁸
5.08 Deliverables.	Error! Bookmark not defined.
ARTICLE 6.IMPLEMENTER’S PROCESS, RECORD KEEPING AND SAFETY OBLIGATIONS	28²⁹
6.01 Implementer’s Process and Record Keeping Obligations.	28 ²⁹

Table Of Contents

Section	Page
6.02 Implementer’s Post-Installation Obligations.	2829
6.03 Safety.	29
6.04 Background Checks, Fitness for Duty.	2930
6.05 Additional Safety Requirements.	31
ARTICLE 7. CREDIT AND COLLATERAL	3132
7.01 Credit and Collateral Covenants.	3132
7.02 California Commercial Code Waiver.	3132
7.03 Financial Information.	32
ARTICLE 8. FORCE MAJEURE	33
8.01 No Default for Force Majeure.	33
8.02 Force Majeure Claim.	3334
8.03 Termination.....	34
ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS	34
9.01 Representations and Warranties of Both Parties.....	34
9.02 Implementer Representations and Warranties.	35
9.03 SCE Covenants.	3940
9.04 Implementer Covenants.	3940
9.05 Customer Service Covenants.	41
9.06 [Customer Data, Customer Contact, and Data Privacy.	4546
ARTICLE 10. EVENTS OF DEFAULT; TERMINATION	4748
10.01 Events of Default.	4748
10.02 [Termination for Cause]	4950

Table Of Contents

Section	Page
10.03 [Termination/Modification by CPUC Order].....	49 50
10.04 [Conclusion of Work].....	50 51
10.05 Notice of Termination Payment.....	50 51
10.06 Calculation of Termination Payment.....	51 52
ARTICLE 11. LIMITATIONS	53 54
11.01 Limitation of Remedies, Liability and Damages.....	53 54
11.02 No Representation by SCE.....	54 55
ARTICLE 12. DISPUTES	55 55
12.01 Dispute Resolution.....	55 55
12.02 [Venue].....	56 56
ARTICLE 13. INDEMNIFICATION; GOVERNMENTAL CHARGES	56 57
13.01 SCE’s Indemnification Obligations.....	56 57
13.02 Implementer’s Indemnification Obligations.....	56 57
13.03 Indemnification Claims.....	59 59
13.04 Survival of Indemnification Rights and Obligations.....	60 60
13.05 Cooperation to Minimize Tax Liabilities.....	60 61
13.06 Governmental Charges.....	60 61
13.07 Compliance with Laws and Indemnification.....	60 61
13.08 Environmental Costs and Indemnification.....	61 61
13.09 Cyber and Data Protection Enforcement Expenses.....	61 61
ARTICLE 14. MISCELLANEOUS	61 62
14.01 General.....	61 62

Table Of Contents

Section	Page
14.02 Notices.	<u>6364</u>
14.03 Governing Law.	<u>6465</u>
14.04 Assignment.	<u>6465</u>
14.05 Confidentiality.	65
14.06 Records.	<u>6768</u>
14.07 Insurance.	68
14.08 Nondedication.	73
14.09 Coordination with other Program Administrators.	<u>7374</u>
14.10 Data Collection and Ownership Requirements.	<u>7374</u>
14.11 Billing, Energy Use, and Program Tracking Data.	<u>7475</u>
14.12 Access to Customer Sites.	75

Table Of Exhibits

EXHIBIT

EXHIBIT A DEFINITIONS

EXHIBIT B INTENTIONALLY OMITTED

EXHIBIT C PROGRESS REPORT

EXHIBIT D NOTICE

EXHIBIT E PROGRAM PLAN FRAMEWORK

EXHIBIT F KEY PERFORMANCE INDICATOR SCHEDULE

EXHIBIT G DISPUTE RESOLUTION

EXHIBIT H CYBER AND DATA PROTECTION REQUIREMENTS

EXHIBIT I TELEPHONE CONSUMER PROTECTION ACT TERMS

EXHIBIT J PROJECT DELIVERABLES

**EXHIBIT K EXPECTED DELIVERABLE PROJECTS AND DELIVERABLE
PROJECT BUDGETS**

[EXHIBIT L DATA PRIVACY] {SCE Note: delete if no Personal Information being
provided.}

[EXHIBIT M CUSTOMER DATA] {SCE Note: delete if no Personal Information being
provided.}

ENERGY EFFICIENCY PURCHASE AND SALE AGREEMENT

between

SOUTHERN CALIFORNIA EDISON COMPANY

and

[IMPLEMENTER'S NAME]

(SCE Agreement No. [Number])

This Energy Efficiency Purchase and Sale Agreement, together with its attachments and exhibits (as amended, restated, extended, renewed, modified or supplemented from time to time, collectively, the “Agreement”) is made and entered into as of this [] day of [Month], [Year] (“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 is willing to perform Work for the purpose of designing and implementing an energy efficiency Program, and to Install the Projects resulting from such Program. Implementer will sell and deliver exclusively to SCE such resulting Savings, and SCE is willing to purchase, the Savings under the terms and conditions set forth in this Agreement.
- C. For the purpose of this Agreement, the Program is a “third-party program” as described in CPUC EE Decisions & Guidance.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, and for other 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. PURCHASE AND SALE OF PRODUCT

1.01 Product.

- (a) During the Delivery Term, Implementer shall deliver and sell, and SCE shall purchase and receive, the Product.
- (b) The “Savings” consists of the improved energy efficiency, energy savings, demand savings, capacity savings, gas savings, greenhouse gas reductions, Ex Ante TSB, and Load Modifier Attributes resulting from, associated with, or attributable to, the Program in accordance with the terms and conditions of this Agreement.

For each Site, the Savings shall be evaluated using one of the following selected approaches, consistent with CPUC EE Decisions & Guidance: {SCE Note: Select the measurement approach to be used}

- Customized Calculated Approach
- Deemed Approach
- NMEC-Based Site-Specific Approach
- Population NMEC Approach
- Other Approach

- (c) The Deliverables consist of the goods and services to be delivered to SCE in accordance with the terms and conditions of this Agreement, and as more specifically set forth in Exhibit J.

1.02 Program.

The “Program” is the Implementer’s strategy, including its Deliverables, marketing, advertising, outreach, Customer acquisition techniques, incentive structures, rebates, or other mechanisms designed to achieve Savings by influencing Customer(s) to implement a Project through the Installation, purchase or effectuation of a Measure or Measures, and all other components of the Implementer’s Final Implementation Plan.

- (a) Eligibility.

Notwithstanding any other provision in this Agreement, each Measure, Site,

Project, and Customer, must meet the following requirements:

- (i) The Customer served by a Project must directly take or receive electricity services from within SCE's service territory. [SCE Note: Modify "SCE's" to "an IOU's" and add gas services if applicable]
- (ii) No Measure, Project, nor any Customer service account that is part of a Project, may use, submit, claim, or receive any rebates, discounts, incentives, or services from any other CPUC-directed or CEC-directed energy efficiency program (i.e., no "double incentives"). Notwithstanding the foregoing, Implementer may pursue incentive layering in accordance with CPUC EE Decisions & Guidance.
- (iii) Each Measure that is part of a Project must be a new Measure that was not previously installed or utilized.
- (iv) No Measure that is part of a Project may be purchased or Installed prior to the Effective Date.

(b) NAICS Codes.

The Program and resulting Projects shall serve the following NAICS Codes:

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

1.03 Expected Quantities and Price.

(a) Expected TSB.

(i) The Expected TSB that Implementer expects to deliver in each Delivery Period Year is as set forth below:

<u>Delivery Period Year</u>	<u>Expected TSB (in \$)</u>	<u>Savings Price (in \$/\$ of TSB)</u>
Year	[SCE Note: insert TSB from Offer]	[SCE Note: insert from Offer]
Year	[SCE Note: insert TSB from Offer]	[SCE Note: insert from Offer]
Year	[SCE Note: insert TSB from Offer]	[SCE Note: insert from Offer]

(b) Expected Total Resource Cost (TRC) Ratio.

The Expected TRC Ratio for each Delivery Period Year is as set forth below.

<u>Delivery Period Year</u>	<u>Expected TRC Ratio</u>
Year	[SCE: insert from Offer]
Year	[SCE: insert from Offer]
Year	[SCE: insert from Offer]
Year	[SCE: insert from Offer]

(c) Maximum Payment Obligations for Ex Ante TSB and TRC.

- (i) Implementer may deliver Ex Ante TSB in excess of the Expected TSB; provided, during the Delivery Term, SCE shall not be obligated to pay for more than one hundred twenty percent (120%) of the aggregate Expected TSB and such excess amounts will be excluded from the Savings Payment calculation.
- (ii) If, during any Delivery Period Year, Implementer delivers an Ex Ante Annual TRC Ratio in excess of one hundred twenty percent (120%) of Expected TRC Ratio, then such excess amounts shall be excluded from the Savings Payment calculation and SCE shall be under no obligation to pay for such excess amounts.

(d) Deliverable Budget

SCE shall be under no obligation to pay Implementer any amount that exceeds: (1) the Annual Deliverable Budget for each calendar year of the Delivery Term as set forth below, or (2) the Deliverable Project Budget for each Project, as set forth in Exhibit K.

- (i) Annual Deliverable Budget. The total amount accrued to be paid by SCE to Implementer for Deliverables in each calendar year of the Delivery Term shall not exceed the value for such calendar year set forth in the table below:

Calendar Year	Annual Deliverable Budget (\$)
[Year]	<p><i>[SCE Note: Option 1, insert value from Offer Workbook; value must not be more than 5% of the annual Savings budget to be paid upon SCE approval of pre-installation report]</i></p> <p><i>[SCE Note: Option 2, insert value from Offer workbook; value must not be more than 2.5% of the [first year's Total Savings budget]</i></p> <p><i>[SCE Note: Only one of the options above can be selected.]</i></p>
[Year]	<p><i>[SCE Note: Option 1, insert value from Offer Workbook; value must not be more than 5% of the annual Savings budget to be paid upon application approval]</i></p>

	<i>[SCE Note: For Option 2 Deliverable based payments past year one are not allowed; value is \$0]</i>
[Year]	<i>[SCE Note: Option 1, insert value from Offer Workbook; value must not be more than 5% of the annual Savings budget to be paid upon application approval]</i> <i>[SCE Note: For Option 2 Deliverable based payments past year one are not allowed; value is \$0]</i>
[Year]	<i>[SCE Note: Option 1, insert value from Offer Workbook; value must not be more than 5% of the annual Savings budget to be paid upon application approval]</i> <i>[SCE Note: Option 2 Deliverable based payments past year one are not allowed; value is \$0]</i>

For the purposes of the foregoing, an amount shall be deemed to be accrued to be paid by SCE for Deliverables upon delivery of an Acceptance Notice by SCE to Implementer.

1.04 Exclusive Rights.

Throughout the Term, SCE shall have exclusive rights to the Product and all benefits derived therefrom. Implementer will not sell, assign, attribute, claim, or otherwise transfer the Product to any party other than SCE pursuant to this Agreement.

ARTICLE 2. TERM AND DELIVERY TERM

2.01 Term.

The "Term" of this Agreement shall commence upon the Effective Date and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the Parties' respective obligations are fully performed and discharged. *[SCE Note: See Appendix B of the RFP Instructions]*

2.02 Delivery Term.

The “Delivery Term” shall commence at 12:01 a.m. on the Initial Project Approval Date, and shall continue until the earlier of: (1) midnight on the date that is [number of years] years and [number of months] months after the Initial Project Approval Date; and (2) the date that this Agreement is otherwise terminated in accordance with its terms.

2.03 Initial Project Approval Deadline.

The “Initial Project Approval Deadline” is [DATE] [SCE Note: Insert Date that is three months after the date Implementer expects to achieve Section 2.04 requirements, which should be no earlier than the date that is 210 days from the Effective Date if CPUC approval is required; and 120 days from the Effective Date if CPUC approval is not required.]

2.04 Initial Project Approval Requirements.

- (a) The “Initial Project Approval Date” must be achieved on a date that is no later than the Initial Project Approval Deadline and is the first day of the month, following (3) Business Days’ Notice from SCE to Implementer, that all of the following conditions have been satisfied or waived in SCE’s sole discretion:
 - (i) Implementer has obtained approval of [at least one (1) [[Post Installation Reports, Second Post Installation Reports, or Deemed Post Installation Packages]], in accordance with Article 5][at least [xxx] Deliverable Reports via an Acceptance Notice in accordance with Exhibit J].
 - (ii) Implementer has delivered to SCE all insurance documents required under Section 14.07; and
 - (iii) SCE has obtained or waived CPUC Approval.

2.05 [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 (i) 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 (ii) 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 2.05 will not be deemed to be a failure of Implementer to implement the Program or a failure of SCE to purchase or receive the Savings or Deliverables, and will not be or cause an Event of Default by either Party.] {SCE Note: delete if CPUC Approval is not required}

ARTICLE 3. BILLING AND PAYMENTS

3.01 Invoicing Process.

- (a) Beginning on the Initial Project Approval Date and continuing through the Delivery Term, by the twentieth (20th) calendar day after the end of each Delivery Period Month for which:
 - (i) for Savings Payments, one or more Post Installation Reports, Second Post Installation Reports, Deemed Post Installation Packages, or Population NMEC Quarterly Reports are approved by SCE; or
 - (ii) for Deliverable Payments, one or more Deliverable Reports are accepted via an Acceptance Notice in accordance with Exhibit J and the Deliverable Project Plan.

SCE shall issue to Implementer an invoice authorization for the Product Payment obligations, if any, incurred during the previous Delivery Period Month, along with supporting calculations reasonably necessary to evidence all amounts due thereunder (the "Invoice Authorization").

- (b) Within five (5) Business Days after receiving an Invoice Authorization, Implementer shall submit to SCE an invoice consistent with the Invoice Authorization, which shall include all data required by SCE through a software management tool provided by SCE, with the date such invoice submitted being the "Invoice Date". For avoidance of doubt, the Invoice Date shall not occur until Implementer has accurately input all such required data into the software management tool provided by SCE.
- (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 twenty-four (24) months after the close of a Delivery Period Month, the right to any payment for that Delivery Period Month under this Agreement is waived.
- (d) An invoice can only be adjusted or amended after it was originally rendered within the time frames set forth in Section 3.03.

3.02 Timeliness of Payment.

Payments under this Agreement will be made no later than ten (10) Business Days from

the applicable Invoice Date for each invoice by ACH or similar method, or by other mutually agreeable methods, to the account designated by the Party to which payment is owed. Any undisputed payment made thereafter shall include an Interest Payment.

The Parties acknowledge that data necessary to calculate certain payment obligations of SCE and Implementer under this Agreement may not be available at the time the Party issuing the invoice actually issues the invoice with respect to a particular Delivery Period Month. Any such payment obligations, including related documentation supporting such obligations, shall be included in a subsequent invoice on or before the last Business Day of the month following the month that is one hundred and twenty (120) days following the last day of the calendar month to which the data relates.

3.03 Adjustments of Invoices.

If Implementer or SCE determines that a calculation or amount in any Invoice Authorization or corresponding invoice (for purposes of this Section 3.03, each an "invoice") is incorrect, erroneous, or otherwise determines that all or any portion of the Savings or Deliverables fail to comply with this Agreement, Implementer or SCE, as the case may be, shall promptly recompute the amounts for the period of the inaccuracy based upon a correction of data and any payment affected by the adjustment or correction.

Any amount due will be made as an adjustment to the next invoice that is calculated after Implementer's or SCE's recomputation using corrected measurements.

If the recomputation results in a net amount owed to SCE after applying any amounts owing to Implementer as shown on the next invoice, any such amount owing to SCE will at SCE's discretion be netted against amounts owed to Implementer in any subsequent invoice or separately invoiced to Implementer, in which case Implementer must pay the amount owing to SCE within five (5) days after receipt of that invoice.

A Party will be deemed to have waived any such payment adjustments, if such Party does not provide Notice of such payment adjustment within twelve (12) months after the Invoice Date for the invoice containing the error. Adjustment payments for meter inaccuracy will not bear interest.

3.04 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) Owing to SCE by Implementer arising out of, or related to, this Agreement; or
- (b) Owed to SCE by Implementer arising out of, or related to, any other SCE agreement, tariff, obligation or liability.

3.05 Savings Payments.

Subject to Section 1.03, the “Savings Payment(s)” from SCE to Implementer shall mean and will include the Ex Ante Monthly Contract Payments and the Annual TRC Payment as set forth in Section 3.05(a) and (b), respectively.

- (a) For each Delivery Period Month, the “Ex Ante Monthly Contract Payment” equals eighty percent (80%) of (i) the Ex Ante TSB for the relevant Delivery Period Month, **multiplied by** (ii) the Savings Price (\$/TSB) set forth in Section 1.03(a) for the relevant Delivery Period Year.
- (b) For each Delivery Period Year, the “Annual TRC Payment” equals twenty percent (20%) of (i) the total Ex Ante TSB for such Delivery Period Year, **multiplied by** (ii) the average Savings Price for such Delivery Period Year (in \$/TSB), **multiplied by** (iii) the Annual TRC Factor for the Delivery Period Year, as set forth in Section 3.05(c).
- (c) The “Annual TRC Factor” represents the extent to which Implementer has achieved the Expected TRC Ratio for the Project during the Delivery Period Year, and equals (i) the Ex Ante Annual TRC Ratio for such Delivery Period Year, **divided by** (ii) the Expected TRC Ratio applicable to such Delivery Period Year as set forth in Section 1.03(a).

For purposes of calculating Savings Payments due under this Agreement, the inputs to the CET shall be made in accordance with CPUC EE Decisions & Guidance, as such guidance may be modified from time to time. For avoidance of doubt, the following will apply with respect to the following CET Field Name inputs:

- (i) The input in the tabs in the CET entitled “MarketEffectsBenefits” and “MarketEffectsCost” will be zero (0).
- (ii) The input in the tabs in the CET entitled “Measure Incentive” “Measure Cost” or “Program Cost” will not include incentives or rebates paid by the Implementer to a Customer, a Subcontractor, or a trade ally.
- (iii) The input in the tab in the CET entitled “ClaimYearQuarter” will be the calendar quarter in which SCE is eligible to claim the Savings related to the Measure

3.06 Deliverable Payments.

For each Deliverable approved by SCE in accordance with Exhibit J in a Delivery Period Month, the “Deliverable Payment” equals (i) the applicable Deliverable Project Budget,

multiplied by (ii) the quantity of Deliverables delivered and approved as specified in the Acceptance Notice.

ARTICLE 4. DESIGN AND IMPLEMENTATION OF THE PROGRAM AND EFFECTUATION OF THE RESULTING PROJECT

4.01 Implementer's Additional Obligations.

Implementer shall perform the following obligations:

- (a) Design and implement the Program, and Install each Project resulting from such Program, in accordance with Applicable Laws and this Agreement;
- (b) [Complete any required environmental impact assessments, statements, or studies required for each Installation pursuant to Applicable Laws, including obtaining public review and certification of any final documents relating to any environmental impact assessment or studies;] {SCE Note: bracketed language applicable to Customer Facing Delivery Channel, but should be modified for Point of Sale and Technology/Measure Focused Delivery Channels based on Offeror's shortlisted Offer}
- (c) Provide to SCE, prior to commencement of any activities at any Site or with any Customer, and each calendar year thereafter, a report from an independent third-party engineer (acceptable to both SCE and Implementer) certifying that Implementer has a written plan for the safe: (i) design and implementation of the Program, and (ii) Installation of Projects, in accordance with Sections 6.03, 6.04(b), 6.05, Prudent Practices, and Applicable Laws;
- (d) Implementer must Install all Measures utilized to satisfy Implementer's Expected TSB for a Delivery Period Year (the "Installed Measures") in the same calendar year as the applicable Delivery Period Year; and
- (e) Implementer shall submit any required documentation to SCE, including but not limited to, the required documentation in Article 5 of the Agreement, in the system, database, or format required by SCE.

4.02 Cyber Audit Rights.

SCE shall have the right to conduct an audit of Implementer (and for the avoidance of doubt, Implementer's Contractors and Subcontractors) for adherence to the terms of Section 9.04(n) and the Cyber and Data Protection Requirements not more than once per calendar year or more often upon notification or reasonable belief by SCE of any Cyber Incident, or as required to comply with regulatory requirements. Implementer will cooperate with any audit, at Implementer's sole expense, other than the fees of any third-party auditor, and require the cooperation of any Contractor or Subcontractor.

Upon request, Implementer shall share the results of industry standard third-party audit reports (e.g. SOC 2 Type II audit, ISO 27001, or SSAE 16 audit).

4.03 Changes in Customer Characteristics or Measure.

Throughout the Term, Implementer shall provide to SCE Notice of any material changes associated with each Customer, Site, Project, and Measure.

4.04 Contractors, Subcontractors, Affiliates.

Throughout the Term, Implementer shall provide SCE with Notice of the name and address of Implementer's Contractors, Subcontractors, or Affiliates hired by Implementer to perform any Work or activities for the Program or the Project, on the later of the Effective Date or the fifth (5th) Business Day after Implementer enters into a contract with such entity.

4.05 Provision of Information.

Throughout the Term, Implementer shall provide SCE copies of the following:

- (a) Within ten (10) Business Days after receipt thereof:
 - (i) Any agreements with providers of marketing, designing, administrative, engineering, procurement, installation, implementation, or construction services for the Program, any Customer, Measure, Project, and Site, and any amendments thereto, including any Contractor contract (which may be redacted by Implementer to eliminate pricing terms);
 - (ii) Any documents, information, and records related to the Program, the Project, each Measure, Deliverable, Site and Customer (including documents, information or records of an Affiliate, Customer, Contractor, and Subcontractor) that relate to Implementer's obligations under this Agreement; and
 - (iii) Any reports, studies, and assessments done for Implementer by an independent engineer;
- (b) Within ten (10) Business Days of Implementer's receipt of Notice from SCE requesting the same, 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
- (c) Diverse Business Enterprises.

No later than twenty (20) days after each calendar month during the Term, a report listing all women, minority, disabled veteran, persons with disability, lesbian, gay, bisexual or transgender business enterprises, as more particularly set forth in CPUC General Order 156 ("Diverse Business Enterprises") that supplied goods or services to Implementer during such period, including any certifications or other documentation of such Diverse Business Enterprises' status as such and the aggregate amount paid to Diverse Business Enterprises during such period. SCE has the right to disclose to the CPUC all such information provided by Implementer pursuant to this Section 4.05(c).

Within ten (10) Business Days after the Effective Date, Implementer shall submit, using an electronic platform identified by SCE, a pledge of the amount Implementer intends to spend on goods or services supplied Diverse Business Enterprises in the performance of Implementer's obligations in accordance with this Agreement. [SCE Note: See Appendix B of the RFP Instructions]

- (d) Within ten (10) Business Days after a request from SCE, or three (3) Business Days in the case of a request from SCE needed to respond to a CPUC data request, any and all documents, information, and records, related to the Program, each Project, Deliverable, and any Site, Measure, and Customer that is part of a Project, or related to any of Implementer's obligations under this Agreement, (including documents, information or records of an Affiliate, Customer, Contractor or Subcontractor):
 - (i) Needed to measure the energy savings, gas savings, capacity savings, or TRC Ratio of each Project or any Measure, or needed to validate, approve, or inspect any Deliverable;
 - (ii) Relating to Implementer's engagement of an independent engineer;
 - (iii) Of an Affiliate or a Customer;
 - (iv) Needed to substantiate compliance with the Program, Workforce Standards, Quality Assurance Procedures, Disadvantaged Worker Requirements, any portion of the Program Plan Framework, or any portion of the Final Implementation Plan;
 - (v) Identifying the amount Implementer spent on Administrative Costs, Disadvantaged Worker Requirements, Hard-to-Reach Customers, Disadvantaged Communities, and any component of the Program or any Project;
 - (vi) Needed to substantiate compliance with any of Implementer's obligations under this Agreement;

- (vii) Needed to respond to any CPUC data request, and
- (e) Needed to monitor or otherwise assess Key Performance Indicators.
- (f) Other Program Metrics.

Implementer shall use commercially reasonable efforts to meet the Metrics for the Program set forth in Exhibit E. Within ten (10) Business Days after a request from SCE, Implementer shall provide to SCE any and all documents, information, records, and data related to the Program, the Project, an Installation, a Measure, a Customer, Deliverable, or a Site that is part of the Project (including documents, information or records of an Affiliate, Customer, Contractor or Subcontractor) needed to identify or calculate a Program Metric. [SCE Note: See Appendix B of the RFP Instructions]

Implementer shall utilize SCE's web-based reporting tool to upload the information set forth in Section 4.05.

4.06 Workforce Standards.

At all times during the term of the Agreement, Implementer shall comply with, and shall cause its employees, agents, representatives, subcontractors, independent contractors, and all other persons performing the Services on Implementer's behalf ("Implementer Party") to comply with, the workforce qualifications, certifications, standards and requirements set forth in Sections 4.06(a)(i) and (ii) below ("Workforce Standards"). The Workforce Standards shall be included in their entirety in Implementer's Final Implementation Plan. Prior to commencement of any Services, once per calendar year, and at any other time as may be requested by Company, Implementer shall provide all documentation necessary to demonstrate to Company's reasonable satisfaction that Implementer has complied with the Workforce Standards.

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

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

- (1) Completed an accredited HVAC apprenticeship.
- (2) Is enrolled in an accredited HVAC apprenticeship.

(3) Completed at least five 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.

(4) Has a C-20 HVAC contractor license issued by the California Contractor's State Licensing Board.

This standard shall not apply where the 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.

(ii) For Advanced Lighting Control Programs or Projects.

For all Program Projects and for each Measure, installed in a non-residential setting where the project is seeking an energy efficiency incentive of \$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.] [SCE Note: See Appendix B of the RFP Instructions]

(b) Qualifications. Subject to and in accordance with Applicable Law and SCE Policies, Implementer, prior to assigning any of Implementer's personnel, employees, any Subcontractor, or Contractor, shall have appropriately verified, that Implementer's personnel, employees, Subcontractors, and Contractors, performing any Work have the requisite qualifications, education, experience, technical certifications, training and education degrees to perform the Work in a competent, workmanlike manner in accordance with Applicable Standards and SCE Policies. In addition to the foregoing, SCE may direct Implementer to remove Implementer's personnel, employees, any Subcontractor, or Contractor from performing the Work if, in SCE's reasonable discretion, such Implementer's personnel, employees, any Subcontractor, or Contractor does not perform its duties in a competent, workmanlike manner in accordance with Applicable Standards and SCE Policies.

4.07 Progress Report.

Implementer shall deliver to SCE both weekly and monthly progress report containing the information set forth in Exhibit C and any other documents as may be reasonably requested by SCE ("Progress Report"). In addition, Implementer shall advise SCE, as soon as reasonably practicable, of any problems or issues of which Implementer is aware which could materially impact its ability to achieve each Key Performance Indicator by the applicable deadline.

The Progress Report must be delivered to SCE via e-mail in the form of a single Adobe Acrobat file, unless specifically indicated otherwise.

A report delivered pursuant to this Section 4.07 shall not constitute Notice for any purpose under this Agreement, including with respect to any fact, circumstance, request, issue, dispute or matter included in such report.

4.08 Key Performance Indicators.

Implementer shall use commercially reasonable efforts to meet the Key Performance Indicators ("KPIs") for the Program attached hereto as Exhibit F. Implementer shall provide to SCE all documentation and accurate data needed to demonstrate compliance with each KPI and to calculate satisfaction of each KPI, at the frequency stipulated in Exhibit F or as reasonably requested by Company. SCE shall review Implementer's performance in achieving each KPI once per calendar quarter or as otherwise deemed necessary by Company. If SCE determines that Implementer does not meet one or more of its KPIs, then, in addition to and without limiting any and all remedies available to Company as provided in this Agreement, Implementer shall provide SCE with an action plan detailing the reasons why the KPI(s) were not achieved and the steps (and timeline for those steps) Implementer will take to remediate and achieve its KPI(s) in a timely manner. [SCE Note: See Appendix B of the RFP Instructions]

4.09 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 Plan Framework for submission to the relevant CPUC website 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 revised Draft Implementation Plan, which approval may be withheld in SCE's sole discretion, the Final Implementation Plan will be posted to the relevant CPUC website by SCE no later than sixty (60) days from [the Effective Date of this Agreement] [the date CPUC Approval is received or waived by SCE in its sole discretion].

The Final Implementation Plan shall be consistent with the terms and conditions of the Agreement. Any changes to the Final Implementation Plan must be submitted by Implementer to SCE for SCE's review and approval, as determined by SCE in its sole discretion, which, upon SCE's approval, will be submitted to the relevant CPUC website in accordance with CPUC EE Decisions & Guidance. [SCE Note: See Appendix B of the RFP Instructions]

4.10 Quality Assurance Procedures; Disadvantaged Workers.

Implementer shall comply with, and shall cause each Contractor, Subcontractor, Affiliate or any entity performing Work on Implementer's behalf, to comply with the Final Implementation Plan and shall ensure that the Program, each resulting Project, Measure, Installation, Deliverable, Site and each Customer complies with the Final Implementation Plan, including, but not limited to the Quality Assurance Procedures, Workforce Standards, and Disadvantaged Worker Requirements, as further described in the Final Implementation Plan. [SCE Note: See Appendix B of the RFP Instructions]

4.11 Measure List Revisions.

The list of Measures provided in Exhibit E ("Measure List") may be revised if: (1) Implementer provides prior written Notice to SCE of its proposed revisions to such Measure List, (2) each additional Measure complies with CPUC EE Decisions & Guidance, (3) each additional Measure otherwise complies with and does not undermine or conflict with this Agreement, and (4) SCE accepts Implementer's proposed Measure List revisions in accordance with this Section. Within ten (10) Business Days after receipt of Implementer's Notice of proposed Measure List revisions, SCE shall either:

- (a) provide Notice to Implementer that SCE has accepted all or any portion of the proposed Measure List revisions,
- (b) provide Notice to Implementer that SCE has rejected all or any portion of the proposed Measure List revisions including a justification for rejections, or
- (c) provide Notice that SCE requires additional time as may be reasonably required to complete its review of the proposed Measure List revisions.

If SCE provides Notice under subsection (a) above, then the existing Measure List will be deemed deleted and replaced with a revised Measure List incorporating such portion of Implementer's proposed revisions accepted by SCE. If SCE provides Notice under subsection (b) above, then the existing Measure List shall not be revised to include such rejected proposed Measure List revisions. If SCE provides Notice under subsection (c) above, then SCE shall have additional time as may be reasonably required to review such proposed Measure List revisions.

4.12 Population NMEC M&V Plan

If the Population NMEC Approach is Selected in Section 1.01 of this Agreement, the Implementer shall provide SCE its Draft Population NMEC M&V Plan no later than twenty (20) days after the Effective Date of this Agreement. SCE shall have ten (10) Business Days to review and either (1) approve or (2) 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 (2) 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 Implementation 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 2.05. [SCE NOTE: IF CPUC APPROVAL NOT REQUIRED, USE THIS ALTERNATE LANGUAGE: 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 to the CPUC's Energy Division for review and approval consistent with the NMEC Rulebook].

[Upon CPUC Approval, or waiver of CPUC Approval by SCE in its sole discretion,][Upon Energy Division's approval of] the Draft Population NMEC M&V Plan will 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 requirements of the NMEC Rulebook and CPUC EE Decisions & Guidance.

ARTICLE 5. EVALUATION AND TESTING

5.01 Submission Requirements for all Projects.

All Projects and Measures submitted to SCE must be consistent with all CPUC EE Decisions & Guidance.

5.02 NMEC-Based Site-Specific Approach Evaluation and Testing. [SCE Note: See Appendix B of the RFP Instructions]

Each Project in which the NMEC-Based Site-Specific Approach applies 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. Within 60 days of receipt from the Implementer of a Project Feasibility Study SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Project Feasibility Study, (B) 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 (B) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Project Feasibility Study within 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 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 15 days of Installation of the Project.
- (e) Review and Approval of Post Installation Report. Within 60 days of receipt from the Implementer of a Post Installation Report, SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Post Installation Report, (B) SCE determined all or any portion of the Post Installation Report is materially deficient or inaccurate in any manner, or (C) 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 (B) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a

revised Post Installation Report within the 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. Within 60 days of receipt from the Implementer of a Second Post Installation Report, SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Second Post Installation Report, (B) SCE determined all or any portion of the Second Post Installation Report is materially deficient or inaccurate in any manner, or (C) 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 (B) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Second Post Installation Report within the 30 days notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (h) Payment on NMEC-Based Site-Specific Projects. Upon SCE's approval of a Second Post Installation Report, the Project will be considered approved for payment and included in the invoice for the month the Project is approved in accordance with Article 3.

5.03 Customized Calculated Approach Evaluation and Testing.

Each Project in which the Customized Calculated Approach applies 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. Within 60 days of receipt from the Implementer of a Project Feasibility Study SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Project Feasibility Study, (B) 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 (B) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Project Feasibility Study within 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 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 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 will 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. Within 60 days of receipt from the Implementer of a Post Installation Report, SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Post Installation Report, (B) SCE determined all or any portion of the Post Installation Report is materially deficient or inaccurate in any manner, or (C) 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 (B) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Post Installation Report within the 30 days notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (f) Payment on Custom Projects. Upon SCE's approval of either (i) a Post Installation Report if no Second Post Installation Report is required, or (ii) a

Second Installation Report, the Project will be considered approved for payment and included in the invoice for the month the Project is approved in accordance with Article 3.

5.04 Deemed Approach Evaluation and Testing.

Each Project in which the Deemed Approach applies must be submitted to SCE in accordance with this Section 5.04.

(a) Required Specifications and Checklists.

- (i) Program Verification Checklist. Notwithstanding any other provision in this Agreement, Implementer may not begin any Installation activities prior to receipt of the Program Verification Checklist from SCE.
- (ii) Data Transfer Specifications. Notwithstanding any other provision in this Agreement, Implementer may not begin any Installation activities prior to receipt of the Data Transfer Specifications from SCE.
- (iii) Measure Checklist. Notwithstanding any other provision in this Agreement, Implementer may only begin Installation activities for Measures in which a Measure Checklist has been provided. 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.

- (iv) Installation Prior to Checklist Development. Implementer acknowledges and agrees that the Installation of Measures prior to receipt of each of the Program Verification Checklist, Data Transfer Specifications, and applicable Measure Checklist is at its own risk. SCE may in its sole discretion reject any Project which includes Measures that were Installed prior to Implementer's receipt or posting of the Program Verification Checklist, Data Transfer Specifications, and 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 20 days of receipt from the Implementer of a Deemed Pre-Installation Package, if required, SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Deemed Pre-Installation Package, (B) SCE determined all or any portion of the Deemed Pre-Installation Package is materially deficient or inaccurate in any manner, or (C) 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 (B) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Deemed Pre-Installation Package within 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 Pre-Installation Package is required, Implementer must install the Project within 180 days of SCE approval of the 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, (ii) Program Verification Checklist and (iii) applicable Measure Package.
- (e) Deemed Post-Installation Inspection. After installation, the 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, (y) the Program Verification Checklist and (z) the applicable Measure Package.
- (f) Deemed Post-Installation Package Submission. Implementer shall submit to SCE a Deemed Post-Installation Package within 15 days of completion of the Deemed Post-Installation Inspection.
- (g) Review and Approval of Deemed Post-Installation Package. Within 20 days of receipt from the Implementer of a Deemed Post Installation Package, SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Deemed Post Installation Package, (B) SCE determined all or any portion of the Deemed Post Installation Package is materially deficient or inaccurate in any manner, or (C) 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 (B) above, then Implementer shall have the opportunity to remedy the deficiencies identified and submit a revised Deemed Post Installation Package, within 30 days notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (h) Payment on Deemed Projects. Upon SCE's approval of a Deemed Post Installation Package, the Project will be considered approved for payment and included in the invoice for the month the Project is approved in accordance with Article 3.

5.05 Population NMEC Approach Evaluation and Testing

Each Project in which the Population NMEC Approach applies must be submitted to SCE in accordance with this Section 5.05.

- (a) Population NMEC M&V Plan. Prior to any Installation activities, CPUC Approval must be obtained or waived by SCE in its sole discretion, including CPUC approval of the Final Population NMEC M&V Plan, in accordance with [Section 2.05 and] Section 4.12.
- (b) Required Specifications and Checklists.
 - (i) Program Verification Checklist. Notwithstanding any other provision in this Agreement, Implementer may not begin any Installation activities prior to receipt of the Program Verification Checklist from SCE.
 - (ii) Data Transfer Specifications. Notwithstanding any other provision in this Agreement, Implementer may not begin any Installation activities prior to receipt of the Data Transfer Specifications from SCE.
 - (iii) Population NMEC Measure Checklist. Notwithstanding any other provision in this Agreement, Implementer may only begin Installation activities for Measures in which a Population NMEC Measure Checklist has been provided. Implementer may request changes to a Population NMEC Measure Checklist at any time by submitting a Population NMEC Alternate Verification Requirement to SCE for review and approval. SCE may reject or approve the Population NMEC Alternate Verification Requirement in its sole discretion.

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

- (iv) Installation Prior to Checklist Development. Implementer acknowledges and agrees that the Installation of Measures prior to receipt of each of the Population NMEC Program Verification Checklist, Data Transfer Specifications, and applicable Population NMEC Measure Checklist is at its own risk. SCE may in its sole discretion reject any Project which includes Measures that were Installed prior to Implementer's receipt or posting of the Population NMEC Program Verification Checklist, Data Transfer Specifications, and applicable Population NMEC Measure Checklist.

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

- (d) Review and Approval of Population NMEC Pre-Installation Package. Within 20 days of receipt from the Implementer of a Population NMEC Pre-Installation Package, if required, SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Population NMEC Pre-Installation Package, (B) SCE determined all or any portion of the Population NMEC Pre-Installation Package is materially deficient or inaccurate in any manner, or (C) SCE rejection of the Population NMEC 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 Population NMEC Pre-Installation Package.

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

- (e) Population NMEC Installation Requirements. All Population NMEC 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 (i) NMEC Rulebook, (ii) Final Population NMEC M&V Plan, (iii) the applicable Population NMEC Measure Checklist, and (iv) Program Verification Checklist. If a Population NMEC Pre-Installation Package is required, Implementer must Install the Project within 180 days of SCE approval of the Population NMEC Pre-Installation Package.

- (f) Population NMEC Post-Installation Inspection. If required by the applicable Population NMEC Measure Checklist, the Implementer shall conduct a Population NMEC 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 (a) the applicable Population NMEC Measure Checklist, (b) the Program Verification Checklist and (c) NMEC Rulebook.

- (g) Population NMEC Post-Installation Package Submission. If required by the applicable Population NMEC Measure Checklist, Implementer shall submit to SCE a Population NMEC Post-Installation Package within 15 days of completion of the Population NMEC Post-Installation Inspection.
- (h) Review and Approval of Population NMEC Post-Installation Package. Within 20 days of receipt from the Implementer of a Population NMEC Post Installation Package, SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Population NMEC Post Installation Package, (B) SCE determined all or any portion of the Population NMEC Post Installation Package is materially deficient or inaccurate in any manner, or (C) 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. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Population NMEC Post-Installation Package.

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

- (i) Population NMEC Quarterly Report. Within 60 days of the end of each calendar quarter Implementer shall submit to SCE a Population NMEC Quarterly Report.
- (j) Review and Approval of Population NMEC Quarterly Report. Within 20 days of receipt from the Implementer of a Population Quarterly Report, SCE shall provide written notice to Implementer of one of the following: (A) SCE approval of the Population NMEC Quarterly Report, (B) SCE determined all or any portion of the Population NMEC Quarterly Report is materially deficient or inaccurate in any manner, or (C) 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. SCE's failure to provide written notice in the timeframe set forth above shall not constitute deemed approval of the Population NMEC Quarterly 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 Population NMEC Quarterly Report, within 30 days' notice of such deficiencies, which shall be subject to SCE's review in accordance with this Section.

- (k) Payment on Population NMEC Projects. Upon SCE's approval of a Population NMEC Quarterly Report, the Savings set forth in such Population NMEC Quarterly Report will be considered approved for payment and included in the invoice for the month the Population NMEC Quarterly Report is approved in accordance with Article 3.

5.06 SCE Audits and Inspections.

After receipt of a Deemed Pre-Installation Package, Deemed Post-Installation Package, Project Feasibility Study, Post Installation Report, Second Post Installation Report, or at any time for a Project utilizing a Population NMEC Approach 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 (a "SCE Inspected Project") may not proceed to the next phase of review under this Article 5 and any review timelines provided in this 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 (1) if such deficiencies are capable of being cured, Implementer shall remedy the deficiencies within 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 (2) 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 Project under this Agreement.

5.07 CPUC Review

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 Measure, Project or Site (the "CPUC Ex Ante Review"). If a Site, Measure or Project is selected by the CPUC for an audit or inspection (a "CPUC Inspected Project"), SCE shall notify Implementer of such CPUC Ex Ante Review and such CPUC Inspected Project may not proceed to the next phase of review under this Article 5 and any review timelines provided in this Article 5 shall

be deemed extended for as long as needed for the CPUC to complete such CPUC Ex Ante Review. The CPUC Ex Ante Review results will take precedence over any documents submitted by Implementer and all impacted documents, inspections, or processes will be updated to reflect the CPUC Ex Ante Review results. If the results of any CPUC Ex Ante Review reveal that the CPUC 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 (1) if such deficiencies are capable of being cured, Implementer shall remedy the deficiencies within 30 days of receipt of notice identifying such deficiencies, which shall again be subject to CPUC's review, or (2) 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 Project under this Agreement.

ARTICLE 6. IMPLEMENTER'S PROCESS, RECORD KEEPING AND SAFETY OBLIGATIONS

6.01 Implementer's Process and Record Keeping Obligations.

- (a) [Implementer shall maintain all Implementer Permits, licenses, certifications and approvals necessary for the design and implementation of the Program, each Project, and the Installation of each Measure, and Implementer shall design and implement the Program, and Install each Measure and each Project in accordance with Prudent Practices, Applicable Laws, Applicable Standards, Industry Standards, and this Agreement.] {SCE Note: bracketed language applicable to Customer Facing Delivery Channel, but should be modified for Point of Sale and Technology/Measure Focused Delivery Channels based on Offeror's shortlisted Offer}
- (b) Implementer shall maintain all records applicable to the Program and each Project. Information maintained pursuant to this Section 6.01(b) shall be retained throughout the Delivery Term and for the period that is four years after expiration of the Delivery Term, and shall be made available or provided to SCE within fifteen (15) days after SCE's request.

6.02 Implementer's Post-Installation Obligations.

- (a) [Implementer shall, or shall cause the applicable Customer to, complete all inspection, maintenance and repair requirements associated with each measure and each Project in accordance with Applicable Laws or as otherwise required by the CPUC. Implementer will promptly notify SCE of any malfunction, equipment failure, or other condition affecting such Measure that could impair SCE's ability to utilize the Measure to satisfy SCE's energy efficiency

obligations pursuant to CPUC EE Decisions & Guidance by contacting SCE's Contract Administration within five (5) Business Days after Implementer discovers such condition.] {SCE Note: bracketed language applicable to Customer Facing Delivery Channel, but should be modified for Point of Sale and Technology/Measure Focused Delivery Channels based on Offeror's shortlisted Offer}

6.03 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.] [Comment: Non-Modifiable Term]

6.04 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.

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.]

[Comment: 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.] [Comment: Non-Modifiable Term]

6.05 Additional Safety Requirements.

- (a) Implementer shall comply with the Environmental, Health and Safety Handbook for Contractors and the Supplier Code of Conduct, each of which may be updated from time to time upon Notice from SCE to Implementer, and are hereby incorporated by reference into this Agreement. Implementer shall immediately Notify SCE, with a copy to SCE's Procurement Agent, if it knows or reasonably believes that it is not in compliance with the requirements of these policies.
- (b) 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 Work.

ARTICLE 7. CREDIT AND COLLATERAL

7.01 Credit and Collateral Covenants.

- (a) During any period during which Implementer is a Defaulting Party, Implementer shall not:
 - (i) Declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Implementer; or
 - (ii) Otherwise make any distribution or payment to any Affiliate of Implementer.
- (b) If Implementer is a Special Purpose Entity, then:
 - (i) Implementer shall not cause or permit the stock, equity ownership interest in Implementer or assets of Implementer to be pledged or assigned as collateral or otherwise to any party other than Lender.
 - (ii) Implementer shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than the design and implementation of the Program as set forth in this Agreement.
 - (iii) Implementer shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

7.02 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, including in Article 7 and Article 10, 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 Article 7 and Article 10; 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.

7.03 Financial Information.

[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.] **[Comment: Non-Modifiable Term]**

Each Party, if requested by the other Party, shall deliver the following financial statements, as contemplated in the foregoing paragraph, which in all cases must be for the most recent accounting period and prepared in accordance with GAAP or IFRS:

- (a) Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing audited (or unaudited, if Implementer does not otherwise prepare audited financial statements), consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal year, setting forth in each case, in comparative form, the figures for the previous year for the Party; and
- (b) Within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements (income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) for such fiscal quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case, in comparative form, the figures for the previous year for the Party.

In each case, the financial statements specified above must be certified in accordance with all Applicable Laws, including all applicable SEC rules and regulations, if such Party is an SEC reporting company, or certified by the chief financial officer, controller, treasurer or any assistant treasurer of a Party, or any employee of a Party designated by any of the foregoing, as being fairly stated in all material respects (subject to normal year-end audit adjustments) if such Party is not an SEC reporting company.

A Party shall be deemed to have met the requirements of this Section if its financial statements are publicly available electronically on its or the SEC's website.

Unavailability of financial statements required hereunder due to a delay in preparation or certification shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of such statements.

ARTICLE 8. FORCE MAJEURE

8.01 No Default for Force Majeure.

Neither Party will be considered to be in default in the performance of any of its obligations set forth in this Agreement when and to the extent failure of performance is caused by Force Majeure; provided, a failure to make payments when due that accrued prior to the Force Majeure event shall not be excused.

8.02 Force Majeure Claim.

Other than the Initial Project Approval Deadline which may not be extended due to an event of Force Majeure, if, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure 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, 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 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; 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.

8.03 Termination.

During the Delivery Term, either Party may terminate this Agreement on Notice, if an event of Force Majeure extends for more than one hundred eighty (180) consecutive days and materially and adversely affects the operations of the Claiming Party.

If either Party exercises its termination right pursuant to this Section 8.03, no Termination Payment will be due or owing by either Party.

ARTICLE 9. REPRESENTATIONS, WARRANTIES AND COVENANTS

9.01 Representations and Warranties of Both Parties.

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

- (a) Except for CPUC Approval and EE Funding Approval for the Delivery Term in the case of SCE, it has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) There is not pending, or to its knowledge, threatened against it or, in the case of Implementer, any of its Affiliates, any legal proceedings that could materially and adversely affect its ability to perform under this Agreement;
- (f) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (g) 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;

- (h) It has entered into this Agreement in connection with the conduct of its business and it has the capability or ability to make available or take delivery of, as applicable, the Product under this Agreement in accordance with the terms of this Agreement; and
- (i) It has not relied upon any promises, representations, statements or information of any kind whatsoever that are not contained in this Agreement in deciding to enter into this Agreement.

9.02 Implementer Representations and Warranties.

- (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.] [Comment: 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.] [Comment: 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 Appendix 14.07.] [Comment: 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.] [Comment: Non-Modifiable Term]

For the purposes of Section 9.02(c) above, the word “Appendix” means “Section”.

- (e) Additional Implementer Representations and Warranties.
- (i) As of the Effective Date, Implementer represents and warrants to SCE that Implementer is/ is not {SCE note: select applicable option} an entity formed solely to engage in the design and implementation of the Program and the development, installation, construction, operation, and effectuation of the Project (a “Special Purpose Entity”).
 - (ii) As of the Effective Date and, if applicable, as of each time that a Measure is added to the Project, Implementer represents and warrants to SCE that Implementer has not used, granted, pledged, assigned, sold or otherwise committed any Product to any entity other than SCE during the Delivery Term, except to the extent such benefits are conferred on another entity pursuant to an order of the CPUC or at the direction of SCE.
 - (iii) As of the Effective Date, Implementer represents and warrants to SCE that it has not received notice from or been advised by any existing or potential supplier or service provider that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the implementation of the Program and any Project(s) thereunder or the delivery of materials necessary to complete Projects, in each case that would cause the Initial Project Approval Date to be later than the Initial Project Approval Deadline. [SCE Note: retain or remove as circumstances warrant.]
 - (iv) Upon posting of the Final Implementation Plan and continuing throughout the Term, Implementer hereby represents and warrants that the information contained in the Final Implementation Plan is correct and accurate.
 - (v) Upon posting of the Final Implementation Plan and continuing throughout the Term, Implementer represents and warrants that the Quality Assurance Procedures identified in the Final Implementation Plan includes all of the policies and procedures necessary to ensure that the Project, all activities at each Site, each Site, each Measure, any Installation, and all Work, comply with Applicable Laws,

Applicable Standards, SCE Policies, and ensure that each Measure installed functions properly for the effective useful life of such Measure.

- (vi) As of the Effective Date and continuing throughout the Term, Implementer represents and warrants that neither Implementer, nor any of its Contractors, Subcontractors, consultants, or Affiliates, is an Affiliate of SCE, Pacific Gas & Electric Company, Southern California Gas Company, or San Diego Gas and Electric Company.
- (vii) As of the Effective Date and throughout the Term, Implementer represents and warrants that commencing on the date that is at least one (1) year prior to the Effective Date and continuing throughout the Term: (i) neither Implementer, nor any of its Contractors, Subcontractors, consultants, or Affiliates performs or has performed energy efficiency program and portfolio impact-related studies, including embedded measurement and verification work, that produce findings on energy efficiency program or portfolio accomplishments, as further described in D.05-01-055 and D.18-01-004, for the CPUC (such work, the “CPUC M&V Work”); provided, Implementer’s Contractors, Subcontractors, consultants or Affiliates may perform CPUC M&V Work (such entity, the “Conflicted Evaluator”) if Implementer has implemented an ethics wall, consistent with the ethics wall requirements of the kind used by law firms to manage conflict-of-interest situations among different clients, separating Implementer from the Conflicted Evaluator, and the Conflicted Evaluator has executed a non-disclosure agreement prohibiting dissemination of the CPUC M&V Work to Implementer.
- (viii) As of the Effective Date and throughout the Term, Implementer represents and warrants that neither Implementer, nor any of its Contractors, Subcontractors, consultants, or Affiliates performs or has performed energy efficiency program and portfolio impact-related studies, including embedded measurement and verification work, that produce findings on energy efficiency program or portfolio accomplishments for SCE.
- (ix) As of the Effective Date and throughout the Term, Implementer represents and warrants that it has read and understood the Cyber and Data Protection Requirements and that Implementer is fully compliant with the Cyber and Data Protection Requirements.
- (x) As of the Effective Date, Implementer represents and warrants that it is not and has not been a party to any current, pending, threatened or resolved enforcement action of any government agency, or any

- consent decree or settlement with any governmental agency or private person or entity regarding any failure in Implementer's data security safeguards, or otherwise regarding information privacy or security.
- (xi) As of the Effective Date, Implementer represents and warrants that there are and have been no unfair labor practice complaints against Implementer in connection with its business that materially or adversely affects the business of Implementer.
 - (xii) As of the Effective Date and throughout the Term, Implementer represents and warrants that Implementer's Administrative Costs are less than or equal to ten percent (10%) of Implementer's total expected Product Payments as determined each calendar year and are otherwise in compliance with the requirements applicable to Administrative Costs as set forth in CPUC EE Decisions & Guidance.
 - (xiii) As of the Effective Date and throughout the Term, Implementer represents and warrants to SCE that it does not, directly or indirectly, have any SCE employee or immediate family member of any SCE employee employed or hired to implement the Program, deliver the Product, install each Project, or otherwise satisfy any Metrics.
 - (xiv) As of the Effective Date and throughout the Term, Implementer represents and warrants to SCE that 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 and each Project, deliver the Product, satisfy any Metrics, or otherwise satisfy the terms and conditions of this Agreement.
 - (xv) As of the Effective Date and throughout the Term, Implementer represents and warrants to SCE that Implementer is an equal opportunity employer and, as required by 41 CFR 60-1.4(a), does not and will not discriminate in employment and personnel practices (including hiring, transferring and promotion practices) on the basis of race, sex, age, disability, religion, national origin, color, sexual orientation, gender identity, or any other basis or characteristic prohibited by Applicable Laws.
 - (xvi) Throughout the Term, Implementer represents and warrants that the information contained in each [SCE Note: include appropriate term as applicable] is correct, accurate, and fully reflects the scope, requirements, and outcomes of a Project.
 - (xvii) Upon submission of a [SCE Note: include appropriate term applicable], as applicable, and continuing thereafter, Implementer represents and

warrants to SCE that each Project does not modify, conflict with or otherwise undermine any provision of this Agreement.

- (xviii) As of the Effective Date and throughout the Term, Implementer represents and warrants that all Work and Deliverables shall be rendered with promptness and diligence and executed in a competent, workmanlike manner accordance with all Prudent Practices, Applicable Laws, Applicable Standards, Industry Standards, SCE Policies, and this Agreement.
- (xix) As of the Effective Date and throughout the Term, Implementer represents and warrants that all Work and all Deliverables will be free from defects and conform to this Agreement.

9.03 SCE Covenants.

- (a) SCE shall maintain and preserve its existence as a corporation formed under the laws of the State of California and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
- (b) SCE shall, comply with Applicable Laws with respect to the Savings arising out of or in connection with SCE's actions or inactions after taking delivery of the Savings.

9.04 Implementer Covenants.

- (a) Implementer shall maintain demonstrable exclusive rights to deliver to SCE the Product throughout the Term.
- (b) Implementer shall deliver the Product to SCE free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
- (c) Implementer shall obtain, maintain and remain in compliance with all Implementer Permits, agreements and rights necessary to implement the Program, to Install or otherwise effectuate each Measure, and provide the Product to SCE in accordance with this Agreement.
- (d) Implementer shall maintain and preserve its existence as a [insert applicable corporate incorporation information] formed under the laws of the State of [XX] and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.
- (e) Intentionally Omitted. {SCE Note: placeholder for Programs that include storage, add additional language as applicable.}

- (f) Implementer shall furnish SCE, the CPUC, and each applicable Governmental Authority with such evidence as may reasonably be requested to demonstrate SCE's exclusive right to the Savings, consistent with Section 1.04, during the Delivery Term.
- (g) Implementer shall comply with, shall perform all Work in compliance with, and shall cause all Contractors and Subcontractors to comply with, all Applicable Laws, Applicable Standards, SCE Policies, and this Agreement, relating to the Program, the Project, and the Product; Implementer shall, and shall cause its Contractors and Subcontractors to, prohibit and refrain from the use of Forced Labor. "Forced Labor" means physical force, coercion, threats, intimidation, social, legal or financial pressure or other means to force a person to work against his or her own will or freedom.
- (h) Intentionally Omitted.
- (i) Intentionally Omitted.
- (j) 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 14.04.
- (k) Implementer shall not, directly or indirectly, include or otherwise utilize Implementer's place of business, Subcontractor's place of business, Contractor's place of business, or any Affiliates thereof place of business, or the residence of any employee or immediate family member of any Implementer, Contractor, Subcontractor, SCE, or Affiliate thereof as a Project.
- (l) Implementer shall not, and shall ensure its Contractors, Subcontractors, and Affiliates do not, in each case directly or indirectly, accept donations in any form (including monetary donations, products, equipment, or gifts) from any third-party to implement the Program or any Project.
- (m) Implementer shall implement reasonable administrative, technical, and physical safeguards, including any specific safeguards specified from time to time by SCE, to protect the security and integrity of SCE's systems.
- (n) At Implementer's cost, Implementer shall, and shall cause all its Contractors and Subcontractors to, undertake all work necessary to ensure Implementer, and its Contractors and Subcontractors, is fully compliant with the Cyber and Data Protection Requirements throughout the Term and for so long as Implementer, or its Contractors and Subcontractors, continues to have access to, is in possession

of, or acquires SCE Data or has access to SCE's Computing Systems. Implementer shall immediately notify SCE if it knows or reasonably believes that it, or its Contractors and Subcontractors, are not compliant with the Cyber and Data Protection Requirements.

- (o) If: (i) Implementer, or any Measure, Installation, Work, or the Product, is defective or not in compliance with this Agreement, Applicable Laws, Applicable Standards, or SCE Policies; or (ii) any Event of Default or potential Event of Default has occurred with respect to Implementer or its performance under this Agreement (whether or not Implementer believes that Implementer has cured such Event of Default or potential Event of Default), Implementer shall immediately notify SCE thereof in writing.

9.05 Customer Service Covenants.

- (a) Customer Information.

Implementer shall provide a consumer and privacy policy in compliance with Applicable Law (including the California Consumer Privacy Act, the California Privacy Rights Act and the CAN-SPAM Act) in connection with any data collected from a Customer associated with the Program. SCE has no obligation to verify the accuracy of any Customer information provided to Implementer hereunder.

- (b) Advertising and Marketing.

Any and all marketing materials designed or developed by Implementer that reference SCE, [or] any SCE program, [any IOU, or any IOU program] will be subject to written approval from SCE prior to any distribution, circulation or publication. Implementer is responsible for all marketing activities to customers; however, SCE, in its sole discretion, may assist Implementer, at Implementer's request, with advertising or marketing to SCE's customers. Implementer shall not, nor shall Implementer permit any of its Contractors, Subcontractors, Affiliates, or independent contractors to use SCE's corporate name, trademark, trade name, logo, identity or any affiliation for any reason, without SCE's prior written consent, which may be withheld by SCE in its sole discretion. {SCE Note: select appropriate language based on whether program is local or statewide}

All marketing by Implementer shall be accurate, complete, and in compliance with all Applicable Laws (including the California Consumer Privacy Act, the California Privacy Rights Act and the CAN-SPAM Act), and shall not contain any inaccurate or misleading information. Implementer shall maintain an internet website dedicated to the Program containing disclosures about the Program, Installation, and customer service contact information.

(c) Provision of Contractor Information.

Implementer will provide to SCE a list of all Implementer's direct and indirect Contractors, Subcontractors and any independent contractors associated with the Program, and any Project, prior to any such person contacting any Customer in any manner.

(d) Customer Engagement.

- (i) Implementer must establish a call center and create a call script for all customer service representatives. Implementer's customer service representatives must be able to provide all information regarding the disclosures identified in this Section 9.05 to Customers and prospective Customers calling in with questions.
- (ii) Implementer must provide the following disclosures, in a clear and coherent manner, to all Customers prior to such Customer making any commitment to enroll in Implementer's Program or enter into a contract with Implementer related to the Program:
 - (A) Text describing the available measures and enrollment options;
 - (B) Disclaimer stating that, "Measures do not guarantee a certain amount of energy savings";
 - (C) Statement of estimated kWh of energy savings and therms of gas savings;
 - (D) Implementer's company name and ultimate parent;
 - (E) Implementer's customer service contact information (phone number and email);
 - (F) The total price and price break down including all costs, incentive costs, installation costs, interest rates, and any additional costs, charges, or fees;
 - (G) Contract length;
 - (H) Cancellation policy, requirements, process, and any applicable fees;
 - (I) Bill logistics, including information on who will bill Customer and how they will be billed;

- (J) All other terms and conditions related to a Customer purchase;
 - (K) Disclosure that Implementer is not a representative of SCE or otherwise affiliated with SCE;
 - (L) Disclosure of whether the costs quoted or charged by Implementer, and any terms and conditions of Implementer, include potential financing terms and conditions, financing costs, and interest rates associated with financing the applicable project;
 - (M) Disclosure that Customer is not required to utilize any financing options provided, offered, or identified by Implementer;
 - (N) For each financing option provided, offered, or identified by Implementer, disclosure of all financing costs, interest rates, and associated terms any conditions, as well as the all-inclusive price and price break down including all costs, incentive costs, installation costs, financing costs, interest rates, and any additional costs, charges or fees;
 - (O) For each financing option provided, offered, or identified by Implementer, identification of the party providing the financing and whether Customer will be required to enter into an agreement between customer and the party providing such financing;
 - (P) An explanation of both financing and incentive options available to the Customer, and an indication that the Customer may choose either option;
 - (Q) Disclosure that SCE has no liability to Customer and will not be a party to the agreement between Customer and Implementer; and
 - (R) If applicable, disclosure that Customer may be eligible for SCE's low or no cost Energy Savings Assistance program.
- (iii) For any Customer that agrees to participate in Implementer's Program, Implementer and Customer must enter into a Customer-Implementer Agreement and Implementer shall be required to include the following provisions in each such Customer-Implementer Agreement:

- (A) Repeats all of the disclosures set forth in Section 9.05(d)(ii) above;
- (B) Customer acknowledgment of the risks associated with participating in energy efficiency programs;
- (C) Identifies Customer's enrollment option, the Measure, the price, and the billing cycle;
- (D) Provides the date the Measure will be Installed, any Installation requirements or requirement to effectuate the Measure, any inspection rights or other rights of SCE or other third party under this Agreement with respect to Customer's premises and each Measure;
- (E) The benefits and risks to Customer of enrolling in the Program and the applicable Project, including any termination of the Customer-Implementer Agreement or termination fees that may be assessed by Implementer;
- (F) All disputes will be handled between Implementer and Customer pursuant to the dispute resolution provisions in the Customer-Implementer Agreement;
- (G) Implementer shall notify Customer in the event of Implementer's imminent bankruptcy or insolvency, or if foreclosure proceedings are initiated on any of Implementer's assets;
- (H) Customer is not guaranteed any energy savings from the Measure;
- (I) Implementer's customer service department must respond to Customer inquiries within two (2) Business Days after a Customer request;
- (J) Implementer shall indemnify Customers for claims arising from or related to Implementer's design or implementation of the Program, and the applicable Project, performance, or financing of such Project or Measure, including liens of any type, mortgages, stop notices, and claims for bodily injury, death or property damage or destruction;
- (K) Customer shall ensure, that the Installations and every Measure in each Project, remain installed at the Site(s) for the life of the Measure; and

- (L) Implementer shall provide Customer notice of any direct change of control of Implementer (whether voluntary or by operation of law).

- (e) Customer Contact.

If Implementer makes contact with any Customer via telephone, cellular device, satellite device, or any other technology that is similar to the foregoing or otherwise covered by the Telephone Consumer Protection Act of 1991, Implementer must comply with the Telephone Consumer Protection Act Terms. Furthermore, Implementer shall not contact any Customer that has opted out of being contacted by SCE upon receipt of such information from SCE or as otherwise provided, in accordance with the Telephone Consumer Protection Act Terms.

- (f) Customer Satisfaction.

[Implementer shall obtain a Customer Satisfaction Survey from each Customer that has a Customer-Implementer Agreement with Implementer related to the Program and each Project and deliver such Customer Satisfaction Survey results unmodified by Implementer to SCE in a format and on a timeframe requested by SCE. Customer Satisfaction Surveys must be conducted by Implementer upon entry into a Customer-Implementer Agreement with any Customer, upon Installation of any Measure(s) at such Customer's Site, if such Customer reports an issue or complaint, or as otherwise requested by SCE. The Customer Satisfaction Survey shall be provided by SCE to Implementer from time to time. Implementer shall use commercially reasonable efforts to achieve the highest customer satisfaction rating possible.] {SCE Note: bracketed language applicable to Customer Facing Delivery Channel, but may require modification for Point of Sale and Technology/Measure Focused Delivery Channels based on Offeror's shortlisted Offer}

9.06 [Customer Data, Customer Contact, and Data Privacy.

- (a) Customer Data.

- (i) Subject to Implementer's compliance with the terms of Exhibit M, SCE shall deliver Customer Data for those Customer's that are eligible for the NAICS Codes provided in the table set forth in Section 1.02(c) of Agreement, at least once a month per Delivery Period Year, to a secure location ("Customer Data Location") and maintain such Customer Data in the Customer Data Location for five (5) Business Days ("Customer Data Access Period"). SCE shall grant Implementer access to the Customer Data Location for each applicable Customer Data Access Period. SCE's obligation to deliver

such Customer Data shall be subject to the following:

- (A) Implementer shall provide, at Implementer's expense, any information or technical resources reasonably requested by SCE to facilitate the secure delivery of Customer Data;
 - (B) On or before each Customer Data Access Period, Implementer shall: (I) delete, destroy, and render unrecoverable any and all (x) Customer Data and (y) other reports, documents, memoranda, notes, summaries, analyses, extracts, compilations, studies or other material whatsoever that is based on such Customer Data, in each case, associated with or attributable to all prior Customer Data Access Periods, on or before Implementer accesses any new Customer Data, except as may be required by Applicable Law, and (II) 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 Section 9.06(a)(i)(B) above, on or before Implementer accesses any new Customer Data;
 - (C) SCE shall have no obligation to provide Customer Data upon the occurrence of an actual or potential Event of Default;
 - (D) SCE's compliance with all Applicable Laws, including SCE Tariff Rule 25;
 - (E) SCE makes no representations or warranties that the Customer Data is accurate or complete and SCE has no obligation to verify the accuracy of any Customer Data; and
 - (F) Implementer cannot rely on the Customer Data for any particular purpose, Implementer's use of the Customer Data is at its own risk, and Implementer releases SCE from any claims related to SCE's provision of Customer Data.
- (ii) Destruction. Within five (5) Business Days after the end of the Delivery Term, Implementer shall delete, destroy, and render unrecoverable any and all (1) Customer Data and (2) other reports, documents, memoranda, notes, summaries, analyses, extracts, compilations, studies or other material whatsoever that is based on such Customer Data, in each case, associated with or attributable to all prior Customer Data Access Periods.

- (iii) Permitted Use of Customer Data. Implementer may use SCE's Customer Data solely for (i) Customer targeting, (ii) Customer eligibility checks, (iii) execution of the Program for enrolled Customers, (iv) measurement and evaluation of Measures or Projects, (v) and eliminating participant double-dipping and/or double-counting of Savings, in each case solely for the Program and as further described in Exhibit M. Notwithstanding anything to the contrary in this Agreement, Implementer is prohibited from utilizing Customer Data for any purpose other than as expressly permitted in this Section 9.06(a)(iii), including for any other programs, services, or offerings.
- (iv) Subcontractor's Receipt and Use of Customer Data. Implementer may share Customer Data with a Contractor or Subcontractor only: (i) to the extent such sharing is necessary for Implementer to perform its obligations under the Agreement and (ii) subject to Contractor's or Subcontractor's prior completion and approval of a cybersecurity review by SCE, which approval may be withheld by SCE in its sole discretion. Notwithstanding the foregoing, SCE may in its sole discretion prohibit Implementer from sharing Customer Data with any third party, including any Contractor or Subcontractor, at any time.

(b) Data Privacy.

At Implementer's cost, Implementer shall fully comply, and shall cause each of its Contractors and Subcontractors that receive Customer Data to comply to the same extent as Implementer, with all applicable terms of this Agreement, including Section 9.06 and the Data Privacy Terms set forth in Exhibit L, throughout the Term of the Agreement and for so long as Implementer and such Contractor or Subcontractor continues to Collect, Share, Process, disclose, have access to, or be in possession of, Customer Data, Personal Information or Deidentified Information.]

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.] [Comment: 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 14.04;
- (vi) Implementer fails to maintain the insurance coverage required of it in accordance with Appendix 14.07;
- (vii) Implementer fails to satisfy the collateral requirements set forth in Section 7.01 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 Section 9.04(n); or

- (ix) Implementer fails to achieve [Insert Minimum Performance Requirements] the minimum performance requirements, which are: (1) the Initial Project Approval by the Initial Project Approval Deadline; (2) a Post Installation Report, Second Post Installation Report, Deemed Post Installation Package, CPUC Ex Ante Review, or SCE Inspection, provides that a Project has not met, or does not continue to meet all of the installation requirements of Article 5, as applicable, and Implementer has not corrected the deficiencies as required in accordance with Article 5; (3) Implementer's Ex Ante Annual TRC Ratio is less than one (1) in any Delivery Period Year; (4) Implementer's total Ex Ante TSB delivered to SCE in any Delivery Period Year does not equal or exceed fifty percent (50%) of the Expected TSB applicable to such Delivery Period Year identified in Section 1.03; (5) Implementer fails to implement the Program in accordance with the Program Plan Framework and Final Implementation Plan, provided that such failure continues for sixty (60) days following receipt of written notice of such failure. [Comment: Non-Modifiable Term]

For the purposes of Section 10.01(b)(vi) above, the word "Appendix" means "Section".

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 7 and the obligation to obtain and maintain the insurance requirements in accordance with Section 14.07); 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.] [Comment: 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.] [Comment: Non-Modifiable Term]

10.04 Conclusion of Work.

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.] [Comment: Non-Modifiable Term]

10.05 Notice of Termination Payment.

As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide Notice to the Defaulting Party of the Termination Payment, calculated in a commercially reasonable manner in accordance with Section 10.06. The Notice must

include a written statement setting forth, in reasonable detail, the calculation of such Termination Payment, together with appropriate supporting documentation.

If the Termination Payment is owed to the Non-Defaulting Party, then the Defaulting Party shall pay such amount to the Non-Defaulting Party within five (5) Business Days after the Notice is provided. If the Termination Payment is owed to the Defaulting Party, then the Forward Settlement Amount shall be zero dollars (\$0) and the Non-Defaulting Party shall only pay to the Defaulting Party, within thirty (30) days after the Notice is provided, any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

The Parties shall negotiate in good faith to resolve any Disputes regarding the calculation of the Termination Payment. Any Disputes which the Parties are unable to resolve through negotiation may be submitted for resolution as provided in Article 12.

10.06 Calculation of Termination Payment.

(a) Termination Payment Prior to Initial Project Approval Date.

If the Early Termination Date occurs before the Initial Project Approval Date, then the Termination Payment shall be calculated as follows:

- (i) If Implementer is the Defaulting Party, then the Termination Payment from Implementer to SCE shall be [insert dollar amount]. There will be no amounts owed to Implementer.
- (ii) If SCE is the Defaulting Party, then the Termination Payment shall be owed to Implementer and shall equal the sum of the actual, documented and verifiable costs incurred by Implementer between the Effective Date and the Early Termination Date in connection with the Program ("Costs"), less the fair market value (determined in a commercially reasonable manner) of any assets associated with such Costs, regardless of whether or not such assets are actually sold or disposed of. There will be no amount owed to SCE.
- (iii) Each Party agrees that its damages in the event of an Early Termination Date prior to the Initial Project Approval Date caused by the other Party's default would be difficult or impossible to determine and that the damages set forth in this Section 10.06(a)(i) are a reasonable approximation of its harm or loss.

(b) Termination Payment After the Initial Project Approval Date.

If the Early Termination Date occurs after the Initial Project Approval Date, then the Termination Payment shall equal the sum of (i) 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 determined as of the Early Termination Date; and (ii) the Forward Settlement Amount.

The “Forward Settlement Amount” is the Non-Defaulting Party’s costs and losses, on the one hand, netted against its gains, on the other. If the Non-Defaulting Party’s costs and losses exceed its gains, then the Forward Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s gains exceed its costs and losses, then the Forward Settlement Amount shall be zero dollars (\$0). The Forward Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

- (a) When used in this definition, costs mean, with respect to the Non-Defaulting Party, brokerage fees, commissions, legal expenses and other similar third-party transaction costs and expenses reasonably incurred by the Non-Defaulting Party in entering into any new arrangement which replaces this Agreement, including, if SCE is the Non-Defaulting Party, with respect to credit towards SCE’s procurement requirements under CPUC EE Decisions & Guidance. With respect to SCE, costs shall be based on replacing the Savings with product from a project with similar attributes to the Program. SCE may also take into consideration any non-standard performance measures or covenants applicable to the Program when determining its costs.
- (b) When used in this definition, gains or losses mean, with respect to any Party, an amount equal to the present value of the economic benefit or loss to such Party, if any (exclusive of costs), resulting from the termination of this Agreement for the remaining Term of this Agreement, determined in a commercially reasonable manner.

Factors used in determining economic gain and loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX). With respect to SCE, gains and losses shall be based on replacing the Savings with product from a project with similar attributes to the Project. SCE may also take into consideration any non-standard performance measures or covenants applicable to the Project when determining its gains or losses.

Only if the Non-Defaulting Party is unable, after using commercially reasonable efforts, to obtain third party information to determine its gains or losses, then the

Non-Defaulting Party may use information available to it internally suitable for these purposes in accordance with prudent industry practices.

If SCE is the Non-Defaulting Party and reasonably expects to incur penalties, fines or costs from the CPUC, or any other Governmental Authority, then SCE may estimate the amount of those penalties and fines ("Estimated Amount") and include them in the Termination Payment amount; 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.

(c) No-Fault Termination.

If either Party exercises a termination right as set forth in Sections 2.05 or 8.03 the Termination Payment will be calculated with a Forward Settlement Amount of zero dollars (\$0). If the CPUC or SCE exercises a termination right as set forth in Sections 10.03, the Forward Settlement Amount shall be zero dollars (\$0) and the Termination Payment shall be calculated in accordance with Section 10.03.

ARTICLE 11. LIMITATIONS

11.01 Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, THERE ARE NO WARRANTIES BY EITHER PARTY UNDER THIS AGREEMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

EXCEPT FOR (1) REMEDIES PURSUANT TO SECTION 12.01(B) (PROVISIONAL RELIEF); (2) ANY REMEDY OR MEASURE OF DAMAGES EXPRESSLY PROVIDED HEREIN; (3) RECOVERY UNDER ANY INDEMNITY COVERING CLAIMS BY THIRD PARTIES, (4) INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 13, OR (5) DAMAGES OR LOSSES ARISING

FROM OR IN CONNECTION WITH IMPLEMENTER'S BREACH OF THE DATA PRIVACY TERMS, CYBER AND DATA PROTECTION REQUIREMENTS, OR SECTION 14.05, AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

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.

11.02 No Representation by SCE.

Any review by SCE or its consultants of all or any portion of the Program or any aspect thereof, including the design or implementation of the Program, each Project, Deliverable or the Installation, efficacy, useful life, or maintenance of any Project or Measure, or otherwise, is solely for SCE's information. By making such review, SCE makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Program, any Project or Measure, and Implementer shall in no way represent to any third party that any such review by SCE of such Project or Measure, including any review of the design or implementation of the Program, or the Installation of such Project by SCE, constitutes any such representation by SCE. Any review, approval, request, or requirement of material submitted by Implementer shall mean only that such Required Material is acceptable to SCE solely for SCE's internal purposes and benefit, and will not in any way be construed to mean that such material is accurate, suitable for its intended purpose, in compliance with any Applicable Law or other requirement, or endorsed for the benefit of any other party, including Implementer. Further, Implementer acknowledges and agrees that SCE shall have no liability to Implementer or any other third party with respect to any Required Material so reviewed, approved, requested or required by SCE or on SCE's behalf. Implementer is solely

responsible for the design and implementation of the Program and the economic and technical feasibility, operational capability, and reliability of each Project.

ARTICLE 12. DISPUTES

12.01 Dispute Resolution.

- (a) [Disputes. 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.] [Comment: Non-Modifiable Term]

If mediation or arbitration is used to resolve the dispute, the Parties agree to utilize the process set forth in Exhibit G.

- (b) Provisional Relief.

The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of this Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy for a breach of Sections 1.01, 9.04(a), 9.04(n), 9.05(b), 9.05(c), and 14.05 (Confidentiality), in any court of competent jurisdiction.

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 accordance with this Article 12, notwithstanding any prohibition against claim-splitting or other similar doctrine. The other remedies that may be sought include specific

performance and injunctive or other equitable relief, plus any other remedy specified in this Agreement for the breach of the provision, or if this Agreement does not specify a remedy for the breach, all other remedies available at law or equity to the Parties for the breach.

12.02 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 Southern District of California), and the parties hereby submit to the exclusive jurisdiction of such courts.] [Comment: Non-Modifiable Term]

ARTICLE 13. INDEMNIFICATION; GOVERNMENTAL CHARGES

13.01 SCE's Indemnification Obligations.

In addition to any other indemnification obligations SCE may have elsewhere in this Agreement, which are hereby incorporated in this Section 13.01, SCE releases, and shall indemnify, defend and hold harmless Implementer, and Implementer's directors, officers, employees, agents, assigns, and successors in interest, from and against any and all loss, liability, damage, claim, cost, charge, demand, fine, penalty or expense of any kind or nature (including any direct damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and costs of litigation, arbitration and mediation, and in the case of third-party claims only, indirect and consequential loss or damage of such third party), arising out of or in connection with, or resulting from or relating to, in whole or in part:

- (a) any breach made by SCE of its representations, warranties, or covenants in Article 9; and
- (b) the failure by SCE to pay any Governmental Charges or Environmental Costs for which SCE is responsible under Sections 13.06 or 13.08.

This indemnity applies notwithstanding Implementer's active or passive negligence. However, Implementer will not be indemnified hereunder for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct.

13.02 Implementer's Indemnification Obligations.

In addition to any other indemnification obligations Implementer may have elsewhere in this Agreement, which are hereby incorporated in this Section 13.02, Implementer releases, and shall indemnify, defend and hold harmless SCE, and SCE's directors, officers, employees, agents, assigns, [and] successors in interest, [and its third party

beneficiaries] from and against any and all loss, liability, damage, claim, cost, charge, demand, penalty, fine or expense of any kind or nature (including any direct damage, claim, cost, charge, demand, or expense, and attorneys' fees (including cost of in-house counsel) and costs of litigation, arbitration or mediation, and in the case of third-party claims only, indirect or consequential loss or damage of such third party), arising out of or in connection with, or resulting from or relating to, in whole or in part: **{SCE Note: select appropriate language based on whether program is local or statewide}**

- (a) any breach made by Implementer of its representations, warranties, or covenants in Article 9;
- (b) injury, personal injury to persons (including without limitation death, disease, illness, sickness, or exposure to any toxic or harmful chemical, material, biological agent, fungus, mold, germ, bacteria or virus), or damage, including SCE employees, and physical damage to property, including SCE property, where the injury, personal injury, or damage, actually or allegedly, arises out of, is related to, or is in connection with, resulting in whole or in part, from Implementer's design or implementation of the Program, Installation, ownership, effectuation, evaluation, or performance of each Project, or obligations or performance under this Agreement;
- (c) injury, personal injury to persons (including without limitation death, disease, illness, sickness, or exposure to any toxic or harmful chemical, material, biological agent, fungus, mold, germ, bacteria or virus), or damage to any property, including the personnel or property of SCE, to the extent that SCE would have been protected had Implementer complied with all of the provisions of Section 14.07 (Insurance); provided, the inclusion of this Section 13.02(c) is not intended to create any express or implied right in Implementer to elect not to provide the insurance required under Section 14.07;
- (d) any violation of Applicable Laws arising out of or in connection with Implementer's performance of, or failure to perform this Agreement, including strict liability;
- (e) any (i) release of a Hazardous Material by Implementer, any of Implementer's Contractors or other contractors, or any of its or their subcontractors, (ii) enforcement or compliance proceeding relating to or in connection with any alleged, threatened or actual violation of any environmental law by Implementer or its Contractor or any of Implementer's or its Contractor's subcontractors, (iii) action reasonably necessary to abate, investigate, remediate or prevent a violation or threatened violation of any environmental law by Implementer or its Contractor or any of Implementer's or its Contractor's subcontractors, or (iv) relating to or involving in any way, in whole or in part, bodily injury (including without limitation 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 Implementers, or its Contractors, or any of Implementer's or its Contractor's subcontractors acts or omissions;
- (f) any representations, statements or promises made by either Implementer or Implementer's agents or employees to a Customer or potential Customer;
 - (g) any actual or claimed infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with each Project;
 - (h) the failure by Implementer to pay any Governmental Charges or Environmental Costs for which Implementer is responsible under Sections 13.06 or 13.08;
 - (i) relating to or involving in any way payments to any Contractors arising from or in connection with the Agreement (including but not limited to any demands for payment, invoices, or liens) and/or Implementer's delay or failure to pay any Contractors the compensation, monies, wages or other payment due or allegedly due such Contractors with regard to any Work performed hereunder;
 - (j) any breach by Implementer of Section 9.04(n);
 - (k) Any costs, penalties or fines resulting from the failure of Implementer to implement the Program and deliver the Product;
 - (l) Any costs, penalties, or fines relating to, associated with, or attributable to the CPUC's ex post evaluation of the Program and each Project, including the failure of any Measure to remain Installed and operating as expected for the expected useful life of the Measure, at the applicable Customer's Site, or any change to the Customer, the Customer's Site, each Measure, the Installation.
 - (m) Any claim resulting from or related to a breach of any of the obligations under the Data Privacy Terms.

The Parties shall use commercially reasonable efforts to minimize costs, penalties, and fines for which indemnity is sought hereunder; provided, in no event will SCE be required to use or change its utilization of its owned or controlled assets or market positions to minimize such costs, penalties, and fines.

This indemnity applies notwithstanding SCE's active or passive negligence. However, SCE will not be indemnified for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by its gross negligence or willful misconduct, nor shall this indemnity apply to the extent prohibited by or made void or unenforceable under

Applicable Law, including but not limited to Section 2782 of the California Civil Code when applicable.

[Implementer expressly acknowledges each IOU as a third party beneficiary to the foregoing indemnification requirements and acknowledges that each IOU is entitled to the rights and benefits hereunder and shall have the right to enforce this Section as if it were a party to this Agreement.] {SCE Note: retain language for statewide programs, delete language for local program}

13.03 Indemnification Claims.

All claims for indemnification by a Party entitled to be indemnified under this Agreement (an “Indemnified Party”) by the other Party (the “Indemnitor”) will be asserted and resolved as follows:

- (a) If a claim or demand for which an Indemnified Party may claim indemnity is asserted against or sought to be collected from an Indemnified Party by a third party, the Indemnified Party shall as promptly as practicable give Notice to the Indemnitor; provided, failure to provide this Notice will relieve Indemnitor only to the extent that the failure actually prejudices Indemnitor.
- (b) Indemnitor will have the right to control the defense and settlement of any claims in a manner not adverse to Indemnified Party but cannot admit any liability or enter into any settlement without Indemnified Party’s approval.
- (c) Indemnified Party may employ counsel at its own expense with respect to any claims or demands asserted or sought to be collected against it; provided, if counsel is employed due to a conflict of interest or because Indemnitor does not assume control of the defense, Indemnitor will bear the expense of this counsel.

The indemnity obligations set forth in this Section 13 shall be separate from and shall not be limited by the insurance requirements set forth in Article 14 of this Agreement. Implementer’s or Implementer Contractor’s insurance policies for any loss, amount or matter Implementer is required to indemnify shall reduce Implementer’s indemnity obligations under this Agreement only if and to the extent the insurer(s) for such insurance coverage promptly accepts liability for and unconditionally pays for such loss, amount and liability.

In the event SCE, or SCE’s directors, officers, employees, agents, assigns, [or] successors in interest, [or its third party beneficiaries], brings suit or initiates any other legal proceeding against any insurer in connection with any insurance that is subject to this Agreement, Implementer shall advance and indemnify SCE the reasonable costs and expenses (including attorneys’ fees) in bringing or maintaining such suit or legal proceedings. The obligations of Implementer under this Article 13 shall arise at such

time, if any, that any claim is first made against or any loss is incurred by SCE, or SCE's directors, officers, employees, agents, assigns, [or] successors in interest, [or its third party beneficiaries]. 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.

13.04 Survival of Indemnification Rights and Obligations.

All indemnity rights and obligations shall survive the termination of this Agreement for a period of four (4) years.

13.05 Cooperation to Minimize Tax Liabilities.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

13.06 Governmental Charges.

Implementer shall pay or cause to be paid all taxes, charges or fees imposed by a Governmental Authority, including ad valorem taxes and other taxes attributable to each Project, land, land rights or interests in land for each Project (collectively, "Governmental Charges") on or with respect to each Project or the Product.

If Implementer is required by Applicable Laws to remit or pay Governmental Charges which are SCE's responsibility hereunder, SCE shall promptly reimburse Implementer for such Governmental Charges. If SCE is required by Applicable Laws to remit or pay Governmental Charges which are Implementer's responsibility hereunder, SCE may deduct the amount of any such Governmental Charge from any amounts due to Implementer under this Agreement. If SCE elects not to deduct such amounts from amounts due to Implementer under this Agreement, Implementer shall promptly reimburse SCE for such amounts upon SCE's request.

Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Laws.

13.07 Compliance with Laws and Indemnification.

Implementer shall be responsible for obtaining and maintaining all Implementer Permits, and shall design and implement the Program, and Install each Project in compliance with all Applicable Laws for the Term, including any new or revised 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.

Implementer shall be solely responsible for any fines, penalties or other charges which result from Implementer's failure to obtain or maintain such Implementer Permits, Install

and maintain each Project, or implement the Program in accordance with Applicable Laws. No such fines, penalties or charges shall be passed through to SCE.

13.08 Environmental Costs and Indemnification.

Implementer is solely responsible for any Environmental Costs, any taxes, charges or fees imposed on each Project or Implementer by a Governmental Authority for Greenhouse Gas emitted by and attributable to each Project, or any portion thereof, during the Term, and any Greenhouse Gas compliance obligations.

13.09 Cyber and Data Protection Enforcement Expenses.

Other than as expressly set forth in the Cyber and Data Protection Requirements, Implementer shall pay, upon demand by SCE, all expenses, charges, costs and fees (including, without limitation, reasonable legal fees and costs) paid or incurred by or on behalf of SCE in connection with the enforcement of any of the rights of SCE or the material obligations of Implementer or its Subcontractors under the Cyber and Data Protection Requirements.

ARTICLE 14. MISCELLANEOUS

14.01 General.

- (a) Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to its subject matter.
- (b) Amendment. This Agreement can only be amended by a writing signed by both Parties.
- (c) [No] 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 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: select appropriate language based on whether program is local or statewide}
- (d) 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.

- (e) 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.
- (f) Successors and Assigns. This Agreement is binding on each Party's successors and permitted assigns.
- (g) Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" and that SCE and Implementer are each "forward contract merchants" within the meaning of the United States Bankruptcy Code (11 U.S.C. §101 et seq.), as amended.
- (h) Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will 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.
- (i) 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. The duty to keep strictly confidential and take reasonable precautions to protect against the disclosure of all BES Cyber System Information, CEII, and Personal Information, shall so survive and shall continue until such time as SCE provides notice that such information may be distributed or disclosed without restriction.
- (j) No Agency. Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party's agent.
- (k) Independent Contractors. 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.
- (l) 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.

(m) Rules of Construction.

- (i) This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and may not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (ii) 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.
- (iii) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (iv) Where days are not specifically designated as Business Days, they will be considered as calendar days.
- (v) All references to time shall be in Pacific Daylight Time (when California observes Daylight Savings Time) and Pacific Standard Time (otherwise) unless stated otherwise.
- (vi) No provision of this Agreement is intended to contradict or supersede the SCE Tariff, [or] Applicable Laws, [or any agreement covering transmission, distribution, metering, scheduling or interconnection,] {SCE Note: include only for programs that include energy storage or demand response} each of which shall control in the event of an apparent contradiction with this Agreement. Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
- (vii) Any reference to any Applicable Laws, tariff, government department or agency, regional reliability council, T&D Provider, accounting standard, or Ratings Agency includes any successor to such law, tariff, standard or organization.

14.02 Notices.

All notices, requests, invoices, statements or payments must be made as specified in Exhibit D.

Notices must, unless otherwise specified herein, be in writing and provided by e-mail; however, if an e-mail address is not provided in Exhibit D, notices may be provided by hand delivery, first class United States mail, overnight courier service, or facsimile.

Notice provided in accordance with this Section 14.02 will be deemed given as follows:

- (a) Notice by e-mail, facsimile or hand delivery will be deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise will be deemed given at the close of business on the next Business Day;
- (b) Notice by overnight United States mail or courier service will be deemed given on the next Business Day after such Notice was sent out;
- (c) Notice by first class United States mail will be deemed given two (2) Business Days after the postmarked date.

Notices will be effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

A Party may change its designated representatives, addresses and other contact information by providing Notice of same in accordance herewith.

All Notices, requests, invoices, statements or payments related to this Agreement must reference the ID# and clearly identify the fact, circumstance, request, issue, dispute or matter to which such Notice relates.

14.03 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.] [Comment: Non-Modifiable Term].

14.04 Assignment.

- (a) 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.
- (b) Any direct or indirect change of control of Implementer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of SCE, which consent shall not be unreasonably withheld.
- (c) Any requests for consent to assignment shall be provided at least forty-five (45) days in advance of the assignment date.

14.05 Confidentiality.

(a) Confidentiality Obligation.

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Sections 14.05(b) (Permitted Disclosures) and 14.05(c) (Duty to Seek Protection), each receiving Party shall, and shall cause its Representatives to: (i) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, BES Cyber System Information, CEII, and Personal Information; and (ii) use all Confidential Information, BES Cyber System Information, CEII and Personal Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose subject to Section 9.06; provided, a Party may disclose Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement (and, in the case of Representatives of Implementer engaged wholly or in part in the purchase and sale of electrical power or natural gas, are directly engaged in performing Implementer's obligations under this Agreement) if, prior to being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are obligated to comply with the requirements of this Agreement. Each Party will be responsible for any breach of this Agreement by its Representatives.

(b) Permitted Disclosures.

- (i) 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, FERC or CEC. 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.
- (ii) 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.
- (iii) 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.

- (iv) If SCE resells all or any portion of the Savings to another party or the Savings is to be provided to another party, SCE may disclose to the other party to such transaction all such information necessary to effect such transaction.
- (v) 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.
- (vi) SCE may confirm with potential Customers (A) the identity of any subcontractors that Implementer has provided to SCE that are acting on behalf of Implementer under this Agreement, and (B) such potential Customer’s eligibility to become a Customer associated with the Program, in accordance with this Agreement.
- (vii) [\[SCE may disclose Confidential Information to any IOU.\]](#) {SCE Note: delete for local programs}

(c) Duty to Seek Protection.

- (i) 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, (A) will 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 (B) will, and will 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 14.05(c)(i) do not apply to Section 14.05(b)(i).
- (ii) If a Party or its Representatives are compelled to make disclosure in response to a requirement described in Section 14.05(c)(i), 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 will exercise reasonable efforts to obtain assurance that confidential treatment will be accorded

to the disclosed Confidential Information protected by this Agreement.

(d) Ownership and Return of Information.

All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Notwithstanding the foregoing, the Parties shall have the right to retain copies of Confidential Information, subject to the confidentiality obligations in this Section 14.05.

14.06 Records.

(a) Performance Under This Agreement.

Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Product, each Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than four (4) years after final payment is made under this Agreement.

(b) Other Regulatory and Governmental Requirements.

At SCE's request, Implementer shall maintain and deliver to SCE copies of records and supporting documentation with respect to the Product or each Project that Implementer is not already required to maintain or deliver under this Agreement, in order to comply with all Applicable Laws.

(c) Audit Rights.

SCE, or its designee, shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of Implementer to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Implementer shall promptly comply with any reasonable request by SCE under this Section 14.06(c) and provide copies of documents, records or data to SCE. The rights and obligations under this Section 14.06(c) shall survive the termination of this Agreement for a period of two (2) years.

(d) Industry Standards.

Implementer shall maintain and make available to SCE and the CPUC, or any division thereof, records including logbooks, demonstrating that each Project is operated and maintained in accordance with Prudent Practices, Applicable Laws,

and Industry Standards. Implementer shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Practices, Applicable Laws, or Industry Standards.

14.07 Insurance.

Throughout the Term and for such additional periods as may be specified below, Implementer and, to the extent not covered by Implementer's insurance policies, its contractors and subcontractors shall, at their own expense, provide and maintain in effect the insurance policies specified below, with limits of liability that meet or exceed the limits specified below, and such additional coverage as may be required by Applicable Laws, with insurance companies which are authorized to do business in the state in which the services are to be performed and which have an A.M. Best's Insurance Rating of not less than A:VII. Implementer shall require each Contractor, at its own expense, to provide and maintain those coverages consistent with good practices for firms in each Contractor's industry for the portion of the Work performed by each Contractor. The minimum insurance requirements specified herein do not in any way limit or relieve Implementer of any obligation assumed elsewhere in this Agreement, including Implementer's defense and indemnity obligations. In the event of the reduction or exhaustion of any of the limits of liability for any insurance for Implementer or any Contractor that is subject to this Agreement, Implementer shall acquire or shall cause Contractor to acquire insurance to replace such reduced or exhausted limits.

- (a) Workers' Compensation Insurance with the statutory limits required by the state having jurisdiction over Implementer's employees;
- (b) Employer's Liability Insurance with limits equal or exceeding:
 - (i) Bodily injury by accident – One Million dollars (\$1,000,000) each accident
 - (ii) Bodily injury by disease – One Million dollars (\$1,000,000) policy limit
 - (iii) Bodily injury by disease – One Million dollars (\$1,000,000) each employee
- (c) Commercial General Liability Insurance (which, except with the prior written consent of SCE and subject to Sections 14.07(c)(i) and (ii), shall be written on an "occurrence," not a "claims-made" basis), covering all operations by or on behalf of Implementer arising out of or connected with this Agreement, including coverage for bodily injury, property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall bear a per occurrence limit equal or exceeding One Million dollars (\$1,000,000) and annual aggregate equal or exceeding Two

Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. Such insurance shall contain standard cross-liability and severability of interest provisions.

If Implementer elects, with SCE's written concurrence, to use a "claims made" form of Commercial General Liability Insurance, then the following additional requirements apply:

- (i) The retroactive date of the policy must be on or prior to the Effective Date; and
 - (ii) Either the coverage must be maintained for a period equal or exceeding four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period equal or exceeding four (4) years after this Agreement terminates.
- (d) Commercial Automobile Liability Insurance covering bodily injury and property damage with a combined single limit equal or exceeding One Million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Implementer's use of all owned (if any), non-owned and hired vehicles in the performance of this Agreement.
- (e) Pollution Liability Insurance, (which, except with the prior written consent of SCE and subject to Sections 14.07(e)(i) and (ii), shall be written on an "occurrence" or a "claims-made" policy form) with limits equal or exceeding [] Million dollars (\$[],000,000) {SCE Note: Amount to be filled in}, 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:

- (i) The retroactive date of the policy must be prior to the Effective Date; and
- (ii) 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.

- (f) Umbrella/Excess Liability Insurance, written on an “occurrence,” not a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, Pollution Liability Insurance, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits equal or exceeding [] Million dollars (\$[],000,000) {SCE Note: Amount to be filled in} per occurrence and in the annual aggregate. The insurance requirements under this Section 14.07 can be provided in part by the combination of Implementer’s primary commercial general liability and excess liability policies.

If Implementer elects, with SCE’s written concurrence, to use a “claims made” form of Umbrella/Excess Liability Insurance, then the following additional requirements apply:

- (i) The retroactive date of the policy must be prior to the Effective Date; and
- (ii) 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.
- (g) Cyber Insurance covering (a) liability arising from theft, dissemination and/or use of Confidential Information stored or transmitted in electronic form and (b) liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer’s or third person’s computer, computer system, network or similar computer related property and the data, software and programs stored thereon. Such insurance will be maintained with limits of no less than [] Million dollars (\$[],000,000) {SCE Note: Amount will be at least \$2 million, but will be based upon Offeror’s cyber risk} per claim and in the annual aggregate, and may be maintained on a stand-alone basis, or as part of any errors and omissions coverage. This Cyber Insurance shall have a retroactive date that equals or precedes the Effective Date, and shall be maintained until the later of: (1) three (3) years after this Agreement terminates, or (2) until Implementer has returned or destroyed all SCE Data in its possession, custody or control, including any copies maintained for archival or record-keeping processes.

All policies required by Sections 14.07(a) through (h) shall be written on a “per project” or “per contract” basis.

- (h) SCE as Additional Insured. The insurance required in this Section 14.07 and all insurance that is required to name SCE, its subsidiaries and affiliates and their respective officers, directors, shareholders, agents and employees as additional insureds, including without limitation primary, excess and umbrella

policies, shall apply as primary insurance to, and without a right of contribution from, any other insurance or self-insurance maintained by or afforded to SCE, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees (“SCE Insurance”), regardless of any conflicting provision in Implementer’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 shall 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 of SCE Insurance by a written endorsement or rider. To the extent permitted by Applicable Laws, Implementer and its insurers shall be required to waive all rights of recovery from or subrogation against SCE, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. All Commercial General Liability, Commercial Automobile Liability, Pollution Liability, Umbrella/Excess Liability, and Cyber insurance that is required above or is maintained by or on behalf of Implementer shall include, either by policy terms and conditions or by endorsement, SCE, its parent, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, as additional insureds with coverage up to the full limits of liability provided for Implementer 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, agents, or any Contractor or Implementer’s design or implementation of the Program, and Implementer’s Installation of each Project, or obligations or performance, under this Agreement.

Implementer shall require each Contractor to have all Commercial General Liability, Cyber, and Umbrella/Excess Liability insurance that is maintained by or on behalf of the Contractor to name SCE, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees as additional insureds with coverage up to the full limits of liability provided for the Contractor for liability directly or indirectly arising out of or in any way involving, in whole or in part, the acts or omissions of the Contractor, its employees, agents or any of its Contractors or Contractor’s products or services, for both ongoing operations and completed operations. The full limits of liability for all insurance policies of the types specified in Section 14.07 purchased by or on behalf of Implementer or any Contractor, including without limitation any excess policies, with limits of liability in excess of the amounts specified in this Section 14.07, will be considered required insurance for purposes of any insurance policy provision seeking to limit coverage for SCE, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, and employees as additional insureds.

- (i) Proof of Insurance. Within ten (10) days after the Effective Date, and within ten (10) Business Days after coverage is renewed or replaced, Implementer

shall furnish to SCE the entire policy forms, including endorsements, and certificates of insurance evidencing the coverage required or referenced above, written on forms and with deductibles reasonably acceptable to SCE. The insurance broker or agent issuing any certificate of insurance shall: (i) confirm that the insurance referenced meets the requirements of this Agreement; and (ii) acknowledge that SCE relies on all statements made and information provided in the certificate of insurance. All deductibles and coinsurance retentions applicable to the insurance above shall be paid by Implementer or each respective Contractor. Implementer shall furnish and cause any Contractor to furnish full copies of all insurance policies that fulfill the requirements of or are subject to this Section 14.07 within thirty (30) days after the Effective Date or within thirty (30) days of the Implementer's or Contractor's receipt of such insurance policies. Implementer, or its insurance broker or agent, shall provide, and shall cause each Contractor to provide, SCE with at least thirty (30) days' prior written notice in the event of the cancellation of or any material change to any insurance (including without limitation any exhaustion or reduction of limits) that is subject to this Agreement. SCE's receipt of certificates or insurance policies that do not comply with the requirements stated herein, or Implementer's or any Contractor's failure to provide certificates or insurance policies that comply with the requirements stated herein, shall not limit or relieve Implementer of the duties and responsibility of maintaining insurance, and requiring each Contractor to maintain insurance, in compliance with the requirements in this Section 14.07 and shall not constitute a waiver of any of the requirements in this Section 14.07. SCE's receipt of certificates of insurance, copies of insurance policies, and any other insurance-related documentation from Implementer or any Contractor shall not be deemed an agreement or acknowledgement by SCE that Implementer or any Contractor has fulfilled its obligations under this Section, nor shall it relieve Implementer or any Contractor of such obligations, which obligations shall remain in full force.

- (j) Reporting. Implementer agrees to report to SCE in writing within ten (10) Business Days following all accidents or occurrences resulting in bodily injury to any person, and to any property where such property damage is greater than One Hundred Thousand Dollars (\$100,000).
- (k) Failure to Comply. If Implementer fails to comply with any of the provisions of this Section 14.07, Implementer, among other things and without restricting SCE's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required Commercial General Liability, Umbrella/Excess Liability, Pollution Liability and Commercial Automobile Liability insurance, Implementer shall provide a current, full and complete defense to SCE, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest,

in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, an alleged violation of the provisions of this Section 14.07 means that Implementer has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Implementer shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California. Without limitation on any of its other rights or remedies, SCE shall have the right to withhold payment otherwise due to Implementer if Implementer or any of its Contractors are not in compliance with their insurance obligations.

14.08 Nondedication.

Notwithstanding any other provisions of this Agreement, neither Party dedicates any of the rights that are or may be derived from this Agreement or any part of its facilities involved in the performance of this Agreement to the public or to the service provided under this Agreement, and this service shall cease upon termination of this Agreement.

14.09 Coordination with other Program Administrators.

Implementer shall coordinate with other Program Administrators administering energy efficiency programs in the same geographic area as Company. The California Public Utilities Commission may develop further rules related to coordination between Program Administrators in the same geographic area, and any Implementer is required to comply with such rules. [SCE Note: See Appendix B of the RFP Instructions]

14.10 Data Collection and Ownership Requirements.

(a) Data Collection.

Prior to Implementer receiving any Company Data, Implementer shall comply, and at all times thereafter continue to comply, with Exhibit H and Company's Confidentiality provisions in Section 14.05.

(b) Ownership and Use Rights.

(i) [Company Data. Company shall retain all of its rights, title and interest in Company's Data.]

(ii) [Program Intellectual Property. Notwithstanding anything in this Agreement to the contrary, Program Intellectual Property shall be jointly owned by SCE and Program Participants, if any, without further consideration. Program Intellectual Property will be owned by SCE upon its creation. Implementer agrees to execute any such other

documents or take other actions as SCE may reasonably request to perfect SCE's ownership in the Program Intellectual Property.]

(iii) Implementer's Pre-Existing Materials. If, and to the extent Implementer retains any preexisting ownership rights ("Implementer's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Program Intellectual Property, Implementer hereby grants Company and the Program Participants on behalf of their respective customers and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Implementer or any Implementer Party for the sole purpose of using such Program Intellectual Property for the conduct of Company's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Implementer shall retain all of its rights, title and interest in Implementer's Pre-Existing Materials. Any and all claims to Implementer's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Program Intellectual Property must be expressly disclosed to Company prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement may not automatically be claimed as owned by Company. [SCE Note: See [Appendix B of the RFP Instructions](#)]

14.11 Billing, Energy Use, and Program Tracking Data.

Implementer shall comply with and timely cooperate with all CPUC directives, activities, and requests regarding the Program and Project evaluation, measurement, and verification ("EM&V"). {Comment: placeholder for Agreement term, each Company to add their own requirements} [SCE Note: See [Appendix B of the RFP Instructions](#)]

Upon SCE's request, Implementer shall make available to SCE detailed descriptions of the program, data tracking systems, baseline conditions, and participant data, including financial assistance amounts. {Comment: placeholder for Agreement term, each Company to add their own requirements} [SCE Note: See [Appendix B of the RFP Instructions](#)]

Implementer shall make available to SCE any revisions to Implementer's program theory and logic model (PTLM) and results from its Quality Assurance Procedures, and comply with all of SCE's EM&V requirements, including reporting of progress and evaluation

metrics. {Comment: placeholder for Agreement term, each Company to add their own requirements} [SCE Note: See Appendix B of the RFP Instructions]

14.12 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 perform the Services. Implementer shall also procure any and all access rights from Implementer Parties, Customers and other third parties in order for Company and CPUC employees, representatives, designees and contractors to inspect the Services.] {Comment: placeholder for Agreement term, each Company to add their own requirement} [SCE Note: See Appendix B of the RFP Instructions]

[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

“Acceptance Notice” has the meaning set forth in Exhibit J.

“ACH” means the electronic funds transfer system operated by the National Automated Clearing House, or any successor entity.

“Administrative Costs” means those costs Implementer spends, directly or indirectly, on: (a) overhead (general and administrative labor and materials), (b) labor (management and clerical), (c) human resources, (d) support and development, and (e) travel and conference fees, as further defined in CPUC EE Decisions & Guidance.

“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.

“Agricultural Customer” means a Customer whose primary business is agricultural production, including field and seed crops, fruit and nut crops, vegetables and melons, livestock, poultry, floriculture, indoor agriculture, or on-site food processing if such on-site food is of one of the foregoing categories. An Agricultural Customer excludes any Commercial and Industrial Customer, Higher Education Customer, Public Customer, Residential Customer, Small and Medium Business Customer, and any Water Wastewater Customer.

“Alternate Verification Requirement” means a document provided by Implementer that identifies the documents, data, photographs, and other materials required for a particular Measure to meet its Measure Package requirements.

“Annual Deliverable Budget” has the meaning set forth in Exhibit J.

“Annual TRC Payment” has the meaning set forth in Section 3.05(c).

“Applicable Law(s)” means CPUC EE Decisions & Guidance, tariff, business practice manuals, and operating procedures, and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, directives, guidelines, policies, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, each Project, the Product, any Measure, or the terms of this Agreement, as the same may be amended or modified from time to time.

“Applicable Standards” means those practices, methods, specifications, codes, acts, equipment and standards set forth or referenced in this Agreement; provided that, if no specific practice, method, specification, code, acts, equipment or standard is set forth or referenced in this

Agreement for a particular Implementer action, then the practices, methods, specifications, codes, acts, equipment and standards for such Implementer action 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 activities similar to such Implementer activity, as well as those applicable industry standards and best practices of Implementer's industry.

“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.

“BES” or “Bulk Electric System” means the electrical generation resources, transmission lines, interconnections with neighboring transmission systems, and associated equipment, generally operated at voltages of 100 kV or higher. This definition is subject to exemptions and inclusion of resources, lines and other elements that do not fit the foregoing definition, if such exemptions or inclusions are required by energy industry regulatory agencies including (but not limited to) NERC and FERC.

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

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

“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 ends at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action.

“CalEnviroScreen Tool” means that certain software tool published by the California Office of Environmental Health Hazard Assessment.

“CEC” means the California Energy Commission.

“CEII” or “Critical Energy Infrastructure Information” means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that: (a) relates details about the production, generation, transmission, or distribution of energy; (b) could be useful to a person planning an attack on critical infrastructure; (c) is exempt from mandatory disclosure under the Freedom of Information Act; and (d) gives strategic information beyond the location of the critical infrastructure.

“CET” or “Cost Effectiveness Tool” means the online database calculator designed for and approved by the CPUC that determines a Measure’s and Program’s cost effectiveness and TSB, and which is located on the California Energy Data and Reporting System website. The CET may be updated from time to time.

“Claiming Party” has the meaning set forth in Section 8.02.

“Commercial and Industrial Customer” means a Customer other than any Agricultural Customer, Higher Education Customer, Public Customer, Residential Customer, Public Customer, Small and Medium Business Customer, and any Water Wastewater Customer.

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

“Company Data” shall mean all data or information provided by or on behalf of Company, including but not limited to, customer personally identifiable information; energy usage data relating to, of, or concerning, provided by or on behalf of any customers; all data or information input, information systems and technology, software, methods, forms, manual’s, and designs, transferred, uploaded, migrated, or otherwise sent by or on behalf of Company to Implementer as Company may approve of in advance and in writing (in each instance); account numbers, forecasts, and other similar information disclosed to or otherwise made available to Implementer. Company Data shall also include all data and materials provided by or made available to Implementer by Company’s licensors, including but not limited to, any and all survey responses, feedback, and reports subject to any limitations or restrictions set forth in the agreements between Company and their licensors.

“Confidential Information” means this Agreement, the terms and conditions and other facts with respect to this Agreement, and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives[, or by any IOU to Implementer,] in connection with this Agreement, including any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon

such information, data, analyses, documents, and materials. Confidential Information does not include information, data, analyses, documents, or materials that (a) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives, or (b) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, provided, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (c) the receiving Party or its Representatives can demonstrate that the information has been independently developed by the receiving Party's personnel acting without access to the Confidential Information. {SCE Note: applicable to statewide programs}

“Conflicted Evaluator” has the meaning set forth in Section 9.02(e).

“Contract Administration” has the meaning set forth in Exhibit D.

“Contract Year” means each time period set forth in the table in Section 7.01.

“Contractor” means an entity chosen by Implementer to perform any work, services or activities for any Project.

[“Covered Personnel” has the meaning set forth in Section 6.04(a)(i).] [Comment: Non-Modifiable Term]

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves this Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to Implementer under this Agreement; (ii) does not contain conditions or modifications unacceptable to SCE, in SCE's sole discretion; and (iii) finds the Agreement satisfies the requirements CPUC Decisions 16-08-019, 18-01-004, 18-05-041, each as may be modified or supplemented from time to time. [SCE Note: See Appendix B of the RFP Instructions]

“CPUC EE Decisions & Guidance” means CPUC Decisions 23-06-055, 23-02-002, 19-07-016, 19-05-019, 19-01-003, 18-10-008, 18-05-041, 18-01-004, 17-12-009, 17-11-006, 17-09-025, 17-04-005, 17-03-026, 17-03-003, 16-12-036, 16-11-022, 16-10-008, 16-09-020, 16-08-019, 15-12-002, 15-11-004, 15-10-028, 15-07-001, 15-06-008, 14-10-046, 13-09-044, 13-09-023, 12-12-032, 12-11-015, 11-09-020, 10-12-054, 09-09-047, 05-07-046, 05-01-055, and any other 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 Ex Ante Review” has the meaning set forth in Section 5.07.

“CPUC Inspected Project” has the meaning set forth in Section 5.07.

“CPUC M&V Work” has the meaning set forth in Section 9.02(e).

“Customer-Implementer Agreement” means that agreement executed between Customer and Implementer in order for Customer to participate in the Program and for Implementer to Install any Measure on such Customer’s Site, which shall be subject to those requirements set forth within Section 9.05 of this Agreement. SCE shall not be a party to the Customer-Implementer Agreement.

“Curable Deficiency Notice” has the meaning set forth in Exhibit J.

“Custom Review Guidance Documents” means those guidance documents published by the CPUC for reviewing custom projects, and which detail the CPUC’s policies and procedures to be utilized in the development of expected values for custom projects and measures, which, as of the Effective Date, are located at the following website address:
<https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/demand-side-management/energy-efficiency/ex-ante-review-custom-projects>.

“Customer(s)” means a person or entity that is a customer of [SCE] [any IOU], has [an SCE] [a] customer service account number [with such IOU], and is the person or entity that is receiving the Measure from the Implementer. {SCE Note: The Parties shall clarify the definition of Customer based on the Program Offered}. {SCE Note: select appropriate language based on whether program is local or statewide}

[“Customer Data” means the data elements set forth in the table titled “Requested Data Elements and Description” in Exhibit M.] {SCE Note: delete if no Personal Information being provided.}

[“Customer Data Access Period” has the meaning set forth in Section 9.06(a)(i).] {SCE Note: delete if no Personal Information being provided.}

[“Customer Data Location” has the meaning set forth in Section 9.06(a)(i).] {SCE Note: delete if no Personal Information being provided.}

“Customer Facing” means a Program and resulting Projects for which (i) the Customer directly receives a rebate or incentive in order to influence end-users of energy efficiency Measures to purchase, install, and utilize such energy efficiency Measures or (ii) such energy efficiency measures are directly installed for the Customer.

[“Customer Participation Information” means the number of Customers participating in Implementer’s Program]

“Customer Permits” means all applications, approvals, authorizations, clearances, consents, filings, licenses, orders, or permits required by Applicable Law, a Measure Package, or any Governmental Authority, for the Installation of any Measure(s) at the Customer’s Site, including but not limited to Title 24 permits.

“Customer Satisfaction Survey(s)” means a list of questions provided by SCE to Implementer from time to time.

“Customized Calculated Approach” means a Program that utilizes Measures without a Measure Package and the methodology to calculate Saving is conducted pursuant to a uniquely determined engineering calculation.

“Customized Calculated Energy Efficiency Program” means a Program for which the Customized Calculated Approach is selected in Section 1.01(b).

“Cyber and Data Protection Requirements” means those requirements for information security, cybersecurity and privacy, as set forth in the attached Exhibit H.

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

“Data Privacy Terms” means the terms and conditions set forth in Exhibit L.

“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 Program that utilizes Measures that have a CPUC Measure Package.

“Deemed Energy Efficiency Program” means a Program for which the Deemed Approach is selected in Section 1.01(b).

“Deemed Post-Installation Inspection” means the inspection by Implementer of all or any portion of a Project to determine if (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, (y) the Program Verification Checklist and (z) 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, the Program Verification 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 Program Verification Checklist, 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.

“Deliverable(s)” has the meaning set forth in Exhibit J.

“Deliverable Report” has the meaning set forth in Exhibit J.

“Delivery Channel(s)” means Technology/Measure Focused, Point of Sale or Customer Facing.

“Deliverable Payment(s)” has the meaning set forth in Section 3.06.

“Deliverable Project Budget” has the meaning set forth in Exhibit J.

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

“Delivery Period Month” means each calendar month of the Delivery Term. For the purposes of determining a Delivery Period Month, the first Delivery Period Month covers the period from the Initial Project Approval Date through the end of the first current calendar month.

“Delivery Period Year” means each calendar year, beginning on January 1 and ending on December 31, of the Delivery Term. For the purposes of determining a Delivery Period Year, the first Delivery Period Year covers the period from the Initial Project Approval Date through the end of the first calendar year of the Delivery Term, and last Delivery Period Year covers the period from January 1 of the last year of the Delivery Term through expiration of the Delivery Term.

“Disadvantaged Community” means a census tract that either:

- (a) scores at or above the 75th percentile (i.e., scoring in the top 25 percent statewide) in the California Environmental Protection Agency's (CalEPA) [CalEnviroScreen](#) 3.0, or successor thereof, on a statewide basis, or
- (b) is one of the 22 census tracts that score in the highest five percent of CalEnviroScreen's pollution burden, but that do not have an overall score in the top 25 percent because of unreliable socioeconomic or health data.

“Disadvantaged Worker” means a worker that meets at least one of the following criteria: (i) lives in a household where total income is below fifty percent (50%) of Area Median Income; (ii) is a recipient of public assistance; (iii) lacks a high school diploma or GED; (iv) has previous history of incarceration lasting one year or more following a conviction under the criminal justice system; (v) is a custodial single parent; (vi) is chronically unemployed; (vii) has been aged out or emancipated from the foster care system; (viii) has limited English proficiency; or (ix) lives in a high unemployment ZIP code that is the top 25 percent of the unemployment indicator of the CalEnviroScreen Tool. [\[SCE Note: See Appendix B of the RFP Instructions\]](#)

“Disadvantaged Worker Requirements” means activities intended to improve access to career opportunities for Disadvantaged Workers, as further described in the Program Plan Framework.

“Dispute” means any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Agreement, or to either Party's performance or failure of performance under this Agreement.

“Diverse Business Enterprise” means a diverse business enterprise, which shall include women, minority, disabled veteran, persons with disability, lesbian, gay, bisexual or transgender business enterprises, as more particularly set forth in CPUC General Order 156. [\[SCE Note: See Appendix B of the RFP Instructions\]](#)

“Draft Implementation Plan” means the draft Final Implementation Plan that is based on the Program Plan Framework in Exhibit E, but does not yet incorporate stakeholder feedback. [\[SCE Note: See Appendix B of the RFP Instructions\]](#)

“Draft Population NMEC M&V Plan” means the detailed plan prepared by Implementer describing the process for the evaluation and estimation of Savings 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.

“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.

“Eligibility Verification” means a report that determines whether a Measure, an Installation, a Site, Deliverable, or a Customer, each as applicable, satisfy the requirements Sections 1.02(a) and 1.02(c).

“EM&V” has the meaning set forth in Section 14.11.

“Emission Reduction Credits” or “ERC” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

[“End-Use Customer(s)” means a person or entity that is a customer of any IOU, has a customer service account number with such IOU, and is the person or entity that completes the Final Installation of the applicable Measure directly resulting in a reduction to energy use or demand of such person or entity. For Point of Sale and Technology/Measure Focused Delivery Channels, the End-Use Customer and the Customer are different entities.] {SCE Note: only applicable to Point of Sale and Technology/Measure Focused Delivery Channels, delete for Customer Facing Delivery Channel}.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for each Project, and each Project’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license each Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, and costs of permit maintenance fees and emission fees as applicable, required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such hazardous substances on the Site.

“Environmental, Health and Safety Handbook for Contractors” means both the “Environmental Handbook for Contractors” and the “Health & Safety Handbook for Contractors” located on SCE’s website, currently at the following website address: <https://library.sce.com/content/dam/sce-doelib/documents/partners-and-vendors/EHSHandbookforContractors.pdf>, which location may be modified from time to time throughout the Term.

“Equitable Defense” means any bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain equitable remedies may be pending.

“Estimated Amount” has the meaning set forth in Section 10.06(b).

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

“Ex Ante Annual TRC Ratio” means the TRC Ratio determined by SCE for the portion of each applicable Project actually delivered and approved by SCE for the applicable Delivery Period Year, which calculation shall include the Portfolio Administrator Fee, but shall not include the Annual TRC Payment.

“Ex Ante Monthly Contract Payment(s)” has the meaning set forth in Section 3.05(a).

“Ex Ante TSB” means the TSB for each project (in \$) 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.

“Ex Post Review” means the CPUC’s review and approval process for all or any portion of a Project or Projects.

“Expected TRC Ratio” means, with respect to any Delivery Period Year, the applicable Projects’ expected TRC Ratio set forth in the table in Section 1.03(a), which Implementer has agreed to provide to SCE for such Delivery Period Year.

“Expected Deliverable Projects” means the number of Deliverables, Implementer expects to receive an Acceptance Notice for, by Delivery Period Year, as set forth in Exhibit K.

“Expected TSB” means, with respect to any particular Delivery Period Month, the applicable Projects’ expected TSB (in \$) set forth in the table in section 1.03(a), which Implementer has agreed to provide to SCE for such Delivery Period Month.

“FERC” means the Federal Energy Regulatory Commission.

[“Final Implementation Plan” means the implementation plan resulting from submittal of the Draft Implementation Plan to SCE and the appropriate forum for review, and after incorporating comments received from SCE and such forum to the Draft Implementation Plan in accordance with Section 4.09(a).] {SCE Note: Ex _}

[“Final Installation” means the activities necessary to effectuate a Measure at an End-Use Customer’s site, 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.] {SCE Note: only applicable to Point of Sale and Technology/Measure Focused Delivery Channels, delete for Customer Facing Delivery Channel}.

“Final Population NMEC M&V Plan” means the Draft Population NMEC M&V Plan that is approved by the CPUC for the Program in accordance with [Section 2.05 and] Section 4.12.

“Financial Consolidation Requirement” has the meaning set forth in Section 14.08(a).

“Force Majeure” means any occurrence that was not anticipated as of the Effective Date that:

- (a) In whole or in part:
 - (i) Delays a Party’s performance under this Agreement;
 - (ii) Causes a Party to be unable to perform its obligations; or
 - (iii) Prevents a Party from complying with or satisfying the conditions of this Agreement;
- (b) Is not within the control of, and not the result of negligence of, that Party; and
- (c) The Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, or strike or labor dispute.

Force Majeure does not include:

- (d) Reductions in performance of a Project resulting from ordinary wear and tear, deferred maintenance, operator error, or the failure of equipment or parts except to the extent such failure is otherwise the result of a Force Majeure;
- (e) Any delay in providing, or cancellation of, any Measure, any Permit, any Installation, or any Site by a Governmental Authority, except to the extent such delay or cancellation is otherwise the result of a Force Majeure;
- (f) Any delay in providing, or cancellation of, any service by a T&D Provider, except to the extent such delay or cancellation is otherwise the result of a Force Majeure;
- (g) A failure of performance of any other entity, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure;

- (h) Implementer's ability to sell the Savings, or any part thereof, at a price greater than the Savings Price; and
- (i) Implementer's inability to obtain or retain Customers.

“Forward Settlement Amount” has the meaning set forth in Section 10.06(x).

“Fuel Substitution Guidance” means that certain guidance published by the CPUC for programs, projects and measures utilizing a fuel substitution approach, which, as of the Effective Date, is located at the following website address: <https://www.cpuc.ca.gov/about-cpuc/divisions/energy-division/building-decarbonization/fuel-substitution-in-energy-efficiency>.

“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“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.

“Governmental Charges” has the meaning set forth in Section 13.06.

“Greenhouse Gas” or “GHG” has the meaning set forth in Title 17, Division 3, Chapter 1, Subchapter 10, Article 5, Sections 95800 et. seq. of the California Code of Regulations, as amended or supplemented from time to time or in any other Applicable Laws.

“Hard-to-Reach Customer(s)” means a customer or customers who do not have easy access to energy efficiency program information or generally do not participate in energy efficiency programs and who satisfy the criteria below by either: (1) satisfying the Geographic Criteria (as defined below) and one additional criterion set forth below, or (2) satisfying any three (3) of the following four (5) criteria, or (3) are California Native American Tribes:

- (a) A customer whose primary language spoken is a language other than English;
- (b) A customer with a geographic barrier (i.e., businesses or homes in areas other than the United States Office of Management and Budget Combined Statistical Areas of the San Francisco Bay Area, the Greater Los Angeles Area and the Greater Sacramento Area or the Office of Management and Budget metropolitan statistical areas of San Diego

County) or located in a Disadvantaged Community or Customers or customer premises in disadvantaged communities, as identified by the California Environmental Protection Agency pursuant to Health and Safety Code Section 39711 (the “Geographic Criteria”);

(c) For small business customers, additional criteria include:

- (i) A business size that is less than twenty-five employees or classified as very small (i.e., customers whose annual electric demand is less than 20 kilowatt (kW), or whose annual gas consumption is less than 10,000 therms, or both)); and
- (ii) A business that leases or rents the facilities in which the energy efficiency investment will be made.

(d) For residential customers, additional criteria include:

- (i) Customers whose income is such that they qualify for the California Alternative Rates for Energy, Energy Savings Assistance, or the Family Electric Rate Assistance Program; and
- (ii) Customers who reside in a multi-family home or a mobile home, and who either rent or lease such residence.

(e) For public customers, additional criteria include:

- (i) Customers classified as “local government” that meet the Geographic Criteria.

“Hazardous Material” means any substance, waste, or material which has been designated as hazardous or toxic by the United States Environmental Protection Agency, the federal Occupational Safety and Health Administration (“OSHA”), California OSHA, the California Environmental Protection Agency, the California Office of Environmental Health Hazard Assessment, the California Department of Toxic Substances Control, the California State Water Resources Control Board, or any other environmental agency now or subsequently authorized to regulate materials in the environment or workplace.

“High Potential Customers” has the meaning set forth in Section 9.06(a)(iii).

“Higher Education Customer” means a Customer who is an educational institution and constitutes part of any of the following institutions: (i) the University of California, (ii) the California State University, or (iii) the California Community Colleges. A Higher Education Customer excludes any Agricultural Customer, Commercial and Industrial Customer, Public Customer, Residential Customer, Small and Medium Business Customer, and Water Wastewater Customer, private university, private college, trade school, private and public kindergarten

through twelfth grade schools, hospitals, and all other California State departments and agencies (including the Department of Corrections), provided, a hospital may be a Higher Education Customer if such hospital is part of the foregoing eligible higher education institutions.

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

“HVAC Workforce Standard” has the meaning set forth in Section 4.06(a)(i).

“IFRS” means the International Financial Reporting Standards as in effect from time to time, consistently applied.

[“Implementer” has the meaning set forth in the preamble.] {SCE Note: Ex. _}

“Implementer Party” has the meaning set forth in Section 4.06.

[“Implementer's Pre-Existing Materials” has the meaning set forth in Section 14.10.]

“Indemnified Party” has the meaning set forth in Section 13.03.

“Indemnitor” has the meaning set forth in Section 13.03.

“Independent Engineer” means an independent, non-Affiliate California registered professional engineer (with experience acceptable to SCE in its sole discretion).

“Independent Evaluator” has the meaning set forth in Section 14.05(b)(i).

“Industry Standard Practice” has the meaning set forth in the Energy Efficiency Industry Standards Practice Guidance document published by the CPUC.

“Industry Standards” mean applicable California utility industry standards, including the standards established by the California Electricity Generation Facilities Standards Committee pursuant to Public Utilities Code Section 761.3 and enforced by the CPUC, and Governmental Authority mandated standards.

“Initial Project Approval Date” has the meaning set forth in Section 2.04.

“Initial Project Approval Deadline” has the meaning set forth in Section 2.04.

“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.

“Integrated Demand Side Management” or “IDSM” means Integrated customer demand side programs include combinations of energy efficiency, self-generation, advanced metering, and/or demand response, delivered in a coherent and efficient manner. EE funding can be used to promote broad IDS M inclusion for non-capital costs such as customer education, marketing, site audits, etc. (D.12-11-015). IDS M is defined and included in conformance with CPUC policy (D.07-10-032, D.09-09-047, D.12-05-015, D.12-11-015, D.14-10-046, D.18-05-041, and D.23-06-055).

“Interest Payment” means a payment amount that results from the product of the following three factors:

- (a) the dollar amount on which an interest payment is based;
- (b) for any given month in which the payment is made, the average of the annual interest rates reported for all weekdays in such month opposite the caption “Federal funds (effective)” as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System; and
- (c) the number of days in the calculation period divided by 360.

[“Investor Owned Utility(ies)” or “IOU(s)” means each of SCE, San Diego Gas and Electric Company, Southern California Gas Company, and Pacific Gas and Electric Company.] {SCE Note: revise based on IOU’s cofounding the program}

“Invoice Authorization” has the meaning set forth in Section 3.01.

“Invoice Date” has the meaning set forth in Section 3.01.

“Journey person” means Journeyman as defined in the California Code of Regulations, Title 8, Section 205.

“Key Performance Indicator” means any of the milestones set forth in Exhibit F.

“Key Performance Indicator Deadline” means the date by which a Key Performance Indicator must be achieved, as set forth in Exhibit F.

“KPI Extension Date” has the meaning set forth in Section 4.08(a).

“kW” means a kilowatt.

“kWh” means a kilowatt-hour.

“Lender” means any financial institutions that provide(s) development, bridge, construction, permanent debt or refinancing for the Program to Implementer.

“Lighting Workforce Standard” has the meaning set forth in Section 4.06(a)(ii).

“Load Modifier Attributes” means any and all attributes resulting from the reduction to a load serving entity’s load forecast that is associated or attributable to the Savings or each Project throughout the Delivery Term, and which includes current or future capacity or demand attributes, howsoever entitled.

“Measure” means a service, product, technology or behavior whose installation and operation, or effectuation, as applicable, at a Customer’s premises results in a reduction in [the Customer’s/an End-Use Customer’s] on-site energy or capacity use, compared to what would have happened without the service or product installation. {SCE Note: select appropriate language in brackets based on Program design and Delivery Channel.}

“Measure Checklist” means a document that identifies the documents, data, photographs, and other materials required for (i) SCE to claim Savings in accordance with CPUC EE Decisions & Guidance and (ii) 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 List” has the meaning set forth in Section 4.10.

“Measure Package” means the CPUC approved document establishing the claimable energy efficiency savings for a Measure, the process and requirements to claim such saving, and eligibility requirements for such Measure to qualify. {SCE Note: definition only applicable to Programs that select the Deemed Approach}

“Measure Package Description” means a description of the Measure Package Implementer will use for the applicable Measure, including the Measure Package’s statewide number, its title, a description. {SCE Note: definition only applicable to Programs that select the Deemed Approach}

“Measure Package Verification” means a report that determines whether a Measure, and Installation, a Site, or a Customer, each as applicable, satisfy the requirements of the applicable Measure Package associated with such Measure. {SCE Note: definition only applicable to Programs that select the Deemed Approach}

“MW” means megawatt or megawatts.

“MWh” means megawatt-hour or megawatt-hours.

“NAICS Code” means a code identifying an engineering energy efficiency sector and that is published by the North American Industry Classification System.

“NMEC-Based Site-Specific Approach” means a Program that utilizes Measures without a Measure Package and the methodology to calculate Saving is conducted pursuant to a uniquely determined engineering calculation at the Site level and such Savings are based on actual metered amounts at the Site, without reference to a control group or a treatment group.

“NERC” means the North American Electric Reliability Corporation.

“NMEC” means normalized metered energy consumption.

“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/files/legacyfiles/n/6442463694-nmec-rulebook2-0.pdf>.

“NMEC Site Based Energy Efficiency Program” means a Program for which the NMEC-Based Site-Specific Approach is selected in Section 1.01(b).

“Non-Curable Deficiency Notice” has the meaning set forth in Exhibit J.

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

“Non-IOU Fuel Source” means any fuel source, not provided or supplied by the T&D Provider, capable to supply energy or meet the electric load or demand of a facility; including solar photovoltaics, energy storage system(s), cogeneration plant(s)/system(s), and fuel cell(s).

“Notice” means notices, requests, statements or payments provided in accordance with Section 14.02 and Exhibit D.

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

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

“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 in the possession or under the control of SCE or any of its Affiliates, or that is furnished or made available by SCE or any of its Affiliates to

Implementer, that identifies an individual, or that relates to, describes, or is capable of being associated with, an identifiable individual (whether a current or former Edison employee, Customer, or otherwise), including, without limitation, his or her name, signature, social security number, physical characteristics or description, address, telephone number, government issued identification number, medical information, insurance information, education, employment information, financial identifiers or information, online account identifiers and password and/or security question together with the answer, or information regarding the individual's electric energy usage or electric service, including, without limitation, service account number, electricity demand, monthly billed revenue, credit history, rate schedule(s), meter data, or number or type of meters at a premise. Personal Information also includes "personal information" as defined in California Civil Code Section 1798.100 – 1798.199, and any regulations promulgated thereunder.

"Point of Sale" means a Program and resulting Projects designed to influence the cost of energy efficiency Measures to a distributor or retailer of such energy efficiency technology or Measures, with the intent of resulting in a reduction to the retail consumer's cost to purchase such energy efficiency Measures. Point of Sale may include point-of-sale rebates.

"Population NMEC Alternate Verification Requirement" means a document provided by Implementer that identifies the documents, data, photographs, and other materials required for a particular Measure to meet its NMEC Rulebook and Final Population NMEC M&V Plan requirements.

"Population NMEC Approach" means an energy savings calculation approach 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 Savings in accordance with CPUC EE Decisions & Guidance, the NMEC Rulebook and the Final Population NMEC M&V Plan.

"Population NMEC Post-Installation Inspection" means the inspection by Implementer of all or any portion of a Project to determine if (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 (w) the applicable Population NMEC Measure Checklist, (x) the Program Verification Checklist, (y) Final Population NMEC M&V Plan, and. (z) the NMEC Rulebook.

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

“Population NMEC Pre-Installation Package” means, if required by the applicable Population NMEC Measure Checklist, the compilation of documents required by the Program Verification Checklist, Data Transfer Specifications, and/or Population NMEC Measure Checklist setting forth the findings from an inspection conducted by Implementer consistent with the NMEC Rulebook and Final Population NMEC M&V Plan, as well as all other applicable CPUC EE Decisions & Guidance.

“Population NMEC Quarterly Report” means a report that among other things includes the evaluation and estimation of hourly Savings per performance period and Site with a description of population design, site/cohort characterization, description of implemented Measure(s), weighted expected useful life, and modifications to energy systems operating schedules as part of the energy efficiency treatment. The Population NMEC Quarterly Report must include data visualization and heat maps on aggregated population Savings per hour of the day. The Population NMEC Quarterly Report must comply with and be prepared in accordance with all CPUC EE Decisions & Guidance, the NMEC Rulebook and the Final Population NMEC M&V Plan.

“Portfolio Administrator Fee” means six percent (6%) of the total Ex Ante Monthly Contract Payment paid, or expected to be paid, from SCE to Implementer during the calculation period associated with the applicable Ex Ante Annual TRC Ratio.

“Post Implementation Performance Monitoring Period” means the period of time over which the Savings 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, that among other things includes the (i) Project and Measure description, (ii) measurement and verification plan, (iii) Project cost and financial analysis, (iv) post measurement and verification data analysis, (v) final project parameters for utility energy efficiency programs, (vi) final project cost and paid invoices, (vii) final estimated Savings calculations, and (viii) 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.

“PRG” has the meaning set forth in Section 14.05(b).

“Procurement Agent” has the meaning set forth in Exhibit D.

“Product” means the Savings and Deliverables associated with a Project.

“Product Payments” means the Savings Payments and Deliverables Payments.

“Program” has the meaning set forth in Section 1.02.

“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 Intellectual Property” means any and all materials, information, or other work product created, prepared, accumulated or developed by Implementer or any Implementer Party under this Agreement with Program funds, including, inventions, processes, templates, documents, drawings, computer programs, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith.] [SCE Note: See Appendix B of the RFP Instructions]

“Program Metric(s)” means any data related to each Project, any Measure, any Installation, any Customer, or any Site required by the CPUC or SCE to measure the performance of or to obtain information regarding such Project, any Measure, any Installation, any Customer, any Site, any Key Performance Indicator, compliance with the Program Plan Framework, compliance with the Final Implementation Plan, and which includes, but is not limited to, sector-level and portfolio-level metrics approved by the CPUC and those metrics and indicators identified in Exhibit E.

[“Program Participants” means an IOU that is jointly funding this Program.] [SCE Note: See Appendix B of the RFP Instructions]

“Program Plan Framework” means the Program description, design, and strategy, including Workforce Standards, Quality Assurance Procedures, and Disadvantaged Worker Requirements as set forth in Exhibit E.

“Program Plan Workforce Standard” means the standards set forth in the Program Plan Framework that any employee, worker, or technician performing work, services, or activities on any Project or any Measure, must satisfy.

“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.

“Progress Report” has the meaning set forth in Section 4.07.

“Project” refers to (1) all Measures at each Site, designed, installed, implemented, or otherwise effectuated in accordance with the Program; and (2) any Deliverable Project.

“Project Feasibility Study” means a report in the form of the Project Feasibility Study Template that includes the (i) Project and Measure description, (ii) measurement and verification plan, (iii) Project cost and financial analysis, (iv) Project eligibility, (v) Project driver, (vi) estimated Savings calculation, and (vii) 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.

“Prudent Practices” means those practices, methods and acts that would be implemented and followed by prudent implementers of Measures similar to those Measures that constitute Projects in the Program, in the Western United States, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known or that should reasonably have been known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety.

Prudent Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and Applicable Laws.

Prudent Practices also includes taking reasonable steps to ensure that:

- (a) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to Install each Measure properly and efficiently,

and are capable of responding to reasonably foreseeable emergency conditions at each Site during Installation or at any time Implementer is located at each Site;

- (b) Appropriate monitoring and testing are performed to ensure each Measure is functioning as designed; and
- (c) Installation is not completed in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public, or the T&D Provider's electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations.

"Public Purpose Programs Charge" means the "public purpose programs" rate, or successor thereof, on an [SCE] [IOU] customer service invoice that funds energy efficiency programs, among other public policies. {SCE Note: select appropriate language based on whether the program is local or statewide}

"Public Customer" means a Customer who is a local government, federal government, special district, tribal government, kindergarten through twelfth grade public or private school, private university, private college, or private trade school. A Public Customer excludes any Agricultural Customer, Commercial and Industrial Customer, Higher Education Customer, Residential Customer, Small and Medium Business Customer, Water Wastewater Customer, public hospital, the University of California, the California State University, the California Community College, all California State agencies, and any water production, distribution, or treatment system customer.

"Quality Assurance Procedures" means Implementer's policies and procedures that ensure the Project, all activities at each Site, each Measure, any Installation, and all Work, comply with Applicable Laws, Applicable Standards, SCE Policies, and ensure that each Measure installed functions properly and that the applicable customer is satisfied, as further described in the Program Plan Framework. [SCE Note: See Appendix B of the RFP Instructions]

"Recovery Plan" has the meaning set forth in Section 4.08(a).

"Representatives" means the Party's, or the Party's Affiliates', officers, directors, employees, Lenders, rating agencies, counsel, accountants and advisors.

"Required Material" means any permit, license, application, certification, design, specification, program, agreement, instrument, equipment, device, mechanism, Project information, Project Feasibility Study, Post Installation Report, Second Post Installation Report, Deemed Post-Installation Package, Deliverable, Deliverable Report, or any other item in connection with each Project to be reviewed or approved by SCE or on SCE's behalf, or requested or required of Implementer by SCE or on SCE's behalf, under this Agreement.

“Residential Customer” means a Customer that is a Single-Family Accommodation or Multifamily Accommodation Customer using Domestic Service, including Recreational Vehicle Parks, Residential Hotels, and Mobile Home Parks, and includes Electric Vehicle charging for Customers using Domestic Service if separately metered, as such capitalized terms are defined in Rule 1 of the SCE Tariff. A Residential Customer excludes any Agricultural Customer, Commercial and Industrial Customer, Higher Education Customer, Public Customer, Small and Medium Business Customer, and any Water Wastewater Customer.

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

“Savings Payment(s)” has the meaning set forth in Section 3.05.

“Savings Price” has the meaning set forth in Section 1.03(a).

[“SBE” or “Small Business Enterprise(s)” means an enterprise that satisfies the requirements of a “small business” as set forth in Title 2, Section 1896.12, of the California Code of Regulations.]
[SCE Note: See Appendix B of the RFP Instructions]

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

“SCE Inspection” has the meaning set forth in Section 5.06.

“SCE Inspected Project” has the meaning set forth in Section 5.06.

“SCE Policies” means (a) the Environmental, Health and Safety Handbook for Contractors, (b) the Supplier Code of Conduct, and (c) the Cyber and Data Protection Requirements.

“SCE Tariff” means the entire body of effective rates, rentals, charges, and rules, collectively, of SCE, including title page, preliminary statement, rate schedules, rules, sample forms, service area maps, and lists of contracts and deviations, all as may be revised from time to time, and which can be found at <http://www.sce.com/AboutSCE/Regulatory/tariffbooks/rules.htm>.

“SCE’s 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 non-public information whether or not designated by SCE or its representatives as Confidential Information at the time it is provided or made available to Implementer, and all information Implementer derives from such information, including any Deliverables and information obtained or created by Implementer for SCE or obtained or created to comply with this Agreement.

“SEC” means the Securities and Exchange Commission.

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

[“Security Measures” has the meaning set forth in Section 14.10.]

[“Serious Offense” has the meaning set forth in Section 6.04(a)(ii).] [Comment: Non-Modifiable Term]

[“Services” means Work.] [SCE Note: See Appendix B of the RFP Instructions]

“Site” means the real property on which each Project is, or will be located, as further described in Section 1.02. {SCE Note: may require additional description}

“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 intent to use NMEC to determine energy and demand savings, or successor thereof, which, 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>.

“Small and Medium Business Customer” means a Customer whose monthly maximum demand is less than two hundred (200) kW in any three-month period during the preceding twelve months, as measured by the applicable utility meter. A Small and Medium Business Customer excludes any Residential Customer, but may also be an Agricultural Customer, Commercial and Industrial Customer, Higher Education Customer, Public Customer, or Water Wastewater Customer.

“Special Purpose Entity” has the meaning set forth in Section 9.02(e).

“Standard Practices Manual” means the California Standard Practices Manual: Economic Analysis of Demand Side Management or successor thereof, published by the CPUC, as modified from time to time.

“Statewide Custom Project Guidance Document” means that certain document 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, or successor thereof.

“Subcontractor” means an entity chosen by a Contractor to perform any work, services or activities for any Project.

“Supplier Code of Conduct” means the handbook located on SCE’s website, currently at the following website address:

<https://www.edison.com/content/dam/eix/documents/investors/corporate-governance/supplier-code-of-conduct.pdf>, which location may be modified from time to time throughout the Term.

“T&D Provider” means any entity or entities (other than Implementer, Customers, or their respective Affiliates) responsible for the interconnection of any Project with the distribution or transmission system.

“Technology/Measure Focused” means a Program and resulting Projects designed to influence the price that manufacturers charge for energy efficiency Measures, with the intent of resulting in a reduction to the retail consumer’s cost to purchase such energy efficiency Measures.

“Telephone Consumer Protection Act Terms” means the terms and conditions set forth in Exhibit I.

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

“Termination Payment” means the sum of 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 determined as of the Early Termination Date. For clarity, the Forward Settlement Amount is part of and included in the Termination Payment.

“Title 20” means the California Code of Regulations, Title 20, in effect as of the Effective Date.

“Title 24” means the California Code of Regulations, Title 24, in effect as of the Effective Date.

“Total Resource Cost Test” means the methodology set forth in CPUC EE Decisions & Guidance, the EE Policy Manual, and the Standard Practices Manual, and which measures the net costs of a demand-side management program.

“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 provides and expressed as an avoided cost (in \$), as further described in CPUC Rulemaking 13-11-005 and calculated using the CET.

“Transferred Savings” has the meaning set forth in Section 1.04.

“TRC Annual Factor” has the meaning set forth in Section 3.05(d).

“TRC Ratio” means the net benefit-cost ratio located in the CET output file and results from applying the Total Resource Cost Test to a program, as further described in the Standard Practices Manual, and which is the primary indicator of energy efficiency cost effectiveness.

[“Underserved Community” means a community that meets one of the following criteria:

- (a) Is a “disadvantaged community” as defined by subdivision (g) of Section 75005 of the Public Resources Code.
- (b) Is included within the definition of “low-income communities” as defined by paragraph (2) of subdivision (d) of Section 39713 of the Health and Safety Code.
- (c) Is within an area identified as among the most disadvantaged 25 percent in the state according to the California Environmental Protection Agency and based on the most recent CalEnviroScreen Tool.
- (d) Is a community located on lands belonging to a federally recognized California Indian tribe.] {SCE Note: bracketed language applicable to equity programs only}

“Water/Wastewater Pumping Customer” means a Customer who: (i) engages in water production, water distribution, or water treatment; (ii) is a water agency, water special district, irrigation district, investor-owned water utilities, or local government primarily focused on water treatment, wastewater treatment, or water pumping facilities and systems; or (iii) engages in oil field water pumping. A Water Wastewater Customer excludes any Residential Customer, Commercial and Industrial Customer, Public Customer, Agricultural Customer, and any Higher Education Customer.

“Work” means any and all obligations and duties Implementer directly performs or delivers, as required or appropriate to directly effectuate the Final Implementation Plan, develop any Project, deliver the Product, Install any Measure at any Site, engage in marketing or work with any Customer, in each case pursuant to and solely for the purpose of this Agreement.

“Workforce Standards” has the meaning set forth in Section 4.06(a).

*** End of EXHIBIT A ***

EXHIBIT B

INTENTIONALLY OMITTED

***** End of EXHIBIT B *****

EXHIBIT C

PROGRESS REPORT

[SCE Note: Exhibit is subject to modification for Program specific differences]

In accordance with Section 4.07, the following information is required to be provided from Implementer to SCE on a **weekly** basis:

1. Pipeline Data:
 - Customer name
 - Customer Address
 - Customer Service Account
 - Measure to be installed/description
 - Recruitment Stage (e.g. Recruit, Under Negotiation, Signed Contract, Installation Date)
 - Expected Completion Date
 - Estimated Savings

In accordance with Section 4.07, the following information is required to be provided from Implementer to SCE on a **monthly** basis:

1. Marketing Strategy:
 - Completed and planned activities to obtain customer program enrollments
 - Marketing Medium: email, mail, telemarketing, text, door to door, digital or social media, website, etc.
 - Dates for marketing events/launches
 - Measures offered by customer segment
 - Reported success from marketing events/launches (e.g. number of customers interested, number of customers that shifted from interest into pipeline, etc.)
2. Customer Satisfaction Survey responses based on Project submissions, or if no Project submissions an alternatively agreed to deliverable to assess customer satisfaction with program delivery:
 - Net Promoter Score – on a scale of 0-10 how likely is the Customer to recommend your program
 - Timeliness – on a scale of 1-5 how responsive is the Program to Customer inquiries
 - Quality of Service – on a scale of 1-5 how was the quality of service received by the Customer
 - Churn Rate- percentage of Customers who participated in the program relative to the Customers who said they would participate in the Program

3. Forecast

- Rolling forecast for next three (3) Delivery Period Months including:
 - Expected TSB that Implementer anticipates will be delivered in each of the next three (3) Delivery Period Months
 - Projects in the pipeline (not yet in iEnergy)
 - Projects in process (projects in iEnergy forms 1-10)
 - Projects Installed (paid)

4. Risk Management

- Identification of risks associated with Program launch and/or delivery that impact meeting savings goals identified in the contract/program performance
- Likelihood of risk occurrence
- Identification of mitigation strategies to minimize adverse impacts from identified risks

*** End of EXHIBIT C ***

EXHIBIT D

Notice

IMPLEMENTER	SCE
<p>All Notices are deemed provided in accordance with Section 14.02 if made to the e-mail address provided below, or if an e-mail address is not provided, to such other address or facsimile provided below:</p>	<p>Unless otherwise specified, all Notices are deemed provided in accordance with Section 14.02 if made to the e-mail addresses provided below, or if an e-mail address is not provided, to such other address or facsimile provided below:</p>
<p>Contract Administration: Attn: Phone: Facsimile:</p>	<p>Contract Administration: Attn: Senior Manager of Customer Energy Efficiency Programs & Contracts Street: 4777 Irwindale Ave City: Irwindale, California 91706 Email: DSM@sce.com</p> <p>Procurement Agent: Attn: Senior Manager, Customer Service Procurement Street: 2244 Walnut Grove Ave. City: Rosemead, California 91770 Email: Smindirect@sce.com</p>
	<p>Cybersecurity: E-mail: cybersecurity@sce.com</p>
<p>Reference Numbers: Duns: Federal Tax ID Number:</p>	<p>Reference Numbers: Duns: 006908818 Federal Tax ID Number: 95-1240335</p>

Southern California Edison

Confidential Information

SCE Agreement No. [Number], [Implementer's Name]

[Insert Year & Solicitation Name]

IMPLEMENTER	SCE
<p>Collateral: Attn: Street: City: Phone: Email:</p>	<p>Collateral: Attn: Manager of Risk Operations & Collateral Management Street: 2244 Walnut Grove Avenue, G01 Quad 2B City: Rosemead, California 91770 Phone: 626-302-0023 Email: scecollateral@sce.com</p>
<p>Payment Invoices: Attn: Phone: Facsimile: E-mail:</p>	<p>Payment Invoices: Southern California Edison Company Accounts Payable Division P.O. Box 700 Rosemead, CA 91770 626-302-6501</p>
<p>ACH Routing Information: Financial Institution: [] Branch: [] Address: [] City, State, & Zip: [] Routing Number: [] Account Number: []</p>	<p>ACH Routing Information: Financial Institution: JPMorgan Chase Routing Number: 021-000-021 Account Number: 323-394434</p>
<p>Wire Transfer: BNK: ABA: ACCT:</p>	<p>Wire Transfer: BNK: JPMorgan Chase ABA: 021-000-021 ACCT: 323-394434</p>

IMPLEMENTER	SCE
<p>Provide Notice of Event of Default to Contract Administration</p> <p>With additional Notices of an Event of Default to: Attn: Phone: Facsimile: E-mail:</p>	<p>Provide Notice of Event of Default to Contract Administration</p> <p>With additional Notices of an Event of Default to: Attn: Director and Managing Attorney Law Dept., Power Procurement Southern California Edison Co. Street: 2244 Walnut Grove, Ave. City: Rosemead, California 91770 Email: PPLegalNotice@sce.com</p> <p>And, to: Attn: Director of Supply Chain Management Street: 2244 Walnut Grove Ave. City: Rosemead, California 91770 Phone: 626-302-5357</p>
<p>Lender: Attn: Phone: Facsimile: E-mail:</p>	

*** End of EXHIBIT D ***

EXHIBIT E

PROGRAM PLAN FRAMEWORK

The purpose of the Exhibit E is solely to describe Implementer’s Program. Nothing contained in this Exhibit E is intended to require any additional obligations, duties, covenants, or requirements of SCE. To the extent any provision of this Exhibit E conflict with or undermine any provision contained in the remainder of this Agreement, the remainder of this Agreement shall govern.

1. BUDGET/COST AND SAVINGS INFORMATION

- (a) Program Name:
- (b) Program ID Number:
- (c) Program Budget Table:

Costs	[year]	[year]	[year]	[year]	[year]	[year]
Administration	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]
Marketing/Outreach	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]
Incentive/Rebate	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]
Direct Implementation	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]
Total	[\$]	[\$]	[\$]	[\$]	[\$]	[\$]

- (d) Program Gross Impacts Table:
- (e) Program Cost-Effectiveness (TRC): See Section 1.03.
- (f) Program Cost-Effectiveness (PAC):
- (g) Type of Program Implementer:

Program Implementer	
PA-delivered	<input type="checkbox"/>
Third Party-Delivered	<input type="checkbox"/>

Program Implementer	
Partnership	<input type="checkbox"/>

(h) Customer Type(s) the Program will serve:

Customer Type(s)	Yes
Agricultural Customer	
Commercial Customer	
Industrial Customer	
Higher Education Customer	
Public Customer	
Residential Customer	
Small and Medium Business Customer	
Water/Wastewater Pumping Customer	

(i) Program Type:

Program Type	Yes	No
Resource Acquisition		
Market Support		
Equity		

(j) Delivery Channel and Intervention Strategies:

Market Channels	
Technology/Measure Focused	<input type="checkbox"/>
Point of Sale	<input type="checkbox"/>
Customer Facing	<input type="checkbox"/>
Intervention Strategies	
Direct Install	<input type="checkbox"/>
Incentive	<input type="checkbox"/>
Finance	<input type="checkbox"/>

Market Channels	
Audit	<input type="checkbox"/>
Technical Assistance	<input type="checkbox"/>
Other	<input type="checkbox"/>

(k) Goals and Timeline: See Section 1.03 of the Agreement.

2. IMPLEMENTATION PLAN NARRATIVE

(a) Description: {SCE Note: describe each of the following identified in the subsections below}

- (i) Program Description:
- (ii) Program Rationale:
- (iii) Program Objectives:

(b) Delivery Channel and Customer Services:

{SCE Note: Describe how the energy efficiency (EE) program will deliver savings (including program strategies/tactics, market channel, and targeted market/customer group); how it will reach customers, including those in CPUC-defined hard-to-reach and/or disadvantaged communities (if applicable), and any services that the program will provide. Describe all services and tools that are provided}

- (i) Program Strategies/Tactics:
- (ii) Market Channel:
- (iii) Targeted Market/Customer Group:

(c) Design and Best Practices:

{SCE Note: Describe the program strategies/tactics that will be used to reduce the identified market barriers for the targeted customer group and/or market actor(s). Describe why the program approach constitutes "best practices" or reflects "lessons learned." Include descriptions of key software tools that are significant to program strategy and implementation, including audit tools. Provide references where available}

(d) Innovation:

{SCE Note: Describe how the program is innovative and will increase the uptake of cost-effective energy efficiency and minimizes lost opportunities for promoting other demand-side energy reduction efforts by advancing a technology, marketing strategy, or delivery approach in a manner different from previous efforts.}

(e) Metrics:

[REDACTED].

(f) For Programs Claiming To-Code Savings

{SCE Note: Describe how the program complies with applicable laws and:

- a. Identify where to-code savings potential resides;
- b. Specify which equipment types, building types, geographical locations, and/or customer segments promise cost-effective to-code savings;
- c. Describe the barriers that prevent code-compliant equipment replacements;
- d. Explain why natural turnover is not occurring within certain markets or for certain technologies; and
- e. Detail the program interventions that would effectively accelerate equipment turnover.}

(g) Pilots:

{SCE Note: Please describe any pilot projects that are part of this program and explain the innovative characteristics of these pilots. The inclusion of this description should not replace the Ideation Process requirements currently agreed upon by the CPUC staff and Investor Owned Utilities (IOUs). The Ideation Process is still undergoing refinements and will be further discussed as part of Phase III of the applicable proceeding.}

(h) Workforce Education & Training (WE&T):

{SCE Note: Describe how the program will support workforce, education, and training to:

- a. Expand/initiate partnerships with entities that do job placement;
- b. Require placement experience for any new partners in the workforce, education, and training programs and new solicitations;
- c. Require "first source" hiring from a pool of qualified candidates, before looking more broadly, beginning with self-certification; and

d. Facilitate job connections, by working with implementers and contractor partners, and utilizing energy centers.}

(i) Workforce Standards:

{SCE Note: include description of Workforce Standards that are applicable to each Project, including, but not limited to, the HVAC Workforce Standards, Lighting Workforce Standards, and any specific skills certification and/or broader occupational training and experience that would reduce the risk of lost net lifecycle energy savings from poor installation, modification, or maintenance of the Measures associated with each Project}

(j) Disadvantaged Workers:

{SCE Note: Describe how the program will provide Disadvantaged Workers with improved access to career opportunities in the EE industry for programs that directly involve the installation, modification, repair, or maintenance of EE equipment. Also, describe the method that will be used for tracking this population in order to satisfy metric reporting requirements}

(k) Additional information:

{SCE Note: Include additional information as required by CPUC decision or ruling. As applicable, indicate the decision or ruling, with page numbers.}

(l) Market Transformation (for programs that may seek to transition to the market transformation framework per D.19-12-021):

i. Market Transformation Transition Rational Market

{SCE Note: Present rationale for seeking to transition the program or program elements to the Market Transformation platform}.

ii. Data Collection and Analysis

{SCE Note: Discuss the data collection and analysis activities that will ensure that the program (or program element) is prepared to transition to the Market Transformation platform. In particular, address how each element of the Market Transformation Agreement will be developed (see Appendix A of D.19-12-021), including but not limited to: (a) documentation of market barriers, (b) development of baseline, and (c) schedule of milestones and metrics for tracking program progress and recognizing savings, etc.}

(m) Quality Assurance Procedures:

{SCE Note: include a description of the policies and procedures necessary to ensure that each Project, all activities at each Site, each Site, each Measure, any Installation, and all Work, comply with Applicable Laws, Applicable Standards, SCE Policies, and ensure that each Measure installed functions properly}.

(n) Disadvantaged Communities Marketing and Spend:

{SCE Note: include description marketing activities that will be implemented by Implementer and that are intended to improve access to energy efficiency technology to Disadvantaged Communities and indicate dollar amount that will be spent on such activities}

(o) Hard-to-Reach Customers Marketing and Spend:

{SCE Note: include description marketing activities that will be implemented by Implementer and that are intended to improve access to energy efficiency technology to Hard-to-Reach Customers and indicate dollars amount that will be spent on such activities}

3. SUPPORTING INFORMATION AND DOCUMENTS

(a) Program Theory¹ and Program Logic Model²

{SCE Note: include a description of the Program Theory and Logic Models, which should visually explain the underlying program theory supporting the sub-program intervention approach, referring as needed to the relevant literature (for example: past evaluations, best practices documents, journal articles, books, etc.)}

(b) Process Flow Chart:

{SCE Note: Provide a program, or if applicable, a sub-program process flowchart that describes the administrative and procedural components of the sub-program. For example, the flowchart might describe: (i) a customer's submittal of an application; (ii) the screening of the application; (iii) the approval and/or disapproval of an application;

¹ The expected causal relationships between program goals and program activities in a way that allows the reader to understand why the proposed program activities are expected to result in the accomplishment of the program goals. A well-developed program theory can (and should) also describe the barriers that will be overcome in order to accomplish the goals and clearly describe how the program activities are expected to overcome those barriers. *California Evaluation Framework*, June 2004.

² The graphical representation of the program theory showing the flow between activities, their outputs, and subsequent short-term, intermediate, and long-term outcomes. *California Evaluation Framework*, June 2004.

(iv) verification of purchase or installation; (v) the processing of incentive payments, and (vi) any quality control activities.}

(c) Incentive Tables, Measure Packages, Software Tools:

{SCE Note: Provide a summary table of measures and incentive levels, along with links to the associated Measure Packages.}

#	Measure	Incentive Level	
1			
2			
3			

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

(d) Quantitative Targets:

See Section 1.03 and Exhibit F of this Agreement.

(e) Diagram of Program:

{SCE Note: Please provide a one-page diagram of the program, including subprograms. This should visually illustrate the program / sub-program linkages to areas such as: (i) marketing and outreach; (ii) Workforce, Education and Training (WE&T) programs; (iii) Emerging Technologies (ET) and Codes and Standards (C&S); and (iv) Integrated efforts across Demand Side Management (DSM) programs.}

Diagram Title

{place diagram here}

*** End of EXHIBIT E *

EXHIBIT F

KEY PERFORMANCE INDICATOR SCHEDULE

{Comment: Schedule to be included in Bidder's Proposal and included in this Agreement, subject to modification and may be negotiated by Company and Bidder}

KPI	Description	Measurement	KPI Source	Reporting Frequency	Purpose of KPI
Energy Savings (kWh, kW, therms)	A comparison of net lifecycle energy savings achieved vs. net lifecycle energy savings required under the Agreement	Based on numeric value of the total net lifecycle energy savings achieved	In accordance with Article 5	In accordance with Article 5	Track progress towards achieving annual program savings goals
Project Pipeline Target (kWh, kW, therms)	A comparison of net life cycle energy savings associated with future project pipeline in relation to the net life cycle energy savings required under Agreement	Numeric value of the total net lifecycle energy savings tracked in the program pipeline	Progress Report	In accordance with Section 4.07	Track progress towards achieving overall program savings goals
TSB (Dollars)	TSB Achieved	Dollars			
Schedule Adherence	Expected TSB vs. Ex Ante TSB; Expected TRC Ratio vs. Ex Ante Annual TRC Ratio	Expected performance vs. actual performance	In accordance with Article 5	In accordance with Article 5	Track progress towards achieving overall program savings goals
Cost Management (TRC ratio) (Levelized cost)	[Incentive/non-incentive] spend based on paid [incentive/non-incentive] spend vs forecasted [incentive/non-incentive] spend				

Customer Satisfaction Rating	Measurement of Implementer's ability to respond to customer needs, number of complaints, resolution of complaints, flexibility, reporting accuracy and timeliness	Report of overall customer satisfaction rating	In accordance with Section 9.05(f)	In accordance with Section 9.05(f)	Reflects ability to deliver Program at a high level of customer satisfaction
Co-Branding	Brand Review Time	The total hours spent reviewing marketing materials submitted by Implementer or Implementer Parties			
Email	Unsubscribes or opt outs	The average unsubscribe rate across all email campaigns			
	Spam (Complaints)	The average spam or complaint rate across all email campaigns			
Direct Mail	Unsubscribes or opt outs				
Telemarketing	Unsubscribes or opt outs				
SMS	Unsubscribes or opt outs	The average unsubscribe rate across all SMS campaigns			
Door-to-Door	Unsubscribes or opt outs				
Digital Media					
Social Media					
Website					

Safety Ratings	Maintain ISNetworkWorld (ISN) grade of B or better	ISN grade	ISNetworkWorld	Annually	Validate adherence to maintaining a culture of workplace safety
Diverse Business Enterprises Spend	To date Diverse Business Enterprise spend as percent of total Program spend.	Total inception-to-date Diverse Business Enterprise spend divided by the total invoiced amount	As defined in Section 4.05	In accordance with Section 4.05(c)	Validates that the Diverse Business Enterprise commitment is being met
Disadvantaged Worker					
Hard-to-Reach Customers					
Disadvantaged Communities					
Sustainability Ratings	Evaluates the Implementer against environmental and sustainability practices and metrics.				Demonstrates Implementer's commitment to sustainability

{Comment: Delete table below upon use of table above}

Category/Program Type		KPI	KPI Definition
Program Performance	For Resource Programs	TSB (Dollars)	A comparison of TSB achieved vs. required under the Agreement
		Project Pipeline Target (kWh, kW, Therms)	A comparison of TSB associated with future project pipeline in relation to the TSB

			required under Agreement
		Schedule Adherence (committed/installed)	Actual number of [committed/installed] projects compared to the projected number of [committed/installed] projects as required under the Agreement
		Cost Management (TRC ratio) (Levelized cost)	[Incentive/non-incentive] spend based on paid [incentive/non-incentive] spend vs forecasted [incentive/non-incentive] spend
		Customer Satisfaction Rating	Measurement of Implementer's ability to respond to customer needs, number of complaints, resolution of complaints, flexibility, reporting accuracy and timeliness
	For Non- Resource Codes and Standards Programs	TBD	TBD
	For Workforce Education & Training Programs	TBD	TBD
	For Emerging Technology Programs	TBD	TBD
	For all Programs	Invoicing and Billing Accuracy	TBD

Implementer Administrative Performance		Program Data Quality	TBD
		Contract Compliance	TBD
Marketing Performance (as applicable)	Co-Branding	Brand Review Time	The total hours spent reviewing marketing materials submitted by Implementer or Implementer Parties
	Email	Unsubscribes or opt outs	The average unsubscribe rate across all email campaigns
		Spam (Complaints)	The average spam or complaint rate across all email campaigns
	Direct Mail	Unsubscribes or opt outs	[TBD]
	Telemarketing	Unsubscribes or opt outs	[TBD]
	SMS	Unsubscribes or opt outs	The average unsubscribe rate across all SMS campaigns
	Door-to-Door	Unsubscribes or opt outs	[TBD]
	Digital Media	TBD	TBD
	Social Media	TBD	TBD
	Website	TBD	TBD
Supply Chain Responsibility	All Programs	Safety Ratings	An evaluation of the Implementer's overall approach to safety and the quality of the Implementer's safety program

		Diverse Business Enterprises Spend	Measures spend performance with Diverse Business Enterprises
		Disadvantaged Worker Spend	TBD
		Hard to Reach and Disadvantaged Communities	TBD
		Sustainability Ratings	Evaluates the Implementer against environmental and sustainability practices and metrics.
		Safety Ratings	An evaluation of the Implementer's overall approach to safety and the quality of the Implementer's safety program

*** End of EXHIBIT F ***

EXHIBIT G**DISPUTE RESOLUTION**

1. Mediation.

Mediation may be initiated by providing Notice in accordance with Section 14.02 of a request for mediation, setting forth a description of the Dispute and the relief requested.

The Parties will cooperate with one another in selecting the mediator ("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 of the mediation.

Such selection and scheduling will be completed within forty-five (45) days after Notice of the request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred twenty (120) days from the date of Notice of the request for mediation.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (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 borne by such Party).

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, provided, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

2. Arbitration.

Arbitration may be initiated by providing Notice in accordance with Section 14.02 of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator"). If mediation is first initiated, then such Notice of arbitration must be provided within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 1 of this Exhibit G, and if such Notice of arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 1 of this Exhibit G, the Dispute resolution process shall be

deemed complete and further resolution of such Dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) days after Notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) days from the date of Notice of the demand.

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.

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 in the Dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon Notice of a Party's demand for binding arbitration, such Dispute submitted to arbitration, including the determination of the scope or applicability of this agreement to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws.

Except as provided for herein, the arbitration 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).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in Los Angeles County, California.

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

- i. 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);
- ii. The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
 - iii. Discovery may commence at any time after the Parties' initial disclosure;
 - iv. The Parties will not be permitted to propound any interrogatories or requests for admissions;
 - v. 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);
 - vi. Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
 - vii. 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;
 - viii. Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
 - ix. Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
 - x. Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Section 11.01, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action.

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

The Arbitrator must, in any award, allocate all of 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 will be borne by such Party),

including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail.

Until such award is made, however, the Parties will share equally in paying the costs of the arbitration.

At the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator's decision is based. The Arbitrator shall also 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 shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees.

EXHIBIT H**CYBER AND DATA PROTECTION REQUIREMENTS**

Implementer shall: (i) implement and maintain appropriate measures, no less rigorous than privacy and cybersecurity Industry Best Practices, to protect its electronic network and systems from Cyber Incidents that could make SCE's Computing Systems vulnerable to unauthorized access or use and to protect SCE Data in its custody or control from accidental or unauthorized access, acquisition, disclosure, use, modification, loss, damage, or destruction; (ii) regularly review and revise those measures to address new or ongoing risks and to implement Industry Best Practices and legal requirements regarding cybersecurity and privacy; and (iii) to cooperate with SCE in its efforts to minimize risks to SCE's Computing Systems and SCE Data and prevent unauthorized access to SCE's Computing Systems and SCE Data, or unauthorized disclosure of SCE Data. Implementer acknowledges that these requirements set forth in these Cyber and Data Protection Requirements are in addition to the security and confidentiality requirements of the Agreement and present a minimum standard only. Without limiting the generality of the foregoing paragraph, Implementer's security and privacy practices and procedures must comply with the requirements in the sections that follow. Solely for the purposes of this Exhibit, "Industry Best Practice" shall mean 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 controls include, at a minimum, those consistent with leading technology and cybersecurity 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.

The Parties acknowledge that the requirements of these Cyber and Data Protection Requirements to the extent expressly relating to access to SCE's Computing Systems, BES Cyber Systems, Personal Information, BCSI, or CEII will only become applicable when and to the extent Implementer is given access to SCE's Computing Systems, BES Cyber Systems, Personal Information, BCSI, or CEII.

A. Management of Information Security

Implementer shall maintain and adhere to a comprehensive written information security program (the "Information Security Program") that: (i) contains appropriate administrative, technical, and physical safeguards to protect its electronic network and systems from Cyber Incidents and to protect SCE Data in its custody or control; (ii) complies with applicable laws and regulations and conforms to cybersecurity best practices for Industry Best Practices; and (iii) is reviewed and revised for adequacy and effectiveness at regular intervals (at least annually and whenever there is a change in Implementer's practices that may affect the security of SCE Data or SCE's Computing Systems). While providing the Services, Implementer shall not alter or modify its Information Security Program in such a way that it will weaken or compromise the

confidentiality, availability, or integrity of SCE Data or SCE's Computing Systems.

B. Data and Information Governance

1. Data Management

- a. SCE Data, including any backups, must always be secured through Industry Best Practice whole disk or media encryption and file or database encryption (if applicable) and strong access controls; and
- b. Transmission of SCE Data must always be encrypted (using Industry Best Practices).

2. Return or Destruction of SCE Data

As between SCE and Implementer, all SCE Data shall be and remain the property of SCE. Unless different requirements regarding the retention and destruction of SCE Data are included in the "Confidentiality" or "Non-Disclosure" section of the Agreement, the following requirements shall apply to all SCE Data: At the end of each engagement, Implementer may keep one copy of SCE Data for back-up and recovery purposes and all other SCE Data must be rendered irretrievable as soon as possible, but in no event more than ten (10) business days after the conclusion of the engagement. Upon request, Implementer shall provide SCE with a written confirmation executed by a manager or officer of Implementer confirming that all SCE Data in its custody or control has been rendered irretrievable. The destruction of all SCE Data shall require use of Industry Best Practices for rendering information irretrievable.

C. Employee Policies

1. Security and Privacy Awareness and Training

Implementer shall provide its personnel with privacy and information security training before providing such personnel access to SCE's Computing Systems or SCE Data and at least annually thereafter. Additionally, Implementer shall use written acceptance of codes of conduct, ethics policies, or confidentiality agreements, to promote employee awareness and compliance with Implementer's information security and privacy policies and procedures, Implementer shall maintain employee completion reports. Upon request, Implementer shall certify compliance with these training requirements.

Implementer shall review the contents of its security and privacy awareness and training program at least annually to ensure it is updated and reflects current, relevant security information.

SCE may specify in the purchase order, work order, or statement of work that Implementer shall supplement its information security training program with training or materials that SCE provides.

Implementer shall require that its internal and third-party software developers remain current on application security and secure coding best practices.

D. Subcontractor Management

Implementer shall assess and track cybersecurity and privacy risk associated with Subcontractors with access to SCE's Computing Systems or SCE Data and shall take all commercially reasonable actions to promptly remediate these risks.

Implementer shall contractually obligate Subcontractors to (1) use Industry Best Practices to protect their electronic network and systems from Cyber Incidents, (2) protect SCE Data and (3) comply with all applicable provisions of these Cyber and Data Protection Requirements; provided that Implementer shall remain primarily liable to SCE for the performance of such Subcontractor.

E. Off-Shoring

Implementer shall not permit access to SCE's Computing Systems or transmit, access, use, or store SCE Data outside the United States.

F. Mobile and Removable Device Security

Implementer's devices, including cell phones, tablets, personally owned laptops, or other portable storage devices, may not access or store SCE Data unless such devices have been configured with industry standard security and encryption features, which shall include at a minimum remote wipe and remote shutdown capabilities.

Implementer shall establish processes and procedures for secure handling, storing, and transporting physical media to protect SCE Data from unauthorized access and/or disclosure.

G. Network and Operations Management

Implementer shall use and maintain industry standard technology controls that prevent the unauthorized use of Implementer's systems as long as Implementer has access to SCE's Computing Systems or access to, custody of, or control of SCE Data, including, but not limited to, in the following areas: Network Security (IDS/IPS Use and Signature Updates); Firewalls; Malware Protection; wireless network management and encryption; Change Control. The following areas additionally apply:

1. Network Logging, including Log Monitoring and Retention

Implementer will maintain and review audit logs for anomalies.

Implementer shall retain system and network logs for at least one year after the engagement is completed to allow for the successful auditing of historical events, to meet legal requirements, and for law enforcement and forensic purposes of either Implementer or SCE.

2. Email Security

Implementer shall secure access and prevent misuse of its own email resources and implement and maintain Industry Best Practices to prevent the unauthorized use of Implementer's email systems to generate phishing email. Implementer shall notify SCE at cybersecurity@sce.com of any confirmed or suspected incidents involving the unauthorized use of Implementer's email in phishing campaigns in a manner consistent with Section I.3 of this Exhibit.

H. Identity and Access Management

Implementer shall control access to its technology assets and SCE Data, including implementation of the following requirements, in line with industry standard practices: Password Controls; Multifactor Authentication for Remote Access; and

1. Administrative Activity

Implementer shall minimize administrative privileges and allow personnel to only use administrative accounts when required.

Implementer shall log and monitor network, server and workstation activities, including log-in attempts, to record administrative activity for accountability and audit purposes.

2. Logical and Physical Access Authorizations and Suspensions

Implementer shall limit access to SCE's Computing Systems and SCE Data only to active users who require access to perform the Services and shall coordinate any such access (remote or otherwise) with SCE. Implementer shall immediately notify SCE management to promptly revoke or disable user access rights to SCE's Computing Systems and to SCE Data of any employee who is terminated, resigns, or retires, or who is reassigned from work requiring access to SCE's Computing Systems or to SCE Data. Implementer also shall immediately revoke the employee's or former employee's access to SCE Data in Implementer's possession, custody, or control.

3. Logging and Monitoring of Persons with Access to BCSI

Implementer shall track and monitor Implementer employees, agents, and subcontractors who have access to BCSI in Implementer's custody or control. Implementer shall maintain logs identifying (i) such persons to whom Implementer provides access to BCSI in Implementer's custody or control; (ii) whether such persons have been trained or re-trained, if training is required by SCE; and (iii) the dates that Implementer provided or revoked that person's access rights to BCSI. Implementer shall provide this information upon request by SCE.

I. Vulnerability and Security Incident Management

Implementer shall implement a formalized vulnerability management program and information security incident management program (the "Security Incident Management Program") in line with Industry Best Practices. These programs shall describe how the organization will manage networks, servers, workstations, portable devices, and other devices which may be provided to SCE or used to access SCE's Computing Systems, or to transmit, access, use, or store, SCE Data, and report vulnerabilities and incidents internally and to affected external parties. It shall also identify Implementer's incident response team (the "Implementer Incident Response Team") and define their roles and responsibilities.

1. Vulnerability Management for Implementer's Products

Implementer shall regularly assess any materials or goods (including all software, firmware, and hardware) provided under the Agreement for cybersecurity-related vulnerabilities, risks or threats or defects ("Vulnerabilities"). Implementer shall rank all such Vulnerabilities and promptly remediate any such Vulnerabilities ranked as: "critical," or "very high;" "high;" or "moderate," or "medium." Implementer shall notify SCE in writing within one (1) business day of identification of any such critical, high or moderate Vulnerabilities. Such notification shall be made to cybersecurity@sce.com. Implementer shall promptly send SCE any patches or other technical remediations developed by Implementer to address those Vulnerabilities within thirty (30) days after discovering the Vulnerability.

If Implementer determines that it cannot remediate the Vulnerability within the timeframe specified above, Implementer shall promptly notify SCE via email to cybersecurity@sce.com that remediation is not available. Implementer's notification shall provide detailed information describing recommended controls to mitigate un-remediated Vulnerabilities.

Where third-party hardware, software (including open-source software) and firmware is provided by Implementer to SCE under this Agreement, Implementer shall provide appropriate hardware, software and firmware updates to remediate Vulnerabilities within

thirty (30) days after discovery thereof.

2. Vulnerability Management for Implementer Systems

Implementer shall regularly scan its systems for Vulnerabilities. Implementer shall rank all Vulnerabilities and promptly remediate detected Vulnerabilities ranked as critical, high or moderate. Implementer will use commercially reasonable efforts to identify and notify SCE in writing within one (1) business day of identification of any critical, high or moderate Vulnerabilities that could potentially impact SCE Data and SCE's Computing Systems and that Implementer cannot remediate within thirty (30) days. If Implementer later determines that it cannot remediate within thirty (30) days, it shall promptly notify SCE via email to cybersecurity@sce.com. Implementer's notification shall provide detailed information describing the controls used to mitigate these un-remediated Vulnerabilities.

3. Information Security Incident Management Policy & Procedures Content

Implementer shall establish, document, and distribute a formal Security Incident Management Program, which includes the reporting procedure for a Cyber Incident involving Implementer or any Subcontractor, the requirement of a Implementer Incident Response Team, escalation procedures, and remediation process, and which provides for periodic testing.

Any reasonably suspected or confirmed Cyber Incident must be reported to SCE via email to cybersecurity@sce.com as soon as possible but in no event more than one (1) business day after Implementer's identification of a confirmed or suspected Cyber Incidents or, if sooner, as required by Applicable Laws. Notification shall include the nature of the event, date, and time of the event, suspected amount of information and type of information (e.g., Personal Information, BCSI) exposed and steps being taken to investigate the circumstances of the exposure.

Implementer will take all necessary steps to eliminate or contain the Cyber Incident and Implementer must cooperate with and assist SCE's Cybersecurity Incident Response Team in the investigation, analysis and resolution of Cyber Incidents, including if requested by SCE, providing breach notifications to individuals and regulatory and law enforcement agencies or providing support to SCE. Implementer shall provide SCE with details of the investigation and final disposition of the Cyber Incident relevant to the services provided to SCE or which may impact the confidentiality, integrity, or availability of those services.

4. System and Data Recovery

Implementer shall regularly back-up SCE Data and systems that access, store or use SCE

Data. Backups of these systems and data shall be available, including in the event of a disaster and the ability to restore from such backups shall be tested periodically, at least once annually.

J. Confirmation of Secure Delivery and Product or Material Authenticity

Implementer shall establish, document, and implement, a risk management plan to securely deliver hardware, software (including patches), and firmware (including patches) to SCE. Such plan shall conform to Industry Best Practices.

Within fifteen (15) days of a request made by SCE, Implementer shall provide documentation to SCE demonstrating the integrity and authenticity of software, firmware, hardware and firmware provided by Implementer to SCE. This documentation may include (but is not limited to) documentation regarding Implementer's: chain of custody practices, inventory management program (including the location and protection of spare parts); patch management processes; confirmation that Implementer has implemented appropriate updates and patches to third-party hardware, software, firmware and services for software provided to SCE under this Agreement.

EXHIBIT I

TELEPHONE CONSUMER PROTECTION ACT TERMS

Definitions

“TCPA” shall mean the Telephone Consumer Protection Act of 1991, formally codified as 47 U.S. Code § 227, 47 CFR 64.1200, et seq.

“CPCL” shall mean Calif. Phone Number Compliance Laws, including the Automatic Dialing-Announcing Devices Law, California Public Utility Code §§ 2871-2876; Calif. Public Util. Comm. Decision 03-03-038; and the California Do Not Call Law, Cal. Bus. & Prof. Code § 17592.

“EPSA/DNCR” shall mean the Establishment of a Public Safety Answering Point Do-Not-Call Registry (47 CFR 64.1202).

“DCPA” shall mean the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788, et seq., and the United States Fair Debt Collection Practices Act 15 USC 1692, et seq.

“Campaign” shall mean a communication plan for specific outbound messages to reach individuals via phone, text, fax, and/or email that communicates specific outbound messages, as reviewed and approved by SCE in accordance with this Agreement.

COMPLIANCE WITH TCPA AND OTHER APPLICABLE CALIFORNIA LAW.

(A) General Law Compliance and Obligations.

(1) All telephone calls, SMS messaging and fax Campaigns Implementer makes on behalf of SCE shall be compliant with the TCPA, and EPSA/DNCR, CPCL, DCPA.

(2) Implementer hereby represents and warrants that it does and shall adhere to the TCPA rules and guidelines, including as they may be promulgated in the future.

(B) Do-Not-Call Lists & Opt-out Preferences. Implementer will adhere to the TCPA rules and guidelines, including as they may be promulgated in the future, as follows:

(1) Do-Not-Call (“DNC”) List.

- (a) Implementer shall subscribe to, and scrub any phone numbers provided by SCE to Implementer against, all DNC lists, including (i) the National Do Not Call Registry; and (ii) any state-wide do-not-call registry.
- (b) Implementer must scrub all call lists against the National and Edison’s DNC lists at monthly intervals.

- (c) Implementer must accept a party's request to be placed on SCE's DNC list even if the party only provides his or her telephone number and even if the party is not an SCE customer.
- (d) In the event a wrong party is contacted (where consent existed for a particular number but the owner of the number has unknowingly changed) Implementer shall not make any further attempt to call that number, and shall mark that number as reassigned.

(2) Opt-out Preferences.

- (a) Implementer shall maintain accurate records, including a date and time-stamp, of any DNC request or revocation of consent, as well as capture the called party's opt-out/unsubscribe preferences (live agent, text, pre-recorded messages, and fax) for the associated Campaign. Implementer shall honor the party's request immediately upon receipt as well as provide reports to SCE periodically.
- (b) Implementer must ensure that text opt-outs have a clearly defined time criteria and follow details in accordance to SCE's specific Campaign instructions.

(3) Database Sharing and Auditing. Implementer shall provide the database of opt-out preferences and DNC lists to SCE to ensure data integrity and elimination of redundant or duplicate customer information. In addition to other audit right provided in this Agreement, SCE and its authorized representatives, shall have the right to audit Implementer's call records and logs to ensure timely and completeness of all called party's DNC requests are reported to SCE.

(C) Dialer Technology – Caller Identification.

- (1) Implementer shall ensure that the correct telephone number is displayed for each Campaign for all outbound calls and SCE's name or any derivative thereof shall not appear in the caller identification.
- (2) Implementer shall verify whether telephone numbers being dialed are wireless or wirelines.
- (3) Implementer shall verify that there is valid prior express written consent if sending pre-recorded messages to wireless or wireline phone numbers.

(D) Messages.

- (1) Implementer is prohibited from utilizing pre-recorded messages, robo calls, or any form of contact other than from a live person in real time using a script that has been approved by SCE in accordance with this Agreement.

(3) Implementer shall ensure it honors all revocations of consent from being called and shall notify SCE immediately, and Implementer must remove that number from all other pertinent lists.

(E) Record Retention.

(1) Implementer shall retain the following types of records for the time-frame noted below. Implementer shall provide to SCE the information identified in the below tables, as relevant:

Record Type	Time Frame
<p>Employee Information: The name, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone communication</p>	6 years
<p>Express Informed Consent: All verifiable authorizations or records of express informed consent or express agreement required to be provided or received under the Telemarketing Sales Rule.</p>	6 years
<p>Do-Not-Call List Requirements: Written procedures that address compliance with DNC and DNT list requirements.</p>	15 years
<p>Do-Not-Call Requirements: Records documenting the process used to prevent telemarketing to numbers on the National “Do-Not-Call” Registry, using a version of the registry obtained from the FTC no more than 31 days prior to the date of any call or text.</p>	15 years
<p>Do-Not-Call Requirements: A list of telephone numbers that the Implementer may not contact (company-specific “Do- Not-Call” list).</p>	15 years
<p>Do-Not-Call Requirements: Records documenting that access to the National Do-Not-Call database is obtained, as well as the implementation of a process to prevent telephone solicitations to any telephone number on any list established pursuant to the DNC rules, employing a version of the National DNC Registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made.</p>	15 years

(2) Additionally, Federal law requires that Implementer retain the following records:

Federal Recordkeeping Requirements	Time Period	Title/Department Responsible	Record Format
Campaign scripts, brochures, and promotional materials.	24months		
Name and address of each prize recipient of \$25.00 or more.	24months		
Name and address of each customer, goods/services provided, date, the amount paid, etc.	24months		
Name (including any fictitious name used), home address, telephone number, job title for all current and former employees directly involved in the Telephone sales/solicitation process.	24months		
All records of express informed consent or express agreement provided under the TSR.	24months		
Written procedures which address compliance with do-not-call requirements.	5 years		
A list of telephone numbers on the internal DNC list.	5 years		
Documentation of the process used to prevent telemarketing to numbers on any opt-out list (national, state, wireless, etc.).	5 years		
Records ensuring compliance w/ the three percent (3%) abandonment rate, per 30-day period.	5 years		
Records showing that each telemarketing call placed allows the phone to ring at least 15 seconds or 4 rings before disconnecting to an unanswered call.	5 years		
Record showing whenever a call is abandoned, a recorded message stating the name and telephone number of the Implementer is played w/in two (2) seconds.	5 years		

Records documenting that access to the national DNC database is obtained.	4 years		
Record of the implementation of the process to prevent calls to numbers on any of the DNC lists (Download and Scrubbing records).	4 years		
Written policy for maintaining an internal DNC list.	4 years		

(F) Calling Time Restrictions. If Implementer makes calls to residential called parties, such calls may only occur during the hours of 9 a.m. and 9 p.m. at the geographic location being called and its associated time zone. Implementer shall not make calls during national, state or local holidays observed at the geographic location being called. Exemptions may only be made for emergency calls.

(G) Call and Text Message Script Approval Process.

(1) Implementer shall only make non-soliciting (informational) communications to customers or non-customers, including 3rd parties, using SCE-provided scripts.

(H) Subcontractors. Implementer shall be responsible to ensure its Contractors and Subcontractors comply with TCPA requirements in performing work directly related to or associated with this Agreement.

(I) Call Records/Logs.

(1) Unless otherwise provided for in the Agreement, Implementer shall maintain all call records and logs for no less than one year following the Term. Upon request by the California Public Utilities Commission or SCE, Implementer shall promptly furnish such call records and logs.

(2) Implementer's call records must display number(s) used for outbound callings.

(J) TCPA Audit.

(1) Implementer shall have and adhere to a process/procedure to conduct TCPA self-assessment.

(2) Upon SCE's request, SCE may perform a TCPA compliance assessment at Implementer's place of business during regular business hours.

(K) Error Rate and Abandoned Calls.

(1) A call is considered abandoned if it is not connected to a live agent within two seconds of the called party's completed greeting, or the dialer disconnects the call after the called party has answered. Implementer's abandoned calls must not exceed 3% during a 30-day period for a single calling Campaign. For Campaigns that last longer than 30 days, the 3% limit applies to each successive rolling 30-day period.

(2) Implementer shall create and will maintain records of all calls resulting in an error rate. These records shall include the date and time of each call, and the number called, including area code.

(3) Implementer shall maintain the records for a minimum of five years and, upon request by the California Public Utilities Commission or SCE, Implementer shall promptly furnish such call records and logs.

*** End of EXHIBIT I ***

EXHIBIT J PROJECT DELIVERABLES

1.01 Definitions:

["Acceptance Notice"] means a written notice provided by SCE to Implementer accepting the applicable Deliverable. [SCE Note: For Option 2]]

["Acceptance Notice"] means the notice of "Project Approval" via SCE's software tool provided by SCE to Implementer accepting a Project Feasibility Study in accordance with Section 5.02(b) of the Agreement. [SCE Note: For Option 1]]

"Annual Deliverable Budget" means, for each calendar year that is part of the Delivery Term, the dollar value set forth in the table in Section 1.03(d)(ii).

["Curable Deficiency Notice"] means a written notice from SCE to Implementer providing that the applicable Deliverable is materially inaccurate, incomplete or inconsistent with this Agreement, or is otherwise deficient in any manner, and an explanation, list, summary, or other form of feedback to Implementer to modify the associated Deliverable.] [SCE Note: For Option 2 only, delete for Option 1.]

["Deliverable(s)"] means each of [list all deliverables as separately defined], as applicable to a Project. [SCE Note: For Option 2]]

["Deliverable(s)"] means each Project Feasibility Study delivered to SCE by Implementer in accordance with Section 5.02(b) of the Agreement.] [SCE Note: For Option 1]]

"Deliverable Project Budget" means for each Deliverable, the maximum amount Implementer may be paid for such Deliverable, as set forth in Exhibit J. For each Deliverable, SCE shall have no obligation to pay Implementer any amount that exceeds the applicable Deliverable Project Budget.

["Deliverable Report"] means: (1) for [SCE Note: INSERT DELIVERABLE], a report that includes [SCE Note: INCLUDE WHAT IS REQUIRED IN REPORT APPLICABLE DELIVERABLE]; and (2) for [SCE Note: INSERT DELIVERABLE], a report that includes [SCE Note: INCLUDE WHAT IS REQUIRED IN REPORT FOR APPLICABLE DELIVERABLE] [SCE Note: For Option 2 only, delete for Option 1.]

[“Non-Curable Deficiency Notice” means written notice from SCE to Implementer that the applicable Deliverable Report is materially inaccurate, incomplete or inconsistent with this Agreement, or is otherwise deficient in any manner.] [SCE Note: For Option 2 only, delete for Option 1.]

[SCE Note: Separately define each Deliverable that can be delivered in line with bid for Option 2.]

1.02 Deliverable Report: For each Deliverable, no more than once per calendar month, Implementer shall provide SCE with a Deliverable Report. Within twenty (20) Business Days after receipt of a Deliverable Report, SCE shall either (A) provide an Acceptance Notice, (B) provide a Curable Deficiency Notice, or (C) provide a Non-Curable Deficiency Notice. If SCE provides notice under subsection (B) above, then Implementer may re-submit a revised Deliverable Report for the Deliverable, which shall again be subject to review in accordance with this Section. If SCE provides notice under subsection (C) above, the Deliverable shall cease to be a Project under this Agreement.] [SCE Note: For Option 2 only, delete for Option 1.]

EXHIBIT K

EXPECTED DELIVERABLE PROJECTS AND DELIVERABLE PROJECT BUDGETS

	First Delivery Period Year		Second Delivery Period Year		Third Delivery Period Year		Fourth Delivery Period Year	
	Expected Projects	Deliverable Project Budget	Expected Projects	Deliverable Project Budget	Expected Projects	Deliverable Project Budget	Expected Projects	Deliverable Project Budget
[SCE Note: Insert name of Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]
[SCE Note: Insert name of Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]
[SCE Note: Insert name of Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]
[SCE Note: Insert name of Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]	[#]	[insert \$ / Deliverable]

**[EXHIBIT L
DATA PRIVACY TERMS]**

{SCE Note: delete if no Personal Information being provided.}

These Data Privacy Terms provide requirements relating to Personal Information and/or Deidentified Information and compliance with Applicable Privacy Law. Implementer shall comply with this Exhibit at Implementer's cost.

1. Definitions Specific to Data Privacy Terms

- 1.1 **“Applicable Privacy Law”** means any applicable federal, state, provincial, foreign or local statute, law, or regulation applicable to a Party's collection, use, storage, distribution or Processing of Personal Information, and specifically includes the CCPA.
- 1.2 **“Business Purpose”** has the meaning given to it by Cal. Civ. Code § 1798.140(e).
- 1.3 **“CCPA”** means the California Consumer Privacy Act of 2018, California Civil Code Section 1798.100 – 1789.199, as amended.
- 1.4 **“Collects”** has the meaning given to it by the CCPA.
- 1.5 **“Commercial Purpose”** has the meaning given to it by the CCPA.
- 1.6 **“Contractor”** has the meaning given to it by the CCPA, which is a Person to whom SCE make available Personal Information for a Business Purpose. A Party otherwise defined as the “Contractor” in this Agreement might or might not be a Contractor under the CCPA.
- 1.7 **“Deidentified Information”** has the meaning given to it by the CCPA.
- 1.8 **“Person”** has the meaning given to it by the CCPA and which includes Subcontractors.
- 1.9 **“Personal Information”** means any information in the possession or under the control of SCE or any of its affiliates, or that is furnished or made available by SCE or any of its affiliates to Implementer, that identifies an individual, or that relate to, describes, or is capable of being associated with, an identifiable individual (whether a current or form SCE employee, customer, or otherwise), including, without limitation, their name, signature, social security number, physical characteristics or description, address, telephone number, government issued identification number, medical information, insurance information, education, employment information, financial identifiers or information, online account identifiers and password and/or security question together with the answer, or information regarding the individual's electric energy usage or electric service, including, without limitation,

The contents of this document are subject to restrictions on disclosure as set forth in the Agreement.

service account number, electricity demand, monthly billed revenue, credit history, rate schedule(s), meter data, or number or type of meters at a premise. Personal Information also includes “personal information” as defined in the CCPA, and any regulation promulgated thereunder.

- 1.10 **“Processing”** has the meaning given to it by the CCPA.
- 1.11 **“Service Provider”** has the meaning given to it by Cal. Civ. Code § 1789.140(ag).
- 1.12 **“Sell”** has the meaning given to it by the CCPA.
- 1.13 **“Sensitive Personal Information”** has the meaning given to it by the CCPA.
- 1.14 **“Service Provider”** has the meaning given to it by the CCPA, which is a Person that Processes Personal Information on behalf of SCE and that receives from or on behalf of SCE an individual’s Personal Information for a Business Purpose.
- 1.15 **“Services”** means the work performed by Implementer, or which Implementer causes a Subcontract to perform, the creation, provisions, or furnishing of deliverables, Savings, and all other obligations of Implementer as required by the Agreement.
- 1.16 **“Share”** has the meaning given to it by the CCPA.
- 1.17 **“Subcontractor”** means a Person, including a Service Provider or Contractor or Third Party, with whom Implementer has entered into a written agreement in connection with the Collection, Sharing, Processing, disclosure, storage or access to Personal Information.
- 1.18 **“Third Party”** has the meaning given to it by the CCPA.

2. **General**

- 2.1 To the extent SCE discloses, Sells, Shares, or otherwise makes available Personal Information to Implementer, it does so for the limited and specified purposes listed in the Agreement. SCE has the right to take reasonable and appropriate steps (i) to ensure that the Implementer uses and Processes Personal Information in a manner consistent with SCE’s obligations under Applicable Privacy Law and (ii) to stop and remediate the unauthorized use of Personal Information.
- 2.2 To the extent SCE discloses or otherwise makes available Deidentified Information to Implementer, 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 Law, and (iii) contractually obligate any further recipient to comply with all provisions of this paragraph.

- 2.3 Implementer represents and warrants that it and its Subcontractors shall comply with all Applicable Privacy Laws and provide the same level of privacy protections as required by SCE under Applicable Privacy Law.
- 2.4 Implementer shall promptly notify SCE if Implementer determines that it can no longer meet its obligations under Applicable Privacy Law.
- 2.5 Implementer shall, and shall require by contract that any non-affiliated party, to whom it discloses Personal Information, shall, implement reasonable security procedures and practices appropriate to the nature of Personal Information to protect Personal Information from unauthorized or illegal access, unavailability, destruction, use, modification, or disclosure.

3. Additional Terms Regarding Retention, Use and Disclosure of Personal Information

- 3.1 Implementer shall Process Personal Information solely for the purpose of Implementer's providing the Services to SCE, and the Agreement identifies the Business Purpose for which the Implementer is Processing Personal Information.
- 3.2 Implementer shall not retain, use, or disclose Personal Information except as permitted by SCE and Applicable Privacy Law: (i) for any purpose (including, but not limited to, any Commercial Purpose) other than the Business Purpose specified in the Agreement, or (ii) outside of the direct business relationship between SCE and Implementer.
- 3.3 Implementer shall not Sell or Share Personal Information.
- 3.4 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 provide Services to SCE, and is otherwise allowed under the Agreement and Applicable Privacy Law.
- 3.5 To the extent Implementer is a Contractor, by executing this Agreement, Implementer certifies that it understands the restrictions on Processing Personal Information set forth in Sections 3.1 – 3.4 of this Exhibit L and agrees that it will comply with them.
- 3.6 If Implementer engages any other Person to assist it in Processing Personal Information for a Business Purpose on behalf of SCE, or if any other Person engaged by the Implementer engages another Person to assist in Processing Personal Information for that Business Purpose, Implementer shall notify SCE of that engagement, and the engagement shall be pursuant to a written contract binding the other Person to observe all the requirements set forth herein and in accordance with Applicable Privacy Law. Implementer may disclose Personal Information only to (i) Service Providers or Contractors approved by SCE and then solely to enable

the Service Providers or Contractors to provide the Services for SCE's benefit, and (ii) those of Implementer's employees with a need to know in order to provide the Services for SCE's benefit, and have been informed of all requirements under the CCPA regarding handling Consumer inquiries, and are under a duty of confidentiality.

- 3.7 Implementer shall notify SCE in writing within five (5) calendar days if Implementer receives a request from an agent or Consumer relating to Personal Information (a "**Consumer Rights Request**"). Implementer shall provide SCE with a copy of the Consumer Rights Request together with all details and information related to the Consumer Rights Request. Thereafter, Implementer will promptly provide to SCE any new or additional details and information relating to such Consumer Rights Request that Implementer may receive at any time.
- 3.8 Implementer shall cooperate with and provide assistance to SCE in responding to any Consumer Rights Request.
- 3.9 Implementer shall provide assistance to SCE to enable SCE to comply with any Consumer Rights Request.
- 3.10 If instructed by SCE, Implementer shall inform the submitter of the Consumer Rights Request in writing that the request will not be acted upon because Implementer is a Service Provider or Contractor, as applicable, and that the submitter should submit the request directly to SCE. Implementer shall not otherwise communicate with a submitter regarding a Consumer Rights Request unless SCE directs Implementer in writing to do so.
- 3.11 If SCE communicates a consumer's opt-out request to Implementer or Implementer's Subcontractor, Implementer and its Subcontractor shall thereafter only use that Consumer's Personal Information for a Business Purpose specified by SCE, or as otherwise permitted by the CCPA, and shall be prohibited from: (i) Selling or Sharing the Personal Information and (ii) retaining, using, or disclosing that Consumer's Personal Information: (a) for any purpose other than for the specific purpose of performing the Services offered to SCE; (b) outside of the direct business relationship between Implementer and SCE under the Agreement and (c) for a Commercial Purpose other than providing Services to SCE.

4. Data Return or Deletion

- 4.1 At SCE's written request, Implementer shall promptly and securely return and/or permanently erase and delete all copies of Personal Information that Implementer or any Service Provider or Contractors Process or has in its or their possession or under its or their control.
- 4.2 Implementer shall within ten (10) days provide to SCE a written certification that Implementer has complied fully with Section 4.1, and, if applicable, (ii) a written

certification from each Service Provider that the Service Provider has complied fully with this Section 4.1.

5. Compliance with this Exhibit

Implementer agrees that SCE may monitor its compliance with this Exhibit, including through manual reviews, automated scans, regular assessments, audits, or other technical and operational testing at least once every twelve months.

6. Limitation of Liability.

ANY LIMITATIONS OF LIABILITY SET FORTH IN THE AGREEMENT, INCLUDING BUT NOT LIMITED TO LIMITATIONS OF LIABILITY WITH RESPECT TO CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, SHALL NOT APPLY TO DAMAGES ARISING OUT OF, IN CONNECTION WITH, RESULTING FROM OR RELATING TO IMPLEMENTER OR ITS SUBCONTRACTOR'S BREACH OF ANY OF IMPLEMENTER'S OBLIGATIONS UNDER THIS EXHIBIT.

[EXHIBIT M CUSTOMER DATA]

{SCE Note: delete if no Personal Information being provided.}

Pursuant to CPUC Decision 23-02-002, the Implementer may request confidential Customer Data from SCE to assist with Program implementation. SCE's obligation to provide Customer Data to Implementer, after the Agreement is executed, is subject to:

- A current cyber security review by SCE; and
- A non-disclosure agreement or terms directly with SCE and any other investor-owned utility (IOU) from which the Implementer is seeking Customer Data; and
- The ability by the Implementer to receive secure data transmission SCE; and
- Compliance with SCE's tariffs, including data minimization requirements.

The Implementer shall consult with SCE regarding the data to be provided (specifically, the fields, observations, and format). Specifically, data fields must map directly to one or more of the following Program functions:

- Customer targeting;
- Customer eligibility checks;
- Execution of the program for enrolled customers;
- Measurement and evaluation; and
- Eliminating participant double-dipping and/or double-counting of savings (when applicable).

The specific data required to be shared is limited to the following types:

- Customer identification, location (physical address), and premise-related, relevant data including but not limited to characteristics such as single-family/multi-family classification, whether the property has a pool, or installed solar;
- Customer energy usage and usage data related to the premise characteristics described above; and

- Customer program participation (when necessary for evaluating customer eligibility).

SCE's obligation to provide Customer Data to Implementer is subject to Implementer's strict compliance with Section 9.06(b) of the Agreement and the terms set forth in this Exhibit M.

REQUESTED DATA ELEMENTS AND DESCRIPTION

#	Data Element	Data Element Description
1		
2		
3		
4		
5		