

**SYSTEMWIDE ENERGY  
STORAGE PROGRAM  
Master Enabling Agreement  
Energy Storage Site License & Service  
Agreement**

|                                |   |
|--------------------------------|---|
| AGREEMENT NUMBER<br><br>180598 | AM NO                                     |
|                                | CONTRACTOR IDENTIFICATION NUMBER<br>11548 |

THIS MASTER ENABLING AGREEMENT, made and entered into this 1<sup>st</sup> day of April 2019, in the State of California, by and between the Trustees of the California State University, which is the State of California acting in a higher education capacity, through its duly appointed and acting officer, hereinafter called Trustees, and

CONTRACTOR'S NAME

**ENGIE Services U.S. Inc.**

, hereafter called Contractor,

WITNESSETH: This Master Enabling Agreement (MEA) sets forth the terms and conditions by which Contractor may provide services to the CSU for the implementation of the Systemwide Energy Storage Program Master Enabling Agreement Energy Storage Site License & Service Agreement (the Program). The Program has been approved by the Trustees pursuant to California Public Contract Code 10708 and 10709 and described in CSU RFQ 160249 including all addenda. Contractor, for and in consideration of the covenants, conditions, agreements, and stipulations of the Trustees hereinafter expressed, does hereby agree to furnish to the services and materials as follows:

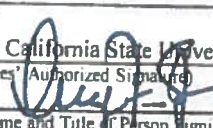
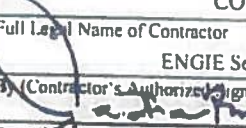

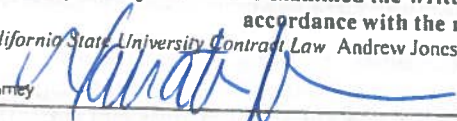
1. For this MEA, the term "University" shall mean any CSU University, administrative and auxiliary office of the Trustees.
2. This MEA allows a University to direct a university-specific and site-specific Request for Proposal (RFP) as referenced in Exhibit A, Rider K to Contractor to solicit project approach, pricing, and schedule.
3. The University will determine the contractor with the best value based on the RFP scoring methodology and can award the University-specific Energy Storage Site License and Services Agreement (ESSLSA) to reflect a specific University site. The University and Contractor shall use the contract language included in this MEA. The ESSLSA shall include a specific University scope of work for the installation of Battery Energy Storage systems and all details pertinent to its completion.
4. Contractor shall provide the necessary services to design, build, operate, maintain and finance battery energy storage systems in accordance with the below referenced Exhibit A, Riders, and Attachments, which by this reference are incorporated herein and made a part hereof:
  - a. Exhibit A, Energy Storage Site License and Services Agreement (ESSLSA), consisting of sixty-four (64) pages and;
    - i. Rider A-1 Map and Premises Location and Licensed Area, consisting of TBD # of pages;
    - ii. Rider A-2 Energy Storage System Summary and Known Site Restrictions, consisting of two (2) pages;
    - iii. Rider B-1 ESSLSA General Conditions, consisting of fifty-one (51) pages;
    - iv. Rider B-2 University Specific Supplemental Conditions, consisting of TBD # of pages;
    - v. Rider C Performance Guarantee, consisting of TBD # of pages;
    - vi. Rider D Operational Access Procedures for the Site and Licensed Area, consisting of two (2) pages;
    - vii. Rider E Schedule, consisting of two (2) pages;
    - viii. Rider F Bond Forms, consisting of three (3) pages;
    - ix. Rider G Trustees Consent and Estoppel Certificate Template, consisting of three (3) pages;
    - x. Rider H Licensee Sample Invoice, consisting of one (1) page;
    - xi. Rider I Scope of Work, Final ESSLSA Rate and Layout, consisting of TBD # of pages;
    - xii. Rider J University Premises Specific Geotechnical Report(s) TBD # of pages;
    - xiii. Rider K Template Request for Proposal Energy Storage Program: Energy Storage Site License and Services Agreement and all Addenda consisting of TBD # of pages;
  - 1) RFP Form 1 Small Business Preference and Certification Request, consisting of one (1) page;
  - 2) RFP Form 2 Disabled Veteran Business Enterprise DVBE Participation Requirement, consisting of seven (7) pages;
  - 3) RFP Form 3 Sustainability Capabilities, consisting of one (1) page;
  - 4) RFP Form 4 Expected and Guaranteed Demand Reduction, consisting of one (1) page;
  - b. Attachment 1 Energy Storage: MEA Notice of Intent to Award, consisting of three (3) pages;
  - c. Attachment 2 Energy Storage: MEA Authorization to Proceed to Design, consisting of one (1) page;
  - d. Attachment 3 Energy Storage: MEA Authorization to Proceed to Construction, consisting of one (1) page;
  - e. Attachment 4 Energy Storage: MEA Contractor Notice of Commercial Operation Date, consisting of one (1) page;
  - f. Attachment 5 Energy Storage: MEA Trustees Notice of Completion, consisting of one (1) page.

5. The contract language in this MEA (including Exhibit A) has been reviewed with Contractor in advance. No changes to the language in Exhibit A are anticipated based on this review; however, if changes are necessary, University and Contractor agree to use Rider B-2, as applicable, to identify any changes or deviations from the Exhibit A language.
6. Contractor agrees that other public agencies, including without limitation those defined by California Government Code Section 6500, shall have the option to cooperatively purchase upon the terms of this MEA for their own use for the services and terms defined in this MEA. Trustees shall incur no financial responsibility or liability in connection with the cooperative purchases through this MEA by another public agency. Contractor agrees that any public agency cooperatively purchasing using the terms of this MEA shall be solely responsible for its own arrangement with and payments to Contractor and that the Trustees shall have no responsibility or liability whatsoever regarding the cooperative purchasing arrangement.
7. The term of this MEA shall be from the date the agreement is executed by both parties through April 1, 2021, with the option of extending the MEA with the same terms and conditions for three (3) additional one (1) year periods, or in the event an ESSLSA is executed pursuant to this MEA, through the end of the Term specified in Section 1.101 of Exhibit A, whichever is later.
8. Contractor shall not perform services without prior written authorization to proceed from the Trustees' Representative or Contract Administrator.
9. Work Reporting: Contractor shall submit annual reports beginning on August 1, 2019, for work done during the previous fiscal year under this MEA. The report shall include an Excel readable spreadsheet with the following headings: University; Premises Name; current status; energy storage system size; and meter number(s) integrated into campus Energy Information System.

The total amount to be expended under this MEA shall be determined by the overall usage by each participating University and administrative office of the California State University. Payment shall be made in accordance with Exhibit A and related Riders.

Contractor shall report to CSU Contract Administrator Aaron Klemm, Chief of Energy and Sustainability for Capital Planning Design and Construction in the Office of the Chancellor, 401 Golden Shore, Long Beach, CA 90802, 562-951-4122.

IN WITNESS WHEREOF, this MEA has been executed by the parties hereto, upon date first above written.

| THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY  |          |  |    |          | CONTRACTOR  |                  |                    |                     |           |                  |  |
|--|----------|--|----|----------|---|------------------|--------------------|---------------------|-----------|------------------|--|
| University<br>The California State University, Office of the Chancellor  |          |  |    |          | Full Legal Name of Contractor<br>ENGIE Services U.S. Inc.   |                  |                    |                     |           |                  |  |
| By (Trustees' Authorized Signature)<br> |          |  |    |          | By (Contractor's Authorized Signature)<br>  |                  |                    |                     |           |                  |  |
| Printed Name and Title of Person Signing for Trustees<br>Elvyra F. San Juan, Assistant Vice Chancellor                     |          |  |    |          | Printed Name and Title of Person Signing for Contractor<br>Jonathan Brann, Vice President   |                  |                    |                     |           |                  |  |
| Capital Planning, Design and Construction<br>401 Golden Shore<br>Long Beach, CA 90802-4210                                 |          |  |    |          | Check appropriate box below that best describes Contractor<br><input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporation<br><input type="checkbox"/> Limited Liability Co <input type="checkbox"/> Other (specify) |                  |                    |                     |           |                  |  |
| <b>SCO Account Data:</b>   |          |  |    |          |   |                  |                    |                     |           |                  |  |
| Fund   | Sub Fund | Agency   | Yr | Ref/Item | Category  | Program Element  | Component          | Chapter             | Fiscal Yr | Legal Reference  |  |
| Fund Name  |          |  |    |          | PS Account<br>613001  | PS Fund<br>485C1 | PS Dept ID<br>1007 | PS Program<br>ENRGY | PS Class  | PS Project/Grant |  |
| Amount Encumbered  |          | <b>I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.</b><br>Signature of Accounting Officer:  Date: 9/24/19        |    |          |   |                  |                    |                     |           |                  |  |
| \$0  |          |  |    |          |   |                  |                    |                     |           |                  |  |
| Amount of Increase   |          |  |    |          |   |                  |                    |                     |           |                  |  |
| \$0  |          |  |    |          |   |                  |                    |                     |           |                  |  |
| Amount of Decrease   |          | <b>I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of the California State University Contract Law.</b><br>By Attorney:  Date: 10/30/19 |    |          |   |                  |                    |                     |           |                  |  |
| \$0  |          |  |    |          |   |                  |                    |                     |           |                  |  |
| Total Amount Encumbered  |          |  |    |          |   |                  |                    |                     |           |                  |  |
| \$0  |          |  |    |          |   |                  |                    |                     |           |                  |  |

## **Rider A - Master Enabling Agreement General Provisions**

1. Contractor, in the performance of this MEA, is an independent contractor and is not an employee, agent, or officer of the Trustees (or CSU Auxiliary).
2. Trustees may cancel this Agreement should Service Provider fail to perform as herein provided. In the event of such cancellation, Trustees shall be relieved of the obligation to make any payment to Service Provider and Trustees (or CSU Auxiliary) may proceed with the work in any manner the Trustees (or CSU Auxiliary) deem proper.
3. Trustees may terminate this Agreement either upon giving fifteen (15) days written notice or upon the immediate notice with payment of \$25.00 to Service Provider. Payment shall be complete by mailing payment to Service Provider at the address appearing on the face of this Agreement. In the event of such termination, Service Provider shall be paid only for the work satisfactorily completed. Contractor shall not assign benefits or delegate duties under this MEA in whole or in part without the prior written approval of the Trustees.
4. The provisions of this MEA shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns to the parties hereto.
5. No alteration or variation of the terms of this MEA shall be valid unless made in writing and signed by the parties. Oral understandings or other agreements not incorporated herein shall not be binding.
6. Any notice, which may be proper or necessary for either of the parties hereto to serve on the other, in case of Trustees (or CSU Auxiliary), may be served effectually upon Trustees (or CSU Auxiliary) by delivering it in writing, addressed to the Trustees of the California State University, attention of the official executing this MEA for Trustees, at CSU Office of the Chancellor, 401 Golden Shore, Long Beach, CA 90802, or by depositing it in a United States mail deposit box with first class postage thereon fully prepaid and addressed to the Trustees of the California State University at the above-mentioned address. If a CSU Auxiliary Organization utilizes this MEA, it will also be served to them directly. In the case of Contractor, notice may be served effectually upon Contractor by delivering it in writing to Contractor at the address appearing on the first page of this MEA or depositing it in a United States mail deposit box with first class postage thereon fully prepaid, and addressed to Contractor at Contractor's above-mentioned address. Any notice may also be served effectually by delivering or mailing it, as in this section provided, addressed to Trustees (or CSU Auxiliary) or Contractor at any other place or places which Trustees (or CSU Auxiliary) or Contractor, by written notice served upon the other, may designate, provided, however, that nothing herein shall preclude the giving of notice by personal service.
7. In the performance of this MEA, Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status. Contractor will take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status as prohibited by the California Fair Employment and Housing Act (Government Code Section 12900 et seq.)
8. Contractor shall not utilize any information, not a matter of public record, which is received by reason of this MEA, for pecuniary gain not contemplated by the terms of this MEA, regardless of whether Contractor is or is not under contract at the time such gain is realized (Education Code Section 89006).
9. The following provisions relate to Conflict of Interest:
  - A. Contractor shall act in the best interest of Trustees (or CSU Auxiliary) at all times during the performance of this MEA. Contractor shall not engage in any business dealings that may be in actual or potential conflict with the performance of this MEA without the prior written approval of Trustees (or CSU Auxiliary).
  - B. Should any actual or potential conflicts of interest arise that could impact Contractor's ability to act in the best interest of Trustees (or CSU Auxiliary), Contractor agrees to immediately disclose the actual or potential conflict of interest to Trustees (or CSU Auxiliary) for evaluation.
  - C. Contractor agrees that it will not submit a bid for the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this consulting MEA except as authorized by law. (Public Contract Code Section 10830).
10. The report, survey, or other product developed by Contractor pursuant to this MEA is the property of Trustees (or CSU Auxiliary), and shall not be used in any manner by Contractor unless authorized by Trustees (or CSU Auxiliary).

11. In executing this MEA, Contractor swears, under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year (2) period because of Contractor's failure to comply with an order of a federal court which orders Contractor to comply with an order of the National Labor Relations Board. Trustees (or CSU Auxiliary) may rescind this contract if Contractor falsely swears to this statement (Public Contract Code Section 10296).
12. Contractor shall be subject to the examination and audit of the State Auditor of the State of California for a period of three (3) years after final payment under this MEA. This examination and audit shall be confined to those matters connected with the performance of this contract, including, but not limited to, the cost of administering this MEA (Government Code Section 8546.7).
13. Contractor hereby certifies compliance with Government Code Sections 8355, 8356, and 8357 in matters relating to providing a drug-free workplace. In accordance with Government Code Section 8355, the Contractor shall:
  - A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations;
  - B. Establish a Drug-Free Awareness Program to inform employees about all of the following:
    - (1) The dangers of drug abuse in the workplace,
    - (2) The Contractor's policy of maintaining a drug-free workplace,
    - (3) Any available counseling, rehabilitation, and employee assistance programs, and
    - (4) Penalties that may be imposed upon employees for drug abuse violations;
  - C. Require that each employee engaged in the performance of the MEA be given a copy of the statement required by subpart A, and require that each employee, as a condition of employment on the MEA, agree to abide by the terms of the statement.
14. Responsive to direction from the State Legislature (Public Contract Code Section 10115 et seq.), the Trustees (or CSU Auxiliary) are seeking to increase the statewide participation of disabled veteran business enterprises in contract awards. To this end, Contractor shall inform the Trustees (or CSU Auxiliary) of any contractual arrangements with consultants or suppliers that are certified disabled veteran business enterprises.
15. Contractor certifies and declares by signing this MEA that it is eligible to contract with the State of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code Section 10286 et seq.).
16. Contractor shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees (or CSU Auxiliary).
  - A. Contractor shall obtain and maintain the following policies and coverage. The insurance furnished by the Contractor under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated on the Cover Page of this MEA:
    - (1) Comprehensive or Commercial Form General Liability Insurance: on an occurrence basis, covering work done or to be done by or on behalf of Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work. Limits of Liability:  
\$4,000,000.00 General Aggregate  
\$2,000,000.00 Each Occurrence—combined single limit for bodily injury and property damage.
    - (2) Business Automobile Liability Insurance: on an occurrence basis, covering owned, scheduled, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists with limits per California law requirements. Limits of Liability:
    - (3) \$1,000,000.00 Each Accident—combined single limit for bodily injury and property damage.
    - (4) Workers' Compensation: including Employers Liability limits of \$1,000,000.00 and other limits as required under California law.
    - (5) Errors and Omissions Insurance: on an occurrence basis is preferred, covering work done or to be done by or on behalf of the Contractor and providing insurance for errors and omissions in the amount of \$5,000,000.00 per occurrence and which follows an event otherwise covered by the commercial general liability policy, the employer's liability policy, and the automobile liability policy upon exhaustion of the limits set forth in these policies. Alternatively, Contractor may provide umbrella insurance on a "claims made" basis pursuant to a policy with limits of \$10,000,000.00, in which case Contractor agrees to the following conditions in return for CSU's acceptance of Licensee's "claims-made" policy: (1) the Retroactive Date of the policy must coincide with, or precede, Contractor's start of work (including subsequent policies purchased as renewals or replacements); (2) Contractor will maintain

similar insurance for at least three (3) years following completion of the work and/or services contemplated by this MEA; (3) if the policy is terminated for any reason, Contractor agrees to purchase an extended reporting period endorsement (tail coverage) of at least three (3) years to report claims arising from work that is being performed, or in the alternative, purchase “prior acts” coverage from the successor insurer with a Retroactive Date that precedes the date on which work and/or services were first provided by Contractor to CSU; and (4) the policy allows for reporting of circumstances or incidents (incident reporting) that might give rise to future claims.

- B. Contractor shall submit to the Trustees (or CSU Auxiliary) certificates of insurance and original endorsements to the policies of insurance required by the agreement as evidence of the insurance coverage. The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no cancellation of coverage without thirty (30) days written notice to the Trustees (or CSU Auxiliary), as specified in Section 15-C (3). Renewal certifications and endorsements shall be timely filed by Contractor for all coverage until the work is accepted as complete. The Trustees (or CSU Auxiliary) reserve the right to require Contractor to furnish the Trustees (or CSU Auxiliary) complete, certified copies of all required insurance policies. Contractor shall notify the Trustees (or CSU Auxiliary) in writing of any material change in insurance coverage.
- C. The insurance policies shall contain, or be endorsed to contain, the following provisions:
- (1) For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, (or CSU Auxiliary), their officers, employees, representatives, volunteers, and agents shall be covered as additional insureds.
  - (2) For any claims related to the work, the Contractor’s insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, (or CSU Auxiliary), the University, their officers, employees, and volunteers. Contractor shall provide a Waiver of Subrogation endorsement form in favor of the State of California, Trustees of the California State University, the California State University campuses, their officers, employees, and volunteers. Trustees agree that blanket policy endorsements are acceptable.
  - (3) Each insurance policy required by this Article shall state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Trustees (or CSU Auxiliary).
  - (4) The State of California, the Trustees of the California State University, (or CSU Auxiliary), the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- D. Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best’s rating of no less than A: VII or equivalent carrier otherwise acceptable to the Trustees (or CSU Auxiliary).
- E. Miscellaneous:
- (1) Any deductible under any policy of insurance required in this Article shall be Contractor’s liability.
  - (2) Acceptance of certificates of insurance by the Trustees (or CSU Auxiliary) shall not limit the Contractor’s liability under this MEA nor does it create any waiver of subrogation CSU.
  - (3) In the event the Contractor does not comply with these insurance requirements, the Trustees (or CSU Auxiliary) may, at its option, provide insurance coverage to protect the Trustees (or CSU Auxiliary). The Contractor shall pay the cost of the insurance and, if prompt payment is not received by the insurance carrier from Contractor, the Trustees (or CSU Auxiliary) may pay for the insurance from agreement sums otherwise due Contractor.
  - (4) If the Trustees (or CSU Auxiliary) are damaged by the failure of Contractor to provide or maintain the required insurance, Contractor shall pay the Trustees (or CSU Auxiliary) for all such damages.
  - (5) Contractor’s obligations to obtain and maintain all required insurance are non-delegable duties under this agreement.
17. Contractor agrees to hold harmless, defend, and indemnify the State of California, the Trustees (or CSU Auxiliary) of the California State University, the University, and the officers, employees, and volunteers of each of them from any and all claims, damages, losses, causes of action and demands, and all costs and expenses incurred in connection therewith, resulting from or in any manner arising out of or in connection with any negligent act or omission or willful misconduct on the part of Contractor, its officers, agents, and employees, in the performance of this MEA. This provision shall survive the expiration or termination of this MEA.
18. In accordance with Labor Code Section 1720 et seq., Contractor must pay employees at least the prevailing rate wages for public works performed on the Project, including preconstruction inspection and surveying. If and to the extent the Project will involve public works, Contractor must register with the Department of Industrial Relations (DIR) to bid and/or perform work on the Project, and Contractor must submit certified payroll records to DIR at least monthly for such work. The Project is subject to DIR monitoring and enforcement.

19. In the event of any conflict between this MEA and, if an Energy Storage Site License and Services Agreement (ESSLSA) is executed pursuant to this MEA, the ESSLSA, the terms of the ESSLSA shall prevail.

**End of Rider A**

## ENERGY STORAGE SITE LICENSE AND SERVICES AGREEMENT

AGREEMENT NUMBER: \_\_\_\_\_

THIS ENERGY STORAGE SITE LICENSE AND SERVICES AGREEMENT BY AND  
BETWEEN THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY AND  
LICENSEE

FOR THE LICENSED AREA LOCATED AT

CALIFORNIA STATE UNIVERSITY [CAMPUS]

DATED: [Month Day, 201X]



This Energy Storage Site License and Services Agreement (“Agreement”) is made and effective MONTH AND DAY, 201Choose an item., by and between the Trustees of the California State University, on behalf of California State University campus (“University”) (collectively “Trustees”) and [Company Name] (“Licensee”).

RECITALS:

WHEREAS, Trustees are authorized to lease or license their real property pursuant to Section 89048(e) of the California Education Code; and

WHEREAS, Trustees own certain real property in the County of County, State of California, upon which is located the Licensed Area on the premises of California State University campus; and

WHEREAS, Licensee desires to obtain, and Trustees desire to provide, a license to use the Licensed Area to install, maintain, and operation of an energy storage system; and

WHEREAS, Licensee desires to sell, and Trustees desire to purchase, peak demand reduction services delivered by the energy storage system (“System”), as further defined in the Project Manual

NOW, THEREFORE, in consideration of these recitals, the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:



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## 1. DEFINITIONS

Except as specifically provided to the contrary in this Agreement, or unless the context clearly requires otherwise, the capitalized terms in this Agreement shall have the meanings set forth below.

- 1.1. “AC” means alternating current.
- 1.2. “Access Procedures” means the Site access procedures for Licensee set forth in Rider D and, if applicable, Appendix A of Rider B-2 (University Site Specific Construction Requirements).
- 1.3. “Actual Peak Demand Reduction” means the difference in peak kW demand in a Billing Cycle as measured by the peak kW demand stated in the Counter-factual Bill and the actual peak kW demand stated in the Local Electric Utility bill for purposes of calculating the demand charges for the Billing Cycle.
- 1.4. “Addendum” or “Addenda” mean(s) any document(s) issued by Trustees during the bidding process that may modify or supersede portions of the Request for Proposals.
- 1.5. “Affiliate” means, with respect to Licensee, any other legal entity directly or indirectly controlling, controlled by, or under common control with Licensee.
- 1.6. “Agreement” means this Energy Storage Site License and Services Agreement and all riders, attachments, and appendixes attached hereto or incorporated by reference.
- 1.7. “Alterations” means changes to, replacement of, or alteration to the System, including the erection of additions and structures in or upon the System as further defined in Section 8.12.
- 1.8. “ANSI” means American National Standards Institute.
- 1.9. “Applicable Law” means any and all applicable federal, state, and local laws, codes, ordinances, rules and regulations, and all issued permits and licenses.
- 1.10. “As-Built Drawings” means the Licensee’s annotated set of Construction Documents that have been contemporaneously revised by the Licensee during the course of the System’s installation and construction to identify changes to the System subsequent to the approval of the Construction Documents so as to record the System’s actual physical constructed condition.
- 1.11. “As-Is” means the term used to notify Licensee that no express or implied warranty regarding the Site and Licensed Area is provided by Trustees. Licensee therefore takes the Site and Licensed Area at Licensee’s own risk, without recourse against Trustees for their condition or performance. ‘As is’ translates into ‘with all faults.’
- 1.12. “ASME” means American Society of Mechanical Engineers.
- 1.13. “Billing Cycle” means the period in which Licensee shall bill Trustees for the Electricity delivered by the System which shall be on a calendar month basis following the Notice of Commercial Operation. In the event the first day of delivery

of Electricity falls on a day other than the first day of the month Licensee shall bill the Metered amount of Electricity for the remaining portion of the month.

- 1.14. “Business Day” means any day other than a Saturday, a Sunday, or a day on which commercial banks in New York, New York, are authorized or required to close. The first Friday after the US Thanksgiving holiday shall not be a Business Day.
- 1.15. “CEC” means the California Energy Commission.
- 1.16. “CEQA” means the California Environmental Quality Act, which is a California environmental law that provides certain rules and regulations related to the issuance of permits and approval of projects. CEQA applies to all discretionary projects proposed to be conducted or approved by a California public agency, including private projects requiring discretionary government approval.
- 1.17. “COD” means the Commercial Operation Date.
- 1.18. “Collateral Assignment” means an assignment, if any, to a Lender of certain rights and interests of the Licensee in the System or this Agreement for any time period during the Term.
- 1.19. “Commercial Operation Date” means the date on which the System commences delivery of peak demand reduction services, which date shall not be earlier than the date all of the following conditions have been met: (a) the System is substantially complete and available for commercial operation to the full extent of designed capability as demonstrated during the commissioning and performance validation; (b) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System have been obtained and be in full force and effect; (c) Trustees have entered into an interconnection agreement for the System with the applicable Local Electric Utility; and (d) Licensee has provided the Notice of COD to Trustees (Attachment 4 of the MEA).
- 1.20. “Construction Completion Date” means the date all of the following conditions have been met: (a) construction of all System support structures, patching of the existing paved licensed area surfaces to previous conditions, has been completed; (b) all temporary onsite fencing has been removed; and (c) all temporary facilities and all licensed area surfaces affected by Licensee’s construction of the System are fully restored to previous conditions and available for the areas original use. Construction Completion Date will be formally recognized by Trustees within five (5) business days after receipt of notification in writing by Licensee of completion of these conditions.
- 1.21. “Construction Documents” means the design drawings, specifications, general conditions, supplementary general conditions, special conditions, addenda, and change orders developed to convey in detail the design, function, and construction of the System.
- 1.22. “Construction Start Date” has the meaning provided in Section 8.3.
- 1.23. “Contract Year” means each twelve-month period commencing on the COD and each anniversary thereof.

- 1.24. “Controlling Interest” with respect to Licensee means fifty percent (50%) or more of outstanding ownership interest or the power to vote such percentage of ownership interest.
- 1.25. “Cost Savings” means, for each billing cycle during the Term, the total dollar amount of the Counter-factual Bill minus the total dollar amount of the Local Electric Utility bill and, if applicable, any additional Utility bill for the service account listed in Exhibit A.
- 1.26. “Counter-factual Bill” means the bill for each billing cycle generated by Licensee by adding the billing determinant interval data from the System Meter to the Local Electric Utility and, if applicable, the Utility Revenue Meter(s) to determine the electric utility charges (energy and demand) that would have been billed to Trustees for each Billing Cycle in the absence of the peak demand reduction services delivered by the System. In the event there is a discrepancy in the demand data (kW) from the Local Electric Utility Revenue Meter and the demand data from the Utility Revenue Meter, the higher demand value will be used for purposes of the Counter-factual Bill, subject to true-up in a later billing cycle once final settlement data becomes available.
- 1.27. “CPUC” means the California Public Utilities Commission.
- 1.28. “CSU” means the Trustees of the California State University.
- 1.29. “CSU Deputy Building Official” means an individual appointed by the California State University [campus] and who is responsible for University-specific building code, and administrative and operational control. This individual acts under the authority of the CSU Building Official in the CSU Office of the Chancellor, who is responsible for the overall administration and operational control of the building code for the CSU.
- 1.30. “CSU [campus]” means California State University [campus].
- 1.31. “DC” means direct current.
- 1.32. “Demand Response” refers to energy resource programs that compensate electricity customers for reducing consumption.
- 1.33. “DER” means Distributed Energy Resource(s).
- 1.34. “Differing Site Conditions” has the meaning provided in Section 8.11.
- 1.35. “Disclosing Party” has the meaning provided in Section 19.34.
- 1.36. “Distributed Energy Resources Market Products” means products and services that the System is capable of providing from time to time, including, without limitation, Demand Response, wholesale energy, ancillary services, generation capacity, and resource adequacy benefits.
- 1.37. “Double Incentive” means Rebates, discounts, Incentives or services from any other CPUC-authorized energy efficiency program for the System. Notwithstanding any other provision hereof, Double Incentive does not include: (a) any state or federal

investment tax credits associated with the System; (b) any other state or federal tax credits or tax benefits (including depreciation) associated with the System; and (c) Renewable Energy Credits generated by the System.

- 1.38. “Due Date” means thirty (30) days after receipt by Trustees of Licensee’s invoice for delivery of Peak Demand Reduction services.
- 1.39. “Effective Date” means the date set forth in the first paragraph of this Agreement.
- 1.40. “Electrical Interconnection Point” means the point(s) specified in the Construction Documents where the System connects to the existing electrical transmission line(s) serving the Site.
- 1.41. “Energy Management System” means a computer application system used by University facility operators to monitor, control, and optimize the performance of the electricity and/or transmission system on University premises.
- 1.42. “Energy Management Web Portal” means a password protected website maintained by Licensee that will display energy use, battery throughput in kW and kWh terms, and Peak Demand Reductions achieved by the System. The portal shall be capable of exporting data in CSV file format in a standard, recurring, and automated process.
- 1.43. “System Meter” means the revenue grade meter that records the energy and power used to charge and discharged by the System.
- 1.44. “Environmental Attributes” means any and all credits, offsets and other benefits related to the avoidance of the emission of any gas, chemical or other substance into the air, soil or water resulting from the use of renewable energy, including but not limited to Renewable Energy Credits and any similar benefits for which a market may exist now, or at a future time, and all reporting rights with respect to the Environmental Attributes.
- 1.45. “Environmental Laws” means all federal, state, and local laws, statutes, ordinances, and regulations now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof relating to the regulation and protection of human health, safety, the environment, and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land, surface or subsurface strata, wildlife, aquatic species, and vegetation), including, without limitation, laws and regulations relating to emissions, discharges, releases, or threatened releases of hazardous materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials. However, this definition shall in no way be considered, or otherwise serve, to waive or abridge any of CSU’s immunities, including but not limited to those under the Eleventh Amendment to the U.S. Constitution, or to subject CSU to any laws to which it is immune under the Eleventh Amendment or any other applicable immunity.
- 1.46. “EDR” means “Expected Demand Reduction.”
- 1.47. “Expected Demand Reduction” means the expected reduction in peak kW demand by month specified in Section 4.2.

- 1.48. “Fiscal Year” means the State of California fiscal year, beginning on July 1 of each calendar year and ending on June 30 of the following calendar year.
- 1.49. “General Conditions” means the Contract General Conditions as set forth in the Request for Proposals, which is attached hereto as Rider B-1.
- 1.50. “Guaranteed Construction Completion Date” for [1st licensed area] and [2nd licensed area] shall be no later than [Month, day, year], subject to any extensions as provided in Section 8.6.
- 1.51. “Guaranteed Savings” means, for a given Contract Year, the Price for the Contract Year specified in Section 4.1 times the sum of the Guaranteed Demand Reductions for each month of the Contract Year specified in Section 4.3.
- 1.52. “Hazardous Material” means, without limitation, any substance defined as “hazardous substance,” “hazardous waste,” “extremely hazardous waste,” or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act as amended, 49 U.S.C. Section 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1317 et seq.; Sections 25115, 25117, 25122.7, 25140, 25281, 25316 or 25501 of the California Health & Safety Code; and any substance regulated pursuant to any environmental law(s). The term “Hazardous Material” includes, but is not restricted to, asbestos, polychlorobiphenyls (“PCBs”) and petroleum.
- 1.53. “IEEE” means Institute of Electrical and Electronics Engineers.
- 1.54. “Incentive” means financial support, including Rebates and low-interest loans, funded or administered by any utility (PG&E, SCE or SDG&E, SMUD or TID) or the CPUC, to install facilities such as the System. Notwithstanding any other provision hereof, Incentive does not include (a) the state or federal investment tax credits associated with the System (b) any other state or federal tax credits or tax benefits (including depreciation) associated with the System, or (c) Renewable Energy Credits.
- 1.55. “In Lieu of Demand Reduction Payment” means the amount for the applicable Contract Year as set forth in the table below as provided in Sections 5.1 and 11.7.



| Contract Year | In Lieu of Demand Reduction Payment (\$/kW-month) |
|---------------|---|
| 1             | \$  |
| 2             | \$  |
| 3             | \$  |
| 4             | \$  |
| 5             | \$  |
| 6             | \$  |
| 7             | \$  |
| 8             | \$  |
| 9             | \$  |
| 10            | \$  |

- 1.56. “kW” means kilowatt (AC), a unit of power equal to one thousand watts.
- 1.57. “kWh” means kilowatt-hour, a unit of energy equal to one thousand watt-hours.
- 1.58. “Lender” means any financial institution or other provider of capital or credit (and successors in interest and assignees permitted under this Agreement) that provide(s) development, bridge, construction, takeout, term debt or Tax Equity Financing (including any associated cash equity) or refinancing for the System on behalf of Licensee, including any sale leaseback, monetization of tax benefits, back leverage financing, or credit derivative arrangements. Licensee’s Lender includes any System Lessor and Tax Equity Investor.
- 1.59. “Licensed Area” means the portion of the Site licensed by Trustees to Licensee to install, operate and maintain the System, as further described in Rider A.
- 1.60. “Licensee” means the legal entity who, pursuant to this Agreement, holds a license to use the Licensed Area for the installation, maintenance, and operation of the System.
- 1.61. “Local Electric Utility” means the public utility entity that provides electricity delivery service to the University premises upon which the Licensed Area is located.

- 1.62. “Meter” means a device capable of collecting electricity consumption data that includes kWh and fifteen (15) minute or less kW and KVAR demands as recorded and may be transmitted or collected via telephone lines or wireless telephone and that otherwise has the capabilities set forth in Section 6.1 of this Agreement.
- 1.63. “NFPA” means National Fire Protection Association.
- 1.64. “Notice of COD” means written notice in a form substantially similar to Attachment 4 of the MEA which the Licensee gives Trustees stating that the System has satisfied requirements (a) through (c) of the definition of “Commercial Operation Date” and specifying the Commercial Operation Date. The Notice of COD shall include a surveyor’s description of the physical boundaries of the System.
- 1.65. “Notice to Proceed to Construction” means written notification in a form substantially similar to Attachment 3 of the MEA from Trustees to Licensee that Licensee may begin construction of the System subject to the terms and conditions of this Agreement.
- 1.66. “Other System Attributes” means (i) any tax, investment, or depreciation credit or benefit that belongs to the owner of the System. Other System Attributes do not include Peak Demand Reductions.
- 1.67. “Parties” means Trustees and Licensee, each of whom may also be referred to as “Party.”
- 1.68. “Peak Demand Reduction” means the maximum value, measured in kW, in each billing cycle recorded by the Local Electric Utility Revenue Meter minus the maximum value, measured in kW, in each billing cycle recorded by the System Meter for the same 15-minute interval.
- 1.69. “Performance Threshold” means the amount of [XXX,XXX].
- 1.70. “Permitted Use” has the meaning provided in Section 3.1.
- 1.71. “Rider A-1” means a rider to this Agreement that consists of the “Map and Premises Location and Licensed Area”.
- 1.72. “Rider A-2” means a rider to this Agreement that consists of the “Generation Summary and Known Site Restrictions”.
- 1.73. “Rider B-1” means a rider to this Agreement that consist of the “ESSLSA General Conditions”.
- 1.74. “Price” means the price per kW reduced by Contract Year specified in Section 4.1 to be paid by Trustees to Licensee for the Peak Demand Reduction in each Billing Cycle generated by the System and delivered to Trustees as provided in Section 4.1.
- 1.75. “Project Manual” means System documentation which includes, but is not limited to, System Design Schematics, equipment data sheets, Construction Documents, As-Built drawings, and System operation and emergency instructions provided by Licensee to Trustees pursuant to Section 9.5.

- 1.76. “Proposal” means the technical and cost proposal packages submitted by Licensee on the bid date.
- 1.77. “Rebate” means an identified and pre-specified amount of money to be paid to Trustees for the installation of the System at the Trustees Site.
- 1.78. “Receiving Party” has the meaning provided in Section 19.33.
- 1.79. “REC(s)” means “Renewable Energy Credit(s).”
- 1.80. “Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment in violation of Environmental Laws.
- 1.81. “Renewable Energy Credit(s)” means renewable energy credit(s) or certificates, emission reduction credits, emission allowances, green tags, tradable renewable credits, and Green-e products related to renewable energy production supplied from the System.
- 1.82. “Request for Proposals” means the documents submitted by Trustees to potential proposers describing and specifying the requirements for the Work and the System.
- 1.83. “Revenue Meter” means an electric meter attached to the service account number listed in Exhibit A. The data generated by the Local Electric Utility and, if applicable, any other Utility Revenue Meter(s) will be used to calculate the Utility Counter-factual Bill, inclusive of energy and demand charges, for electric energy and power that would have been used at the Site in each Billing Cycle but for the operation of the System.
- 1.84. “Rider B-2” means the “University Specific Supplemental Conditions”.
- 1.85. “Rider C” means a rider to this Agreement that consists of the terms and conditions of the “Performance Guarantee”.
- 1.86. “Rider D” means a rider to this Agreement that consists of the “Operational Access Procedures for the Site and Licensed Area”.
- 1.87. “Rider E” means a rider to this Agreement that consists of the “Schedule”.
- 1.88. “Rider F” means a rider to this Agreement that consists of the “Bond Forms”.
- 1.89. “Rider G” means a rider to this Agreement that consists of the “Trustees Consent and Estoppel Certificate Template”.
- 1.90. “Rider H” means a rider to this Agreement that consists of the “Licensee Sample Invoice” containing the information that Licensee shall include in its invoices for Electricity to Trustees for each Billing Cycle.
- 1.91. “Rider I” means a rider to this Agreement that consists of the “Scope of Work, Final and Array Layout”.
- 1.92. “Rider J” means a rider to this Agreement that consists of the “University Premises Specific Geotechnical Report(s)” consisting of University provided Geotechnical Reports (if available) for each licensed area.

- 1.93. “Rider K” means a rider to this Agreement that consists of “Request for Proposal No. [XXXX] Energy Storage Site License and Services Agreement and all Addenda”.
- 1.94. “Rule 21” means the Local Electric Utility tariff rule describing the interconnection, operating and metering requirements for generating facilities to be connected to the Local Electric Utility’s distribution system. In the event Local Electric Utility is not a CPUC-jurisdictional investor-owned utility, “Rule 21” shall be understood to refer to the provisions of Local Electric Utility’s tariff or other applicable rules or regulations that are comparable in content to Rule 21.
- “Site” means the University premises under the control and jurisdiction of Trustees, a portion of which is the Licensed Area described in Rider A, which will accommodate the System.
- 1.95. “Substitute Licensee” means the Lender or any other permitted purchaser of, or successor to, the interests in a judicial or non-judicial foreclosure sale or otherwise that meets the conditions of assignment set forth in Section 12.5 and shall be substituted for the Licensee under this Agreement.
- 1.96. “Supplementary General Conditions” means the “University Specific Supplementary General Conditions,” which is attached hereto as Rider B-2.
- 1.97. “System” means the integrated assembly of batteries, enclosures, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices, and wiring (as specified in the Project Manual) installed in the Licensed Area for the purpose of providing peak demand reduction services for purchase by Trustees.
- 1.98. “System Lessor” means the legal entity that owns the System and licenses the System to the Licensee.
- 1.99. “System License” means an agreement, if any, between the Lender and Licensee whereby the Licensee licenses the System from the Lender.
- 1.100. “Tax Equity Financing” means a transaction or series of transactions involving one or more investors seeking a return that is enhanced by Tax credits and/or Tax depreciation (each a “Tax Equity Investor”) and generally (i) described in Revenue Procedures 2001-28 (sale-leaseback (with or without “leverage”)), 2007-65 (flip partnership) or 2014-12 (flip partnership and master tenant partnership) as those revenue procedures are reasonably applied or analogized to a storage project transaction (as opposed to a wind farm or rehabilitated real estate) or (ii) contemplated by Section 50(d)(5) of the Code, as amended (a pass-through lease).
- 1.101. “Term” means the period that shall commence on the Effective Date and continue for a period of ten (10) years from the Commercial Operation Date unless terminated earlier pursuant to the provisions in this Agreement.
- 1.102. “Termination Date” means the date on which this Agreement terminates.

- 1.103. “Termination Fee” means the amount, if any, payable to Licensee in the event of certain circumstances of early termination under the terms and conditions of this Agreement.
- 1.104. “Tier One” means the minimum equipment standards pursuant to California Public Resources Code Sections 25780-25784 and/or CSI which are the minimum acceptable equipment standards as of the date of the Notice to Proceed of this Agreement for installation of the System.
- 1.105. “Transaction Fee” means the nonrefundable fee to be paid by Licensee to University as provided in Section 3.9.
- 1.106. “Trustees” means the State of California, acting by and through the Trustees of the California State University, on behalf of University).
- 1.107. “UL” means Underwriters Laboratories, Inc.
- 1.108. “University” means California State University [campus].
- 1.109. “Force Majeure Event” means an event or circumstance that is beyond the control and without the fault or negligence of the Party affected and that by the exercise of reasonable diligence the Party affected was unable to prevent, provided the event or circumstance is limited to the following: riot, war, invasion, act of foreign or domestic enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority, ionizing radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity, labor strikes at national level or industrial disputes at a national level, or labor strike or industrial disputes by labor not employed by the affected Party, its subcontractors or its suppliers and that affect an essential portion of the Agreement, but excluding any industrial dispute that is specific to the performance of this Agreement.

Neither Party is responsible for any failure to perform its obligations under this Agreement, if it is prevented or delayed in performing those obligations by an event of force majeure. Where there is an event of force majeure, the Party prevented from or delayed in performing its obligations under this Agreement must immediately notify the other Party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that Party from, or delaying that Party in performing its obligations under this Agreement and that Party must use commercially reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the Agreement and to fulfil its or their obligations under the Agreement. Upon completion of the event of force majeure the Party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement. An event of force majeure

does not relieve a Party from liability for an obligation that arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event, unless the actual act of payment is affected by an event of force majeure. Licensee has no entitlement to and Trustees have no liability for: (a) any costs, losses, expenses, damages or the payment of any part of this Agreement during an event of force majeure; and (b) any delay costs or damages in any way incurred by Licensee due to an event of force majeure. Licensee is responsible for the care of the Licensed Area and the System during an event of force majeure.

- 1.110. “Utility” shall be any provider of electric commodity services to the University in the absence of the System. A Utility may be an investor owned utility, an energy service provider, a community choice aggregator, a publicly owned utility, or other similar retail provider of electricity commodity service.
- 1.111. “Watt” means a unit of power equal to 1 joule per second; the power dissipated by a current of 1 ampere flowing across a resistance of 1 ohm.
- 1.112. “Work Product” has the meaning provided in Section 7.7.
- 1.113. “Yieldco” means [insert name of company] that is directly or indirectly under the operating control of [insert name of company] and is a United States entity.

## 2. TERM

- 2.1. Term. The Term of this Agreement shall commence on the Effective Date and shall continue for a period of ten (10) years from the Commercial Operation Date unless terminated earlier pursuant to the provisions in this Agreement.
- 2.2. Holding Over. This Agreement shall terminate upon expiration of the Term or earlier termination without any further notice thereof by Trustees and no possession by Licensee of the Licensed Area shall be permitted without Trustees’ prior written approval, except as provided in Section 13.1. Any possession of the Licensed Area by Licensee after expiration of the Term or early termination of this Agreement shall not constitute a renewal or extension of this Agreement or, except as provided in Section 13.1, give Licensee any rights in or to the Site or Licensed Area or any portion thereof.

## 3. USE

- 3.1. Permitted Use. Trustees grant to Licensee a license to use the Licensed Area for the construction, maintenance, operation, examination, testing, measuring, inspecting and removal of the System, including Meters, for the production, transformation, transmission and sale of peak demand reduction services, future Distributed Energy Credits and for no other use or purpose (the “Permitted Use”), which license shall not be revocable by Trustees during the Term except as a result of Trustees’ valid exercise of one or more of Trustees’ termination rights under this Agreement.
- 3.2. No Trustees Warranties. Licensee acknowledges that Trustees have not made any statements or representations or warranties regarding the Site’s or the Licensed

Area's fitness for Licensee's anticipated use, and Licensee agrees that it is not relying upon any statement or representation or warranty by Trustees or any third party regarding the Site or Licensed Area, the fitness of the Site or the Licensed Area for any particular use of Licensee or any other matter. Licensee acknowledges and accepts the Licensed Area in "As-Is" condition. Licensee has had an opportunity to inspect the Site and Licensed Area prior to the Effective Date, as described in Section 8.10.

- 3.3. Licensee Waiver. Trustees hereby expressly disclaim and Licensee hereby waives all implied warranties regarding the Site or the Licensed Area including, without limitation, any warranty of merchantability or warranty of fitness for a particular use or purpose.

Licensee hereby initials this Section to verify this waiver.

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- 3.3.1. Lead Based Paint Disclaimer. Licensee, by acceptance of this license, is hereby notified and informed and shall assume that the Licensed Area contains lead-based paint. Licensee shall be prepared to perform localized abatement. Licensee accepts the Licensed Area in its "As-Is" condition and shall hold harmless, indemnify, and defend Trustees and Trustees' officers, agents and employees from all liability, damages, and claims which may occur to any real or personal property or persons by: (A) any Release of lead on the Site or the Licensed Area caused by Licensee or its affiliates, officers, agents and employees ("Licensee Indemnitors"); or (B) any environmental claim from any third party with regard to any violation or alleged violation of any Environmental Laws that dictate handling of lead by Licensee or the Licensee Indemnitors, or any actual, threatened or alleged Release of lead affecting the Site or the Licensed Area by the Licensee or Licensee Indemnitors. If lead based paint containment and/or removal will be required solely as a result of Licensee's installation of the System at the Licensed Area, Licensee shall not install the System until all lead-based paint containment and/or removal work is performed and certified as completed by a licensed lead-based paint contractor approved by Trustees. Licensee shall submit copies of the certification of completion of any and all lead-based paint work to Trustees pursuant to the Notice provisions in Section 19.9 prior to the installation of the System at the Licensed Area.

Licensee hereby initials this Section to verify this indemnity and agreement.

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- 3.4. Limitation on Use. Licensee shall not permit or suffer any use of the Site or the Licensed Area or any part thereof by others, or provide the System for the use by others, without first obtaining Trustees' written consent, except as it relates to the Permitted Use. Licensee is only to use the Licensed Area for the Permitted Use. No change in the Permitted Use may be made by Licensee without the prior written approval of Trustees.
- 3.5. Prohibited Uses. Licensee shall not use or allow the Site or the Licensed Area to be used for any improper, immoral, or unlawful purposes, nor shall Licensee cause,



maintain or permit any nuisance in, on, or about the Site or the Licensed Area. Licensee will not use or allow the Site or the Licensed Area to be used for any purpose inconsistent with this Agreement. Licensee shall comply with all rules and regulations adopted by Trustee and/or University for the Site, and shall comply with all CSU and University orders, requirements and recommendations concerning Licensees use of the Site and Licensed Area, provided that no such rule, regulation, order, requirement or recommendation shall materially increase the costs of Licensee's compliance with its obligations under this Agreement or cause unreasonably interfere with the operation of the System. Such rules and regulations include but are not be limited to prohibitions against the possession or use of firearms, liquor, and illegal drugs.

- 3.6. Licensee Signage and Lighting. Licensee shall not erect or install any signage or exterior lighting without the written approval of Trustees, which shall be at the sole discretion of Trustees.
- 3.7. No Interference/Quiet Enjoyment. Licensee shall operate, maintain and repair the System in a manner that will not obstruct or interfere with Trustees' use of the Site or other Trustees property or the rights of any other occupants of the Site. Licensee will not injure or annoy any occupants of the Site or other Trustees property. Such interference shall be a default of this Agreement subject to the cure periods provided in Section 15.1.3. In the event interference occurs, Licensee agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days after Trustees have notified Licensee subject to the extensions provided in Section 15.1.3. Trustees may construct, reconstruct, modify or make alterations to the Site and Licensed Area, so long as such activities do not cause interference (including shading) with the operation of the System.
- 3.8. Subordination, Easements, and Rights of Way. Licensee acknowledges and understands that the license provided to Licensee under this Agreement and all rights of Licensee thereunder are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record, and all existing agreements of Trustees with respect to the Site and Licensed Area. Trustees reserve the right to grant additional licenses, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere with Licensee's use of the Licensed Area and the System.
- 3.9. Transaction Fee. Licensee shall pay a Transaction Fee to University for Trustees' administrative oversight, Trustees' project/construction management services, third-party plan/peer review services and materials inspection/testing services (quality assurance), regardless of actual costs incurred. Licensee shall pay 7% of construction costs as shown on CPDC Form 2-7 at the address provided in Section 19.9 in three (3) installments as follows: (a) 25% within (i) 60 days of contract signing for carport and roof-mount installations or (ii) 90 days of contract signing for ground-mount installations; (b) 50% at issuance of NTP; and (c) 25% at COD. The Transaction Fee shall not be adjusted irrespective of Trustees' actual costs and is non-refundable. The Transaction Fee does not include interconnection costs or

other costs (permits, licenses and utility connections) associated with Licensee's obligations under the provisions of this Agreement.

The Licensee shall secure all permits and licenses required for any operations required under this Agreement and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State of California, a county, a city, a public utility, a telephone company, a special district, or a quasi-governmental entity. It is the Licensee's responsibility to ascertain the necessity of such permits and licenses in preparing its cost (fee) proposal.

- 3.10. Applicable Law and Regulations. All activities conducted by Licensee pursuant to this Agreement shall be in compliance with Applicable Law, and shall be conducted at Licensee's own cost and expense.
- 3.11. Violation of Law. Licensee shall immediately suspend any use of the System, upon notice by the CPUC, the CEC, or any governmental authority having jurisdiction over any of Licensee's activities under this Agreement which constitutes a lawful order to suspend operation of the System, until such order is removed or the cause for such order, if any, is corrected and the applicable governmental authority concurs that the cause is corrected.
- 3.12. No Infringement. Licensee represents and warrants that Licensee's installation and operation of the System at the Site shall not infringe upon any third party's intellectual property or other proprietary rights. In addition, Licensee shall pay all royalties and license fees which may be required for the methodology, techniques, and for other intellectual property, in connection with the System. Licensee shall indemnify Trustees against and defend all suits or claims for infringement of any patent, copyright, trade secret, trade name, trademark or any other proprietary or contractual rights and shall hold Trustees harmless from loss, expense, claim, or cost on account thereof.
- 3.13. Ownership of System. Licensee, Lender(s), System Lessor and/or their permitted assigns, with respect to the System, shall at all times retain title to and be the legal and beneficial owner(s) of the System, including the right to any tax credits available under federal or state law.
  - 3.13.1. Personal Property. The System shall remain the personal property of Licensee, System Lessor, and/or their permitted assigns and shall not attach to or be deemed a part of, or fixture to, the Site. The System shall at all times retain the legal status of personal property. Licensee shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code (UCC) filing(s) in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System. The System shall be clearly marked and identified by the Licensee as being the property of the Licensee, System Lessor, and/or their permitted assigns. Licensee shall reimburse Trustees for any actual costs incurred in order to provide documents required for such filing(s), if any. Trustees agree to such UCC filings, so long as they reflect the Parties' agreement that any filing to perfect or provide notice of the security interest clearly document the Parties' intent

that the System is considered personal property only and is not considered a fixture to the Licensed Area or the Site.

3.13.2. Security Interests in System. Except as otherwise provided in this Agreement, Trustees acknowledge and agree that Licensee may grant or cause to be granted to a Lender a security interest in the System and Licensee's rights under this Agreement, and Trustees expressly disclaim and waive any rights they may have in the System at law or in equity. Any security interest in or mortgage of the System shall not create any right or interest in the Site or the Licensed Area and shall be subject to the terms and conditions of this Agreement.

3.13.3. Legal Description. Within sixty (60) days of the receipt of Licensee's Notice of COD, Trustees shall provide Licensee a legal description of the physical location of the System and the property where the Local Electric Utility service account associated with the Site is located.

#### 4. SALE OF DEMAND REDUCTION SERVICES

4.1. Price. The Price paid by Trustees for Storage Services shall be the Price of \$0.XXXX per Actual Peak Demand Reduction for every Billing Cycle by Contract Year specified in the table below.

| Price         |                       |                     |
|---------------|-----------------------|---------------------|
| Contract Year | Price/Peak KW Reduced | Or Shared Savings % |
| 1             | \$ X.XXX              |                     |
| 2             | \$ X.XXX              |                     |
| 3             | \$ X.XXX              |                     |
| 4             | \$ X.XXX              |                     |
| 5             | \$ X.XXX              |                     |
| 6             | \$ X.XXX              |                     |
| 7             | \$ X.XXX              |                     |
| 8             | \$ X.XXX              |                     |
| 9             | \$ X.XXX              |                     |
| 10            | \$ X.XXX              |                     |

4.2. Expected Demand Reduction. The Licensee's software modeling projects that the System should be able to produce the Expected Demand Reductions by month specified in the table below.

| Expected Demand Reduction |                            |
|---------------------------|----------------------------|
| Contract Year             | Expected Peak kW Reduction |
| 1                         |                            |
| 2                         |                            |
| 3                         |                            |
| 4                         |                            |
| 5                         |                            |
| 6                         |                            |
| 7                         |                            |
| 8                         |                            |
| 9                         |                            |
| 10                        |                            |

- 4.3. Purchase Obligation. Trustees' obligation in any Contract Year shall be to purchase all of the Peak Demand Reductions delivered or deemed delivered to Trustees by the System in any Contract Year, up to an amount equal to 120% of the EDR for such Contract Year. If Licensee delivers more than 120% of the EDR in any Contract Year, Trustees shall not be obligated to purchase any Peak Demand Reductions in excess of 120% of EDR.
- 4.4. Environmental Attributes included in Price. The Price includes all environmental attributes available as a result of the System, including any Renewable Energy Credits (RECs) to be used by Trustees at Trustees' sole discretion.
- 4.5. Energy use for charging. Licensee shall use best efforts to charge system with lowest cost energy.
- 4.6. Rebates and Other Incentives. Any grant, Rebate, incentive payment, Incentive or credit paid as a result of the ownership design, construction and operation of the System or the energy produced thereby shall inure to the benefit of the Licensee. Trustees will cooperate in good faith as necessary to enable Licensee to obtain all available incentives and rebates, including assignment to Licensee of any incentive received by Trustees in connection with the System.
- 4.7. Distributed Energy Resource Market Products. Licensee has the right to utilize the capabilities of the System to provide Distributed Energy Resource Market Products, including agreements for the purchase and sale of such products entered into after the Effective Date of this Agreement. The net benefits of Distributed Energy Resource Market Products will be shared equally between Licensee and Trustees. Licensee shall be solely responsible for performing and complying with any agreement to provide Distributed Energy Resources Market Products. Licensee shall be entitled to all revenues and other benefits associated with Distributed Energy Resource Market Products entered into prior to the Effective Date of this Agreement.

5. SYSTEM INVOICING AND PAYMENT

- 5.1. Invoicing Methodology. The invoiced amount due from Trustees to Licensee shall be for each Billing Cycle the sum of any In Lieu of Electricity Payment for Deemed Generated Energy owing to Licensee and the amount calculated for Electricity delivered to the Electrical Interconnection Point as follows:

Simple Peak kW methodology

$A = P \times Q$ , where:

A = Amount of payment due to Licensee for Actual Peak Demand Reduction for the Billing Cycle.

P = Price per peak kW reduced for the Contract Year (see table in Section 4.1).

Q = Quantity of the Actual Peak Demand Reduction (measured in kW) delivered to

Trustees for the Billing Cycle.

Example (illustrative only):

(A) \$850 = (P) \$4.25 /kW x (Q) 200 kW

Counter-factual Bill methodology

Licensee shall combine the 15-minute interval meter data from the Local Electric Utility's Revenue Meter and the System Meter, including the energy delivered to charge the System and the energy the System delivers in 15-minute intervals, to generate a load profile that would have occurred absent operation of the System.

The combined 15-minute interval data shall be processed through a rate engine using the then applicable Local Electric Utility tariff rate and, if applicable, utility rates or charges for the service account number listed in Exhibit A. The rate engine will generate the amount of "charges" appearing in the Counter-factual Bill. The rate engine shall be accurate within 1%.

Per Section 1.25, the difference in the total dollar amounts stated in the Counter-factual Bill and the Local Electric Utility and, if applicable, Utility bill(s) for the same Billing Cycle shall be the calculated Cost Savings from operation of the System.)

- 5.2. Invoicing. Licensee shall deliver to Trustees an electronic invoice and a hard copy invoice for each Billing Cycle on the twentieth (20th) of each month during the Term to the address as set forth in Section 19.9 of this Agreement. Each invoice shall contain all the information provided in Rider H, and shall state the charges and the amounts due Licensee for Electricity produced by the System and delivered to Trustees by the System.
- 5.3. Invoice Remittance. Trustees shall pay invoices to Licensee by check, wire transfer, or electronic funds transfer, at Trustees' discretion, by the Due Date.
- 5.4. Invoice Disputes. In the event Trustees dispute all or any part of any invoice submitted by Licensee under this Agreement, Trustees shall nevertheless pay the undisputed portion of the invoice when due and shall notify Licensee in writing within ninety (90) calendar days from the date of receipt of any disputed invoice or

adjusted invoice. The Parties shall work in good faith to resolve the invoice dispute(s) amicably and promptly. If upon determination of the correct billing amount, it is determined that Trustees have underpaid Licensee, Trustees shall promptly pay the amount due to Licensee. If upon determination of the correct billing amount it is determined that Trustees have overpaid, Licensee shall promptly credit to Trustees the amount of overpayment. Notwithstanding the above paragraph, the Parties shall have the rights set forth in Section 19.28, provided that any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 5.4 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made.

- 5.5. System Reporting. Within sixty (60) calendar days after the end of each Contract Year, Licensee shall submit to Trustees audited reports related to Licensee's financial performance and, in a format reasonably acceptable to Trustees, a summary of the System's technical performance for that Contract Year, and cumulatively from the COD. Licensee shall provide an Energy Management Web Portal to Trustees to analyze performance of the system. The Energy Management Web Portal shall be compliant with Trustee's IT security policy and standards in effect as of the Effective Date, as described in the Integrated State University Administrative Manual (ICSUAM) Section 8000. Licensee shall be deemed to have satisfied the delivery requirement for financial performance if the applicable report is publicly available on the SEC EDGAR information retrieval system.

## 6. METERING

- 6.1. Interval Data Recording Meter. Licensee shall measure the actual amount of Electricity delivered to Trustees by the System at the Electrical Interconnection Point utilizing a commercially available revenue grade meter that shall comply with the ANSI code for electricity Meters C12.1-2008 or its successor ("Meter"). The Meter shall be installed and maintained at Licensee's expense. The Meter provided and installed by the Licensee shall have standard industry telemetry capabilities for communication with Ethernet, cellular and other common output capabilities, including but not limited to KYZ output connection, that will provide Trustees with the ability to connect the Meter to the University's Energy Management System for the purpose of incorporating System electrical output data into the University energy monitoring system. Licensee understands that this is a necessary capability in the event that Trustees require real time monitoring of Trustees' total energy demand and usage for the purpose of complying with, for example, the requirements of a Utility administered Demand Response program in which Trustees are a participant. Actual physical connection to the Meter by Trustees for the above stated purpose shall be at Trustees' expense, with review and approval by the Licensee.
  - 6.1.1. Licensee will ensure that the System Meter's timekeeping mechanism is synchronized with that of the Local Electric Utility Revenue Meter, such that the time stamps created by both meters (i.e., date and time) are identical when the System is delivering Peak Demand Reduction services. Licensee's failure

to meet this requirement shall be a default of this Agreement subject to the cure periods provided in Section 15.1.3.

- 6.2. **Meter Calibration.** Licensee shall have the Meter tested every two (2) years at Licensee's expense by a certified independent third party approved by Trustees. Trustees shall be allowed to observe the Meter test, and Licensee shall provide notice of the testing to Trustees at least ten (10) Business Days prior to the test date. Licensee shall provide signed copies of the results of the Meter test to Trustees. In addition to the bi-annual test, Licensee shall test the Meter at any reasonable time upon the request of Trustees; Trustees shall reimburse Licensee for the cost of any additional tests requested by Trustees, unless such testing demonstrates that the Meter was operating outside of industry standard tolerance allowances or as defined by the CPUC or other applicable governing authority for electricity meter calibration and operation.
- 6.3. **Meter Inaccuracy.** If the Meter is determined to be inaccurate and such inaccuracy exceeds ANSI C12.20 Standard accuracy range or, if more stringent, as defined by the CPUC or other applicable governing authority for electricity Meters, and if the date that such inaccuracy commenced is known, then all invoices since the date on which such inaccuracies began shall be corrected. If it is unknown when the Meter's inaccuracy commenced (if such evidence exists, such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one half of such period. Adjustments which benefit Trustees shall be reflected on the next invoice following the date of determination of the inaccuracy. Adjustments which benefit Licensee shall be included on Licensee's next invoice to Trustees.

## 7. SYSTEM DOCUMENTS

- 7.1. **Associated Agreements.** Within thirty (30) calendar days after the Effective Date of this Agreement or no later than thirty (30) calendar days after receipt of any other agreement described herein, to the extent such agreement is not available as of the Effective Date, Licensee shall provide Trustees copies of all forms of other agreements, including but not limited to interconnection agreements, rebate agreements, or other required agreements, which Licensee anticipates it will want Trustees to execute in order to effectuate the purpose of this Agreement. In the event Licensee subsequently determines any other agreement(s) are necessary to effectuate the purpose of this Agreement, Licensee shall provide Trustees a copy of the agreement within five (5) business days after such determination. Trustees shall notify Licensee no later than thirty (30) calendar days after it receives a form of agreement as to whether the agreement is acceptable to Trustees or Trustees will require an amendment to be acceptable to CSU. If Trustees require an amendment, Trustees will provide written notice as to the form of required amendment within such thirty (30) calendar day period. The final agreements submitted to Trustees for execution shall not deviate materially from, or impose any obligations on Trustees



beyond, those approved forms of agreements, and Trustees will not unreasonably withhold Trustees' signature on such final agreements.

- 7.2. Interconnection Agreement. Trustees will be the party to the interconnection agreement with the applicable Local Electric Utility. The Licensee shall be solely responsible for all costs of negotiating and executing any necessary interconnection agreement(s) with the applicable Local Electric Utility and for all costs of interconnecting the System with the Local Electric Utility's system but not including any legal fees or any other similar type costs that may be incurred by Trustees in connection with any such negotiation and execution. In the event interconnection of the System with the Local Electric Utility's system will trigger a need for Distribution Upgrades or Network Upgrades, as defined in Rule 21 ("Upgrades"), Trustees shall be solely responsible for the cost of the Upgrades, provided that: (i) Licensee shall pass on to Trustees all information regarding the Upgrades, including any formal or informal determination of need and any cost estimate for the Upgrades issued by the Local Electric Utility, within two (2) Business Days following Licensee's receipt of such information; and (ii) Trustees shall have the right to terminate the Agreement with no Termination Fee in the event the cost estimate for the Upgrades exceeds an amount that Trustees, in Trustees' sole discretion, deems to be reasonable. Trustees shall provide notice of a termination under this section within ten (10) Business Days following Trustee's receipt of the Local Electric Utility's final cost estimate for the Upgrades.

7.3. System Compliance. Licensee agrees that the System shall be designed, at Licensee's cost, to comply with all applicable California building codes and standards, SGIP Handbook equipment eligibility and provisions of Rule 21 or its successor, and in accordance with Trustees permit process, in effect as of the Effective Date. System design and Construction Documents shall expressly state and identify the applicable building codes and standards. System design and Construction Documents submitted by Licensee must include, but shall not be limited to, the following:

- System schematics
- Single line electrical diagram
- Short circuit and coordination study
- Electrical Interconnection Point schematics
- Electrical Interconnection Point single line electrical diagram
- Utility Interconnection Agreement
- Construction plans (structural, civil, mechanical, etc.)
- Structural calculations (as necessary or required)
- List of equipment and materials schedule
- Construction schedule
- Foundation recommendations as applicable (consistent with owner supplied geotechnical report)
- As-Built Drawings

- 7.4. Electric Power Requirements. Electricity from the System must be provided at 60 Hertz and at the appropriate voltage for electrical interconnection to the Site at the voltage service level, which will be specified by Trustees.

The System components must comply with all standards relevant to the operation and installation of energy storage equipment by UL or other nationally recognized testing facility. Batteries, enclosures, inverters and components must be certified to comply with the following requirements:

- UL Subject 1741, “Standard for Static Inverters and Charge, Converters, Controllers and Interconnection System Equipment for use with Distributed Energy Resources”
- UL Subject 1973 “Batteries for Use in Light Electric Rail Applications and Stationary Applications”
- UL Subject 1642 “Standard for Lithium Batteries”
- UL Subject 508 “Standard for Industrial Control Panels”
- Any and all requirements as listed by the SGIP incentive program and/or the CEC for the installation of energy storage systems.
- Other codes that will apply include, but are not limited to: ANSI C12.1-2008; (electricity metering)
- NFPA 70 (including NFPA 70E Arc flash)
- IEEE 1547 (interconnections)
- NFPA 855, Standard for the Installation of Stationary Energy Storage Systems

- 7.5. Approval; Permits. Trustees shall assist Licensee in obtaining all necessary consents, approvals, and permits required to perform Licensee’s obligations under this Agreement, and those related to the Local Electric Utility, any Governmental Approval, and Incentive program, and any consents, waivers, approvals or releases required pursuant to any applicable tariff, contract or provision of the California Code of Regulations. It is the sole responsibility of the Licensee to secure all required approvals prior to the commencement of the System’s construction or operation.

7.5.1. The following are the plan check approvals required by Trustees for the Energy Storage System(s): University Deputy Building Official, Code Plan Check, State Fire Marshal, Local Fire Agency, Electrical Systems Peer Review, Geotechnical Engineer and Seismic Peer Review. DSA review for accessibility will be necessary should any University accessible path of travel or accessible parking at the Site be modified as part of the System design.

- 7.6. Professional Engineer. Licensee understands that all System design, Construction Documents, and engineering calculations must be submitted to Trustees under the authority of a registered architect and/or licensed professional engineer(s) certified to practice in California.

- 7.7. **Ownership of Designs.** All drawings, specifications, calculations, data, notes and other materials and documents, including electronic data furnished by Licensee to Trustees under this Agreement (“Work Product”), are the instruments of service of Licensee, and Licensee will retain all statutory and other reserved rights provided by Applicable Law, including copyrights. However, upon the Commercial Operation Date, Licensee will grant to Trustees an irrevocable, non-exclusive, non-sublicenseable, royalty-free license to use the Work Product in connection with the System during the Term of this Agreement.
- 7.8. **Schematic Design.** Licensee shall submit outline specifications for the System in sufficient detail to convey an initial indication of the design of the System as it relates to the Site and Licensed Area, other buildings and the University premises, the materials to be used in construction, and the types of mechanical, electrical and structural systems to be utilized, for approval by Trustees, and Trustees shall review and respond to Licensee within fifteen (15) Business Days of receipt of such System schematic design.
- 7.9. **Construction Documents.** Licensee shall submit 95% Construction Documents for the System. The Construction Documents shall address System constraints and specifications that are deemed to be reasonably necessary by Trustees’ Deputy Building Official. Trustees will review the Construction Documents for compliance with Applicable Law and this Agreement and notify Licensee in writing within fifteen (15) Business Days of receipt of the 95% Construction Documents as to whether or not Trustees approve the submittals or have comments. If Trustees do not approve the submittals, Trustees’ written notice shall specify the deficiencies thereof. Trustees’ approval of the Construction Documents shall not be unreasonably withheld, conditioned, or delayed. Should any external review agencies (e.g., the State Fire Marshal) take longer than the specified fifteen (15) days to complete their review and approvals, such delay shall be deemed to be out of the control of Trustees and no penalty should be assessed, provided Licensee’s obligations will be extended as provided in Section 8.6.
- 7.10. **Submittals.** Licensee shall submit to Trustees shop drawings, samples, material lists, and manufacturer’s equipment brochures setting forth in detail the materials and equipment to be installed in connection with the installation work, and shall obtain Trustees’ written approval with respect thereto, which such approval shall be provided within five (5) Business Days of submittal by Licensee and shall not be unreasonably conditioned, withheld, or delayed.
- 7.11. **Trustees Review.** Reasonable changes to System schematic design and Construction Documents required by Trustees shall be submitted to Licensee and, subject to the limitations set forth in Sections 7.8 and 7.9, Licensee shall incorporate such changes into the System Schematic Design and Construction Documents and return such documents to Trustees within fifteen (15) days of Licensee’s receipt of Trustees’ required changes.

- 7.12. No Trustees Responsibility. In no event shall Trustees' review or approval of the System design and Construction Documents or any other submittals by Licensee in accordance with this Agreement be interpreted as making Trustees responsible for, and Licensee acknowledges that Trustees are not responsible for, any aspect of the design, construction, maintenance, or operation of the System.
- 7.13. As-Built Drawings. Licensee shall deliver As-Built Drawings to Trustees following completion of the System's installation. The As-Built Drawings will reflect the final installed System. Licensee understands that As-Built Drawings are required to be submitted for the purpose of full and complete compliance with the applicable provisions of this Agreement.
- 7.14. System Installation Schedule. Rider E to this Agreement provides a schedule of the System's development, installation, construction documentation, technical review, and the responsible Party for each action.

## 8. SYSTEM CONSTRUCTION AND INSTALLATION

- 8.1. Installation Work. Licensee and Trustees will, in accordance with the provisions of this Agreement and Applicable Law, cooperate reasonably and in good faith on the design, permitting, construction, interconnection, and installation of the System, including tasks related to the interconnection agreement for the System, so as to enable Licensee and/or its Affiliates, to meet their obligations under this Agreement.

Licensee shall, at its sole cost and expense, design, build, install, own, maintain, and operate the System, as generally described in Rider I, in compliance with this Agreement and Applicable Law. With the exception of minor field changes, the construction and installation of the System and all related matters are subject to and shall be completed in accordance with this Agreement and Trustees' approved System design and Construction Documents. A "minor field change" is defined as a change or deviation from Trustees' approved System plans, System drawings, or Construction Documents that does not significantly affect the construction, installation, operation, or aesthetics of the System or materially deviate from the design, construction, installation, or operation of the System, as originally approved by Trustees.

- 8.1.1. Notwithstanding any provision herein to the contrary, Licensee acknowledges and agrees that all onsite labor employed for the installation work shall be paid at the then-current prevailing wage rates as established by the California Department of Industrial Relations pursuant to Section 1770 of the California Labor Code, and all on-site labor shall be paid in accordance with the provisions of Applicable Law, including, without limitation, the applicable provisions of the California Labor Code. All contractors and subcontractors performing on-site installation work must register with the Department of Industrial Relations (DIR) and obtain and maintain current registration numbers. At Trustees' request in accordance with Applicable Law, Licensee and its contractors shall provide Trustees with payroll records for onsite labor employed in connection with the installation work.

- 8.1.2. Licensee, or Licensee's contractors and subcontractors, shall be duly licensed by the California Contractors State License Board with contractor's license, registered with the Department of Industrial Relations (DIR).
- 8.1.3. California law requires that state agencies achieve three percent (3%) participation for disabled veteran business enterprises ("DVBES"). In connection with the installation work, Licensee, or Licensee's contractors or designees, shall show good faith efforts to utilize DVBES for contracts and subcontracts in the aggregate amount of at least three percent (3%) of the cost of all on-site labor associated with the installation work, but without including the cost of any related software, materials, and equipment that are the personal property of Licensee. Licensee, or Licensee's contractors or designees, will identify the DVBES that will be utilized in connection with the installation work to Trustees on forms provided by Trustees. Licensee agrees that any replacement of such identified DVBES will require Trustees' consent, which consent will not be unreasonably withheld, conditioned, or delayed. Failure to provide, or Licensee's contractors or designees, to comply with its obligations in this clause may be cause for termination of this Agreement, recovery of damages under rights and remedies due Trustees, and penalties as outlined in Military and Veterans Code section 999.9 and Public Contract Code section 10115.10 or section 4110, to the extent applicable.
- 8.2. Trustees Approval. No construction or installation by Licensee or its contractor shall be permitted to begin until (i) Trustees have approved in writing the Construction Documents and specifications, (ii) Licensee has satisfied all the conditions precedent necessary to commence construction including, but not limited to, all tasks listed under development in Rider E, (iii) final interconnection costs have been determined by the Local Electric Utility and agreed to by the Trustees, and (iv) Trustees have issued a Notice to Proceed which notice shall occur within five (5) Business Days after the conditions in (i), (ii) and (iii) have been satisfied. Should interconnection costs referenced in condition (iii) result in an updated ESSLSA Price that is greater than the University specific hurdle rate as published in the RFP on the University variables coversheet for the University premises to which the system is being interconnected, the Trustees may terminate this Agreement by written notice to the Licensee. In the event of such notice by the Trustees, this Agreement shall terminate, Trustees shall retain any Transaction Fee paid or due as of the date of such termination notice, Licensee shall comply with Section 13.1 and neither Party shall have any further obligation to the other Party.
- 8.3. Construction Start Date. Licensee shall start construction of the System after receipt of Trustees' Notice to Proceed. Licensee shall provide written notice to Trustees of the date that Licensee commences construction at the Site (the "Construction Start Date") and shall diligently pursue construction until the System's completion. If Licensee has not commenced substantial construction activities by [Month, day, year], either Party may terminate this Agreement by written notice to the other Party. In the event of such notice by either Party, this Agreement shall terminate, Trustees

shall retain any Transaction Fee paid or due as of the date of such termination notice, Licensee shall comply with Section 13.1 and neither Party shall have any further obligation to the other Party.

8.3.1. Construction Supervision. During the course of the installation work, Licensee, or Licensee's contractors or designees, will have a qualified construction supervisor onsite with whom Trustees can communicate with respect to the Installation Work. If, in the reasonable judgment of Trustees, such construction supervisor is incompetent, unqualified, poorly performing, or disorderly, Licensee shall, upon request by Trustees, promptly replace such construction supervisor with an individual reasonably acceptable to Trustees.

8.4. Completion of System.

8.4.1. The Parties agree that the COD will occur no later than [Month, day, year] (the "Guaranteed Commercial Operation Date") unless otherwise agreed to by the Parties in writing and except as provided in Section 8.6.

8.5. Liquidated Damages for Delay. If Licensee has not achieved the Construction Completion Date by the Guaranteed Construction Completion Date, it shall pay liquidated damages to Trustees as provided in this Section 8.5. Liquidated damages will be assessed at a per calendar day cost of [\$X]. All such liquidated damages shall be assessed for each day beyond the Guaranteed Construction Completion Date, except Licensee shall be excused from its obligations to pay liquidated damages pursuant to this Section 8.5 during the period of any excused extension as set forth in Section 8.6.

8.6. Extensions of Dates. The Guaranteed Construction Completion Date and the Guaranteed Commercial Operation Date shall be extended as follows:

8.6.1. For any delays caused by Force Majeure Events, provided that Licensee exercises commercially reasonable efforts to mitigate any delay caused by such Force Majeure;

8.6.2. For any delays caused by Trustees, including any failure to timely provide any approval, inspection or notice Trustees are obligated to provide pursuant to this Agreement;

8.6.3. For delays caused by a government agency or public utility, including any failure to timely provide any approval or notice Licensee is obligated to obtain pursuant to this Agreement;

8.6.4. For delays caused by a Utility;

8.6.5. For delays caused by Differing Site Conditions pursuant to Section 8.11;

8.6.6. For delays caused by changes in the installation work pursuant to Section 8.11.1;

8.6.7. For delays caused by emergency changes pursuant to Section 8.11.2;

8.6.8. For delays caused by archeological finds pursuant to Section 8.16; and

8.6.9. By the mutual written agreement of the Parties.



- 8.7. Notice of Commercial Operation Date. Licensee shall in a form substantially similar to Attachment 4 notify Trustees in writing no less than ten (10) days and no more than fifteen (15) days before the date on which Licensee expects the COD to occur. Licensee shall give Trustees the Notice of COD within twenty-four hours after its occurrence. Licensee warrants that the System as built will be fully consistent with all documentation previously approved by Trustees as of the COD except for any minor field changes as set forth in Section 8.1. The COD establishes when Licensee may begin to sell Electricity from the System.
- 8.8. Punch List. Trustees shall have fifteen (15) calendar days after receiving the Notice of COD to inspect the Site and the System for compliance with the Trustee approved Construction Documents. Trustees shall present Licensee with a list of any material deficiencies found by Trustees together with a punch list of tasks reasonably related to the installation work to be completed post-COD that relate to Trustees' ownership and use of the Site and Licensed Area, including but not limited to tasks related to cleanliness, safety, security, accessibility, and noise above manufacturer's specifications at the Site and/or with respect to the System. The Licensee shall have thirty (30) calendar days (or such reasonably longer time period if thirty (30) calendar would not be reasonably sufficient) after Licensee's receipt of Trustees' notice to correct any deficiencies and to complete the tasks on said punch list.
- 8.9. Construction Performance Bond. Before starting any construction or installation, Licensee shall furnish a performance bond in an amount calculated by multiplying the kW (AC) capacity of the System as described in this Agreement by \$250/kW, which provides an estimate of the amount necessary to restore the Site and Licensed Area to its pre-installation condition in the event Licensee fails to complete the installation of the System in accordance with this Agreement. Trustees shall release to Licensee any such construction performance bond no later than first day of the second Contract Year.
- 8.9.1. Licensee Payment and Performance Bonds for initial physical construction:  
In addition to the Bond in Section 8.9, the Licensee shall furnish, for each counterpart signed, two surety bonds in the form prescribed by Trustees. Each bond shall be in an amount equal to 100 percent of the mutually agreed upon construction costs and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." Reference the following websites: State of California Department of Insurance at: <https://interactive.web.insurance.ca.gov/companyprofile/companyprofile> and the US Treasury listing at: <https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm> One of the surety bonds shall guarantee faithful performance of the installation work by the Licensee and the other shall secure payment of laborers, mechanics, or material men employed in connection with the installation work. Such

bonds are subject to the approval of Trustees. The surety bonds required by this Subsection 8.9.1 shall remain in full force and effect during the term of the construction and for a period of one year after the Commercial Operation Date. Trustees shall release to Licensee all such bonds no later than the first day of the second Contract Year. If change order(s) exceed 110% of the mutually agreed upon construction costs, Trustees may demand in writing that the Licensee provide such further bonds or additional surety to the extent of such additional construction costs, not exceeding that originally required, as in Trustees' opinion is necessary, considering the extent of the Installation Work remaining to be done.

- 8.10. Licensee's Access and Inspection. Licensee acknowledges that, prior to the Effective Date of the Agreement, Licensee was provided access to the Site and Licensed Areas in order to conduct feasibility and configuration assessments, environmental assessments, and other inspections of the Site and Licensed Areas, as Licensee deemed necessary. Licensee's access to the Site and Licensed Areas shall be subject to Access Procedures reasonably adopted from time to time by Trustees including, but not limited to, the procedures set forth in Rider D (Operational Access Procedures for Site and Licensed Areas) and Rider B-2 (University Specific Supplemental Conditions). Only Licensee's employees, agents, and contractors retained by Licensee(s) shall be permitted access to the Site and Licensed Area; provided that Lender and its employees and agents (all as agents of Licensee) shall have access to the Site and Licensed Area once during each calendar year to inspect the System, subject to the same access procedures as Licensee.
- 8.11. Differing Site Conditions. If during the course of the installation work, either Party identifies a condition, event, or circumstance related to the Site and/or the installation work for which Trustees would be responsible to remedy or otherwise address (a "Differing Site Condition"), and Trustees and Licensee agree (each in its reasonable discretion) that it would be beneficial to utilize Licensee's contractors to remedy or otherwise address such Differing Site Condition, then the Parties shall enter into a written agreement, separate and apart from the Agreement, with respect to such Differing Site Condition, which such written agreement shall provide that the Differing Site Condition will be remedied or otherwise addressed at Trustees' sole cost and expense.

Trustees can only be charged the direct cost of the work as negotiated with the subcontractors plus a mark-up of no more than 15% from the sub-contractor to cover all overhead, profit, supervision, home office, warranty, bond, insurance, project management, and processing costs. The general contractor is limited to a mark-up of no more than 10% (to be calculated on the subcontractor's direct cost) to cover all overhead, profit, supervision, home office, warranty, bond, insurance, project management, and processing costs for coordinating the work done by the subcontractor. If the general contractor self performs the changed work, the general contractor can charge the direct cost of the work plus 15% for overhead, profit, supervision, home office, warranty, bond, insurance, project management, and processing costs. Trustees will only pay the actual cost of work and all hourly labor

rates shall be verified by certified payroll records or an audit of the contractors accounting records for that classification, if rates are claimed in excess of the minimum prevailing wage rate.

8.11.1. Allowable Time Extensions. For any change in the installation work that affects the critical path of the project, the Licensee shall be entitled only to such adjustments in time by which completion of the entire installation work is delayed due solely to performance of the changed installation work. However, no extension of time shall be granted for a change in the installation work unless the Licensee demonstrates to the satisfaction of Trustees that the installation work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the Licensee is making, or has made, every reasonable effort to guarantee completion of the additional installation work called for by the change within the time originally allotted for the Agreement.

8.11.2. Emergency Changes. Changes in the installation work agreed by Trustees to be made necessary due to unforeseen Site conditions, discovery of errors in the Construction Documents requiring immediate clarification in order to avoid a serious installation work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by Trustees are kinds of emergency changes which may be authorized by Trustees in writing to the Licensee. The Licensee shall commence performance of the emergency change immediately upon receipt of written direction from Trustees.

If agreement is reached as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Sections 8.5 and 8.6. If agreement is not reached as to compensation and/or time adjustment at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, then Licensee shall proceed with the changed installation work subject to a requirement that time and materials records and summaries be witnessed and maintained until the changed installation work is complete and the dispute is resolved by the Parties.

8.12. Modifications/Alterations. On and after the Commercial Operation Date, Licensee shall have no right to change the approved design and Construction Documents or to make material Alterations to the System without receiving prior written approval of Trustees, except for minor field changes pursuant to Section 8.1. On and after the Commercial Operation Date, prior to undertaking any Alterations, Licensee shall submit to Trustees detailed and complete plans and specifications for the proposed Alterations. In Trustees' sole discretion, Trustees may waive the requirement for detailed plans upon Licensee's demonstration that the proposed Alteration consists solely of modification or replacement of like-kind equipment. Trustees shall not unreasonably delay or withhold written approval of Licensee's proposed Alteration. However, as a condition to consenting to the Alterations, Trustees may impose reasonable requirements, including the requirement that Licensee provide Trustees

with a surety bond or other financial assurance that the cost of the Alterations will be paid when due, and reimbursement of any costs incurred by Trustees in responding to Licensee's request. Any such Alterations shall be performed in accordance with all Applicable Laws, including any and all necessary permits and approvals by Trustees. Licensee agrees to provide Trustees with sufficient advance notice of any proposed Alterations to allow the coordination and approval by Trustees of the construction schedule for such Alterations.

- 8.13. Security. At all times during the construction of the System on the Licensed Area and any other authorized use areas, Licensee shall keep any and all areas of construction adequately secured for safety and security purposes. Licensee shall coordinate with the Site manager and comply with all Site security requirements when accessing the Site. Licensee hereby acknowledges that Trustees shall have no obligation whatsoever to provide guard services or other security measures for the benefit of the Licensee. Licensee assumes all responsibility for the protection of Licensee, its agents and invitees and the property of the Licensee and of Licensee's subcontractors, agents and invitees from acts of third parties except as set forth in Article 17.
- 8.14. Acceptance. When the installation work (or any phase thereof) has been completed in all respects in accordance with this Agreement, Trustees will file a notice of completion with the county recorder in the county in which the Site is located, in which event, and to the extent applicable hereto, the stop notice clause of the California Public Contract Code shall be in effect.
- 8.15. Inspection of System. Trustees' inspections of the System during construction shall be allowed in accordance with Section 11.1. In no event shall Trustees' inspections of the System be interpreted as making Trustees responsible for, and Licensee acknowledges that Trustees are not responsible for, the design or construction of the System.
- 8.16. [Archaeological Finds. The Site is located on an archeological sensitive area. If Licensee discovers any artifacts during excavation and/or construction, Licensee shall stop all affected work and notify Trustees. Trustees will employ, at Trustees' cost and expense, the services of a Native American monitor and archeologist to be present whenever excavation of the Site occurs at any depth. Licensee is responsible to notify Trustees in advance of any digging or excavation so these monitors can be scheduled. If Licensee discovers human remains, Licensee shall notify Trustees who will be responsible for contacting the county coroner and a qualified archaeologist. Licensee shall be entitled to a day-for-day extension pursuant to Section 8.6 for any impact on schedule due to any delays or stoppage of installation work pursuant to this Section 8.16.] Applicable only on certain campuses.

## 9. LICENSEE'S PERFORMANCE OBLIGATIONS

- 9.1. General. Licensee shall cause the System to be operated and maintained in good repair and operation at Licensee's sole expense, including the cost of capital repairs and replacements, in a commercially reasonable manner throughout the Term.

Licensee warrants that all of its operating and maintenance personnel will be adequately qualified and trained throughout the Term. Licensee shall also be responsible for any maintenance and repairs to the Site and Licensed Area if such maintenance and repairs are necessary as a result of Licensee's use.

- 9.2. Performance Guarantee. Licensee's sole and exclusive delivery performance guarantee will be as set forth in Rider C attached hereto.
- 9.3. Outage Reporting. Within thirty (30) calendar days of any outage of 25% or more of the System capacity lasting more than twenty-four (24) hours, Licensee shall provide to Trustees a report indicating the nature and cause of the outage and the steps taken by Licensee to correct the problem.
- 9.4. Licensee's Failure to Maintain. If Licensee fails to maintain the System in good repair and operation consistent with industry standards for operators of similar systems, Trustees shall give Licensee written notice to perform such maintenance and repair activities as are reasonably required under this Agreement. Licensee shall commence within ten (10) calendar days after receiving such written notice from Trustees and diligently complete the requested maintenance or repairs; provided that if it disputes the need for such maintenance and repair activities then such dispute will be resolved pursuant to the provisions of Section 19.28. If Licensee fails to commence the requested maintenance or repair activity within the allowed time, Licensee shall be subject to fines of \$250 per day until the maintenance or repair is completed, and Trustees shall deduct the sum of the daily fines from the payments otherwise due to Licensee under this Agreement. In the event of an emergency and/or if there is a safety hazard and Licensee fails to commence repairs and act diligently to address the emergency or repair such safety hazard within the timeframe set forth above after notice of such emergency or safety hazard from Trustees, then Trustees shall have the right to address the emergency and repair the System at Licensee's expense. Any amount so expended by Trustees shall be paid promptly by Licensee upon Trustees' submittal of the work invoices to Licensee, or Trustees may deduct the amount expended from invoices submitted to Trustees by Licensee for amounts due Licensee for Peak Demand Reductions delivered to Trustees. Except as set forth in this Section 9.4, Trustees shall have no right to conduct or have such work performed and any such maintenance or repair activity sanctioned or conducted by Trustees will be a breach of this Agreement and will cause the immediate and permanent cessation of Licensee's obligations with respect to the Performance Guarantee set forth in Rider C.
- 9.5. Project Manual. Within thirty (30) days of COD, Licensee shall provide a Project Manual to University staff. Licensee shall subsequently notify University in writing of any changes to the Project Manual within fifteen (15) calendar days of such change.
- 9.6. Shut down Training. Within thirty (30) days of acceptance of COD, Licensee shall instruct and train CSU's designated personnel on how to shut down the System in the event of an emergency. CSU may reasonably request additional training and

Licensee will conduct such training at CSU's expense. The training session(s) may be recorded by CSU at CSU's expense.

- 9.7. **Lien /Removal of Liens.** During the Term, except for any liens in favor of the Lender, Licensee shall not cause or permit any liens to attach or to be placed upon or encumber the System or the Licensed Area or Site arising out of or resulting from any improvements, Alterations or other work performed by Licensee. If any such lien attaches, Licensee agrees to cause the lien to be removed within ten (10) calendar days of notification thereof by the post of a bond, payment of the lien or otherwise. If Licensee fails to remove the lien within the allowed time period, Trustees, in addition to its other remedies under this Agreement, may undertake to cause such lien to be removed and charge to Licensee any costs and expenses incurred in connection with the removal of said lien. Licensee agrees to hold harmless, defend and indemnify Trustees against all costs and expenses including reasonable attorneys' fees and court costs at trial and on appeal incurred in discharging and releasing any such lien.
- 9.8. **Health and Safety.** Licensee shall take all necessary and reasonable safety precautions and shall comply with all Applicable Law pertaining to the safety of persons and real and personal property. Licensee shall immediately report to Trustees any death, loss time injury, or property damage that occurs within the Licensed Area or the Site or as part of Licensee's operation of the System.
- 9.9. **Hazardous Material.** Licensee agrees to comply with all applicable environmental laws pertaining to the use, storage and disposal of Hazardous Material at the Site and Licensed Area. Licensee shall indemnify, defend and hold harmless Trustees and Trustees' officers, agents, representatives, and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of environmental laws caused by Licensee or Licensee's representatives at the Site. In addition, Licensee shall reimburse Trustees for any and all costs related to investigation, clean up and/or fines incurred by Trustees for non-compliance with environmental laws that are caused by Licensee or Licensee's representatives. Trustees reserve the right to inspect the Licensed Area for purposes of verifying compliance with these Hazardous Materials and environmental laws.
- 9.10. **Notice of Damage.** Licensee shall promptly notify Trustees of any matter of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to affect the System or Trustees operations.
- 9.11. **Customer Service Support.** Licensee will provide customer service support accessible to Trustees twenty-four (24) hours per day, seven (7) days per week. For purposes of this provision, "accessible" means that Licensee will provide a designated customer service telephone number with a voice mail system which records the time and date of the call. Licensee agrees that it will respond to Trustees' messages on this designated customer service voice mail system within twenty-four (24) hours of Trustees' call.

- 9.12. Academic Component. Licensee will provide one LCD display, which will be installed at a location on the University. The location chosen by Trustees must be within 6' of an electrical outlet and an Ethernet jack with access to the Internet. The display will provide a rotating overview of the System's performance, environmental benefits, and a description of how energy storage systems works. [Campus Choice]

## 10. TRUSTEES OBLIGATIONS

- 10.1. General. Subject to any specific limitations in this Agreement, Trustees shall at all times during the Term use commercially reasonable efforts to maintain the Site, other than the System, in good condition and repair so as to be able to receive and utilize the Electricity delivered from the System. Trustees shall at all times maintain the Site consistent with all Applicable Law pertaining to the health and safety of persons and property. Trustees will maintain in good working order and available at all times, Trustees' connection and service contract(s) with the applicable Local Electric Utility so that Trustees can, upon any suspension or interruption of Electricity from the System, obtain electricity from a Utility. All obligations of Trustees under this Agreement regarding maintenance shall be subject to the right of Trustees during periods of renovation, or maintenance and repairs to any part of the Licensed Area or Site to issue a shutdown order to the System, consistent with Section 11.6.
- 10.2. Liens. Trustees shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the System or any interest therein. If Trustees breach their obligations under this section, Trustees shall immediately notify Licensee in writing and shall promptly cause such lien to be discharged and released of record without cost to Licensee.

## 11. GENERAL TERMS AND CONDITIONS

- 11.1. Inspections. Trustees shall be permitted access to inspect the System upon twenty-four (24) hours prior written notice to Licensee. Trustees' personnel must be accompanied by personnel of Licensee during any non-emergency inspection of the System, unless Licensee agrees in writing to waive its right to accompany Trustees' personnel on all non-emergency inspections, and must comply with all safety protocols provided by Licensee to Trustee. This requirement in no way prohibits Trustees from inspecting any and all portions of the Site and Licensed Area at any time.
- 11.2. System Maintenance. Licensee shall notify University twenty-four (24) hours prior to accessing the Site and Licensed Area to perform System maintenance. Licensee shall be subject to Access Procedures reasonably adopted from time to time by Trustees including, but not limited to, the procedures set forth in Rider D (Operational Access Procedures for Site and Licensed Area). Only Licensee's employees, agents and contractors retained by Licensee(s) shall be permitted access to the Site and Licensed Area.

- 11.3. System Malfunctions. Trustees and Licensee each shall notify the other Party as soon as possible but not more than twenty-four (24) hours following such Party's discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Electricity from the System by providing notice in accordance with Section 19.9. Licensee and Trustees shall each designate personnel and establish procedures such that each Party may provide notice of conditions requiring Licensee's repair or Alteration at all times, consistent with Subsection 11.5.1.
- 11.4. System Malfunction Repairs. Licensee shall commence repairs to the malfunctioning System and restore the supply of Electricity, as soon as reasonably possible after receipt of Trustees' notice or upon Licensee's discovery of any of the conditions causing a malfunction in the operation of the System, subject to the Operational Access Procedures for the Site and Licensed Area defined in Rider D. In the event Licensee must repair the System and requires Trustees' personnel to be present after normal business hours, Licensee shall reimburse Trustees for all costs for after hour's access to the Site and Licensed Area and shall bear all costs incurred by Trustees to facilitate Licensee's repair of the System.
- 11.5. System Emergencies.
- 11.5.1. Notification. Licensee and Trustees each shall notify the other Party as soon as possible upon the discovery of an emergency condition involving the System. For emergencies requiring repairs to the System, the Parties shall contact the persons identified in Section 19.9 (Notices).
- 11.5.2. Immediate Dispatch. If an emergency condition involving the System exists, Licensee shall immediately dispatch the appropriate personnel to perform the necessary repairs or corrective action in an expeditious and safe manner, subject to Trustees emergency rights under Subsection 11.5.3 (System Emergencies: Disconnection of System).
- 11.5.3. Disconnection of System by Trustees. In case of emergency in which Trustees determine that the continued operation of the System presents an imminent threat requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services, the Parties agree that Trustees may disconnect the System from the Licensed Area and Site prior to notification of Licensee. Trustees will notify Licensee if Trustees disconnect the System pursuant to this provision no later than eight (8) hours after the System is disconnected. Parties agree that only Licensee or an agent designated by Licensee will be authorized to reconnect the System after the System is disconnected by Trustees pursuant to this section. In no event shall Trustees be liable for any damage for actions taken by Trustees in the event of an emergency.
- 11.6. System Shutdowns.
- 11.6.1. Scheduled Shutdown. If Licensee schedules a shutdown of the System, Licensee shall notify Trustees in writing as soon as practical after Licensee schedules such shutdown but in no event less than fifteen (15) calendar days



prior to the start of such shutdown. Such notice shall include the reasons and expected duration of such shutdown.

11.6.2. **Unscheduled Shutdown.** If a shutdown of the System occurs that is not scheduled, Licensee shall provide notice to Trustees as soon as possible. For any shutdown which duration exceeds twenty-four (24) hours, Licensee shall be required to notify Trustees of the cause and time of expected resumption of operation of the System.

11.7. **Trustees Temporary System Shutdown Allowance and In Lieu of Peak Demand Reduction Payment.** During the Term, Trustees shall be entitled to shut down the System in order to perform maintenance, repairs and renovations to the University. Trustees will work in good faith with Licensee to minimize the impact of such shutdowns on Licensee's operations to the extent practical in Trustees' sole reasonable judgment. Trustees may cause a shutdown of the System without penalty for a cumulative period not to exceed fifty (50) hours during a Contract Year, nor more than eight hundred (800) hours during the Term, and such shutdowns shall be tracked and reported in the annual report to Trustees in accordance with Section 5.5.

In the event such shutdown due to Trustees' maintenance, repairs and renovations exceeds fifty (50) hours during a Contract Year, or exceeds eight-hundred (800) hours during the Term, Trustees shall pay Licensee an In Lieu of Peak Demand Reduction payment for the Deemed Generated Energy for the duration of the period in excess of the fifty (50) hours during a Contract Year.

11.8. **Permanent Shutdown of the Site.** If during the Term, through no fault of Licensee and for reasons other than a Force Majeure Event, the System is permanently shut down due to Trustees' renovation, destruction or closure of the Site, the following provisions shall apply:

11.8.1. **Notification.** Trustees shall notify Licensee as soon as possible but in no event less than one hundred and twenty (120) calendar days prior to the planned permanent Site shutdown that will result in the shutdown of the System. Trustees shall provide written notice to Licensee indicating whether Trustees desire to relocate the System.

11.8.2. **Relocation.** Trustees and Licensee agree to negotiate in good faith to find an alternative location where Licensee can relocate the System and from which Licensee can provide Peak Demand Reduction to Trustees in conformance with this Agreement. If the Parties can agree on such new location and if the Parties agree that such new location has a similar load profile and ability to capture and incentives as the original Site, then this Agreement shall be amended to substitute the alternative location as the Licensed Area and Trustees shall pay reasonable costs associated with relocation of the System. Trustees shall reduce the Guaranteed Savings, as provided in Section Peak Demand Reductions during the period of relocation.

11.8.3. **No Adequate Alternative Site.** If Trustees and Licensee cannot locate an alternative site that meets the requirements of Subsection 11.8.2 but can

mutually agree upon an alternative location which is inferior to the Licensed Area for purposes of energy storage system installation, then Trustees and Licensee shall in good faith attempt to negotiate an adjustment in the Price to compensate for the alternative location such that Licensee receives payments comparable to those which it would have received from the System at the original Licensed Area. If the Parties mutually agree to such change in Price, then the Parties shall amend all relevant terms in this Agreement and Licensee shall proceed to relocate the System (or as much of System as practical) to the new location. If the Parties agree to such relocation, Trustees shall pay for the reasonable costs for Licensee to relocate the System. Trustees shall reimburse Licensee for the period of temporary System shutdown prior to relocation under the options specified in Section 11.7.

11.8.4. Termination due to Permanent Shutdown of the Site. If, within seventy-five (75) calendar days prior to date that Trustees will commence the permanent Site shutdown for reasons set forth in this section, Trustees and Licensee have not agreed upon an alternative location for the System, Licensee shall remove the System pursuant to Section 13.1 of this Agreement, and Trustees shall pay Licensee a Termination Fee pursuant to Section 16.1 of this Agreement and neither Party shall have any further obligation to the other Party.

11.9. Trustees System Repair Costs. If Trustees damage the System as a result of Trustees' operations, maintenance, repairs or renovations, and for reasons other than in connection with a Force Majeure Event, Trustees shall reimburse Licensee reasonable costs to repair the damage to the System. If, in Trustees' sole opinion, Trustees deem the costs to repair the System are unreasonable, then Trustees may elect to terminate the Agreement, in which case Licensee shall remove the System in accordance with Section 13.1 and Trustees shall pay Licensee the Termination Fee in accordance with Section 16.1.

11.10. Damage Covered by Insurance. Subject to the provisions in Section 16.5 (Early Termination Due to Force Majeure Event) and any Trustees Consent and Estoppel Certificate if during the Term the System is wholly or partially destroyed or damaged by an event covered by insurance or required to be covered by insurance under this Agreement, the Licensee shall use the proceeds of such insurance to restore the System to its original capacity. If Licensee determines that it is not economically feasible to restore the System after such loss event, Licensee shall give Trustees written notice of such determination as soon as practical. In that case and subject to the terms of any Trustees Consent and Estoppel Certificate, the Agreement shall be terminated and the insurance proceeds shall be paid in the following order of interest:

11.10.1. First, to pay for the reasonable costs to remove the damaged System and restore the Licensed Area and Site to their original condition as of the Effective Date save for normal wear and tear. If the insurance proceeds are insufficient, or there are no insurance proceeds as provided in this Agreement to cover the costs to restore the Licensed Area and Site, Licensee shall be

responsible to remove the System and restore the Licensed Area and Site at Licensee's sole cost.

11.10.2. Second, to make a payment to Licensee in the amount equal to the Termination Fee as of the date immediately preceding the casualty event minus the amount paid to remove the System pursuant to Subsection 11.10.1.

11.11. Condemnation. In the event that the whole or any portion of the Site or the Licensed Area is acquired or condemned by any authority or sold in lieu thereof, Trustees agree to notify Licensee immediately of such condemnation or sale. The entire award in any such condemnation proceeding or sale shall be and remain the property of Trustees, and Licensee hereby fully waives and relinquishes any right to seek an award or participate in the condemnation proceeding.

11.12. No Conflict with the Agreement. Licensee warrants that all other contracts and agreements (including warranties and guarantees) related to the System or Licensees' business of designing, building, operating, maintaining and financing the System shall contain no terms or provisions that conflict with Licensee's performance obligations pursuant to this Agreement. Upon Trustees' written request as provided in Section 19.8, Licensee shall provide Trustees with copies of all such agreements and Licensee shall notify Trustees in writing and provide copies of all significant amendments to such agreements within thirty (30) days after any such amendment.

## 12. SYSTEM FINANCING AND ASSIGNMENT

### 12.1. Assignment and Change of Control.

12.1.1. Assignment. Except as otherwise provided in this Article 12, the rights, duties and obligations of Licensee under this Agreement shall not be assignable by the Licensee in whole or in part without the written consent of Trustees and upon such reasonable terms and conditions that Trustees may require. Trustees consent to one assignment shall not be deemed consent to any subsequent assignment. Licensee shall pay Trustees three thousand dollars (\$3,000) upon the second assignment of Licensee's interest and each subsequent assignment, and Licensee warrants that such payment shall be made a contractual requirement in perpetuity in all agreements assigning the rights, duties and obligations of Licensee under this Agreement in which Licensee is relieved of its duties and obligations hereunder. Except with respect to assignments set forth in Section 12.1.1.2 and 12.1.1.3, no such assignment shall relieve Licensee of its obligations under this Agreement unless Trustees have agreed otherwise in writing. With respect to assignments set forth in Section 12.1.1.2 and 12.1.1.3, Licensee's assignee shall assume all the obligations of Licensee under this Agreement and the Licensee shall be relieved of its duties and obligations hereunder. The following transactions or events, including any transfers of Controlling Interests, shall not constitute an assignment that is subject to Trustees' prior written approval:

12.1.1.1. to a Lender pursuant to a financing as set forth in Section 12.3 of this Agreement,

- 12.1.1.2. to an Affiliate of a limited liability company of which Licensee is a member;
  - 12.1.1.3. sale, transfer, assignment or disposal of the direct or indirect equity interests in the Licensee to Yieldco; or
  - 12.1.1.4. to a Tax Equity Investor in connection with a Tax Equity Financing.
- 12.1.2. Change of Control. Except for assignments or transfers pursuant to Section 12.1.1.1, 12.1.1.2, 12.1.1.3 and 12.1.1.4 and ignoring transfers of publicly traded securities, no Controlling Interest in Licensee may be sold, transferred or assigned (whether through a single transaction or a series of transactions over time) without Trustee's prior written approval, not to be unreasonably withheld, conditioned or delayed.
- 12.2. Trustees Approval. Licensee acknowledges that Trustees are relying upon the unique expertise and capability of Licensee. Any assignment of this Agreement (except those exclusions set forth in Sections 12.1.1.1 through 12.1.1.4) shall be subject to Trustees' written approval, which approval shall not be unreasonably withheld. Licensee shall provide Trustees with thirty (30) calendar day's written notice of each proposed assignment that requires Trustees' approval. Licensee must include in such notice supporting documentation sufficient to demonstrate to the reasonable satisfaction of Trustees that such proposed assignee has both the financial capacity and the technical and managerial ability to perform the duties and obligations required under this Agreement. For purposes of assessing the proposed assignee's financial capacity, a review of audited financial statements or other financial documentation shall be made by the Trustees to ensure prospective assignee possessed sufficient financial resources and satisfactory investment grade credit ratings as measured by Fitch BBB, Moody's Baa, and Standard & Poor's BBB. For purposes of demonstrating the proposed assignee's technical and managerial ability, documentation showing the entity meets the applicable prequalification requirements specified in the Request for Proposals associated with Trustees' selection of Licensee shall be sufficient. If Trustees determine in their sole reasonable judgment that those standards are satisfied, Trustees shall approve such proposed assignment. In the event Trustees determine in their sole reasonable judgment that the proposed assignee fails to meet the standards for demonstrating the financial capacity and the technical ability to perform the duties and obligations required under this Agreement, Trustees shall promptly give Licensee written notice of Trustees' determination and Licensee shall be prohibited from making such assignment. Trustees shall notify Licensee within thirty (30) calendar days after Trustees' receipt of Licensee's notice of a proposed assignment as to whether Trustees approve the proposed assignment.
- 12.3. Collateral Assignment. Trustees acknowledge that Licensee will be financing the acquisition and installation of the System with financing accommodations from one or more financial institutions and that Licensee's obligations under the financing documents will be secured by, among other collateral, a pledge or collateral assignment of Licensee's rights under this Agreement and a first security right in the

System. Licensee may assign its interest in the System, including Licensee's rights under this Agreement, as security for loans or financing of the System including a sale-leaseback of the System (the "System Lease") with a System Lessor. Trustees' consent to the initial assignment, including a sale and System Lease, is for the purpose of financing the System. Trustees will work in good faith with Licensee and Lender to agree upon the documentation that may be required in connection with the financing.

- 12.4. The Trustees Consent and Estoppel Certificate. Trustees shall, upon not less than thirty (30) calendar days' prior written request by Licensee or Licensee's Lender, execute, acknowledge and deliver to Licensee or to Licensee's Lender a statement in writing, substantially in the form of the document provided in Rider G, "Trustees Consent and Estoppel Certificate," with such amendments as may be reasonably requested by Lender. If the Trustees Consent and Estoppel Certificate is not applicable to the Lender's financing structure, then Trustees, the Lender and Licensee shall in good faith work to agree upon a consent and estoppel. The consent and estoppel must be in a form and substance agreed to by Trustees, the Lender and Licensee.
- 12.5. Licensee's Default Under Financing Agreements. The provisions of this Section 12.5 apply subject to any modifications to this section included in the terms of any consent and estoppel entered into pursuant to Section 12.4. Licensee agrees to require any Lender to notify Trustees in writing of any default of Licensee under any agreement with the Lender regarding the System. If the Lender notifies Trustees that an event of default under the System Lease or other financing agreement has occurred and that the Lender has elected to exercise its rights and remedies there under or under any of the related security documents, then, upon the exercise of such rights and remedies, the Lender or any other qualified purchaser of, or successor to, the interests in a judicial or non-judicial foreclosure sale shall be substituted for the Licensee under this Agreement, provided that the conditions in this section are satisfied. In that event, Trustees will continue to perform their obligations under this Agreement in favor of the Substitute Licensee provided that such Substitute Licensee expressly acknowledges in writing that (i) it is assuming all rights, duties, and obligations of Licensee under this Agreement and (ii) it agrees to cure all of Licensee's defaults under this Agreement existing at the time such Substitute Licensee assumes the rights, duties and obligations of the Licensee; and provided further that the Lender has included in such notice supporting documentation sufficient to demonstrate to the reasonable satisfaction of Trustees that such proposed Substitute Licensee or designee has both the financial capacity and the technical ability to perform the duties and obligations required under this Agreement per the standards described in Section 12.2. If Trustees determine in their sole reasonable judgment that those standards are satisfied, Trustees shall approve such proposed Substitute Licensee or designee for the remaining Term and on the same terms and conditions contained in this Agreement.

In the event Trustees determine in their sole reasonable judgment that the proposed Substitute Licensee or designee has failed to satisfy the requirements (i) and (ii) in

the preceding paragraph, Trustees shall promptly give the Lender written notice of Trustees' determination and the Lender and Licensee shall be prohibited from making such assignment.

### 13. REMOVAL OF SYSTEM

13.1. System Removal Licensee shall, at its sole cost, during the summer period between the end of the spring semester and the start of the fall semester as per the Academic Calendar posted on the University official website after the expiration or any earlier termination of this Agreement, remove the System from the Licensed Area and Site, return the Licensed Area and Site to its pre-installation condition except for ordinary wear and tear and peaceably and quietly leave, surrender and yield the Licensed Area to Trustees; provided that, if the expiration or any earlier termination occurs less than sixty (60) days prior to end of the then-applicable spring semester, then Licensee's obligation to remove the System shall be during the summer period in the following calendar year. In no case shall Licensee's removal of the System damage the Licensed Area or Site. Notwithstanding the foregoing, Trustees may, within their sole discretion, grant Licensee access to the Licensed Area and the Site, as contemplated and for the purposes specified in this section, prior to the end of the then-applicable spring semester, provided that such access shall not interfere with Trustees' normal operation and use of the Site. Trustees may also, within their sole discretion, extend the time allowable for Licensee to vacate the Licensed Area and remove the System upon written request by Licensee within the otherwise applicable time period for removal. Upon completion of Licensee's removal of the System and completion of any necessary repairs, Trustees shall inspect the Site and Licensed Area to determine that the Site and Licensed Area were left in accordance with this section. If Trustees determine that Licensee has not removed the System or repaired damage in an adequate or timely manner in accordance with this section, Trustees shall have the right to draw on any and all security as specified in Section 13.2. During such removal time period for purposes of Licensee being able to meet the removal and restoration requirements provided by this section, Trustees shall grant to Licensee, any Affiliate of Licensee, and any other entity designated thereby by Licensee that is involved or intends to be involved in meeting the removal and restoration requirements required by this section, an assignable, non-exclusive easement or license on, under, over and across the University premises, for access to and from, and ingress to and egress from, the Licensed Area and Site. Among other things, such access easement or license shall contain all of the rights and privileges for access, ingress, egress and roads as are set forth in this Agreement.

13.2. Security for System Removal. Twelve (12) months prior to the expiration of the Term, Licensee shall provide Trustees with an estimate of the cost to remove the System and restore the Site and Licensed Area in accordance with the Section 13.1. Licensee and Trustees shall then meet and confer within thirty (30) calendar days after such estimate is provided to resolve any concerns regarding such removal and the amount of the estimated cost, and a revised estimate taking those concerns into account shall then constitute the final restoration cost estimate. Licensee shall then either provide a performance bond covering such final restoration cost estimate or

establish a cash escrow account with an acceptable financial institution subject to approval of Trustees of the escrow instructions for accessing the funds into which a portion of payments under the Agreement necessary to equal the estimate of the cost to remove the System and restore the Site and Licensed Area in accordance with the Section 13.1 during the remainder of the Term shall be deposited by Trustees for amounts otherwise due to Licensee for Electricity delivered to Trustees until the escrow reaches the final restoration cost estimate. The escrow account shall serve as the security for the restoration of the Site, and such funds shall be released to Licensee when the Site and Licensed Area restoration are accepted by Trustees. In event that Licensee fails to fulfill its obligations under Section 13.1, Trustees shall have the right to all the funds in the escrow account for purposes of removing the System and restoring the Licensed Area and Site. Interest on the escrow account shall be retained in the escrow account for the benefit of whichever Party is entitled to the funds in the escrow account

- 13.3. End of Term. Trustees shall have an option to purchase the System and any Alterations, materials, spares, tools, supplies, and equipment or any portions thereof at the end of the Term of this Agreement. Trustees shall, within one hundred and eighty (180) calendar days before the expiration of the Term, advise Licensee as to whether it shall enter negotiations with Licensee to exercise Trustees' option to purchase the System and/or other components listed in the first sentence of this section. The purchase price shall be the fair market value of the System as determined by an independent third-party appraiser mutually selected by the Parties. If either Party does not agree with the purchase price as determined by the independent third-party appraiser by the scheduled expiration date of this Agreement, then the purchase option shall expire and Licensee shall fulfill its obligations under Section 13.1.

14. THIS ARTICLE INTENTIONALLY LEFT BLANK

15. DEFAULT

- 15.1. Events of Default. A default includes any of the following:

- 15.1.1. the failure by a Party to make any payment required under this Agreement by the Due Date and if not cured by payment within fifteen (15) Business Days after receiving notice from the other Party that payment is past due
- 15.1.2. Any representation or warranty made by a Party to this Agreement proves to have been false or misleading in any material respect when made or ceases to remain true in all material respects during the Term of this Agreement, if not cured within ten (10) Business Days after written notice from the other Party; or
- 15.1.3. The failure by a Party to perform any obligation set forth in this Agreement (other than the events that are otherwise specifically covered as a separate event of default), and such failure is not cured within thirty (30) calendar days or other such period as specified in this Agreement after receipt of written notice of default from the non-defaulting Party; or in the event of a default which cannot be cured within such thirty (30) calendar day period, if the

defaulting Party has not commenced and diligently prosecuted such cure within thirty (30) calendar days of written notice and thereafter and diligently prosecuted to cure such default within sixty (60) calendar days after receipt of written notice of default from the non-defaulting party.

- 15.1.4. A Party makes an assignment or any general arrangement for the benefit of creditors; files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed within twenty (20) Business Days after such filing; otherwise becomes bankrupt or insolvent (however evidenced); or is unable to pay its debts as they fall due.
- 15.2. Notice of Default. The non-defaulting Party shall provide the defaulting Party written notice of any alleged default hereunder, and such notice shall describe the alleged default. Provided that Licensee has notified Trustees in writing of any Lender and such Lender's name and address, a notice of default shall only be effective if and when the non-defaulting Party also gives such Lender a copy of such notice.
- 15.3. Remedies for Default. Either Party may terminate this Agreement if the other Party is in default of this Agreement and such default is not cured within the periods specified in Section 15.1. Except as expressly stated otherwise in this Agreement, the rights and remedies granted to the Parties pursuant to this Agreement shall be the sole and exclusive remedies for a failure of a Party to perform its obligations hereunder.
  - 15.3.1. Trustees Remedies. If Licensee's default continues uncured following notice of default as required by this Agreement, Trustees may at their sole discretion resort to any or all of the following remedies:
    - 15.3.1.1. Trustees Termination of Agreement. Trustees, along with all other rights and remedies they may have, shall have the right to immediately terminate this Agreement in writing. Upon Trustees' written notice of termination, all of Licensee's rights in the Site and Licensed Area shall terminate except that Licensee shall have all rights in the Site and Licensed Area required for Licensee to fulfill its obligations pursuant to Section 13.1 and 13.2. Termination shall not relieve Licensee from the obligation to pay any sum then due to Trustees or from any claim for damages previously accrued or then accruing against Licensee. Upon any termination of this Agreement under this Subsection 15.3.1.1, Licensee shall execute such documents as Trustees may request to memorialize the termination and to release Trustees and the Site and Licensed Area from the terms and conditions of this Agreement.
    - 15.3.1.2. Recovery of Damages. Trustees shall be entitled to damages equal to the amount necessary to compensate Trustees for all the detriment proximately caused by Licensee's failure to perform Licensee's obligations under this Agreement including any detriment which in the ordinary course of events would be likely to result from Licensee's failure.



- 15.3.1.3. System Removal. Promptly after notice of termination and subject to Sections 13.1 and 13.2, Licensee shall fulfill its obligations in accordance with Section 13.1 hereof.
  - 15.3.1.4. No Obligation to Pay Termination Fee. Trustees shall have no obligation to pay Licensee a Termination Fee.
  - 15.3.1.5. Trustees Self-Help. In the event of default by Licensee, Trustees may withhold payments due to Licensee for Electricity for the purpose of recovering costs or fees for Licensee's performance obligations, or that would otherwise be due to Trustees under the terms of this Agreement.
- 15.4. Lender's Rights. Subject to any modifications to this section included in the terms of any consent and estoppel entered into pursuant to Section 12.4, Trustees shall not take any action to terminate this Agreement because of any default or breach by Licensee if any Lender, within thirty (30) calendar days after service of written notice that Trustees (while not yet electing its remedies) believes it may terminate this Agreement for such default, gives Trustees written notice that Lender will:
- 15.4.1. Cure such default if the default can be cured by the payment or expenditure of money required to be paid under this Agreement.
  - 15.4.2. In the case of a default that cannot be cured unless and until the Lender has obtained possession, diligently pursue actions to obtain possession of the System (including possession by receiver) and to cure such default; provided, however, that Lender shall not be required to continue such foreclosure proceedings if Licensee has in the meanwhile cured such default.
  - 15.4.3. If such default is not curable under the foregoing Sections 15.4.1 and 15.4.2, the Lender shall institute and complete judicial or non-judicial foreclosure proceedings, or otherwise acquire Licensee's interest hereunder with due diligence, and keep and perform all of the covenants and conditions of this Agreement, including those requiring the payment or expenditure of money by Licensee, until such time as the Lender shall have acquired Licensee's interest in the System and this Agreement.
  - 15.4.4. The Lender shall have the right, but not the obligation, at any time prior to termination of this Agreement to pay any amounts due hereunder, to affect any insurance, to pay any taxes and assessments, to make any repairs, improvements or to do any other act required of Licensee hereunder to prevent termination of this Agreement. All payments so made and all things so done and performed by any Lender shall be as effective to prevent a termination of this Agreement as the same would have been if made, done and performed by Licensee instead of the Lender.
- If any Lender is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Licensee or by an automatic stay thereunder from commencing or prosecuting foreclosure or any unlawful detainer action, the time specified in Section 15.4 for terminating this Agreement shall be extended for the period of such prohibition; provided that the Lender shall have fully cured any default of Licensee which it is obligated

to cure under this Agreement. In the event that the Lender fails or refuses to comply with the conditions of this subsection, Trustees shall then and thereupon be released from the covenant of forbearance contained in this subsection.

15.4.5. Upon the Lender's acquisition or possession of the System by foreclosure or by transfer or assignment pursuant to or in lieu of foreclosure, Trustees shall enter into a new agreement with the Lender or Lender's nominee provided that in Trustees' sole reasonable judgment, the Lender or Lender's nominee, as the case may be, has satisfied all of the conditions and requirements applicable to the Lender or Lender's nominee under Section 12.5 of this Agreement. The new agreement shall be for the remainder of the Term hereof and shall be on the same terms and conditions contained in this Agreement.

If in Trustees' sole reasonable judgment, the Lender's nominee does not satisfy one or more of the requirements in Section 12.5, Trustees shall give the Lender written notice of such determination by Trustees which notice shall describe the deficiencies. The Lender shall have sixty (60) calendar days after the receipt of such notice from Trustees to cure the deficiencies noted by Trustees. In the event the Lender does not comply with the provisions of this subsection within such sixty (60) calendar day period, Trustees may terminate this Agreement without further obligation to Licensee or the Lender.

15.5. Licensee's Remedies. If any default by Trustees shall continue uncured following notice of default as required by this Agreement, Licensee's sole remedies are the following:

15.5.1. Licensee's Termination of Agreement. Except as specifically provided otherwise in this Agreement, if Trustees default under this Agreement, Licensee shall have the right to immediately terminate this Agreement. In that event, termination under this subsection shall not relieve Trustees from the obligation to pay any sum then due to the Licensee or from any claim for damages previously accrued or then accruing against Trustees. Upon any termination of this Agreement under Section 15.5, Trustees shall execute such documents as Licensee may request to memorialize the termination and to release Licensee from the terms and conditions of this Agreement.

15.5.2. Termination Fee. If Licensee elects to terminate the Agreement due to Trustees' default, Trustees shall, within thirty (30) days of the termination pay Licensee any Termination Fee due for the Contract Year in which the default that gave rise to the Termination occurred Licensee shall fulfill its obligation under Section 13.1 of this Agreement.

## 16. EARLY TERMINATION

16.1. Termination Fee. If a Termination Fee is due from Trustees to Licensee under this Agreement, Trustees shall pay to Licensee a Termination Fee corresponding to the applicable Contract Year in which the early termination occurs as set forth in the following table. Upon termination of this Agreement and subject to Section 13.2, Licensee shall remove the System at its cost and restore the Site to its original

condition (less normal wear and tear) pursuant to Section 13.1 of this Agreement. Trustees shall pay Licensee the Termination Fee within thirty (30) calendar days of the early termination of this Agreement.

| Termination Fee Schedule |                 |
|--------------------------|-----------------|
| Contract Year            | Termination Fee |
| 1                        | \$X             |
| 2                        | \$X             |
| 3                        | \$X             |
| 4                        | \$X             |
| 5                        | \$X             |
| 6                        | \$X             |
| 7                        | \$X             |
| 8                        | \$X             |
| 9                        | \$X             |
| 10                       | \$X             |

- 16.2. Trustees Early Termination Rights. After the sixth (6th) Contract Year, Trustees may terminate this Agreement for any reason, upon sixty (60) calendar days' written notice to Licensee with a copy to any Lender whose name and contact information has been provided by Licensee to Trustees. In the event that Trustees terminate this Agreement pursuant to this section, neither Party shall be in default solely as a result of Trustees' election to terminate hereunder, and Licensee shall fulfill its obligations under Section 13.1 and Trustees shall within thirty (30) calendar days after the early termination of this Agreement pay Licensee the Termination Fee in accordance with Section 16.1.
- 16.3. Trustees Purchase Option Prior to Expiration Date. Trustees may elect to purchase the System on either the sixth (6th) anniversary of the Commercial Operation Date, the tenth (10th) anniversary of the Commercial Operation Date provided that no Trustees' Default shall have occurred and be continuing beyond any applicable period of cure. If Trustees elect to so purchase the System, the purchase price shall be the higher of the then Fair Market Value of the System (calculated in accordance with the definition of "Fair Market Value" set forth in Section 16.3.1), or the then-current Termination Fee as set forth in Section 16.1. Not less than one-hundred-and-eighty (180) days prior to the exercise of the purchase option for the System, Trustees shall provide written notice to Licensee of Trustees' exercise thereof. Upon the exercise of the foregoing purchase option plus receipt of the higher of the Fair Market Value or Termination Fee and all other amounts then owing by Trustees to Licensee, the Parties will execute all documents necessary to cause title to the System

to pass to Trustees as-is, where-is; provided, however, that Licensee shall remove any encumbrances placed on the System by Licensee at Trustees' expense.

16.3.1. The "Fair Market Value" of the System shall be the value determined by the mutual agreement of Trustees and Licensee within ten (10) days after receipt by Licensee of Trustees' notice of Trustees' election to purchase the System. If Trustees and Licensee cannot mutually agree to a Fair Market Value, then the Parties shall jointly select a nationally recognized independent appraiser with whom the parties have discussed methods and assumptions, with experience and expertise in the energy storage industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by Trustees. To the extent transferable, the remaining period, if any, on all warranties for the System will be transferred from Licensee to Trustees at Trustees' sole expense. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by Trustees and the appraiser firm proposed by the Licensee.

16.4. Licensee Early Termination Rights. Licensee may terminate this Agreement at any time on thirty (30) calendar days' written notice to Trustees, if, prior to the Licensee's commencement of construction of the System, Licensee determines, in its sole discretion, that the System cannot be built as planned or that its construction and operation would not be economically viable for the Licensee. Notwithstanding anything in this Agreement to the contrary, Licensee's prior inspection of the Site, including as provided in Sections 3.2 (No Warranties) and 8.10 (Licensee's Access and Inspection), shall in no way limit Licensee's right to terminate this Agreement pursuant to this Section 16.4. In the event that Licensee terminates this Agreement pursuant to this section, neither Party shall be in default solely as a result of Licensee's election to terminate hereunder, Licensee shall fulfill its obligations under Section 13.1 (System Removal) Trustees shall not pay a Termination Fee, and Trustees shall not refund any Transaction Fee already received.

16.5. Early Termination Due to Force Majeure Event. If a Force Majeure Event occurs, the affected Party shall promptly provide written notice to the other Party describing the nature of the event; the length of time it is expected to continue; and efforts (planned or under way) to overcome the effects of the event. The Parties shall cooperate in good faith to overcome the effects of the Force Majeure Event. The obligations of each Party shall be suspended for the continuance of any inability to perform caused by a Force Majeure Event, but for no longer period. If a Force Majeure Event prevents a Party from performing its obligations under this Agreement and such event continues for more than 365 days, either Party may terminate this Agreement and neither Party shall be in default.

16.6. Capacity Reduction. If a Force Majeure Event occurs that reduces the Peak Demand Reduction of the System and Licensee determines the System cannot,

within the period allowed in Section 16.4 (Licensee Early Termination Rights), be restored to a capacity sufficient to satisfy its obligations under this Agreement, Licensee shall give Trustees written notice of such determination as soon as possible. If Licensee demonstrates to Trustees' reasonable satisfaction that the System can, within the period provided in Section 16.4 of this Agreement, be repaired and restored such that the System can deliver at least fifty percent (50%) of the applicable Peak Demand Reduction for the remaining Term, then Licensee may elect to prosecute such repairs as necessary to deliver at least 50% of the applicable Peak kW demand reduction for the remaining Term. Licensee must notify Trustees of such election in writing, which notice must specify the procedures and dates for the planned repairs. If Licensee so notifies Trustees of such election, the Parties agree to amend the provisions in the Agreement relating to or derived directly from EEP and the Termination Fee to reflect the capacity of the System that remains operable after Licensees' repairs pursuant to this section. No other terms or conditions in the Agreement shall be changed and the Term shall not be extended.

## 17. INDEMNIFICATION

17.1. Licensee Indemnity provisions can be found in Rider B-1 ESSLSA General Conditions section 36.07.

## 18. INSURANCE

18.1. Licensee's Insurance. Licensee shall not commence work until it has obtained all the insurance required in this Agreement, and such insurance has been approved by Trustees.

18.2. Policies, Coverage and Amounts. Licensee shall obtain and maintain for the term of the Contract the following insurance policies and coverage as specified in this Article 18. The insurance furnished by the Licensee under this Agreement shall provide coverage in amounts not less than the following:

18.3. Comprehensive or Commercial Form General Liability Insurance. On an occurrence basis, covering work done or to be done by or on behalf of the Licensee and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to this Agreement.

### Limits of Liability

- \$4,000,000.00 General Aggregate
- \$2,000,000.00 Each Occurrence—combined single limit for bodily injury and property damage.

18.4. Business Automobile Liability Insurance. On an occurrence basis, covering owned, scheduled, hired, and non-owned automobiles used by or on behalf of the Licensee and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists with limits per California law requirements. Limits of Liability:

- \$1,000,000.00 Each Accident—combined single limit for bodily injury and property damage.
- 18.5. Workers' Compensation. As required by law, including Employers Liability limits of \$1,000,000.00.
- 18.6. Umbrella or Excess Liability Insurance. Licensee may provide umbrella or excess liability insurance on an "occurrence" basis pursuant to an excess liability policy with limits of \$5,000,000.00 per occurrence and which follows an event otherwise covered by the commercial general liability policy, the employer's liability policy, and the automobile liability policy upon exhaustion of the limits set forth in these policies. Alternatively, Licensee may provide umbrella insurance on a "claims made" basis pursuant to a policy with limits of \$10,000,000.00, in which case Licensee agrees to the following conditions in return for Trustee's acceptance of Licensee's "claims-made" policy: (1) the Retroactive Date of the policy must coincide with, or precede, the Licensee's start of work (including subsequent policies purchased as renewals or replacements); (2) Licensee will maintain similar insurance for at least three (3) years following completion of the work and/or services contemplated by this Agreement; (3) if the policy is terminated for any reason, Licensee agrees to purchase an extended reporting period endorsement (tail coverage) of at least three (3) years to report claims arising from work that is being performed, or in the alternative, purchase "prior acts" coverage from the successor insurer with a Retroactive Date that precedes the date on which work and/or services were first provided by Licensee to Trustees; and (4) the policy allows for reporting of circumstances or incidents (incident reporting) that might give rise to future claims.
- 18.7. All Risks Property Insurance. Licensee will also provide and maintain "all-risk" property insurance covering the System during all periods (construction and operation) when Licensee or its assignee or its Lender is the beneficial owner of the System.
- 18.8. Environmental Impairment Liability Insurance. The Licensee also may be required to obtain or caused to be maintained the following policies and coverage:
- 18.8.1. Environmental Impairment Liability Insurance may be required should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs naming Licensee or its assignee as the loss payee and name Trustees as additional insured.
- 18.9. Certificates. Upon each anniversary of Coverage, the Licensee shall submit certificates of insurance and endorsements to the policies of insurance required by the Contract to Trustees as evidence of the insurance coverage. Renewal certificates and endorsements shall be timely filed by the Licensee for all coverage until the end of the Term.
- 18.10. Insurance Provisions. Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 17. The insurance policies shall contain, or be endorsed to contain, the following provisions:

18.10.1. For the general and automobile liability policies, the State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers shall be covered as additional insureds. Contractor shall use Insurance Service Office (ISO) Form Numbers CG 20 10 (ongoing operations) and CG 20 37 (completed operations), or equivalent forms, for general liability policies (blanket endorsement acceptable). For automobile liability policies, Contractor shall use ISO Form Number CA 20 48 (Designated Insured) or a similar blanket Additional Insured endorsement.

18.10.2. For any claims related to Licensee's work or the System, the Licensee's insurance coverage shall be the primary insurance with respect to the State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers. Contractor shall provide a Waiver of Subrogation endorsement form in favor of the State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers. Trustees agree that blanket policy endorsements are acceptable.

18.10.3. The Licensee shall upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required by this Article, provide written notice of any such insurance cancellation or non-renewal to Trustees within thirty (30) days of receipt of any such notice.

18.10.4. The State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers shall be in excess of the Licensee's insurance and shall not contribute with it.

18.10.5. The State of California, Trustees of the California State University, the University, and their officers, employees, and volunteers shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

18.11. Acceptability of Insurers. Insurers shall be authorized by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A-VII or equivalent carrier otherwise acceptable to Trustees.

18.12. Earthquake. Licensee is hereby notified that Trustees do not have coverage for earthquake damage. Trustees assume no responsibility or liability whatsoever for any damage to Licensee's System or to any property or persons under the control or direction of Licensee including any Lender and any subcontractors or agents of Licensee or Lender that may result from an earthquake.

18.13. Miscellaneous Insurance Provisions.

18.13.1. Any deductible under any policy of insurance required in this Article 18 shall be Licensee's liability.

18.13.2. Acceptance of certificates of insurance by Trustees shall not limit the Licensee's liability under the Agreement nor does it create any waiver of subrogation by Trustees.

In the event the Licensee does not comply with these insurance requirements, Trustees may, at their option, provide insurance coverage to protect Trustees. The

Licensee shall pay the cost of the insurance and, if prompt payment is not received by the insurance carrier from the Licensee, Trustees may pay for the insurance from Agreement sums otherwise due the Licensee.

18.13.3. The Licensee's obligations to obtain and maintain all required insurance are non-delegable duties under this Agreement.

## 19. OTHER TERMS AND CONDITIONS

- 19.1. Approval. This Agreement is of no force or effect until approved by The California State University, Office of the Chancellor and Office of General Counsel on behalf of Trustees with the consent of the University and signed by both Licensee and Trustees. Licensee may not commence performance until such approval has been obtained.
- 19.2. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the Licensee and the California State University, Office of the Chancellor on behalf of Trustees with the consent of the University. No oral understanding or agreement not incorporated in the Agreement is binding on any of the Parties.
- 19.3. Licensee Name Change. An amendment is required to change the Licensee's name as listed on this Agreement. Upon receipt of legal documentation of the name change Trustees will process the amendment. Payment of invoices presented with a new name will not be paid prior to execution by both Parties of said amendment.
- 19.4. Notification of Change in Parties. Licensee shall notify Trustees in writing within five (5) calendar days after any change in name, ownership, or control of the Licensee.
- 19.5. Survival of Obligations. Notwithstanding expiration or earlier termination of this Agreement, the Parties shall continue to be bound by the provisions of this Agreement which by their nature survive such expiration or termination. Such provisions shall include, but are not be limited to, Section 3.12 ("No Infringement"), Article 4 ("Sale of Demand Reduction Services"), Section 8.5 ("Liquidated Damages for Delay"), Section 9.10 ("Hazardous Material"), Article 13 ("Removal of System"), Article 15 ("Default"), and Article 17 ("Indemnification").
- 19.6. Appropriation of Funds. To the extent that Article XVI, Section 1 of the California Constitution is applicable to this Agreement, Trustees shall not be obligated to continued performance under this Agreement in the event the California State Legislature fails to make a budgetary appropriation to the general fund of California State University. It is mutually agreed that if the State Legislature does not make an appropriation, Trustees may terminate this Agreement.
  - 19.6.1. In the event Trustees close the University, Trustees may elect to terminate this Agreement without any further cost or liability to Trustees. Trustees shall make such election in writing to Licensee not later than thirty (30) days following their decision to close the University.



- 19.6.2. In the event Trustees close the University, but not all Universities, the Parties may mutually agree to relocate the System to another University. In the event the Parties agree to relocate the System to another Trustees University, Trustees shall reimburse Licensee for reasonable costs to relocate the System.
- 19.6.3. Trustees will include in their budget request each year during the Term monies sufficient to fund the estimated cost for Electricity hereunder.
- 19.6.4. For the avoidance of doubt, the Parties agree that a delayed appropriation and any insufficient appropriation shall not be deemed to be a non-appropriation for purposes of this Section 19.6.
- 19.7. Taxes. Licensee, its successor and assigns, shall pay all lawful taxes, including possessory interest or other tax, assessments or charges that may at any time be levied upon any interest in System or this Agreement. Trustees are exempt from municipal energy and utility users' taxes and franchise fees on Electricity purchased from Licensee as a private on-site energy storage services provider. To the extent any such taxes are levied on Trustees with respect to purchases of peak kW demand reductions from Licensee, Trustees shall pay all such taxes.
- 19.8. Audit. Licensee agrees that Trustees, the Bureau of State Audits, and their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement, at such entity's sole cost. Trustees agrees that Licensee or its designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Licensee and Trustees agree to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated by Trustees. Licensee agrees to allow the auditor(s) access to such records during normal business hours after reasonable notice and to allow interviews of any employees who might reasonably have information related to such records. Further, Licensee agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896). Trustees will provide information related to this Agreement as reasonably requested by Licensee upon Licensee's reasonable request, but in no event later than ten (10) Business Days after such request, including information regarding (1) the Local Electric Utility and/or Utility service account number(s) associated with the Site where the System installed; (2) twelve (12) months of billing data for the meter behind which the System will be installed; (3) a general description of Trustees operations at the Site; and (4) the energy or capacity reductions related to the System and consumption by Trustees at the Site.

19.9. Notices. Except as otherwise expressly provided in this Agreement, all notices and other communications to be given or made under this Agreement shall be in writing, shall be addressed as specified below, and shall either be personally delivered, by registered or certified mail, electronic mail with positive return receipt, or by facsimile during a Business Day. Initially, the respective Parties' addresses and fax numbers are:

Licensee

Address: Choose an item.  
City: Choose an item.  
State: Choose an item.  
Zip: Choose an item.  
Attn: Choose an item.  
Title: Choose an item.  
Phone: Choose an item.  
E-mail: Choose an item.

Lender:

Address: Choose an item.  
City: Choose an item.  
State: Choose an item.  
Zip: Choose an item.  
Attn: Choose an item.  
Title: Choose an item.  
Phone: Choose an item.  
Facsimile: Choose an item.  
E-mail: Choose an item.

CSU Office of the Chancellor:

Address: Choose an item.  
City: Choose an item.  
State: Choose an item.  
Zip: Choose an item.  
Attn: Choose an item.  
Title: Choose an item.  
Phone: Choose an item.  
Facsimile: Choose an item.  
E-mail: Choose an item.

California State University [Campus]:

Address: Choose an item.  
City: Choose an item.  
State: Choose an item.  
Zip: Choose an item.  
Attn: Choose an item.  
Title: Choose an item.  
Phone: Choose an item.  
Facsimile: Choose an item.  
E-mail: Choose an item.

- 19.10. Compliance with NLRB Orders. In submitting a bid or signing this Agreement Licensee swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Licensee within the immediately preceding two-year period because of Licensee's failure to comply with an order of a federal court which orders the Licensee to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, Public Contract Code Section 10296.
- 19.11. Non-Discrimination. During the performance of this Agreement, Licensee and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, nor deny family care leave. Licensee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Licensee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Licensee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. Licensee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.
- 19.12. Americans with Disabilities Act. Licensee assures Trustees that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
- 19.13. Domestic Partners. Licensee certifies that it follows Public Contract Code Section 10295.3 with regard to benefits for domestic partners.
- 19.14. Drug-Free Workplace. Licensee will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
- 19.14.1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations. Establish a Drug-Free Awareness Program to inform employees about: The dangers of drug abuse in the workplace; the person's or organization's policy of maintaining a drug-free workplace; any available counseling, rehabilitation and employee assistance programs; and, penalties that may be imposed upon employees for drug abuse violations. Every employee who works on the

proposed System will: Receive a copy of the company's drug-free workplace policy statement; and agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

- 19.14.2. Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Licensee may be ineligible for award of any future State agreements if Trustees determine that any of the following have occurred: the Licensee has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Government Code 8350 et seq.)
- 19.15. Corporate Qualifications to do Business in California.
  - 19.15.1. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.
  - 19.15.2. "Doing business" is defined in Revenue and Tax Code Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
  - 19.15.3. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.
- 19.16. Conflict of Interest. Licensee needs to be aware of the following provisions regarding current or former state employees. If Licensee has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
  - 19.16.1. Current State Employees (Public Contract Code 10410):
    - 19.16.1.1. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
    - 19.16.1.2. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
  - 19.16.2. Former State Employees (PCC 10411):
    - 19.16.2.1. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
    - 19.16.2.2. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with

any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

19.16.3. If Licensee violates any provisions of above paragraphs, such action by Licensee shall render this Agreement void. (PCC 10420)

19.16.4. Members of boards and commissions are exempt from the conflict of interest provisions of this Section 19.16 if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

19.17. Labor Code/Workers Compensation. Licensee needs to be aware of the provisions which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions, and Licensee affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700).

19.18. Expatriate Corporations. Licensee hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

19.19. Employment of Undocumented Aliens. Licensee verifies and warrants that, in entering into this Agreement with Trustees, Licensee has not, in the preceding five years, been convicted of violating a state or federal law regarding the employment of undocumented aliens.

19.20. Sweatfree Code of Conduct.

19.20.1. All contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.

19.20.2. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under Subsection 19.21.1.

- 19.21. Child Support Compliance Act. For any Agreement in excess of \$100,000, the Licensee acknowledges in accordance with Public Contract Code 7110, that:
- 19.21.1. The Licensee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
  - 19.21.2. The Licensee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 19.22. Union Activities. For all contracts, except fixed price contracts of \$50,000 or less, the Licensee acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Agreement and agrees to the following:
- 19.22.1. Licensee will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
  - 19.22.2. No state funds received under this Agreement will be used to assist, promote or deter union organizing.
  - 19.22.3. Licensee will not, for any business conducted under this Agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
  - 19.22.4. If Licensee incurs costs, or makes expenditures to assist, promote or deter union organizing, Licensee will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Licensee shall provide those records to the Attorney General upon request.
- 19.23. Integration of Riders. This Agreement, together with the Riders incorporated hereunder, constitute the entire Agreement and understanding between Trustees and Licensee with respect to the subject matter hereof and supersede all prior agreements relating to the subject matter hereof, which are of no further force or effect.
- 19.23.1. These Riders referred to herein are integral parts hereof and thereof and are made a part of this Agreement by reference. In the event of any conflict between the Agreement and any Exhibit, or between any Exhibits, the conflict shall be resolved in the following order of priority:
    - 19.23.1.1. Rider B-2 University Specific Supplemental Conditions shall prevail over the Agreement and all other Riders;
    - 19.23.1.2. The Agreement shall prevail over all riders except Rider B-2;
    - 19.23.1.3. The Agreement and Riders A-1 through I shall prevail over Rider K;

- 19.24. Limited Effect of Waiver. The failure of either Trustees or Licensee to enforce any of the provisions of this Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on that Party's part of any such provision, in any other instance or of any other provision in any instance.
- 19.25. Relationship of Parties. The relationship between Trustees and Licensee shall not be that of partners, agents or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes.
- 19.26. Standby Capability. Licensee will to the extent possible (physically, operationally and subject to any Distributed Energy Resources Market Product Agreements) provide standby capability from System in cooperation with other upgrades made by Trustees for Standby power and disaster recovery.
- 19.27. Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Trustees will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- 19.28. Dispute Resolution. If a dispute arises between the Parties regarding this Agreement, the Parties shall attempt in good faith to expeditiously negotiate a resolution to the dispute for a period of not less than forty-five (45) days from notification of the dispute. The Parties agree:
- 19.28.1. All disputes prior to COD shall be follow the procedures in Article 39.01 of Rider B-1; and
- 19.28.2. All disputes after COD shall attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner; and
- 19.28.3. Conduct negotiations through a representative or representatives of each Party who is authorized to act for the Party and resolve the dispute without resorting to higher authority.
- 19.28.4. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Electricity delivered at the Electrical Interconnection Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of three (3) years from the rendition thereof, and thereafter any objection shall be deemed waived.
- 19.29. Unenforceable Provision. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

- 19.30. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 19.31. **Successors and Assigns.** This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns. Assignment of rights under this Agreement shall comply with Article 12 of this Agreement.
- 19.32. **Licensee Press Releases.** To avoid any conflicts with fair trade rules regarding claims of storage or renewable energy use, Licensee shall submit to Trustees for approval any press releases regarding Licensee's use of storage or renewable energy in connection with this Agreement and shall not submit for publication any such releases without the written approval of Trustees, which approval shall not be unreasonably withheld or delayed. Trustees and Licensee may by mutual written agreement set forth specific statements that may be used by Licensee in any press releases that address storage or renewable energy provided pursuant to this Agreement.
- 19.33. **Confidentiality of Data.** Any financial, statistical, personal, technical and other data and information relating to the either Party which are designated confidential by a disclosing party (the "Disclosing Party") and made available to the other party (the "Receiving Party") in order to carry out the Agreement shall be protected by the Receiving Party from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the Disclosing Party; provided that Licensee shall be permitted to provide confidential information to Local Electric Utilities (PG&E, SCE, SDG&E, SMUD, TID) the CPUC as may be reasonably required. The Disclosing Party shall identify all confidential data and information and shall provide Receiving Party in writing with the Disclosing Party's procedural requirements for protection of such data and information. A Receiving Party shall be permitted to disclose information designated as confidential by the Disclosing Party as follows:
- 19.33.1. to the Party's affiliates, the Party's or its affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential;
- 19.33.2. in order to comply with any applicable Law (including, in the case of Trustees, the California Public Records Act, Government Code sections 6250 et seq., and the Bagley-Keene Act, Government Code sections 11120 et seq.), regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the Disclosing Party; or
- 19.33.3. in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

If Trustees are required to disclose confidential information pursuant to Sections 19.33.2, it shall, to the extent permitted by Applicable Law, provide notice to Licensee. Trustees shall not be: (i) prohibited from complying with Applicable Law or (ii) liable to Licensee for monetary or other damages incurred in connection with the disclosure of the Confidential Information. Except as provided in the preceding sentence, the Parties shall



be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

19.34. Independent Status. The Licensee, and the agents and employees of Licensee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Trustees. While Licensee may (or may not) be required under the terms of this Agreement to carry worker's compensation Insurance, Licensee is not entitled to unemployment or workers' compensation benefits from Trustees.

19.35. Endorsement. Nothing contained in this Agreement shall be construed as conferring on any Party hereto, any right to use the other Party's name as an endorsement of product/service or to advertise, promote or otherwise market any product or service without the prior written consent of the other Party. Furthermore, nothing in this Agreement shall be construed as endorsement of any commercial product or service by Trustees or Trustees' officers or employees.

19.36. Covenant Against Gratuities. The Licensee warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Licensee, or any agent or representative of the Licensee, to any officer or employee of Trustees with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this warranty, Trustees shall have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by Trustees in procuring on the open market any items which the Licensee agreed to supply shall be borne and paid for by the Licensee. The rights and remedies of Trustees provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.

19.37. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Licensee avers that it will not enter into any arrangement with any third party which might abridge any rights of Trustees under this Agreement.

19.38. Authority. The signatories hereto represent and warrant that they are duly authorized on behalf of their respective entities to enter into and consummate this Agreement.

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and all riders hereto and intending to be legally bound hereby, Trustees and Licensee execute this Agreement as of the Effective Date by signing below.

“TRUSTEES”

California State University [Campus]

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Trustees Office of General Counsel

By: \_\_\_\_\_  
Name:  
Title:  
Date:

“LICENSEE”

By:

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

## **RIDER A-1**

MAP AND PREMISES LOCATION AND LICENSED AREA

[CAMPUS TO INSERT CAMPUS, PREMISE AND LICENSED AREA MAPS]

**End of Rider A-1**

## RIDER A-2

### ENERGY STORAGE PROGRAM SUMMARY AND KNOWN SITE RESTRICTIONS

| Premise Address | Premise Name | Delivery Service Account Number | Tariff rate and service voltage as of effective date | Energy Storage System Size (kW) | Total SGIP Eligible Project Cost |
|-----------------|--------------|---------------------------------|--|---------------------------------|----------------------------------|
| XXXXXX          | XXXXXX       | XXXXXX                          | XXXXXX   | XXXXX                           | XXXXXX                           |

Known Restrictions. In accordance with Section 3.8 of the Agreement, the following information references any known restrictions on the use of the Premises or the Site for the construction, ownership, use and operation of the System, including any land use restrictions, known underground structures or equipment, or limitations arising under permits or applicable law, as well as any additional Environmental Documents, reports or studies in the possession or control of CSU, which shall each have been delivered to Licensee as of the Effective Date: XXX

| Type of Information   | Information Delivered to Licensee as of the Effective Date |
|---|--|
| Phase I environmental site assessment   |  |
| Reports on site sampling (soil or groundwater)  |  |
| Land use restrictions imposed by governmental authorities   |  |
| Cleanup plan, corrective action plan or permits applicable to Premises                            |  |
| Open spill reports or unresolved release reports  |  |
| Known underground storage tanks, foundations, utilities   |  |
| Utility easements or public rights of way   |  |
| Completed closure or “cap” on buried waste or other materials                                     |  |
| Collection Systems in place for extracting and collecting methane, groundwater or leachate        |  |
| Subject to the control of a trustee, group of entities or entities other than landlord and/or CSU |  |
| Condition of roof material (if licensed area is rooftop)  |  |

**End of Rider A-2**

## **Rider B-1**

### **ENERGY STORAGE SITE LICENSE AND SERVICES AGREEMENT GENERAL CONDITIONS**

#### **1. DEFINITIONS**

Acceptance -When the Project has been completed in all respects in accordance with the Plans and Specifications, and the Contract has been otherwise fully performed by the Licensee, to the full satisfaction of the Trustees, and the Commercial Operation Date has been achieved, the Trustees will accept the Project as complete.

Addendum - A document issued to the Licensee by the Trustees, prior to the agreement on the Actual Peak Demand Reduction Rate that modifies or supersedes portions of the Contract Documents.

Agreement – Exhibit A of the Systemwide Energy Storage Program Master Enabling Agreement executed by both the Licensee and the Trustees, that provides the Work will be done in accordance with the Contract Documents as specified, as approved and on file with the Trustees and as incorporated into the Contract Documents by reference.

Allowance - Allowances are allocations of the Contract Amount to portions of the Work that could not be specified sufficiently for competitive bidding.

Architect – A California-licensed architect employed by the Licensee, who is responsible for all engineering and architectural services to be performed in connection with the Project. For projects on which an engineer or landscape architect is employed instead of an architect, the term “Architect” shall mean the design professional so employed for the Project.

Bid Date - The date for submission of technical and cost proposals; same as proposal due date.

Budgeted Direct Construction Cost - The budgeted total cost of the Work, excluding Design Fees, Preconstruction Fees, the Licensee’s site management fee, the Licensee’s contingency, and the Licensee’s overhead and profit, line 7 on CPDC form 2-7.

Bidder - Any individual or business entity acting directly or through an authorized representative that submits a technical and cost proposal for the Work in response to a Request for Proposals. “Bidder” and “Proposer” are synonymous.

Building Official - Trustees-appointed, the senior building official for the California State University (the Chief of Architecture and Engineering) is responsible for the overall administration and operational control of the building code. (See University Deputy Building Official).

Business Day - Calendar day excluding Saturdays, Sundays, national holidays and state holidays; same as Working Day.

Capital Planning, Design and Construction - Department within Business and Finance, a division in the Office of the Chancellor of the California State University, responsible for all major capital outlay projects.

Change Order - A written agreement entered into after the award of the ESSLSA that alters or amends or adds to the Scope of Work specified in Rider I and/or the Final Construction Documents and specifies the compensation to be paid Licensee for the extra or changed work, as described and to be governed by the provisions of Article 38 of this Rider B-1.

Construction Administrator - The person designated by the Trustees to manage the construction phase of the Project, and authorized to approve changes to the Contract.

Construction Documents - A product of the ESSLSA Contract Documents, the progress design documents prepared by the Licensee, represented by the Design Documents as further developed in Design Development through the submittal of the 95% CD documents.

Construction Inspector - The Inspector of record for the Project who works under the direction of the University Deputy Building Official.

Construction Schedule - The Licensee's time use plan for completing the Work within the Contract Time.

Contract - The Contract Documents which collectively represent the entire Agreement between Trustees and the Licensee, and which supersede any prior negotiations, representations, or agreements, either written or oral.

Contract Documents – The ESSLA Contract Documents, Plans, Specifications, Addenda, Agreement, Bonds, ESSLA General Conditions, Supplementary General Conditions, Special Conditions, Change Orders, and any other documents so designated by the Trustees.

Contract Time - The period of time, set out in Calendar Days, established in the Contract Documents within which the Work must be completed. The Contract Time may be adjusted by Change Orders or by time extensions as provided in Section 8.6 of the Agreement.

Day - Unless otherwise indicated herein, day is a calendar day.

Direct Cost of the Work - Costs necessarily incurred by the Licensee to perform the construction Work shown on the Construction Documents, usually performed by the trade contractors.

Engineer - A California-licensed engineer employed by the Licensee or Architect, who is responsible for engineering services. There may be more than one engineer, depending on the Work required, (i.e., civil, structural, electrical, geotechnical, mechanical).

ESSLA – Energy Storage Site License and Services Agreement or Exhibit A and all Riders of the Systemwide Energy Storage Program Master Enabling Agreement including Construction Documents produced and Final Construction Documents.

ESSLA Contract Documents - Exhibit A and all Riders described in the Systemwide Energy Storage Program Master Enabling Agreement.

Executive Facilities Officer - University official who oversees the capital outlay process.

Field Instruction - A written order from the Trustees to the Licensee, signed by the Construction Administrator.

Final Construction Documents - The Contract General Conditions, Supplementary General Conditions, Plans, Specifications, and Addenda related to the bidding of trades and construction of the Project at the issuance of building permits/notice to proceed to construction.

Licensee - The individual or business entity that has entered into an ESSLA with the Trustees.

Licensed area - The area specified in ESSLA Rider A-1 for the Project and the area made available for the Licensee's operation.

Plans - The drawings prepared by the Licensee and approved by the Trustees, which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions of any of these, and which show the location, character, dimension, or details of the Work.

Preliminary Project Criteria Documents - The ESSLA Contract Documents of the Project at the time of award.

Prevailing Wages - The general prevailing rate of wages in effect when Licensee advertises the trade contractor bidding, and identified by the Director of the Department of Industrial Relations of the State of California pursuant to section 1770 of the Labor Code.

Price - The amount of compensation for delivered Actual Peak Demand Reduction from the System stated in the Agreement expressed in terms of \$0.XXXX/KW.

Progress Schedule – Rider E which is the periodically updated Construction Schedule that reflects the actual progress of the Work and impacts on the Work thereby maintaining a current projected date of completion. Impacts on the Work include, but are not limited to, anticipated delays, re-sequencing of tasks, and Change Orders.

Project - The total Work to be designed and constructed as approved by the Trustees and as required by the Agreement and any Change Orders.

Project Manager - The on-site representative of the Construction Administrator, but without the authority to approve changes to the Contract.

Proposal - The technical and cost proposal packages submitted by the proposers on the bid date. A bid may be considered a proposal.

Proposal Documents – Request for Qualifications (Advertisement), Request for Qualifications, Statements of Qualifications, Request for Proposals, and the Technical and Cost Proposals.

Proposer - Any individual or business entity acting directly or through an authorized representative that submits a technical and cost proposal for the Work in response to a Request for Proposals. “Proposer” and “Bidder” are synonymous.

Request For Proposals (RFP) - The documents that the Trustees issue to the Proposers describing and specifying the requirements of the Work.

Request for Qualifications (RFQ) - The documents from CSU RFQ number 000617 requesting submittal of Statements of Qualifications to the Trustees from interested and qualified Licensees to provide design and construction services for the Project.

Specifications - The instructions and requirements that complement the plans and describe the manner of performing the Work or the quantities, qualities, and types of materials to be furnished.

State - State of California.

Subcontractor - Contractor that is under contract to the Licensee or another subcontractor for completion of a portion(s) of the Work. Same as Trade Contractor.

Superintendent - The representative of the Licensee at the construction site who is authorized to receive instructions from the Trustees, and who is authorized to direct the performance of the Work on behalf of Licensee.

Supplier or Vendor - Any individual or business entity that contracts with the Licensee or Trade Contractor to provide materials or equipment.

Trade Contractor - Contractor that is under contract to the Licensee or another subcontractor for completion of a portion(s) of the Work. Same as Subcontractor.

Trustees – The State of California, acting by and through the Board of Trustees of the California State University and their authorized representatives who act on behalf of the Trustees. See also Executive Facilities Officer and Construction Administrator.

University - The California State University [Campus] upon which the Project is located, and the University President and other University officers and employees acting within the scope of their duties.

University Deputy Building Official - A University-appointed individual responsible for University-specific building code administrative and operational control. This individual acts as a deputy under the authority of the Building Official.

Work - That total design and construction work required to be performed, or done under the Agreement and any Change Orders, including the furnishing of all design services, labor, materials, and equipment.

Working Day - Day excluding Saturdays, Sundays, national holidays and state holidays; same as Business Day.



## 2. PROPOSALS

### 2.1. Duty to Carefully Examine These Instructions

Licensee and the trade contractors for this Project shall carefully examine the instructions contained herein and be cognizant of the conditions that must be satisfied before submitting a proposal, and the conditions that affect the award of the ESSLA.

### 2.2. Competence of Proposers

#### A. License and Public Works Registration.

##### (1) License.

No Bidder may bid on Work for which it is not properly licensed. The Trustees shall disregard any proposal received from a proposer who is not properly licensed (Business and Professions Code section 7028.15). Nor will the Trustees award the ESSLA to a proposer who does not possess the appropriate contractor's license, which is that specified in the RFQ/RFP. Proposers participating in a joint venture must individually possess a current license when submitting the joint venture proposal, and the joint venture must possess a joint venture license at the time of award (Public Contract Code section 3300).

##### (2) Public Works Registration with Department of Industrial Relations

The Trustees will only issue public works bids and award public works contracts to currently registered contractors and subcontractors on the Trustees' public works projects. All proposers and subcontractors of all tiers must register to bid public works projects with the Department of Industrial Relations (DIR), and obtain and maintain current registration numbers. Note: DIR will assess a penalty on any public works contractor who allows its registration to lapse. For more information please review the DIR public works registration requirements at <http://www.dir.ca.gov/Public-Works/PublicWorks.html>.

The following applies to this Agreement:

- Contractor shall check the public works registration for all subcontractors that it proposes to list to ensure that each subcontractor is registered to bid public works projects with the DIR;
- An unregistered contractor or subcontractor can be replaced with one who is registered;
- A contract with an unregistered contractor or subcontractor is subject to cancellation but is not void as to past work.
- Licensee shall provide a monthly sub-contractor update with all DIR registration numbers.

#### B. Prequalification Rating.

The Trustees shall issue an RFP only to Proposers who have prequalified with the Trustees (Public Contract Code section 10764).

The Trustees shall disregard any proposal received either from a Proposer that is not currently prequalified or from a Proposer that is prequalified but the rating is not high enough to accommodate its proposal. Although this prequalification permits participation in the submitting of a proposal for the Project, it does not mean that the proposer satisfies the requirements of being a "responsible" bidder. This determination occurs later in the process (see Article 32.09, Failure to be a Responsible Bidder).

### 2.3. Necessity for Careful Examination of Site, Plans, and Specifications

The Licensee and trade contractors shall carefully examine the Site, the plans, and specifications for the Project, and shall investigate and be satisfied as to the conditions to be encountered, the character and quantity of surface and subsurface materials or obstacles to be encountered, rights of way and easements at or near the Site, the Work to be performed, and materials to be furnished and as to the requirements

of the proposal, plans, and specifications for the Project. See Article 36.11, Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc. Bidder certifies that Bidder has complied with the requirements of this provision by the submission of its bid.

Any failure by the Licensee and trade contractors to acquaint themselves with information that is available or with reasonable investigation may be available will not relieve them from responsibility to properly estimate the difficulty or cost to perform the Work. Such examination does not require independent underground soil borings unless required elsewhere in the Contract Documents.

A. Subsurface Investigations.

Where the Trustees have made investigations of subsurface conditions and have made that information available to the Licensee, such information is limited in scope to that which has been actually encountered in the investigations, and is included only for the convenience of the Licensee.

The Trustees assume no responsibility whatsoever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations or any interpretation of the above. There is no guarantee or warranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen conditions or developments may not occur. Making such information available to the Licensee is not to be construed in any way as a waiver of this provision. The Licensee must satisfy itself through its own investigations as to the actual conditions to be encountered.

B. Differing Site Conditions.

During the progress of the Work, if the Licensee encounters a subsurface or latent condition at the Site that is substantially different from those indicated in the Contract Documents or made available for examination, a Differing Site condition may exist. The Licensee shall immediately, in writing, notify the Architect, the Construction Administrator, and the Construction Inspector of the condition encountered. The Architect shall investigate the assertion of a Differing Site condition by collecting the facts and applying the facts as expressed by the Architect to the appropriate provisions of the Contract Documents. If the Architect in the exercise of reasonable discretion determines that a differing Site condition exists and that the differing site condition directly results in extra Work, and if the Trustees concur, the Licensee shall be entitled to a Change Order that shall compensate the Licensee for the extra Work.

2.4. Clarification During Bidding

The Proposer shall examine the RFQ/RFP documents in preparing its proposal and shall report to the Construction Administrator any omissions, discrepancies, or errors found in the RFQ/RFP. Before the date of opening proposals, the Proposer shall submit a written request for clarification to the Construction Administrator who may give such clarification in the form of an addendum to all Proposers if time permits. Otherwise, in estimating the cost of the Project, the Proposer shall consider that any conflicts shall be governed by Article 37.01, Interpretation of Contract Requirements.

Only the Construction Administrator is authorized to answer questions or prepare addenda relative to the Project. Information obtained verbally from any source has no contractual authority, may not be relied upon, and shall have no standing in any event that may occur.

The Proposer is required to acknowledge each addendum on the Cost Proposal Form. Therefore, Proposer is responsible for assuring receipt of all addenda. Proposer shall confirm all addenda with designated Trustees' official one (1) Business Day prior to opening proposals.

2.5. Proposal Documents

Once the Trustees have completed the review of the responses to the RFQ and published the list of qualified proposers, the Trustees will issue an RFP to only the qualified proposers. In response to the requirements of the RFP, each Proposal will consist of two separate submittals, the cost proposal and the technical proposal.

Following are forms that Proposer shall tender with its Proposal:

A. Cost Proposal.

The Trustees will furnish a cost proposal package, which Proposer must completely fill out and execute, and submit as its cost proposal. Cost Proposals not presented using the furnished cost proposal package shall be disregarded (Public Contract Code section 10764). Proposer may not transfer the cost proposal package to another Proposer, and must submit it in the same name as is used on the Proposer's license and prequalification.

The Trustees' cost proposal package contains a standard cost or fee proposal form that shall be used for Proposer's proposal. Each proposal shall give the prices proposed in the manner required by the proposal and shall be signed by the Proposer or by the Proposer's duly authorized representative, with its address and telephone number. If an individual makes the proposal, the individual's name, postal address, and telephone number must be shown. If made by a partnership, the proposal shall have the signature of all partners, or an affidavit signed by all partners empowering one partner as an agent to act in their behalf, and shall include the address and telephone number of the partnership. A proposal submitted by a corporation shall show the name of the state in which the corporation is chartered, the name of the corporation, its address and telephone number, and the title of the person who signs on behalf of the corporation. The corporation shall also complete and submit the Certification, attaching a certified copy of corporate board action that identifies and authorizes the person who may sign and submit bids for the corporation. The Trustees shall reject any proposal submitted that is not signed by the Proposer or by the Proposer's duly authorized representative.

B. Proposer's Bid Security.

No bid security is required for this Project.

2.6. Proposal Regulations

A. Submission of Proposals.

Proposers shall submit proposals as instructed in the RFP. It is the Proposer's responsibility to ensure that its proposal is received in the proper time and location. Delays in timely receipt of the proposal caused by the United States or the Trustees' mail system, independent carriers, acts of God, or any other cause shall not excuse late receipt of the proposal. The Trustees shall return unopened any proposal received after the time specified in the RFP or in any addendum (Public Contract Code sections 4104.5 and 10766).

All proposals shall be submitted to the Trustees under sealed cover, shall be identified plainly as a proposal for the Project, and shall be addressed as directed in the RFP. The Trustees will disregard proposals not marked properly.

B. Withdrawal of Proposals.

Any proposal may be withdrawn at any time prior to the time fixed in the public notice for the opening of proposals, but only by a written request from the Proposer or its authorized representative filed with the Trustees. A request to withdraw a proposal that is communicated orally in person, or by the use of telegram or telephone is not acceptable. The withdrawal of a proposal shall not prejudice the right of a Proposer to file a new proposal. This paragraph does not authorize the withdrawal of any proposal after the time of the public notice for the opening of proposals (Public Contract Code section 10767).

C. Public Opening of Cost Proposals.

Cost proposals will be publicly opened and read at the time and place indicated in the RFP. Proposers or their agents are invited to be present.

D. Rejection of Irregular Cost Proposals.

The Trustees may reject any cost proposal if it shows any alterations of forms, additions not called for, conditional proposals, incomplete proposals, unsigned proposals, erasures, or irregularities of any kind. If Proposer changes the proposal amount after the amount has been inserted, Proposer shall initial the change.

E. Power of Attorney or Agent.

When an agent signs the proposal, a power of attorney shall either be on file with the Trustees before the opening of proposals, or be submitted with the proposal. Failure to submit a necessary power of attorney may result in the rejection of the proposal as irregular and unauthorized. A power of attorney is not necessary in the case of a general partner of a partnership.

F. Waiver of Irregularities.

Trustees reserve the right to waive minor irregularities in proposals submitted.

2.7. Competitive Bidding

Proposer shall submit only one proposal. A party who has quoted prices on materials or Work to a Bidder is not thereby disqualified from quoting prices to other Bidders, or from submitting a bid directly for the materials or Work.

All Proposers are hereby notified that any collusive agreement fixing the prices to be bid in order to control or affect the awarding of the ESSLSA may render void any Contract awarded under such circumstances. The Proposer, by act of submitting a proposal, certifies that in the preparation of the proposal, no bid was received by the Proposer from a bid depository, which depository, as to any portion of the Work prohibits, or imposes sanctions for, the obtaining by the Proposer, or the submission to the Proposer by a subcontractor or vendor or supplier of goods and services, of a bid outside the bid depository. The certification shall constitute a warranty, the falsity of which shall entitle the Trustees to pursue any remedy authorized by law and shall include the right at the option of the Trustees of declaring any Contract made as a result thereof to be void (Business & Professions Code section 16600 et seq.).

2.8. Mistake in Proposal

As required by Public Contract Code section 5100 et seq., a Proposer shall not be relieved of a proposal without consent of the Trustees, nor shall any change be made in a proposal because of mistakes. However, a Proposer may pursue relief of its proposal in accordance with section 5100 et seq. of the Public Contract Code.

2.9. Failure to be a Responsible Bidder

In order to be considered for award of the ESSLSA, a Proposer must be a responsible bidder (Public Contract Code section 10780). To be responsible, a Proposer, in the judgment of the Trustees, must be sufficiently trustworthy and possessed of the requisite quality, fitness, capacity and experience to satisfactorily perform the Work (Public Contract Code section 1103). Should the Trustees question the Proposer's responsibility, the Proposer shall be given an opportunity to rebut any evidence of non-responsibility, and to present evidence of responsibility. The hearing shall be informal, and may be conducted in whole or in part in writing by an individual appointed by the Trustees to hear the matter. A decision concerning the Proposer's responsibility shall be mailed to the Proposer within ten (10) Days of the conclusion of the hearing.

2.10. Small Business Five Percent Proposal Advantage

If a certified small business is the highest scoring Proposer, the Trustees will not calculate the five percent bid advantage. Only the DVBE incentive will be calculated in this situation. Only another small business may displace the small business highest Proposer.

A. Preference for Small Businesses.

In accordance with Government Code section 14835 et seq., and Title 2, California Code of Regulations, section 1896 et seq., the Trustees shall give a small business proposal advantage of five percent, up to a maximum of \$50,000, to contracting firms that have been certified as a "Small Business" by the Office of Small Business & DVBE Services in the Procurement Division of the Department of General Services. Such certification shall be in accordance with section 1896.2 of Title 2 of the California Code of Regulations. To receive the five percent advantage, the certified small businesses shall:

- (1) Submit with the proposal a completed form of “Request for Small Business Five Percent Preference –Certification” form;
- (2) Be certified Small Business upon verification in accordance with section 1896.2, having applied for certification no later than 5:00 p.m. on the proposal due date;
- (3) Submit a timely and responsive proposal;
- (4) Be determined to be a responsible proposer.

B. Preference for Non-small Businesses.

(1) Preference.

The application of the five percent small business bidding preference is also extended to any non-small business that commits to subcontracting at least 25% of its net proposal price to California certified small businesses and/or microbusinesses. To receive this preference the non-small business must satisfy the following criteria:

- a. Indicate in its proposal its commitment to subcontract at least 25% of its net proposal amount with one or more small businesses [submit the “Request for Small Business Bidding Preference” form],
- b. Submit a timely and responsive proposal,
- c. Be determined to be a responsible Proposer, and
- d. Submit the California certified small businesses on the List of Subcontractors for Design-Build Projects form and specify the dollar amount of each small business subcontractor’s bid thereon.

(2) Penalty.

The Trustees will impose a penalty to any non-small business who receives the small business preference and does not contract 25% of its net bid price to California certified small businesses and/or micro businesses. The penalty will be no more than two times the amount of the bid preference received. For example, if the Licensee received a bid preference of \$49,000, and does not contract 25% of its net bid price with certified small businesses and/or micro businesses, then the Trustees will assess an amount to be forfeited by the Licensee of \$98,000.

C. Trustees’ Reporting of Small Business Participation.

Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of certified small businesses in contract awards. To this end, the successful Proposer shall inform the Trustees of any contractual arrangements with subcontractors, consultants or suppliers that are certified small businesses.

2.11. California Company; Reciprocal Preference Against Nonresident Contractors; Certification

The Trustees shall grant a California company a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts. The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor who is the selected Proposer, except where the resident contractor is eligible for a California small business preference, in which case the preference applied shall be the greater of the two, but not both.

Each Proposer shall certify at the time of proposal opening that the Proposer qualifies as a “California company,” which means a business entity licensed in California on the date of bid opening and which is one of the following:

- A. a business entity with its principal place of business in California,
- B. an out-of-state contractor whose state does not provide a local contractor preference, or
- C. an out-of-state contractor that has paid at least \$5,000 in sales or use taxes in the immediately preceding five years.

If the Licensee does not qualify as a California company, then it shall indicate the name of the state in which its principal place of business is, and the amount of the local contractor preference in that state (Public Contract Code section 6107).

## 2.12. Disabled Veteran Business Enterprise Participation Requirement and Incentive

California state law requires that its state agencies achieve three (3) percent participation for Disabled Veteran Business Enterprises (DVBE) in state contracts. Failure of the Licensee to achieve three (3) percent DVBE participation on this Project will cause the Trustees to assess a penalty in accordance with the Contract Documents.

The successful Proposer understands and agrees that the DVBEs identified on the List of Trade Contractors form may only be replaced by another DVBE, and the substitution must be approved by the Trustees and the Department of General Services (DGS). Trustees will document changes to the scope of Work that impact the DVBEs identified in the GMP by contract change order, and will provide their decision on DVBE substitutions in writing via the subcontractor substitution process per Public Contract Code section 4100.

Failure of Licensee to seek substitution and adhere to the DVBE participation level identified in its Proposal may be cause for Contract termination, recovery of damages under rights and remedies due the State, and penalties as outlined in Military and Veterans Code section 999.9 and Public Contract Code section 10115.10 or section 4110.

### A. Special Definitions

- (1) “Disabled veteran” as used herein, means a veteran of the military, naval or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, “New Scouts,” and who has at least a ten (10) percent service-connected disability and who is domiciled in the State of California.
- (2) “Disabled veteran business enterprise contractor, subcontractor, or supplier” means any person or entity that has been certified by the Office of Small Business & DVBE Services and that performs a “commercially useful function,” as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:
  - a. A person or an entity is deemed to perform a “commercially useful function” if a person or entity does all of the following:
    - (i) is responsible for the execution of a distinct element of the Work of the contract;
    - (ii) carries out the obligation by actually performing, managing, or supervising the Work involved;
    - (iii) performs Work that is normal for its business services and functions;
    - (iv) is responsible, with respect to products, inventories, materials, and supplies required for the Contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and
    - (v) is not further subcontracting a portion of the Work that is greater than that expected to be subcontracted by normal industry practices.
  - (b) A contractor, trade contractor, or supplier will not be considered to perform a “commercially useful function” if the contractor’s, subcontractor’s, or supplier’s role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.
  - (c) Equipment Brokers
  - (I) A DVBE that rents equipment to the Trustees shall be deemed to be an equipment broker, unless one or more disabled veterans have 51-percent ownership of the quantity and the value of each piece of equipment. If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any contract, submit to the Trustees a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing the name, address, telephone number, and tax identification number of the disabled veteran owner.
  - (ii) A DVBE that rents equipment to the Trustees shall, prior to performing the contract, submit to the Trustees a declaration signed by each disabled veteran

- owner and manager of the enterprise stating that the enterprise obtained the contract by representing that the enterprise was a DVBE meeting and maintaining all of the requirements of a DVBE. The declaration shall include the name, address, telephone number, and tax identification number of the owner of each piece of equipment identified in the contract.
- (iii) State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the DVBE participation requirement.
  - (iv) A DVBE that is a broker or agent and that obtains a contract pursuant to these provisions shall, prior to performing the contract, disclose to the Trustees that the business is a broker or agent. The disclosure shall be made in a declaration signed and executed by each disabled veteran owner and manager of the enterprise, declaring that the enterprise is a broker or agent, and identifying the name, address, and telephone number of the principal for whom the enterprise is acting as a broker or agent.
- (3) DVBE as used herein, means a business concern certified by the Office of Small Business & DVBE Services as meeting all of the following criteria.
- A. The business is at least 51 percent owned by one or more disabled veterans, or in the case of a publicly owned business, at least 51 percent of its stock is unconditionally owned by one or more disabled veterans; a subsidiary that is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management, control and earnings are held by one or more disabled veterans.
    - (i) One or more disabled veterans manage and control the daily business operations. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
    - (ii) A sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm or other foreign-based business.
  - (b) Notwithstanding subdivision (3)(a), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a DVBE prior to that death or certification of a permanent disability, that business shall be deemed to be a DVBE for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons. A business is a DVBE pursuant to this subdivision under either of the following circumstances:
    - (i) For the duration of any contract entered into prior to the death or certification of permanent medical disability for the sole purpose of fulfilling the requirements of that contract.
    - (ii) After the date of the majority owner's death or certification of permanent medical disability established by this subdivision for the sole purpose of providing sufficient time to make orderly and equitable arrangements for the disposition of the business, except that the business shall not enter into any new contract as a DVBE for purposes of the program if the contract would not be completed within the three-year period.

B. Participation Requirement.

In order to satisfy and be responsive to this requirement, the Licensee must meet the three (3) percent DVBE Participation requirement, which is attained when:

- (1) The Licensee is not a DVBE and is committed to use DVBE trade contractors for not less than three (3) percent of the Cost of Work (including alternatives); or
- (2) The Licensee is a DVBE and is committed to performing not less than three (3) percent of the Cost of Work (including alternatives) with its own forces or in combination with those of other DVBEs.

C. Documentation Requirements.

The Licensee must document its satisfaction of the DVBE participation requirement. Final determination of DVBE Participation by the Licensee shall be at the Trustees' sole discretion.

(1) Required Documentation.

In addition to documentation submitted with the Cost Proposal, on the List of Trade Contractors form (see Article 32.05-b), the DVBE documentation forms that must be completed are as follows, and instructions for completing the required forms correctly are included to assist the Licensee.

(a) DVBE Transmittal Form.

Licensee must fill out the DVBE transmittal form as a cover sheet to the required documents, attach and submit it and the additional required documentation. All requested DVBE documentation must be completed on the forms provided and submitted with the DVBE Transmittal Form.

(b) Summary of Disabled Veteran Owned Business Participation (Attachment 1)

Summary of Disabled Veteran Owned Business Participation, Attachment 1, must be completed showing the type of Work and company proposed for DVBE participation, their trade contractors (if any), and other related information. Complete the form providing the following information:

- (i) Company Name: List the name of the company proposed for DVBE participation. If the prime contractor is a DVBE, its name must also be listed to receive participation credit.
- (ii) Nature of Work: Identify the proposed Work or service to be provided by the listed company.
- (iii) Contracting With: List the name of the party with which the company listed is contracting.
- (iv) Tier: Identify the contracting tier using the following level designations:  
0=Prime contractor;  
1=First tier trade contractor/supplier;  
2=Second tier subcontractor/supplier of first tier subcontractor/supplier;  
3=Third tier subcontractor/supplier of second tier subcontractor/supplier; etc.
- (v) Claimed DVBE Value: State the total dollar amount of the DVBE's bid.
- (vi) Percentage of Bid: State the percentage (%) of the claimed DVBE's bid as it relates to the Licensee's total project bid.
- (vii) DVBE Certification: The Licensee must include one copy of the DVBE certification from the Office of Small Business & DVBE Services for each DVBE listed on the Summary of Disabled Veteran Owned Business Participation.

(c) Licensee's Certification (Attachment 2)

The Licensee must sign and include the Bidder's Certification, certifying that each DVBE listed on the Summary of Disabled Veteran Owned Business Participation (Attachment 1) complies with the legal definition of DVBE.

(d) Disabled Veteran Business Enterprise Declarations (STD. 843)

The disabled veteran owner(s) and disabled veteran manager(s) of the DVBE must complete this declaration when a DVBE contractor or trade contractor will provide materials, supplies, services or equipment.

(2) Time Frame for Submitting Documentation.



The DVBE participation documentation must be submitted to the Construction Administrator with the Guaranteed Final PPA Rate. Failure to submit full and accurate documentation will result in the Trustees deeming your Guaranteed Final PPA Rate nonresponsive, and thus eligible for a penalty assessment as identified in the Contract Documents.

D. Use of Proposed DVBE.

If awarded the ESSLSA, the successful Licensee must use the DVBE suppliers and/or trade contractors proposed in its Guaranteed Final PPA Rate unless it has requested substitution and has received approval of the Trustees in compliance with the Subletting and Subcontracting Fair Practices Act. See Article 36.04, Substitution of Trade Contractors, subsection c-Substitution of a Disabled Veteran Business Enterprise.

E. Trustees' Reporting of DVBE Participation.

Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of DVBE in contract awards. To this end, the successful Licensee shall inform the Trustees of any contractual arrangements with trade contractors, consultants or suppliers that are certified DVBE.

F. Additional DVBE Information Sources.

For more information regarding DVBE certification, directories or for general DVBE information, contact:

State of California, Department of General Services, Procurement Division  
Office of Small Business & Disabled Veteran Business Enterprise Services (OSDS),  
Room 1-400, MS 210  
P.O. Box 989052, West Sacramento, CA 95798-9052 (mailing address)  
707 Third Street, First Floor, Room 400, West Sacramento, CA 95605 (physical address)  
Telephone number: (800) 559-5529 or (916) 375-4940; Fax number: (916) 375-4950  
Email: [osdshelp@dgs.ca.gov](mailto:osdshelp@dgs.ca.gov) or, via the Internet at  
<http://www.dgs.ca.gov/pd/Programs/OSDS.aspx>.

G. Incentive.

In accordance with Government Code section 14838(f), and Military and Veterans Code sections 999.5(a) and 999.5(d), the Trustees are granting a bid incentive for bid evaluation purposes only to Proposers that exceed the three percent DVBE participation requirement. The level of DVBE incentive will correlate to the level of participation; that is, the more DVBE participation proposed, the higher the incentive. The bid incentives are identified in the Request for Proposals.

H. Prime Contractor's DVBE Subcontracting Report (Form DVBE Subcontracting Report).

- (1) Licensee shall submit a DVBE Subcontracting Report to the Trustees at the end of the Project and upon completion of the Work, with the final retention payment.
- (2) In submitting the DVBE Subcontracting Report, the Licensee certifies the following information provided in the report is true and correct:
  - (a) the total amount Licensee received from the Trustees under the Contract,
  - (b) the name and address of the DVBE(s) that participated in the performance of the Contract,
  - (c) the total contracted amount for each DVBE,
  - (d) the total payment amounts made to the DVBEs, and
  - (e) the actual percentage of DVBE participation that was achieved for this Contract.

A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in accordance with Military and Veterans Code section 999.5(d).

I. Sanction for Licensee's Failure to Achieve the DVBE Incentive.

The Trustees will sanction any Contractor (Licensee) who receives the DVBE incentive and does not contract the incentive percentage dollar amount of its net Cost of the Work to DVBEs.

If by the end of construction, the Licensee does not realize the incentive DVBE percentage identified in its proposal, the Trustees shall assess an amount of \$50,000 per one percent shortfall down to the minimum of three percent (3%), prorated, and deduct it from the Contract Amount due.

3. ACCEPTANCE OF PROPOSAL – ESSLA

3.1. Award of ESSLA

If the Trustees deem the acceptance of a proposal or proposals is not in the best interests of the State, the Trustees may reject all proposals (Public Contract Code section 10785). If the Trustees accept the proposal(s) and award an ESSLA agreement (Exhibit A of the Master Enabling Agreement), the Trustees' award shall be made to the Proposer whose proposal complies with all the requirements prescribed and whose proposal is determined to be the best value among the submitted proposals.

3.2. Execution of Agreement

The ESSLA shall be signed by the successful Proposer and returned to Trustees, along with other requisite documentation such as the certificates evidencing the required insurance coverage (see Article 36.06, Insurance Requirements), within ten (10) Business Days of receipt from Trustees. If the successful Proposer is a joint venture, then the joint venture shall submit with the Contract certification form a formal resolution designating the person authorized to sign on behalf of the joint venture. No Contract will be binding on Trustees until it has been executed by Licensee and Trustees and approved by the attorney appointed according to law and authorized to represent the Trustees (Public Contract Code section 10820).

After the Trustees' Office of General Counsel has fully executed the Design Services Agreement, Licensee can expect to start Work within 30 days. The Trustees will issue to the Licensee a written Notice to Proceed in substantially similar form to Attachment 2 of the MEA that authorizes the start of design Work only. The Licensee may not begin Work before receiving the Trustees' written Notice to Proceed. Any Work performed by the Licensee before receipt of the written Notice to Proceed shall be considered as having been done at the Licensee's own risk.

4. DESIGN REQUIREMENTS

4.1. Scope of Work

Licensee shall furnish programming, architectural, landscape architectural, furniture and engineering services for the preparation of Construction Documents necessary to complete the Project in accordance with the requirements of the Contract Documents. Licensee shall furnish all labor, materials, equipment, services, and transportation necessary to complete the design and construction of the Project, including site work, finishes, structures, utilities, furniture and landscaping.

4.2. Intent of the Contract Documents

The intent of the Construction Documents is to provide the Trustees with full, complete, and accurate Project documentation, giving such directions as will enable any competent mechanic or other builder to carry them out, resulting in a Project that is complete in all respects. The Construction Documents shall identify that all items necessary or reasonably required to produce a complete and operational Project shall be provided.

4.3. Laws and Codes

A. Codes.

The Construction Documents and resulting construction shall comply with all laws, ordinances, rules and regulations of the state of California, including:

- (1) The California Building Standards Code (CBC), in Title 24 of the California Code of Regulations, as adopted and published by the California Building Standards Commission.
- (2) Compliance with the Department of State Architect, Access Compliance Unit's accessibility regulations in the California Code of Regulations Title 24 (Parts 2 and 3); 2010 federal ADA standards for accessible design; standards for state and local government facilities – Title II (where more restrictive than CBC.)
- (3) Compliance with the Office of the State Fire Marshal, fire and life safety regulations, including the most recent editions of NFPA 101, Life Safety Code and NFPA Fire Protection Handbook.
- (4) Compliance with the California State University Seismic Review Board seismic project peer review comments.
- (5) Other agencies (as may apply) elevators and escalators, Division of Occupational Safety & Health (DOSH), county health department (food and aquatics).

Codes and specifications incorporated by reference shall be those of the latest edition at the time of receiving proposals, unless otherwise specified, see Article 34.08, Standard Specifications.

B. Plan Review Related Appointments by Trustees.

(1) Plan Check Service Provider.

The Trustees shall appoint a plan check service provider for the Project from the Trustees' approved list of such firms. The selected service provider will review the Project Plans and Specifications for adherence to applicable codes and standards, providing an assessment of code compliance to the University Deputy Building Official. The service provider is solely responsible to the Trustees in the provision of these services.

(2) Seismic Peer Reviewer.

Per the Trustees' Seismic Policy, the California State University Seismic Review Board shall appoint a seismic peer reviewer for the Project.

(3) Mechanical Review Board electrical systems review

(4) Energy Storage peer review – economic pro forma analysis

(5) Section 7.4 of Exhibit A ESSLSA describing electric power requirements.

(6) Materials Testing and Inspection Services.

The Trustees shall appoint a firm(s) to provide materials testing and inspection services during construction. The testing and inspection services firms are solely responsible to the Trustees for observation of construction, determination of adherence to the Construction Documents (including approved Plans and Specifications) and compliance with the applicable codes and standards.

C. Plans and Specifications – Miscellaneous Requirements.

The Plans and Specifications shall identify the design codes, standards, and requirements used for the development of the plans, including the edition and applicable sections.

The Construction Documents shall include a quality control program and an implementation plan to ensure that the completed Project complies with the approved Project criteria. The design professional-of-record shall specify within the Construction Documents all tests and inspections that are required by the building code and those that are appropriate to achieve compliance with the Contract. The Licensee shall retain the design professional-of-record to provide in a professional capacity, timely construction administration services. These services shall include shop drawing review, response to requests for information regarding the Construction Documents, and periodic visits to the site to observe the quality of the Work.

The final, approved-for-construction set of Construction Documents shall be signed and stamped by the respective California-licensed professionals who prepared the documents, certifying their compliance with codes, standards, practices and regulations. The design professionals-of-record shall retain full responsibility for the design.

D. Plan Check Review.

The Licensee shall submit to the Trustees three (3) copies of the completed Plans and Specifications and two (2) copies each of the structural calculations and soils report, for code review, and shall coordinate, monitor and secure all required review approvals. The Trustees will provide contact information for the individual review agencies and support in status inquiries for the Project reviews. When submitting these documents, Licensee must allow sufficient time to conduct the reviews and to correct identified deficiencies before construction. For construction projects with an estimated cost exceeding ten million dollars, the minimum review time for the completed design documents is 31 Days, 21 Days for projects less than ten million dollars. These durations may vary. The Licensee shall allocate appropriate additional time for resolution of back check review comments for all reviews.

The Licensee is encouraged to seek guidance and clarification of Project-specific code compliance issues from the respective agencies and/or assigned plan review firm.

The Trustees shall pay plan check fees and seismic peer review fees associated with the Project, either directly or as a reimbursable item.

The Licensee shall incorporate changes, if any, resulting from plan reviews, and/or University Deputy Building Official code determinations into the final design without additional cost to the Trustees. Such final drawings and specifications shall be resubmitted to the Trustees for approval.

The final authority for code interpretations shall be as follows for:

- Exiting and fire-life-safety issues, The Office of the State Fire Marshal
- Access compliance issues, the Division of the State Architect Access Compliance Unit
- All other items, code issues shall be issued by the University Deputy Building Official, with the Building Official issuing the building permit.

E. Seismic Safety Structural Peer Review.

The Licensee shall direct its design team to interact with the appointed Seismic Safety Peer Reviewer at the beginning of the design process, as required by Trustees' policy, and continue at regular intervals during the design process and during construction as required. The Licensee shall submit one (1) set at each submittal point within the peer review process (Schematic, Preliminary Design, and Construction Documents). Seismic Peer Review comments shall be resolved before the start of construction.

In the event that there are disputes over interpretation of the Trustees' seismic safety policy, the full California State University Seismic Review Board shall make a final determination under the authority of the Building Official.

F. Access Law Compliance.

For all new, alteration or remodeling projects, the Trustees must be in compliance with access requirements. Compliance must be certified by the State of California, Department of General Services, and Division of the State Architect. The appointed plan review firm will coordinate the access compliance submittal.

The Licensee shall supply one (1) copy of the Construction Documents (structural calculations are not required) for certification of access compliance (Government Code section 4450 et seq.). The Licensee shall incorporate modifications required in the Construction Documents without additional cost to the Trustees. Access compliance review and certification can take six to eight weeks or more. The Trustees will consider administrative appeals in the event that Access Compliance review extends beyond eight weeks when due to reasons outside the control of the Licensee.

G. State Fire Marshal.

The Licensee shall direct its design team to interact with the appointed State Fire Marshal Reviewer at the beginning of the design process, as required by Trustees' policy, and continue at regular intervals during the design process and during construction as required. Licensee shall

submit copies of the Construction Documents as required (structural calculations are not required) for review and approval by the State Fire Marshal. The Licensee shall incorporate modifications required in the Construction Documents without additional costs to the Trustees. Complex code issues will increase State Fire Marshal plan review times.

During construction, the State Fire Marshal will conduct periodic field reviews of the construction. Notwithstanding State Fire Marshal stamped and approved plans, the State Fire Marshal has the authority to require revisions/ corrections to secure code compliance, based on their field review inspection findings. These corrections, when ordered by the State Fire Marshal to achieve code compliance, shall be provided by The Licensee without additional costs to the Trustees.

H. Plan Approval by University Deputy Building Official.

Plans for construction require the express written approval of the responsible University Deputy Building Official, who will require resolution of issues from building code, accessibility, Fire Marshal and Seismic Peer Review and other agency reviews as may apply, as a prerequisite to the approval of documents for construction.

The Licensee shall address all review comments and appropriately reserve Project schedule time for their completion. Delays in meeting the schedule are the responsibility of the Licensee, not the Trustees.

Changes, alterations, substitutions, or modifications made to previously stamped and approved Plans during construction that affect code compliance must be approved in writing by the University Deputy Building Official.

Licensee shall incorporate without additional cost to the Trustees any changes, alterations, substitutions, or modifications made to the approved Plans that are required during construction to satisfy code requirements, including those not previously identified in the approved Plans, or to properly implement the approved Plans, or where observed workmanship and/or discovered conditions so require.

As a prerequisite to the Trustees filing the Notice of Completion for the Project, the University Deputy Building Official will issue a certificate of completion when satisfied that the approved Plans have been implemented and that all inspection and technical code and standards compliance issues identified during construction have been satisfactorily resolved.

4.4. Trustees' Review of Construction Documents

The Licensee shall submit to the Trustees for approval Construction Documents necessary to construct the Project, including drawings and detailed Specifications for site layout, utilities, and landscaping. It is required that these Construction Documents be prepared under the supervision of a California licensed architect, and shall be signed or sealed by the architect (and respective engineers), responsible for the preparation thereof.

During the course of the development of the Construction Documents, the Trustees will review the Construction Documents and respond with desired corrections/adjustments.

The Licensee shall check the review response of the Trustees to ascertain if notations result in a claim for extra cost and shall notify Trustees in writing of any such claim before proceeding with Work. Proceeding with the Work included without prior notification constitutes waiver of claim for any extra cost. The Licensee shall coordinate with the Trustees to then identify any scope revisions and associated costs.

The Licensee shall promptly make code/peer review corrections and agreed scope revisions (if any) to the Construction Documents and resubmit them to the Trustees for approval. Such review does not constitute approval or acceptance of variations from the ESSLSA Contract Documents, as modified and detailed in the Technical Proposal, unless such variations specifically have been identified with special emphasis in writing by the Licensee and specifically have been approved in writing by the Trustees.

#### 4.5. Partial Permit Approvals

Review and approval of Construction Documents shall be obtained from the Trustees before the start of construction. The Trustees will consider design submissions for site development and, if found satisfactory, may allow the Licensee to proceed with preliminary grading, foundations, and other elements of site development while completing final Construction Documents for the balance of the Work.

The Licensee is responsible for final approvals per Articles 34.03 and 34.04, and approval of portions of the Work by the Trustees does not relieve the Licensee of responsibility for construction should changes be required due to items disapproved or changed due to plan check. The responsibility for a totally integrated design in accordance with the Contract Documents shall remain with the Licensee.

#### 4.6. Submittals

The Licensee shall submit shop drawings, samples, material lists, and manufacturer's equipment brochures setting forth in detail the Work as it is to be performed by the Licensee. Submittals shall be made in accordance with Article 36.04. The Licensee shall secure Trustees' written approval of submittals prior to use of the materials for the Work.

#### 4.7. Divisions of the Performance Specifications

The performance specifications are divided into sections for convenience. The actual Scope of Work for the various trades and/or sections of the specifications remain the responsibility of the Licensee.

#### 4.8. Standard Specifications

Standard specifications such as ASTM, ANSI, AASHTO, AWWA, AISC, Commercial Standards, Federal Specifications, NBFU, NEMA, UL, and the like, incorporated in the requirements by reference, shall be those of the latest edition at the time of receiving proposals, unless otherwise specified.

#### 4.9. Layout of the Work

The Licensee shall employ, at its own expense, a California-registered civil engineer or California-licensed land surveyor to layout the Work of the Project and establish reference points and elevations required for the construction. Reference points for the construction shall be set in accordance with layout control points identified in the Request for Proposal.

On projects with new foundations (for buildings, site improvements, bridges, light poles, others), the Licensee shall prepare a survey illustrating dimensions, locations, angles and elevations of the construction associated with the new foundation, and shall show the as-built location of the construction on the Project Site Boundary drawing provided by the Trustees. The Licensee shall specify the horizontal location using California Coordinate System, NAD 83 Coordinates. A California-licensed land surveyor shall certify the survey with its stamp and signature, after which the Licensee shall submit it promptly to the Trustees.

The Licensee shall prepare surveys and design for excavations and shorings, where required, for the Project.

The Trustees have the right, but not the obligation, to check the location and elevation of such stakes and reference points and/or to check Work constructed from such stakes or reference points. Work that is not correctly located shall be rejected.

The Licensee shall provide to the Trustees the record survey and a copy of the closure data of the layout of the Project showing the ties to the University layout control points. The information shall be provided in the form of a CD-ROM containing "PDF" and "CAD" files of the same.

#### 4.10. Use of Documents

Article 7.7 of Exhibit A ESSLSA covers the use of the Construction and As-built documents.

5. AUTHORIZATION TO PROCEED TO CONSTRUCTION OF ESSLSA AGREEMENT

5.1. Direct Cost of the Work

The costs included in the Direct Cost of the Work shall not be at rates higher than the standard paid at the place of the Project, except with prior written consent of the Trustees. Licensee attests that the stated costs are a true and accurate representation of the cost of the work as detailed on the completed CPDC Form 2-7 which can be found [http://www.calstate.edu/cpdc/Facilities\\_Planning/forms.shtml](http://www.calstate.edu/cpdc/Facilities_Planning/forms.shtml)

5.2. Clarification Prior to Guaranteeing the Final Actual Peak Demand Reduction Price

The Licensee shall examine the Preliminary Contract Documents in preparing the Final Actual Peak Demand Reduction Price and shall report to the Construction Administrator any omissions, discrepancies, or errors found in the plans and specifications. Before the date of agreeing to the Final Actual Peak Demand Reduction Price, the Licensee shall submit a written request for clarification to the Construction Administrator who may give such clarification in the form of an addendum. Otherwise, in obtaining the cost of the Project, the Licensee shall consider that any conflicts shall be governed by Article 37.01, Interpretation of Contract Requirements.

Only the Construction Administrator is authorized to answer questions or prepare addenda relative to the Project. Information obtained verbally from any source has no contractual authority, may not be relied upon, and shall have no standing in any event that may occur.

5.3. Guaranteed Final Actual Peak Demand Reduction price

The Licensee shall guarantee the final Actual Peak Demand Reduction Price, as set forth in the Agreement. The Guaranteed Final Actual Peak Demand Reduction Price shall be subject to additions and deductions by change order as provided in Article 38, Change Orders.

5.4. Notice of Authorization to Proceed to Construction

The Trustees and the Licensee have agreed to a schedule, design, specifications, and a Guaranteed Final Actual Peak Demand Reduction Price and, the Trustees have issued a building permit and Attachment 3 Authorization to proceed to Construction to the Licensee to complete the design and construct the Project.

5.5. Contract Bonds

Contract bond requirements can be found in Section 8.9 of Exhibit A ESSLSA

6. CONDUCT OF THE CONSTRUCTION WORK

6.1. Laws to be Observed--Generally

A. State and Federal Laws.

The Licensee shall observe all state and federal laws that affect the Work under this Agreement and any Change Orders. The Licensee shall hold harmless, defend and indemnify the Trustees against any claim arising from the violation of any law, whether by itself or its agents, employees, or subcontractors. If a conflict arises between the provisions of this Agreement or a Change Order and a law, the Licensee immediately shall notify the Trustees' Construction Administrator in writing. "Law" as used in this paragraph includes statutes and regulations adopted, as well as executive orders, authoritative interpretations, and other rules and directives issued by legally constituted authority.

B. National Labor Relations Board-Compliance with Order.

In executing this Agreement, the Licensee swears, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Licensee within the immediately preceding two-year period because of the Licensee's failure to comply with an order of a federal court which directs the Licensee to comply with an order of the National Labor Relations Board. The Trustees may rescind this Agreement if the Licensee falsely swears to this statement (Public Contract Code section 10296.)

C. Child and Family Support Obligations.

The Licensee acknowledges the policy of the state of California regarding the importance of child and family support obligations expressed in Public Contract Code section 7110(a). The Licensee acknowledges that to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the State's Employment Development Department.

D. Audit Provisions.

The contracting parties shall be subject to examination and audit by both the Trustees (or designee) of the California State University and the Auditor General of the State of California at any time during construction and for a period of three (3) years after final payment of the Contract (Government Code section 8546.7). Such examination and audit shall include access to the Licensee and the subcontractor records as delineated in the following:

- (1) The Licensee's records which shall include but not be limited to accounting records (hard copy, as well as electronic data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful proposers, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Trustees/Auditor General to substantiate charges related to this Contract (all foregoing hereinafter referred to as "records") and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) the Licensee's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the Licensee or any of his payees. The Licensee is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the Project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total Project costs by cost codes; and a subcontractor history report including each subcontract amount and change orders issued thereto.
- (2) Inspection and copying from time to time and at reasonable times and places any and all information, materials and data of every kind and character, including but not limited to records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this contract.
- (3) The Trustees/Auditor General shall be allowed to interview any of the Licensee's employees, pursuant to the provisions of this article throughout the term of this Contract and for a period of three years after final payment or longer if required by law.
- (4) The Licensee shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between the Licensee and payee. Such requirements will also apply to subcontractors and sub-subcontractors, etc. The Licensee will cooperate fully and will cause all related parties and all of the Licensee's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making any and all such information, materials and data available to Trustees/ Auditor General from time to time, whenever requested, in an expeditious manner.



- (5) The Trustees/Auditor General shall have access to the Licensee's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and any Change Orders, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- (6) If an audit inspection or examination in accordance with this Article discloses overcharges (of any nature) in excess of one-half of one percent (.5%) of the total Contract billings by the Licensee to the Trustees, the Licensee shall reimburse to the Trustees the reasonable actual cost of the Trustees/ Auditor General audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Licensee's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 Days) from presentation of the Trustees/Auditor General findings to Licensee.
- (7) If an audit discloses overcharges on change orders, where a Licensee has submitted costs and has received payment of costs for a subcontractor's Work, but has not passed on such payment to the subcontractor (including mark-up charged), and the Licensee's records do not reflect offsetting back charges, the Licensee shall reimburse the Trustees for such overcharges upon receipt of a request from the Trustees.

E. Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

If the Licensee is a natural person, the Licensee certifies in accepting this Agreement that it is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69).

F. Declaration of Eligibility to Contract with the State.

If the Licensee is a corporation, the Licensee certifies and declares by signing the Agreement that it is eligible to contract with the state of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code section 10286 et seq.).

6.2. Laws to be Observed--Regarding Labor

A. Prevailing Wage.

The Work under this Agreement and any Change Orders is a public works project (see definition of public works, Labor Code section 1720 et seq.) and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8 California Code of Regulations sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Licensee and all subcontractors must comply with all applicable laws and regulations, and perform all obligations required by the DIR pursuant to such authority.

The prevailing wage rates set forth are the minimum that must be paid by the Licensee on a public works contract. Nothing herein contained shall be construed as preventing the Licensee from paying more than the minimum rates set forth. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the Licensee is liable for any penalties under section 1775(a), if the Licensee fails to comply with the requirements of section 1775(b). Licensee shall periodically review and monitor all subcontractors' certified payroll records. If Licensee learns that any subcontractor has failed to comply with the prevailing wage requirements herein, Licensee shall take corrective action.

Licensee represents and warrants that the Contract Amount includes sufficient funds to allow Licensee and all subcontractors to comply with all applicable laws and contractual agreements. Licensee shall defend, indemnify and hold the Trustees of the California State University, the University, its officers, employees and agents harmless from and against any and all claims, demands, losses, liabilities, and damages arising out of or relating to the failure of Licensee or any subcontractor to comply with any applicable law in this regard, including, but not limited to,

Labor Code section 2810. Licensee agrees to pay any and all assessments, including wages, penalties and liquidated damages (those liquidated damages pursuant to Labor Code section 1742.1) made against the Trustees in relation to such failure.

- (1) Hours of Labor.  
Eight (8) hours of labor constitutes a legal day's work. The Licensee or any subcontractor shall forfeit, as a penalty to State, \$25.00 for each worker employed in the execution of the Contract by the Licensee or any subcontractor, for each Day during which the worker is required or permitted to work more than eight hours in any one Day and forty hours in any one calendar week, in violation of the provisions of the Labor Code sections 1810 to 1814, thereof, inclusive. Notwithstanding the provisions of Labor Code sections 1810 to 1814, Work performed by employees of the Licensee or any subcontractor in the execution of the Contract in excess of eight hours per Day, and forty hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per Day at not less than one and one-half times the basic rate of pay as provided in Labor Code section 1815.
- (2) If it becomes necessary to employ crafts other than those listed, the Licensee shall notify the Trustees immediately, and the Trustees will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.
- (3) Pursuant to Labor Code section 1770, the Director of the DIR has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime Work for each craft needed in execution of the Contract as set forth in the Notice to Contractors. Licensee shall post a schedule showing all applicable prevailing wage rates at appropriate and conspicuous locations on the Project site in accordance with Labor Code section 1773.2. The Trustees shall maintain copies of the prevailing rate of per diem wages, and shall make them available to any interested party upon request. Licensee shall also post job site notices as required by the DIR pursuant to Labor Code section 1771.4 (a) (2) and applicable regulations.
- (4) The Licensee and any subcontractor under subcontract to the Licensee on the Project shall comply with Labor Code section 1775, and the Licensee shall include provisions in its contract with its subcontractors that will require compliance with Labor Code section 1775. As required by section 1775(b) the Licensee shall include a copy of the provisions of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the contract between the Licensee and the subcontractor. The Licensee shall monitor its subcontractors' compliance with the prevailing wage law as required by section 1775(b). In accordance with section 1775, the Licensee and any subcontractor under the Licensee shall forfeit as a penalty to the State not more than \$200 for each Day or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any public work done under the contract by it or, except as provided in section 1775(b), by any subcontractor under it. In addition to this penalty, the Licensee or subcontractor shall pay each worker the difference between the prevailing wage rates and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate.
- (5) In accordance with Labor Code section 1776, the Licensee and subcontractors shall keep an accurate payroll record on forms provided by the Division of Labor Standards Enforcement (or shall contain the same information as the forms provided by the division). The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified herein. Payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the public work. Each payroll record shall contain verification by written declaration under penalty of perjury that the information contained in the payroll

record is true and correct and that the Contractor and subcontractors have complied with the requirements of Labor Code sections 1771, 1776, 1777.5, 1811 and 1815 for any work performed by its employees on the Project.

- a. The Licensee, and all subcontractors must furnish payroll records to the Labor Commissioner at least monthly and in a format prescribed by the Labor Commissioner, as required by Labor Code section 1776.
- b. The Licensee and subcontractors' certified payroll records shall be available for inspection at all reasonable hours, or certified copies furnished upon request to the following requesting parties:
  - (i) the employee or his or her authorized representative,
  - (ii) the Trustees, the Division of Labor Standards Enforcement (DLSE), the Division of Apprenticeship Standards (DAS),
  - (iii) the public; however, a request by the public shall be made through the Trustees or the DLSE or DAS. If the requested payroll records have not been provided pursuant to paragraph ii) above, the Licensee shall collect from the requesting party the costs of preparation by the Licensee subcontractors, and the Trustees. The public may not be given access to the records at the principal office of the Licensee.
- c. Records made available for inspection as copies and furnished upon request to the public or any public agency by the Trustees or the DLSE or the DAS shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the Licensee or subcontractor awarded the contract or subcontractor performing the contract shall not be marked or obliterated.
- d. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c) (5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number.
- e. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C Sec. 75a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.
- f. Any copy of records made available for inspection by, or furnished to, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to section 329 of the Unemployment Insurance Code, and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records.

Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

- g. The Licensee or subcontractor shall file a certified copy of the payroll records with the requesting entity within 10 Days after receipt of a written request. In the event the Licensee or subcontractor fails to comply within the 10-Day period, the Licensee or subcontractor shall, as penalty to the state or Trustees, forfeit one hundred dollars (\$100) for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the DLSE or the DAS, these penalties shall be withheld from progress payments then due. The Licensee is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section. Licensee or subcontractor may be

subject to debarment by the Labor Commissioner for failure to submit certified payrolls timely.

- (6) The Licensee is required to submit to the Trustees a minimum of the first two weeks of certified payroll and the Hourly Labor Rate Worksheet for its workers and all subcontractors included in change orders. Additional weeks of certified payroll records may be required at the discretion of the Trustees.
- (7) Consistent with Public Contract Code section 6109, the Licensee is prohibited from performing a portion of Work with a subcontractor who is debarred pursuant to Labor Code section 1777.1 or 1777.7.
- (8) Apprentices.

If the Licensee or any subcontractor employs workers on the Project in any apprenticeable craft, it may apply to any apprenticeship program in the craft in the area of the Work for a certificate approving the Licensee or subcontractor for the employment and training of apprentices. The Licensee or subcontractor shall employ the number of apprentices or the ratio of apprentices to journeymen specified in the certificate unless the conditions set out in Labor Code section 1777.5 excuse it from this requirement.

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which they are employed and shall be employed only in the Work of the craft or trade to which they are indentured. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship agreements under which a person is training.

The Licensee or subcontractor employing journeymen or apprentices in any apprenticeable craft or trade shall contribute to the fund or funds set up in the area of Work to administer the apprenticeship program in each trade in which it employs such journeymen or apprentices in the same amount and manner as the contributing contractors.

Special attention is directed to Labor Code sections 1777.5, 1777.6 and 1777.7, and California Code of Regulations, Title 8, section 200 et seq. Each Licensee and subcontractor must, before commencement of Work under this Agreement and any Change Orders, contact the Division of Apprenticeship Standards, 455 Golden Gate, 8<sup>th</sup> Floor, San Francisco, California, 94102, or one of its branch offices to ensure compliance and understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.

Licensee or subcontractor's failure to comply with Labor Code section 1777.5 may result in penalties or debarment pursuant to Labor Code section 1777.7.

B. Nondiscrimination

- (1) During the performance of the Contract, the Licensee and its subcontractors shall not deny the Contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Design Builder shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- (2) Design Builder shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.) and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2, sections 11135-11139.5 of the Government Code.
- (3) Design Builder shall permit access by representatives of the Department of Fair Employment and Housing and the Trustees upon reasonable notice at any time during

the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or Trustees shall require to ascertain compliance with this clause.

- (4) Design Builder and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (5) Design Builder shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform Work under the Agreement (Title 2, California Code of Regulations section 8107).

C. Workers' Compensation.

The Design Builder shall be required to secure payment of Workers' Compensation to its employees in accordance with Labor Code section 3700 and shall file with the Trustees prior to performing the Work the certification required in Labor Code section 1861 (refer also to Article 36.06-a (1), Policies and Coverage, herein).

D. Education, Counseling, and Training Programs.

All educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs, under this Agreement and any Change Orders, shall be open to all qualified persons, without regard to race, sex, color, religion, national origin or ancestry. Such programs shall be conducted to encourage the fullest development of the interests, skills, aptitudes, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall also be encouraged with a view toward involving larger numbers of participants from these segments of the labor force where the need for upgrading levels of skills is the greatest.

E. Occupational Safety and Health.

The Design Builder shall comply with all the provisions of the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. section 651 et seq.) and all rules, regulations, and orders adopted pursuant thereto. The Design Builder shall comply with all the provisions of the California Occupational Safety and Health Act of 1973 (Labor Code section 6300 et seq.) and all rules, regulations and orders adopted pursuant thereto. These laws provide for job safety and health protection for workers.

The Design Builder shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations. The Design Builder shall fully inform each subcontractor and materials supplier as to the requirements of the applicable safety orders.

F. Assignment of Rights Relating to Federal and State Anti-Trust Actions.

The Design Builder and all subcontractors shall be bound by the provisions of Public Contract Code section 7103.5 as follows: in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Design Builder or subcontractor offers and agrees to assign to the Trustees all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (Chapter 2, (commencing with section 16700) of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Trustees tender final payment to the Design Builder, without further acknowledgment by the parties.

6.3. Environmental Requirements

Mitigation Monitoring and Reporting Programs (MMRP), which are included in California Environmental Quality Act (CEQA) documentation, provide a description of required mitigation measures associated with California State University capital projects. The Licensee shall implement those mitigation measures in the MMRP for which the Licensee has been designated the responsible party. In addition, the Licensee shall comply with the following environmental requirements.

A. Air Pollution Control.

The Licensee shall comply with all air pollution control rules, regulations, ordinances and statutes that apply to the Work performed under the Contract, including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of section 11017 of the Government Code. The Licensee must be eligible to perform work for the State, and is deemed eligible if not found to be in violation of any order, resolution, or regulation relating to air or water pollution adopted in accordance with Government Code section 4477.

(1) Solvents.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, Licensee shall ensure that all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Project, comply with the applicable material requirements of the Air Quality Management District (AQMD). All containers of solvent, paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

(2) Disposal of Material.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

(3) Fugitive Dust.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (see also Article 36.08-c, Protection of Facilities).

(4) Construction Vehicles and Equipment.

Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.

Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

B. Water Pollution Control

The Licensee shall comply with all water pollution control rules, regulations, ordinances and statutes that apply to the Work performed under the Contract, including the California General Permit (NPDES) 2009-009-DWQ for Storm Water Discharges Associated with Construction Activities issued by the California State Water Resources Control Board (SWRCB) and as modified by order 2010-0014-DWQ, also issued by the SWRCB.

(1) Storm Water Pollution Prevention Plan.

The Licensee shall develop and implement a Storm Water Pollution Prevention Plan (SWPPP) that complies with the State of California Construction General Permit for Storm Water Discharges.

The Licensee shall contract for, or have on payroll, a California Certified Qualified SWPPP Developer (QSD). Licensee shall be responsible for hiring or contracting for the services of a California certified Qualified SWPPP Practitioner (QSP).

The Licensee shall pay all costs associated with development and implementation of the SWPPP. See Specifications for additional requirements.

(2) Compliance.

The Licensee shall comply with the California General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), Order Number 2013-0001-DWQ. The Licensee shall comply with the University's Post Construction Storm Water Management Program requirements.

Post Construction Storm Water Management Program Best Management Program Practice (BMP) details shall be designed by a competent individual licensed to practice as a Civil Engineer in California.

(3) Maintenance Manual for Post-construction BMPs.

The Licensee shall incorporate into the Project a maintenance program for post-construction BMPs that will be permanent components of the completed Project. The maintenance program shall be delivered in a bound manual. The manual shall meet the requirements described in the California Stormwater Quality Association's ([www.casqa.org](http://www.casqa.org)) New Development & Redevelopment BMP Handbook.

C. Sound Control Requirements.

The Licensee shall comply with all sound control and noise level rules, regulations and ordinances which apply to the Work. In the absence of any such rules, regulations and ordinances, the Licensee shall conduct its Work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the Trustees' requests to reduce noise levels.

Licensee shall not cause or allow sounds to be produced in excess of 65 decibels measured at the job site between the hours of 7:00 p.m. and 7:00 a.m. Licensee shall not cause or allow sounds to be produced in excess of 85 decibels measured at the job site between the hours of 7:00 a.m. and 7:00 p.m. without the consent of the University.

Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without a muffler.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to University activities. Construction activities will be scheduled to minimize disruption to the University and to University users.

D. Environmental Clearances.

The Licensee shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this Project. The Licensee shall comply with the provisions, including giving notices during construction when so required. The Licensee shall not be compensated for the delays in obtaining environmental clearances and authorizations; however, an appropriate extension of time will be granted in accordance with the provisions in Article 36.15-g, Adjustment of Contract Time Due to Reasons Beyond Trustees' Control, if the Licensee demonstrates to the satisfaction of the Trustees that it has made every reasonable effort to obtain the requisite clearance or authorizations, and cannot obtain it in a timely manner.

E. Source of Aggregates.

The Public Contract Code section 10295.5 requires that no State agency shall purchase or utilize sand, gravel, aggregates, or other minerals unless the source is on an eligible list identifying operations that have met certain requirements of the Surface Mining and Reclamation Act of 1975 (Public Resources Code section 2710 et seq.). Accordingly, the Licensee shall submit to the Trustees documentation that it is complying with the requirements of this law in purchasing these materials

F. Archaeological Finds.

If the Licensee discovers any artifacts during excavation and/or construction, the Licensee shall stop all affected Work and notify the Trustees, who will call in a qualified archaeologist designated by the California Archaeological Inventory to assess the discovery and suggest further mitigation, as necessary.

If the Licensee discovers human remains, the Licensee shall notify the Trustees who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, the Trustees shall contact the appropriate tribal representatives to oversee removal of the remains.

G. Integrated Waste Management.

Pursuant to the State Agency Integrated Waste Management Plan (Public Resources Code, Division 30, Part 3, Chapter 18.5), the California State University shall divert 65% of all solid waste generated in construction activities from landfill disposal or transformation facilities through source reduction, recycling and composting. Licensee shall report all source reduction, recycling and composting relative to this Project to the Trustees. Refer to Contract Documents for further requirements.

6.4. Substitution of a Disabled Veteran Business Enterprise

A. Substitution of a Disabled Veteran Business Enterprise.

The Licensee shall use the listed Disabled Veteran Business Enterprise (DVBE) companies listed on the List of Subcontractors for Design-Build Projects form, unless a substitution is requested in writing to the Trustees, and the Trustees and the Department of General Services (DGS) approve the substitution in writing before the commencement of any Work. The substitution request must include at least the following:

- (1) An explanation of the reason for the substitution.
- (2) A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm, if any.
- (3) The Licensee must substitute a DVBE with another DVBE. If the DVBE substitution cannot occur, the Licensee must include a written justification and the steps that were taken to try to acquire a new DVBE subcontractor and how that portion of the contract will be fulfilled.
- (4) A description of the Work to be performed identified both as a task(s) and as a dollar amount or percentage of the overall contract that the substituted business will perform. The request for substitution of a DVBE and the Trustees' and DGS approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Sections 4100 et seq., Public Contract Code) or any other contract requirements relating to substitution of subcontractors.

6.5. Delegation of Performance and Assignment of Money Earned

The performance of all or any part of this Agreement and any Change Orders may not be delegated without the written consent of the Trustees. Consent will not be given to any proposed delegation which would relieve the Licensee or its surety of their responsibilities under the Contract.

6.6. Insurance Requirements

Insurance requirement are found in Section 18 of Exhibit A ESSLSA.

6.7. Indemnification

Nothing in these indemnification provisions shall be deemed to alter the insurance provisions in Article 36.06.

- A. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them, from and against all claims, damages and losses arising out of, resulting from, or relating to: (1) the failure of the Design-Builder to perform its obligations under the Contract or the performance of its obligation in a willful, reckless, or negligent manner or contrary to the provisions of the Contract; (2) the inaccuracy of any representation or warranty by the Design-Builder



given in accordance with or contained in the ESSLSA Contract Documents; and (3) any claim of damage or loss by any subcontractor, or supplier, or laborer against the Trustees arising out of any alleged act or omission of the Design-Builder or any other subcontractor, or anyone directly or indirectly employed by the Design-Builder or any subcontractor.

- B. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses arising out of, resulting from, or relating to the negligent acts or omissions, recklessness, or willful misconduct of the Design-Builder, a subcontractor, or anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in Article 36.07-c, following. Such obligation shall, however, apply in proportion to and to the extent that any such losses result from the negligent acts or omissions by an employee of the Design-Builder, a subcontractor, or a person indirectly employed by the Design-Builder or a subcontractor, or anyone for whose acts either may be liable.
- C. In claims against any person or entity indemnified under this Article made by an employee of the Design-Builder or a subcontractor, or indirectly employed by either of them, or anyone for whose acts either may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.
- D. The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- E. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses resulting from any claim of damage made by any separate contractor of the Trustees against the Trustees arising out of any alleged acts or omissions of the Design-Builder, a subcontractor, anyone directly or indirectly employed by either the Design-Builder or subcontractor, or anyone for whose acts either the Design-Builder or subcontractor may be liable.
- F. The Design-Builder shall hold harmless, defend, and indemnify the separate contractors of the State of California, the Board of Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses arising out of the negligent acts or omissions, recklessness, or willful misconduct of the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable.

Trustees shall cause a reciprocal indemnification provision in favor of the Design-Builder to be included in its contracts with separate contractors of the Trustees. Liability for any negligent act or omission, recklessness, or willful misconduct shall be apportioned pursuant to the applicable law of the State of California.

#### 6.8. Licensee's Responsibility for the Work

The Licensee shall be fully responsible for all Work performed under this Agreement and any Change Orders, and no subcontractor will be recognized as such. For purposes of assessing responsibility to the Licensee, all persons engaged in the Work shall be considered as employees of the Licensee. The Licensee shall give its personal attention to the fulfillment of the Contract and keep all phases of the Work under its control.

Licensee shall create a report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on site each day, briefly describing the Work the subcontractors are performing. Each subcontractor shall create report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on site each day, briefly describing the Work the subcontractors are performing. Licensee and every subcontractor shall submit these reports to the Trustees daily. At the end of the Project, Licensee shall submit to the Trustees a complete listing of all subcontractors, suppliers and other businesses that performed Work on the Project.

The Trustees will not arbitrate disputes among subcontractors nor between the Licensee and one or more subcontractors concerning responsibility for performing any part of the Project.

##### A. Quality Control.

The Licensee shall be fully responsible for the quality of materials and workers' skill in the Project. The Licensee shall not rely upon the inspection and testing provided by the Trustees other than those special inspections and tests performed by the Trustees' selected laboratories for which there are written reports.

On projects with new foundations (for buildings, site improvements, bridges, light poles, others), the Licensee shall prepare a certified survey illustrating dimensions, locations, angles and elevations of the construction associated with the new foundation, and shall show the as-built location of the construction on the Project Site Boundary drawing provided by the Trustees. The Licensee shall specify the horizontal location using California Coordinate System, NAD 83 Coordinates. An appropriately licensed Professional Land Surveyor or Registered Civil Engineer (pre-1982 license) shall stamp the certified survey, after which the Licensee shall submit it promptly to the Trustees.

##### B. Burden for Damage.

From the issuance of the official Notice to Proceed until the formal acceptance of the Project by the Trustees, the Licensee shall have the charge and care of and shall bear the risk of damage to the Project and materials and equipment for the Project.

The Licensee, at its own expense, shall promptly rebuild, repair, restore, and make good all such damage to any portion or to all of the Project and materials therefor before the acceptance of the Project by the Trustees except for such damage as is proximately caused by acts of the federal government or public enemy. In case of suspension of Work from any cause whatever, the Licensee shall be responsible for all materials, and shall properly store them, if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

If the Licensee damages any property belonging to the Trustees, the Trustees may, in addition to other remedies available to the Trustees, retain from the money due to the Licensee an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

Neither the State of California, the Trustees of the California State University, the University, nor the officers, employees, representatives, nor agents of each of them shall be responsible for any damage to the Project and materials and equipment for the Project.

##### C. Protection of Facilities.

Once the Licensee mobilizes and occupies the Site, and until the formal acceptance of the Project by the Trustees, Licensee shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Work is not prosecuted, Licensee shall

furnish such watchman's services as necessary to safeguard materials and equipment in storage on the Project site, including Work in place or in process of fabrication, against theft, acts of malicious mischief, vandalism and other losses or damages. The Licensee shall be liable for any loss or damage that result from its failure to protect the Site and the Work.

The Licensee shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Licensee's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to Trustees. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Air Quality Management District (AQMD) rules (see also Article 36.03, subsections: a-Air Pollution Control and b-Water Pollution Control).

D. Safety.

The Licensee shall exercise precaution at all times for the protection of persons and their property. The Licensee shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the Work or permanently installed as part of the Project. The Licensee shall provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Licensee shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless the Licensee designates other employees, its superintendent shall have the duty of prevention of accidents. The Licensee shall institute a safety program which includes all trades on the site.

Renovation, expansion, or remodel Work of any existing building may expose workers to lead-containing materials such as paint, flashings, and pipe joints. The Licensee shall comply with all applicable laws addressing such exposure, including the Cal/OSHA Lead in Construction Standards (Title 8, CA Code of Regulations, section 1532.1).

The Trustees and the Construction Inspector may bring to the attention of the Licensee a possible hazardous situation in the field regarding the safety of personnel on the site. Licensee shall be responsible for verifying the observance of all local, state, and federal workplace safety guidelines. In no case shall this right to notify the Licensee absolve the Licensee of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Licensee has assumed any responsibility for field safety operations.

The Licensee shall not use Explosives without first obtaining written permission from the Trustees and then shall use them only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Storage of explosives on the Project site or University premises is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

In the event of an accident, the Licensee shall make available to the Trustees copies of its accident report to its insurance carrier. The Licensee shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

E. Utilities

- (1) If the Licensee discovers utility facilities not identified in the ESSLSA Contract Documents, the Licensee shall immediately notify the Trustees and the utility involved, in writing, of such discovery. When the Licensee is required by the Plans and Specifications to either locate, remove or relocate utility facilities not identified in the ESSLSA Contract Documents with reasonable accuracy, it shall be compensated for any reasonable actual added cost incurred. The Licensee shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Licensee to exercise reasonable care. All such compensation to the Licensee shall be based on an actual cost-plus Licensee and subcontractor mark-up, as identified in Article 38.01-b, Allowable Costs Upon Change Orders, subdivisions (4), (5), and (6), except that both

the Licensee's and subcontractor's mark-up shall be reduced by six (6) percent each, where the damage results from the failure of the Licensee or subcontractor to exercise reasonable care. The Trustees or the public utility, where it is the owner of the utility facilities, shall have the sole discretion to perform repairs, or relocation Work or permit the Licensee to do such repairs or relocation Work at a reasonable price, where such Work is required to facilitate the Project. The Licensee shall not be assessed liquidated damages for delay in the completion of the Project which is caused by the failure of the Trustees or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.

- (2) With the exception of the identification of main or trunk line utility facilities in the Contract Documents, the foregoing provisions of subdivision (1) shall not apply to, and Trustees shall have no obligation to indicate, the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the Project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.
  - (3) Except as expressly provided in subdivisions (1) and (2) above, the Licensee shall be responsible at its own cost for all Work, Work, expense, or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the Project Work including, without limitation, repair of any damage that may result including any damage resulting from hand or exploratory excavation. The Licensee is cautioned that the utilities encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the Licensee at its own cost and shall include the following: all cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and appropriate warning signs, barricades, and safety devices shall be erected.
  - (4) The Licensee shall provide to the University as-built drawings of all utilities encountered and constructed indicating the size, horizontal location, and vertical location based on the Project bench mark or a stable datum.
- F. Hazardous Materials
- (1) Asbestos. The Licensee is prohibited from installing any asbestos-containing materials or products in any Work to be performed under this Agreement and any Change Order. The Licensee shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by Project completion, the warranty period, or other provisions of this Agreement or the Change Order.
  - (2) Lead. The Licensee is prohibited from installing any lead-containing materials or products, including paint, in any Work to be performed under this Agreement and any Change Order without the written consent of the Executive Facilities Officer and the Director of Environmental Health and Safety. The Licensee shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by Project completion, the warranty period, or other provisions of this Agreement or the Change Order.
- G. The Licensee, by warranting the completeness of the Construction Documents, agrees that, if the Licensee uses design-build delivery on certain building elements such as fire protection systems, store front assemblies, etc., then the Licensee accepts responsibility for any impact which results from the design-build process such as deferred submittals, plan check approval and procurement.

#### 6.9. Occupancy by Trustees Prior to Acceptance

The Trustees reserve the right to occupy all or any part of the Site and Licensed Area before completion of the Work, upon issuance of a Field Instruction and subsequent written Change Order, or upon issuance of a written Change Order therefor. In such event, the Licensee shall be relieved of

responsibility for any injury or damage to such occupied part as results from the Trustees' occupancy and use. If the Licensee carries insurance against damage to such premises or against liability to third persons covering the premises so used and occupied by the Trustees, and if such occupancy results in increased premiums for such insurance, the Trustees will pay to the Licensee the added premium costs for such insurance during the period of occupancy. The occupancy change order shall be the vehicle for such payment, if applicable.

The Trustees' occupancy shall not constitute acceptance by the Trustees (see Article 40.01, Acceptance) either of the Project as completed or of any portion thereof, nor will it relieve the Licensee of full responsibility for correcting defective Work or materials found at any time before the formal written acceptance of the Project as completed by the Trustees and during the full guarantee period after such acceptance, nor does it stop the assessment of liquidated damages.

#### 6.10. Payments by Licensee

In accordance with Business and Professions Code section 7108.5, the Licensee agrees to pay all subcontractors not later than seven (7) Days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Licensee on account of the Work performed by its subcontractors, to the extent of each such subcontractor's interest therein.

The Licensee shall pay and shall require its subcontractors to pay each employee engaged in Work on the Project under this Agreement and any Change Order in full (less deductions made mandatory by law) not less often than once each week.

#### 6.11. Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.

The Licensee shall secure all permits and licenses required for any operations required under this Agreement and any Change Order and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, the city, a public utility, telephone company, special district, or quasi-governmental entity. It is the Licensee's responsibility to ascertain the necessity of such permits and licenses in preparing its bid and include in its bid the cost thereof as well as adjustments for any delays which may be caused by securing permits and licenses.

#### 6.12. Patented or Copyrighted Materials

The Licensee shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used on or incorporated in the Project. And the Licensee agrees to save harmless, defend, and indemnify the State, the Trustees of the California State University, Trustees' Consultants, the University, and the officers, agents and employees of each of them from all suits, actions, or claims for, or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes.

#### 6.13. Taxes

The Licensee shall pay all taxes imposed by law which are levied or become payable as a result of the Licensee's performance under this Agreement and any Change Orders.

#### 6.14. Contract Time

##### A. Time of the Essence.

All time limits specified in this Contract are of the essence of the Agreement and any Change Orders.

##### B. Starting and Completion Date.

The Trustees shall designate in the Notice to Proceed the starting date of the Work on which the Licensee shall immediately begin and thereafter diligently prosecute the Work to completion. The Licensee agrees to complete the Work on the date specified for completion of the Licensee's performance in the Contract unless such time is adjusted, in writing, by change order by the Trustees. The Licensee may complete the Work before the completion date if it will not interfere with the Trustees or other contractors engaged in related or adjacent work. The Work shall be regarded as completed on the acceptance date noted on the Trustees' Notice of Completion.

This date shall be used as the date the guarantee period begins as defined in Article 40.06, Guarantee

C. Adjustment of Contract Time Due to Acts of God, etc.

The Licensee shall not be assessed with liquidated damages, nor the cost of engineering and inspection, during any delay in the completion of the Project caused by acts of God, the public enemy, fire, flood, epidemic, quarantine restriction, strike, freight embargo, discovery of archaeological or paleontological artifacts, and unusual action of the elements; provided that the Licensee shall notify the Trustees in writing of the causes of the delays within 24 hours from the beginning of any such delay. The Trustees shall determine the facts with regard to the delay and the reasonable period of time by which the date of completion should be extended by reason thereof, if any. The Trustees' findings thereon shall be final and conclusive.

There shall be no compensation to the Licensee for costs associated with this kind of delay.

The term "unusual action of the elements" is limited to extraordinary, adverse weather conditions and conditions immediately resulting therefrom which cause a cessation in the progress of the Work which will delay the time of completion of the Contract.

The Licensee shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions which are normal for the locality of the site. The time for completion of the Contract has been calculated with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the site.

D. Adjustment of Contract Time Due to Acts of the Trustees.

If the Licensee is delayed in completing the Contract by reason of any act or omission of the Trustees not provided by the Contract, or by reason of changes made pursuant to Article 38.01, Change Orders, without reaching agreement as to any time adjustments, the time for completion of the Contract may be extended for a period commensurate with the delay. The Licensee shall notify the Trustees in writing of the causes of the delay within seven (7) Days from the beginning of the delay.

E. Licensee's Duty to Fully Prosecute Work.

No extension of time will be granted for any of the causes for which extensions may be granted unless the Licensee demonstrates to the satisfaction of the Trustees that the Licensee has made every reasonable effort to fully prosecute the Work and complete the Work within the Contract Time. The causes of delay shall be subject to the same determinations as stated in Article 36.15-c, Adjustment of Contract Time Due to Acts of God, etc., above. Licensee shall refer to Article 36.16, Schedule.

F. Trustees' Adjustment of Contract Time.

Even though the Licensee has no right to an extension of time for completion, the Trustees may extend the time at the request of the Licensee, if they determine it to be in the best interest of the State. If the time is extended, the Trustees may, in lieu of assessing liquidated damages, charge the Licensee, its successors, heirs, assigns, or sureties, and deduct from the final payment for the Work all or any part, as they may deem proper, the value of the lost use of the completed Project, and of the actual cost to the Trustees of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension. Such costs will not exceed liquidated damages.

G. Adjustment of Contract Time Due to Reasons beyond Trustees' Control.

Should the Trustees be prevented or enjoined from proceeding with Work either before or after the start of construction by reason of any litigation or other reason beyond their control, the Licensee shall not be entitled to make or assert any claim for damage by reason for said delay; but time for completion of the Work will be extended to such reasonable time as the Trustees may determine will compensate the Licensee for time lost by such delay. Any such determinations will be set forth in writing.

6.15. Schedule

The following scheduling provisions apply to each ESSLSA.

- A. Time is of the essence of this Agreement, including the time of beginning, the rate of progress, and the time of completion of the Work. The Work shall be prosecuted at such time, in such manner, and on such part or parts of the Project as may be required to complete the Project as contemplated in the Contract Documents and the approved Licensee Construction Schedule.
- B. The LICENSEE shall submit a bar chart or critical path method schedule setting forth the manner and sequence of the Work. The LICENSEE shall schedule the Work in accordance with the time duration set forth in the Service Order Request. The LICENSEE shall have broad discretion in scheduling the Work. The University's basis for disapproval of any schedule shall generally be limited to a determination that the Work sequence lacks logic, is unreasonable, is incomplete or is inconsistent with any other contractual requirement, such as a phasing plan or work shift requirements, noise, class schedules, University holidays or non-construction activity days.
- C. The LICENSEE initial Construction Schedule shall show the sequence, duration in Days, and interdependence of activities required for the complete performance of all Work. The LICENSEE initial Construction Schedule shall begin with the date of issuance of the Notice to Proceed and conclude with the date of final completion.
- D. The LICENSEE may submit an initial Construction Schedule that shows the Work completed in less time than the specified Contract Time. However, the acceptance of such a Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time.
- E. The Construction Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Work. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service or other approved source.
- F. The LICENSEE's submittal of a fully revised and acceptable Construction Schedule shall be a condition precedent to the processing of each monthly payment application.
- G. The Trustees will not grant any time extensions or pay any indirect costs unless the LICENSEE can clearly demonstrate the delay on the basis of the Progress Schedule current as of the month the change is issued or the delay occurred, and which delay cannot be mitigated, offset, or eliminated through revising the intended sequence of Work or other means. The LICENSEE shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract time extension or delay damages.
- H. Once each week, or as approved in writing by the Trustees, the LICENSEE shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, be completed or be in progress for the succeeding three (3) weeks. This schedule shall cover all Work activities listed on the Progress Schedule for the reporting period.
- I. With respect to any LICENSEE submission under this Article, no review, acceptance or approval by the Trustees shall release or relieve the LICENSEE from its obligation to fully and properly complete the Work, or any other duty, responsibility or liability imposed on it under this Agreement and any Change Orders, including, but not limited to the obligation to complete the Work within the Contract Time.

#### 6.16. Labor Force and Superintendent

At all times the Licensee shall provide sufficient labor to properly prosecute the Work and to ensure completion of each part in accordance with the schedule and within the Contract Time (Public Contract Code section 10843). The Licensee shall employ competent workers who are skilled in the type of Work required and whose workmanship is of the best, regardless of the quality of material. If, in the judgment of the Trustees, any person is incompetent or disorderly, the Licensee shall promptly remove such person from the Project and shall not re-employ such person thereon.

The Licensee shall retain a competent, full-time, on-site superintendent to represent the Licensee and to direct the Project at all times while any Work is underway. The Licensee shall not replace a Superintendent without advanced written approval from the Trustees. If, in the judgment of the Trustees, the Superintendent is incompetent, unqualified, poorly performing or disorderly, the Licensee shall, upon request by the Trustees, promptly remove such person from the Project and shall not re-employ such person thereon. In this event, the Trustees shall approve the replacement Superintendent.

The Superintendent shall prepare a daily report which includes worker count, Work in progress, etc. and shall provide it to the Trustees upon request. If the Licensee does not supply the staffing in accordance with its Request for Proposals, the Trustees shall either demand that the prescribed staffing be supplied and/or credit back the value of the staffing not supplied.

The Licensee shall make certain that all subcontractors employed are properly licensed and are in good standing with the California Department of Industrial Relations.

#### 6.17. Limitation of Construction Operations

The Licensee shall limit the area and nature of the construction operations to that which is authorized in the Request for Proposal or as approved in writing by the Trustees.

#### 6.18. Coordination with Other Work

The Trustees reserve the right to do other work in connection with or related to the Project or adjacent thereto, and the Licensee shall at all times conduct the Work so as to impose no hardship on the Trustees or others engaged in the Trustees' work nor to cause any unreasonable delay or hindrance thereto. Where two or more contractors are employed on related or adjacent Work, each shall conduct its operation in such a manner as not to cause delay or additional expense to the other.

The Licensee shall be responsible to others engaged in the related or adjacent Work for all damage to such Work, to persons and to property, and for loss caused by failure to complete such Work within the specified time for completion. The Licensee shall coordinate its Work with the related or adjacent Work of others so that no discrepancies shall result in the Project.

#### 6.19. Drawings Reflecting Actual Construction

During the course of construction, the Licensee shall maintain drawings daily to show the Project as it is actually constructed. Every sheet of the Plans and Specifications which differs from the actual construction shall be marked, and sheets so changed shall be noted on the title sheets of the Plans and Specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. Licensee shall review the "as-built" drawings with the Construction Inspector at least once a month to demonstrate that the Licensee is fully and accurately recording all changes that have occurred. The altered Contract drawings shall be sufficiently detailed so that future Work on the Project or in adjacent areas may be conducted with a minimum of difficulty. Before the completion of the Project, and before release of the final retention payments, the "as-built" drawings and specifications shall be transmitted to the Trustees' Construction Administrator for further handling. Additionally, Licensee shall turn over to the Trustees a re-drafted and complete set of "as-built" drawings of the actual construction on AutoCAD, Version 12 or other version as approved by the Trustees, and Mylar reproducible generated from AutoCAD. Final payment will not be made to Licensee until the "as-builts" are received and spot checked by the Trustees. Corrections, if any, shall be made to the AutoCAD and to the Mylar reproducible.



6.20. Access for Inspection

The Licensee shall at all times permit the Trustees, the Construction Administrator, the Construction Inspector and the Project Manager to visit and inspect the Work and the shops where Work is in preparation and shall maintain proper facilities and provide safe access for such inspection. Work requiring testing, inspection or verification shall not be covered up without such test, inspection, or approval. The Licensee shall notify the Construction Inspector in writing at least one (1) Working Day before the Construction Inspector is required to inspect the Work. For a Project with part-time inspection, a minimum of two (2) Working Days written notification by the Licensee to the Construction Inspector is required before the Construction Inspector is required to inspect the Work.

A. Inspections on Premium Time.

Premium time is defined as Work performed in excess of eight hours per day Monday through Friday and any Work performed on Saturday, Sunday or holiday. Whenever the Licensee intends to perform Work during premium time, it shall provide a minimum of two (2) Working Days written notice of such intention before performing such Work. If such Work during premium time is discretionary and for the sole benefit of the Licensee, the premium cost of inspection shall be reimbursed to the Trustees. Reinspections. The Trustees may back-charge all reinspection costs to the Licensee.

B. Additional Inspections.

If a fabricator or manufacturer of a material or equipment requiring inspection is inefficiently performing or performing at multiple locations, then the Trustees may charge the Licensee for the extraordinary costs incurred.

6.21. Cleanup of Project and Site

The Licensee shall clean up its Work at frequent intervals and at other times when directed by the Trustees. At all times while finish Work is underway, floors shall be kept broom clean. Upon completion of the Work, the Licensee shall promptly remove from the premise's construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

When two or more contractors are engaged in Work at or near the site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed.

In the event the Licensee does not maintain the Project or the Site clear of debris and rubbish in a manner acceptable to the Trustees, the Trustees may cause the Project or Site to be properly cleaned and may withhold the expense incurred therefor from payments due the Licensee.

6.22. Project Sign, Advertising

The Licensee shall furnish and install a Project sign required as part of the Work under the Agreement. As a minimum, the sign shall be four feet by eight feet, made from three-quarter inch plywood. The sign shall identify the Project name, the Trustees, the Licensee, and the Architect. No advertising is permitted on the Project or site without written permission from the Trustees.

6.23. Assignment of Trade Contracts to Trustees

The Licensee shall include in all trade contracts an assignment clause stating that the Trustees have the right to require that the Licensee assign the trade contract(s) to the Trustees. Upon direction from the Trustees, the Licensee shall assign to the Trustees for fully vesting in the Trustees all rights and benefits of the Licensee under such trade contracts or purchase orders, in order that the Trustees may proceed to finish the Project.

## 7. INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

### 7.1. Interpretation of Contract Requirements

#### A. Correlation.

Licensee shall interpret Contract Documents as complementary, requiring a complete Project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the Specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.

#### B. Conflicts.

In the event of conflict in the Contract Documents, the following priorities shall govern:

- (1) Addenda shall govern over all other Contract Documents, and subsequent Addenda shall govern over prior Addenda only to the extent modified.
- (2) Supplementary General Conditions shall govern over Contract General Conditions.
- (3) Contract General Conditions shall govern over all sections of the Specifications and any notation on the RFP Plans. No other section of the Specifications shall modify the Contract General Conditions.
- (4) In case of conflict between the RFP and the ESSLSA General Conditions, the ESSLSA General Conditions shall govern.
- (5) In case of conflict within the RFP Plans:
  - a. Material and equipment schedules, when identified as such, shall govern over all other portions of the RFP Plans.
  - b. Specific notes shall govern over all other notes and all other portions of the RFP Plans, except the material and equipment schedules described in Article 37.01-b(5)(a) above.
  - c. Larger scale drawings shall govern over smaller scale drawings.
  - d. Figured or numerical dimensions shall govern over dimensions obtained by scaling.
- (6) In the event that provisions of codes, safety orders, Contract Documents, referenced manufacturers' specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

#### C. Omissions.

In the event of omissions in the Construction Documents, the following shall apply:

- (1) If the Construction Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Construction Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.
- (2) The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Construction Documents.

#### D. Quality.

The quality of the Licensee's Work shall be equal to or better than that required in the RFP, and if it is found that the Work in the Licensee's proposal is of lesser quality, the RFP shall prevail.

### 7.2. Issuance of Interpretations, Clarifications, Additional Instructions

Should the Licensee discover any conflicts, omissions, errors, or coordination issues in the Contract or have any question concerning interpretation or clarification of the Contract, the Licensee shall request in writing interpretation, clarification, or additional detailed instructions

before proceeding with the Work affected. The written request shall be given to the Trustees with copies to the Project Manager/Construction Inspector.

The Trustees shall, within a reasonable time, issue in writing the interpretation, clarification, or additional detailed instructions requested.

Should the Licensee proceed with the Work affected before receipt of the interpretation, clarification, or instructions from the Trustees, the Licensee shall replace or adjust any Work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification, or additional detailed instructions as approved by the Trustees and, in the opinion of the Licensee, constitute Work beyond the scope of the Contract, the Licensee must submit written notice thereof to the Trustees within seven (7) Days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of Work thereon. The Licensee shall send copies of such correspondence to the Project Manager/Construction Inspector. Within seven (7) Days after the Licensee issues its written notice, the Licensee shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes Work beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts.

If, in the judgment of the Trustees, the notice is justified, the interpretation, clarification or additional detailed instructions shall be revised or the extra Work authorized by Change Order or by Field Instruction with a Change Order to follow. If the Trustees decide that the claim is not justified the Trustees shall give the Licensee a written order that the claim is not justified and direct the Licensee to perform such Work.

The Licensee shall proceed with the Work upon receipt from the Trustees of a written order to do so, in accordance with the Trustees' interpretation of the Contract requirements. If the Licensee objects to the order, the Licensee must notify the Trustees in writing of its objection and the reasons therefore, within seven (7) Days of receipt of the order. The Licensee shall have the right to have this claim later determined by a Claims Review Board pursuant to this Agreement (Article 39.01, Claims). When performing disputed Work, the Licensee shall prepare time and materials records for each day, and the Construction Inspector shall verify these records at the conclusion of each day. The Licensee shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless it gives the written notices required to the Trustees within seven (7) Days as specified above.

#### 7.3. Product and Reference Standards

##### A. Product Designation.

When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the Contract, such designations shall be considered as those found in industry publications of current issue at the date specified in the RFP.

##### B. Reference Standards.

When the Contract references standards of the federal government, trade societies, or trade associations by specific date of issue, these shall be considered a part of this Agreement. When such references do not bear a date of issue, the current and most recently published edition at the date specified in the RFP shall be considered a part of this Agreement.

#### 7.4. Shop Drawings, Samples, Alternatives or Equals, Substitutions

##### A. Submittal Procedure.

The Licensee shall review and approve all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, materials and equipment schedules, performance charts, brochures and catalogs and other data prepared by the Licensee or any subcontractor, manufacturer, supplier or distributor, which illustrate some portion of the Work. To prevent delay in the Work, the Licensee shall promptly review, mark the shop drawing approved, and submit it to the Trustees, together with samples as required by the Contract and shall also submit any offers of alternatives or substitutions. Licensee shall submit at least four copies of shop drawings with three to be retained by the Trustees. All such submittals shall be sent to the Trustees at the address given in the instructions to the Licensee at the job start meeting. A letter shall accompany the submitted

items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the Contract. Failure by the Licensee to identify all deviations may render any action taken by the Trustees on the materials submitted to be void. Whether to void such action shall be in the discretion of the Trustees. The letter and all items accompanying it shall be fully identified as to Project name and location, the Licensee's name, and Contract number. By submitting the approved shop drawings and samples, the Licensee represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract. Samples.

Samples are physical examples furnished by the Licensee to illustrate materials, equipment, color, texture, or workmanship, and to establish standards by which the Work will be judged.

The Work shall be in accordance with the samples, submitted as required by the Contract and reviewed by the Trustees. The Licensee shall remove samples from the site when directed by the Trustees. Samples not removed by the Licensee, at the Trustees' option, will become the property of the Trustees or will be removed or disposed of by the Trustees at the Licensee's expense.

**B. Alternatives or Equals.**

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Proposer complies with the following requirements:

- (1) The Proposer shall submit its proposal to the Trustees for an alternative as an "equal" in writing no later than 35 Days after the award of the subcontract. In exceptional cases where the best interests of the Trustees so require, the Trustees may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The Proposer is responsible for a timely submittal of its proposed "or equal."
- (2) No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Trustees.
- (3) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Proposer. Where the material is specified by capacity or performance, the burden of proof shall be on the Proposer to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. Proposer shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met.

The Trustees shall be the judge of such matters. If the Trustees reject the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from Contract Documents, such changes or delays shall be made at the Licensee's expense without recourse for reimbursement from the Trustees.

**C. Substitutions.**

If the proposer proposes a product that is of lesser or greater quality or performance than the specified material or equipment, it must comply with these provisions of this Article, but, in addition, the proposer must submit any cost impact of this substitution. By submitting a substitute, the Licensee and proposer waives any rights to claim a delay due to the processing of this substitution. The time for submission of a substitute of an unequal product shall be restricted

to 35 Days after the award of the subcontract. The Trustees are not obligated to review or accept substitutions.

7.5. Quality of Materials, Articles and Equipment

Materials, articles and equipment furnished by the Licensee for incorporation into the Work shall be new. When the Contract requires that materials, articles or equipment be furnished, but the quality or kind thereof is not specified, the Licensee shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

7.6. Testing Materials, Articles, Equipment and Work

- A. Materials, articles, equipment or other Work requiring tests are specified in the Contract. Materials, articles and equipment requiring tests shall be delivered to the Site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The Licensee shall be solely responsible for notifying the Trustees where and when materials, articles, equipment and Work are ready for testing. Should any such materials, articles, equipment or Work be covered without testing and approval, if required, they shall be uncovered at the Licensee's expense. The Trustees have the right to order the testing of any other materials, articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, all samples for testing shall be taken by the Trustees from materials, articles or equipment to be used on the Project or from Work performed. All tests will be under the supervision of, and at locations convenient to, the Trustees. The Trustees shall select the laboratories for all tests. Decisions regarding the adequacy of materials, articles, equipment or Work shall be issued to the Trustees in writing.
- B. With the exception of the meter tests required under Sections 6.2 and 6.3 of the Agreement, all costs of the initial required tests shall be borne by the Trustees. The Trustees may decide to take further samples and tests, and if the results show that the Work was not defective, the Trustees shall bear the costs of such samples and tests.
- C. In the event the results of such additional samples and tests show that the Work was defective, the Licensee shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of the Licensee. All retesting costs may be back-charged to the Licensee by the Trustees.

7.7. Rejection

Should any portion of the Work done or any materials, articles or equipment delivered fail to comply with the requirements of the Contract, such Work, materials, articles or equipment shall be rejected in writing and shall immediately be made satisfactory to the Trustees, by the Licensee, at no additional expense to the Trustees. Licensee shall, at its expense, immediately remove from the Site and Licensed Area any rejected materials, articles or equipment. The Trustees may retain one and one-fourth times the cost of the rejected materials, articles, equipment, and Work from any payments due the Licensee until it is made acceptable to the Trustees. The Trustees may back charge the Licensee for the Trustees' costs incurred in the correction of Licensee's rejected Work.

7.8. Off-Site Testing

The Trustees shall bear the cost of off-site testing up to a distance of fifty (50) miles from the Project site and up to one fabrication yard or manufacturing plant per manufactured item, for example, structural steel. If the cost of testing is increased because the fabrication yard or manufacturing plant is located beyond this fifty-mile radius, then the increased costs shall be borne by the Licensee. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall be borne by the Licensee.

#### 7.9. Responsibility of Quality

The testing and inspection provided by the Trustees shall not relieve the Licensee of its responsibility for the quality of materials and workmanship provided by the Licensee, and the Licensee shall make good all defective Work discovered during or after completion of the Project.

### 8. CHANGES IN THE WORK

#### 8.1. Change Orders

The Trustees reserve the right to issue written orders, or Field Instructions, to the Licensee, which shall be signed by the Trustees' Construction Administrator. Through the use of Field Instructions, the Construction Administrator may direct changes in the Work at any time prior to the acceptance of the Project without voiding the Contract, and Licensee shall promptly comply with such orders, provided that the scope of the changed Work and the basis on which compensation will be paid to the Licensee for the changed Work (i.e., a lump sum amount, time and materials) are agreed by the Parties and memorialized in a Change Order signed by both Parties.

On the basis set forth herein, a Contract price (i.e., the compensation to be paid to the Licensee for the changed or extra Work to be performed pursuant to the Change Order, which compensation shall be calculated and paid separately from the Guaranteed Final Peak Demand Reduction Rate unless the Parties specifically state otherwise in the Change Order) shall be established or adjusted for any written order or Field Instruction requiring a different quantity or quality of labor, materials or equipment from that originally required, and the partial payments to the Licensee, set forth in Article 40.02, Partial Payments, shall be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the Trustees in writing, the Licensee shall take all necessary steps to halt such other Work in the area of the change that might be affected by the ultimate change. Changed Work shall be performed in accordance with the original Agreement requirements except as modified by the Change Order. Except as provided in this Article 38, the Licensee shall have no claim for any other compensation due to changes in the Work associated with a Change Order (Public Contract Code section 10841).

##### A. Proposed Change Orders.

The Trustees shall issue to the Licensee a cost request bulletin via the Construction Administrator, or a field instruction via the Project Manager/Construction Inspector, hereinafter called the cost request bulletin, for a proposed change order describing the intended change, and shall require the Licensee to respond with a proposed amount to be the Contract Price or, in the case of sequential Change Orders added to or subtracted from the Contract price due to the change supported by a detailed estimate of cost (hereinafter called a change order request). Upon request by the Trustees, Licensee shall permit inspection of the original Contract estimate, subcontract agreements, or purchase orders relating to the change. Any request for adjustment in time of final completion of the Project which is directly attributable to the changed Work shall also be included, with substantiating detailed explanation, by the Licensee in its response to the cost request bulletin. Licensee's failure to request adjustment of time on the change order request shall waive any right to subsequently claim an adjustment of the time for final completion based on the changed Work. Licensee shall submit the change order request with detailed estimates and any time extension request thereon to the Trustees and to the Project Manager/Construction Inspector within fifteen (15) Days after issuance of the cost request bulletin. If not submitted within the required fifteen (15) Days, and the Licensee has not obtained the Trustees' permission for a delay in submission, the Trustees may order the Licensee in writing to begin the Work immediately in accordance with Articles 38.01-c or 38.02, and the Contract price shall be adjusted in accordance with the Trustees' estimate of cost, unless the Licensee within fifteen days following completion of the changed Work presents proof convincing to the Trustees that the Trustees' estimate was in error. For any amount to be included in or added to a Contract price for the changed Work, the Trustees shall determine payment will be made in one of the following three ways: a lump sum amount, time and materials with a guaranteed maximum price, or time

and materials with no guaranteed maximum price. If either of the latter two methods is agreed upon, Licensee shall keep and submit time and materials records verified daily by the Construction Inspector to substantiate its costs and to furnish such proof.

When the Trustees and the Licensee agree on the amount of the Contract Price (or the amount to be added to or deducted from the Contract price) and the time to be added to or deducted from the completion date, and a Change Order is signed by the Trustees and the Licensee, the Licensee shall proceed with the changed Work. When the Trustees and the Licensee agree to the adjustment in the Licensee's compensation or an adjustment thereto for the performance of changed Work, but fail to agree to the time adjustment for such Work, the Licensee shall proceed with the Work at the agreed price, reserving the right to further pursue its claim for a time adjustment (see Article 36.15-d, Adjustment of Time Due to Acts of the Trustees). Any costs incurred to acquire information relative to a proposed change order shall not be borne by the Trustees.

B. Allowable Costs upon Change Orders.

The only costs (estimated or actual) that will be allowed due to changed Work, and the manner in which such costs are computed, shall be in accordance with the following nine provisions. In submitting a change order request, the Licensee affirms that the cost is submitted in good faith, that the cost is accurate and is in accordance with the provisions of the Contract requirements, and the Licensee submits the cost recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim to the Trustees (see Government Code section 12650 et seq.). Direct cost is defined as the actual cost of Work before the application of any mark-ups for overhead and profit. In addition to items identified in the following provisions, direct cost items may include: hoisting, clean-up (both periodic and final), trash removal, traffic control and dust control.

(1) Labor.

Costs are allowed for the actual payroll cost to the Licensee for labor, field supervision of changed Work, (but not field office supervision nor indirect supervision) and engineering or technical services directly required for the performance of the changed Work (but not site management such as field office estimating, clerical, purchasing, as-builts, change order coordination, or warranty). Costs include payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act.

No labor cost will be recognized at a rate in excess of the wages that are paid by the Licensee for similar Work on the Project at the time the Work is performed, nor will the use of a classification which would increase the labor cost be permitted unless the Licensee established to the satisfaction of the Trustees the necessity for use of such higher classifications of workers. The Licensee and subcontractors shall submit a fully detailed breakdown of the cost of every labor classification to be utilized on a proposed change on the Hourly Labor Rate Worksheet. The Trustees may verify wage and burden per Article 36.02-a, Prevailing Wage, subdivision (6). The unit cost of labor shall be an accurate accounting of actual costs paid in accordance with the allowances herein, and it shall be submitted under penalty of perjury.

(2) Materials.

Licensee's costs are allowed for the cost of the materials directly required for the performance of the changed Work. Such cost of materials may include the costs of transportation, sales tax, and delivery if necessarily incurred. If a trade discount by the actual supplier is available to the Licensee, it shall be credited to the Trustees. If the materials are obtained from a supply or source owned wholly or in part by the Licensee, payment therefor will not exceed the current wholesale price for such materials. Cost for consumed materials may be charged on a reasonably estimated basis, but may not be a percentage of labor.

If, in the opinion of the Trustees, the cost of materials is excessive, or if the Licensee fails to furnish satisfactory evidence of the cost from the actual suppliers thereof, then in either case

the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The Trustees reserve the right to furnish such materials as they deem advisable, and Licensee shall have no claim for costs or profits on material furnished by the Trustees.

(3) Equipment.

Licensee's costs are allowed for the actual cost of the use of equipment directly required in the performance of the changed Work except that no payment will be made for time while equipment is inoperative due to breakdowns or for non-working days. The rental time shall include the time required to move the equipment to the Project site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project in any other way than upon the changed Work. Individual pieces of equipment having a replacement value of \$200.00 or less shall be considered to be small tools or small equipment, and no payment therefor will be made unless it has been rented specifically for the changed Work. Consumed equipment or tools, such as paint brushes, rollers, drill bits, etc. may be charged on an actual or reasonably estimated cost basis and are not to be charged as a percentage.

For equipment owned, furnished, or rented by the Licensee, no cost therefor shall be recognized in excess of the rental rates established by distributors or equipment rental agencies in the locality where the Work is performed.

The amount to be paid to the Licensee including mark-up for the use of equipment as set forth above shall constitute full compensation to the Licensee for the cost of fuel (unless the Licensee has demonstrated that mark-up does not cover consumed fuel cost), power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and any and all costs to the Licensee incidental to the use of such equipment. Equipment operators shall be paid for as provided in Article 38.01-b (1), above.

(4) Mark-ups on Change Orders.

The mark-ups allowed on the direct cost of changed Work include all incidental overhead support costs and profit. Such incidental overhead support costs include: estimating and purchasing; indirect supervision and project management; home office overhead; site overhead including facilities and utilities; change order coordination; as-built drawings; warranties; bonds; liability insurance including labor; and small tools. Any incidental overhead support cost not expressly identified herein shall be included in the Licensee's mark-up. No mark-up on mark-up is permitted. If the subcontractor is owned, partially owned, or has a shared profits arrangement with the Licensee, any mark-up otherwise applicable to a change shall be reduced in proportion with the shared profits.

(5) Work by Subcontractors and Vendors.

For any portion of the changed Work which is to be performed by a subcontractor (any tier), the Licensee shall furnish to the Trustees a detailed estimate prepared and signed by subcontractor of the cost to subcontractor for performing the changed Work. At the option of the Trustees, a lump sum estimate of such cost to subcontractor may be accepted in lieu of the detailed estimate. The combined costs for subcontractor's overhead, profit, taxes, indirect supervision, insurance, bonds, warranty and any other costs not specifically allowed by Article 38.01-b (1), (2) and (3), shall not exceed fifteen (15) percent on the first \$50,000 of the direct cost; thereafter, ten (10) percent on the balance beyond \$50,000. The maximum allowable mark-up of a first-tier subcontractor on any subsequent tiers shall be seven (7) percent. The aggregate mark-ups allowed by multiple tiered subcontractors shall not exceed twenty-six (26) percent of the direct cost on the first \$50,000; thereafter, twenty-one (21) percent on the balance beyond \$50,000. Estimates of the amount to be deleted from subcontractor's portion of the Work shall be gross value of the deducted Work plus at least six percent for overhead, bonds, insurance, and related savings added to the direct value of the deleted Work. For



changed Work to be furnished by a vendor, the Licensee shall furnish upon demand of the Trustees, a lump sum estimate of the cost of the items including taxes and cartage to the Licensee prepared by the vendor. No vendor mark-up for overhead, profit, layout, supervision or bonds will be allowed for changed Work furnished by a vendor.

(6) Licensee Mark-up for Added Work.

When changed/added Work is performed by a subcontractor, the Licensee may add no more than ten (10) percent mark-up to the subcontractor's total direct cost estimate (excluding the subcontractor's mark-up) for such Work on the first \$50,000; thereafter the mark-up is seven (7) percent on the balance beyond \$50,000. The Licensee's ten (10) percent mark-up in this case is for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs not specifically allowed by Article 38.01-b (1), (2) and (3). Also refer to Article 36.08-e, Utilities, for special mark-up on repair of utilities. The Licensee may add up to fifteen (15) percent to its direct cost when self-performing the changed Work on the first \$50,000 and ten (10) percent thereafter on the balance beyond \$50,000.

(7) Credit for Deleted Work.

Where an entire item or section of Work is deleted from the Contract, the entire subcontract value or bid value shall be considered the appropriate deduction less the value of Work performed, and shall have at least six percent mark-up added thereto for the Licensee's saved overhead, bonds, and insurance. If the subcontract value or bid value is not identifiable, then the amount to be deducted from the Contract amount shall be the estimated value of the deducted Work plus at least six (6) percent for saved overhead, bonds, and insurance. The value submitted on the schedule of values shall be used to calculate the credit amount, and may not be further marked up if it includes the value for general conditions (overhead, bonds, insurance, etc.).

For a proposed change order that involves both added and omitted Work, the Licensee shall separately calculate its total added costs and its total deducted costs, and shall then sum its total added and deducted costs, resulting in the Licensee's net cost for the change order. The Licensee shall then apply the mark-up to this net cost. Similarly, the Licensee shall separately calculate each subcontractor's total added costs and total deducted costs, and shall then sum each subcontractor's total added and deducted costs, resulting in each subcontractor's net cost for the change order. If the resulting net costs for each subcontractor will increase the Contract price, then the Licensee shall apply separate mark-ups for added Work as specified in Article 38.01-b (6). If the resulting net costs for each subcontractor will decrease the Contract price, then the Licensee shall apply separate mark-ups for deleted Work as specified in this Article. For example:

Licensee - net cost is \$30,000, Licensee's mark-up is 15%, or \$4,500.

Subcontractor A - net cost is \$20,000, Licensee's mark-up is 10%, or \$2,000.

Subcontractor B - net cost is <\$10,000>, Licensee's mark-up is six percent, or <\$600>.

The Licensee's total mark-up for this example change order is \$5,900.

(8) Market Values.

Cost for added Work shall be no more than market values prevailing at the time of the change, unless the Licensee can establish to the satisfaction of the Trustees that it investigated all possible means of obtaining Work at prevailing market values and that the excess cost could not be avoided.

When a change order deletes Work from the Contract, the computation of the amount thereof shall be the values which prevailed at the time bids for the Work were opened, if the Work is contained in a subcontract agreement or purchase order executed at or near the time proposals were opened.

(9) Architect/Engineer's Extra Services for Change Order Work.

- (a) Negotiated Fee.
- (b) The Trustees may elect to negotiate a fixed fee for design extra services on Change Order Work.
- (c) Work Performed by Principals and Employees of the Architect/Engineer.

- (d) Unless as identified in (a) above, for any Work performed by the Architect/Engineer on a change order, the Architect/Engineer shall receive an amount not to exceed two and one half (2.5) times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra services. Reimbursement for principals when providing drafting or other related services normally provided by an employee shall be reimbursed at the maximum rate for services of employees. The Architect/Engineer shall provide an Hourly Labor Rate Worksheet at the onset of the Project, listing rates applicable to this Project within the limits listed above.
  - (e) Work Performed by Firms or Individuals Not Employees of the Architect/Engineer.
  - (f) Unless as identified in (a) above, for Work performed by firms or individuals not employees of the Architect/Engineer, but engaged by the Architect/Engineer to assist in providing the authorized extra service, the Architect/Engineer shall receive one and one tenth (1.1) times the amount to be paid by the Architect/Engineer to the consultants for said services. Payment to consultants for services rendered is limited to direct Project costs, including a maximum of two and one half (2.5) times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra service.
  - (g) Architect/Engineer Reimbursables. The Architect/Engineer shall be paid only the actual and reasonable costs of reimbursable expenses incurred on change order Work as approved in writing by the Trustees prior to the Architect/ Engineer incurring the costs, with no mark-up for overhead and profit.
- C. Failure to Agree as to Cost
- (1) For Added Work.  
Notwithstanding the failure of the Trustees and the Licensee to agree as to the cost of the proposed change order, the Licensee, upon written order from the Trustees, shall proceed immediately with the changed Work. A Field Instruction or letter signed by the Trustees shall be used for this written order. At the start of each day's Work on the change, the Licensee shall notify the Trustees in writing as to the size of the labor force to be used for the changed Work and its location. Failure to so notify may result in the non-acceptance of the costs for that day. At the completion of each day's Work, the Licensee shall furnish to the Construction Inspector a detailed summary of all labor, materials, and equipment employed in the changed Work. The Construction Inspector will compare his/her records with Licensee's daily summary and may make any necessary adjustments to the summary. After the Construction Inspector and the Licensee agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional Work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed Work. Subsequent adjustments, however, may be made based on later audits by the Trustees. When changed Work is performed at locations away from the job site, the Licensee shall furnish in lieu of the daily summary, a summary submitted at the completion of the Work containing a detailed statement of labor, material, and equipment used in the Work. This latter summary shall be signed by the Licensee who shall certify thereon under penalty of perjury that the information is true, and the costs are as allowed in Article 38.01-b(1), (2), and (3). If changed Work is to be paid on the basis of time and materials, a credit for deleted Contract Work shall be included. Mark-up shall be as covered in Article 38.01-b(4), (5), (6), (7) and (9).  
The Licensee shall maintain and furnish on demand of the Trustees itemized statements of cost from all vendors and subcontractors who perform changed Work or furnish materials and equipment for such Work. All statements must be signed by the vendors and the subcontractors.
  - (2) For Deleted Work.

When a proposed change order contains a deletion of any Work, and the Trustees and the Licensee are unable to agree upon the value thereof, the Trustees' estimate may be deducted from the Contract price and may be withheld from any payment due the Licensee until the Licensee presents proof convincing to the Trustees that the Trustees' estimate was in error. The amount to be deducted, other than deletion of an entire item as addressed in Article 38.01-b (7), shall be the costs to the Licensee for labor, materials, and equipment which would have been used on the deleted Work together with the credit mark-up. The guidelines set forth in Article 38.01-b, shall be used in computing the amounts involved for changes other than deletion of an entire item.

D. Allowable Time Extensions.

For any change in the Work, the Licensee shall be entitled only to such adjustments in time by which completion of the entire Work is delayed due solely to performance of the changed Work. However, no extension of time shall be granted for a change in the Work unless the Licensee demonstrates to the satisfaction of the Trustees that the Work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the Licensee is making, or has made, every reasonable effort to guarantee completion of the additional Work called for by the change within the time originally allotted for the Work (Public Contract Code section 10842). Attention is directed to Article 36.15, Contract Time, and Article 36.16, Schedule.

E. Use of Licensee's Contingency.

- (1) If there is an omission or correction in the Construction Documents that should have been identified through a reasonable constructability check and coordination review of the Construction Documents by the Licensee, then the Licensee shall purchase and install the omitted equipment or material utilizing the Licensee's contingency.

F. Use of Allowances

The Trustees limit the use of allowances; however, the Trustees shall approve the use of any allowance, on a case by case basis. If the Trustees so approve, allowances may only be used for specific and discrete scopes of Work that were indeterminate at the time of producing the Guaranteed Final PPA Rate. The Licensee shall not aggregate allowances to create another Project contingency; the Licensee bears the cost risk of completing the Work covered by a Licensee Allowance, and shall return unused portions of the Licensee Allowance to the Trustees in a credit change order. Credits on remaining allowance balances shall have licensee markups credited in accordance with 38.01. The Trustees are responsible for the estimate on a Trustees' allowance.

The Licensee shall only use allowances for their identified specific and discrete purpose. The Licensee may not use allowance balances to make up deficits on other line items. The Trustees shall authorize each debit from an allowance in writing, using a field instruction. The Licensee shall maintain a detailed cost accounting, including allowances, and submit it with the monthly payment application for the Trustees' approval. The trade contractors shall markup direct cost items in accordance with this Article, however, Trustees will not award to Licensee additional mark-ups or fees on allowances.

8.2. Emergency Changes

Changes in the Work agreed by the Trustees to be made necessary due to unforeseen site conditions, discovery of errors in the Contract Documents requiring immediate clarification in order to avoid a serious Work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the Trustees are kinds of emergency changes which may be authorized by the Trustees in writing to the Licensee. The Licensee shall commence performance of the emergency change immediately upon receipt of written direction from the Trustees.

If agreement is reached as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 38.01 relating to ordinary changes. If agreement is not reached as to compensation and/or time adjustment

at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 38.01-c, that is, time and materials records and summaries shall be witnessed and maintained until either a lump sum payment and/or a time extension, as provided in Article 38.01-d, is agreed upon, or the changed Work is completed.

## 9. CLAIMS AND DAMAGES

### 9.1. Claims

#### A. Claim and Dispute Submittals.

Any dispute related to this Agreement or its breach that is not resolved by agreement shall be promptly submitted in accordance with this Article, with adequate supporting data. Adequate supporting data shall include, but is not limited to a statement of the reasons for the asserted entitlement, the certified payrolls, invoice(s) for material and equipment rental, an itemized breakdown of any adjustment sought, and supporting schedules.

At the time of submission of any claim, the Licensee shall certify as follows:

#### SUBMISSION UNDER PENALTY OF PERJURY

“I, (insert full name), am the (insert title--must be an Officer) of (insert name of firm), and I declare under penalty of perjury under the laws of the State of California and do personally certify and attest that: I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, and know its contents, and said claim is made in good faith; that the supporting data is truthful and accurate; that the amount requested accurately reflects the contract adjustment for which I believe the Trustees are liable, and further, that I am familiar with California Penal Code section 72 and California Government Code section 12650 et seq., pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences.”

BY: (Signature)

Date: (insert date of signature)

Licensee’s submission of a claim, properly certified, with all required supporting documentation, and Trustees’ written rejection or denial of all or part of the claim(s) are conditions precedent to any action, proceeding, litigation, suit, or demand for arbitration by the Licensee.

#### B. Licensee’s Claim(s) – Notice of Claim.

In accordance with Article 37.02 (Issuance of Interpretations, Clarifications, Additional Instructions), should the Licensee disagree with the determination of the Trustees on a matter that substantially affects the Licensee’s costs, compensation or extent of Work, the Licensee shall file a preliminary claim with the Trustees. For purposes of this Article 39.01, “claim” means a separate demand by Licensee, sent by registered or certified mail with return receipt requested, for one or more of the following:

- (1) A time extension for relief from damages or penalty for delay;
- (2) Trustees’ payment which is not otherwise expressly provided or to which the Licensee is not otherwise entitled.
- (3) Payment of an amount that is disputed by the Trustees.
- (4) Subcontractor claims.

#### C. Actions Prior to Claims Review Board

##### (1) Licensee’s Claim Submittal / Documentation.

Licensee submitted its claim in accordance with Article 39.01, subsections ‘a’ and ‘b’.

##### (2) Trustees’ Review of Licensee’s Claim upon Receipt.

The Trustees shall conduct a reasonable review of the claim upon receipt and, within a period not to exceed 45 days, shall provide the Licensee a written statement identifying disputed and

undisputed portions of the claim. Upon receipt of the claim, the Trustees and Licensee may, by mutual agreement, extend the time provided herein.

The Trustees' failure to issue a written statement shall result in the rejection of the claim in its entirety. A claim that is denied by reason of the Trustees' failure to respond to the claim or to meet the time requirements contained herein shall not constitute an adverse finding regarding the merits of the claim or the responsibility/qualifications of the Licensee.

(3) Trustees' Payment of Undisputed Portion of Claim.

The Trustees shall pay the undisputed portion of the claim within 60 days after issuing the written statement.

D. Informal Meet and Confer Conference

(1) If Licensee disputes the Trustees' response, or if the Trustees fail to respond to Licensee's claim within the time prescribed, the Licensee may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered or certified mail with return receipt requested, the Trustees shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(2) Post-Meet and Confer Conference

Within ten business days following conclusion of meet and confer conference, the Trustees shall provide Licensee a second written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. The Trustees shall pay the undisputed portion within 60 days after the Trustees issue the second written statement.

E. Nonbinding Claims Review Board

Any remaining disputed portion of the claim shall be submitted to nonbinding Claims Review Board. If the Claims Review Board is unsuccessful, Licensee may submit the disputed portion of the claim to mediation.

F. Licensee Submission of Unresolved Claims.

Licensee shall submit all claims in writing in accordance with this Article 39.01 to the Trustees no later than 30 Days after the County Recorder's recordation date on the Trustees' Notice of Completion. The Licensee's failure to submit its claims to the Trustees within this 30-Day period shall constitute a waiver by the Licensee of such claims. Once the claims have been submitted, and the 30 Days after the County Recorder's recordation date on the Notice of Completion have expired, Licensee may not submit any additional claims. Licensee shall have 30 additional Days in which to submit six copies of a total and detailed claims package. Failure to submit the full detailed package within this second 30-Day period shall constitute a waiver by the Licensee of such claims.

G. False Claims

Licensee submits the claim recognizing the significant civil penalties and treble damages, which follow from making a false claim or presenting a false claim to the Trustees (see Government Code sections 12650 et seq.).

H. Trustees' Claim(s) Submittal.

The Trustees shall submit a rebuttal to the Licensee's claim, along with any Trustees' claims to the Claims Review Board within a reasonable time after the submission by the Licensee of a total and detailed claims package or the expiration of the time to file Licensee's claims.

I. Licensee Rebuttal to Trustees' Claims.

Upon submission of any Trustees claims, the Licensee shall have an additional 30-day period to submit to the Claims Review Board the Licensee's rebuttal to the Trustees' claims.

J. Claims Review Board.

The Trustees will convene a Claims Review Board to hear the submitted claims at the completion of the Project. Each Claims Review Board shall continue to function until the members review all pertinent facts and arrive at a recommendation. The Assistant Vice Chancellor for Capital Planning, Design and Construction, or a designee administers the Claims Review Board process.

These administrative responsibilities include, but are not limited to, selection of the Claims Review Board members, determination of the time and location of the hearing, and application of the Claims Review Board procedures. The Claims Review Board is comprised of representatives of the California State University, which may include representatives of Capital Planning, Design and Construction staff who have not had any direct connection to the Project. It is a neutral, lay dispute resolution board, in which an independent third-party board assists the parties in dispute resolution through negotiation or by issuance of an evaluation or recommendation. Attorneys and third-party claims specialists may not participate in the hearings, with the exception of scheduling consultants. The Board's recommendation will be made as soon as possible after the conclusion of the hearing, and that recommendation is made to the appropriate University official and the Assistant Vice Chancellor of Capital Planning, Design and Construction.

The decision to accept or reject the Board's recommendation is the responsibility of either the University official, if the Project was administered by the University, or the Assistant Vice Chancellor, if the Project was administered by Capital Planning, Design and Construction. The decision of the University official or the Assistant Vice Chancellor (as appropriate) exhausts the Licensee's contractual and administrative remedies with the Trustees.

K. Actions Post Claims Review Board.

(1) Initial Mediation.

Should a dispute remain unresolved following exhaustion of the Claims Review Board process, the parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute.

Within ten business days after the disputed portion has been identified in the Trustees' second written statement, the Trustees and Licensee shall mutually agree to a mediator, for which the Trustees and the Licensee shall share the costs equally. If Licensee and Trustees cannot agree on a mediator, each party shall select a mediator, and these mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(2) Another Dispute Resolution.

If, on completion of such mediation, the parties are unable to agree and settle the dispute, then the dispute may be pursued in litigation or through some other dispute resolution technique, except arbitration.

9.2. Delay in Completion--Liquidated Damages

If the Work is not completed within the time required, the Trustees will sustain damage. It is, and will be, impractical and extremely difficult to determine the actual damage which the Trustees will sustain by reason of the delay. It is therefore agreed that the Licensee will pay to the Trustees the sum of money stipulated per Day in Section 8.5 of this Agreement for each Day's delay in completing the Work beyond the time prescribed (see Article 40.01, Acceptance). If the Licensee fails to pay such liquidated damages, the Trustees may deduct the amount thereof from any money due or that may become due the Licensee under this Agreement or any Change Order (Public Contract Code section 10826). If the Trustees have occupancy of all or the majority of the Project and can use it for its intended purpose, including operation of fire and life safety systems, the Trustees may reduce the amount of assessment of liquidated damages (if it is determined to be in the best interest of the Trustees). In this case, the Trustees may reduce the liquidated damages assessment to [\$X00] per Day or half of the value originally stipulated per Day, whichever is higher. The Trustees' assessment of liquidated damages shall not commence on a Saturday, Sunday or legal holiday.

9.3. Termination

Termination provisions are found in Article 11 and 15 of Exhibit A ESSLSA of the Master Enabling Agreement.

9.4. Intentionally Omitted

9.5. Intentionally Omitted

9.6. Third-Party Claims

The Trustees have full authority to compromise or otherwise settle any claim relating to this Agreement or any Change Order at any time. However, the Trustees shall notify the Licensee of the receipt of any third-party claim relating to this Agreement or any Change Order (Public Contract Code section 9201).

10. PAYMENT AND COMPLETION

10.1. Stop Payment Notices

Trustees shall retain out of any money due or that may become due the Licensee, sums sufficient (125 percent of the claim) to cover claims filed pursuant to the stop payment notice provisions of the law (Civil Code section 9000 et seq.).

Preliminary notices and stop payment notices shall be presented to the Trustees in proper form and should be addressed to the Construction Administrator and sent to the Trustees at the address identified in the letter transmitting the Contract for signature and at the preconstruction conference. The Licensee shall be responsible to communicate this information to all subcontractors.

In the event Trustees receive a stop payment notice, Licensee shall post an additional bond of 125% of the claim amount to cover the claims filed pursuant to the stop payment notice provisions of the law (Civil Code section 9000 et seq.)

10.2. Contractor Evaluation

The University will perform a contractor evaluation, and a report filed with the Trustees after completion of the Project. If the Licensee fails to perform the Work responsibly by failing to complete all Work and requirements, including honoring the warranty, the Construction Administrator shall so state the facts on the Contractor Evaluation Form. If an evaluation results in a non-responsible contractor finding, it could affect the Licensee's prequalification and may cause the Licensee to be deemed ineligible to bid on Trustees' Work. Refer also to Article 32.09, Failure to be a Responsible Bidder.

**End of Rider B-1**

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## **RIDER B-2**

### UNIVERSITY SPECIFIC SUPPLEMENTAL CONDITIONS

[Any and all changes to Exhibit A shall be made in this Rider (B-2)]

**End of Rider B-2**

## **RIDER C**

### **PERFORMANCE GUARANTEE**

If the business model is a shared savings as a percent of peak demand reductions, then no performance guarantee is necessary since the Licensee's interests are aligned with the Trustees.

If the business model is a synthetic shared savings model where the Trustees pay a dollar amount for every verified peak demand reduction (KW) with a guaranteed savings in dollars per month or per year. In a synthetic shared savings agreement, a performance guarantee ensuring savings is essential to align the Licensee's interests with the Trustees.

This document will be populated after the RFQ based on proposals from qualified firms that wish to use a synthetic shared savings agreement.

[This is the minimum viable performance guarantee built around administrative simplicity. University and Licensee may agree to more elaborate performance guarantees as long as the guarantee meets or exceeds this minimum]

**End of Rider C**

## **RIDER D**

### **OPERATIONAL ACCESS PROCEDURES FOR THE SITE AND LICENSED AREA**

Access procedures for Licensee: As set forth in Section 8.10 of this Agreement, Licensee's access to the Site and Licensed Area shall be subject to all procedures adopted from time to time by Trustees, including but not limited to, the procedures set forth herein. Only Licensee's employees, agents and contractors retained by Licensee and listed below shall be permitted access to the Site and Licensed Area. Said representatives and other entities shall be required to show appropriate identification prior to the requested access. At University's option, Licensee may be required to be escorted by a representative of University.

**NON-EMERGENCY ACCESS** – Between the Notice to Proceed and the Construction Completion Date, Licensee shall have access to the Site and Licensed Areas Monday through Friday from 7:00 a.m. to 7:00 p.m., and Saturdays from 9:00 a.m. to 6:00 p.m. during the periods between [Month, day, year] and [Month, day, year] and [Month, day, year] and [Month, day, year]; provided that Licensee shall be granted a day-for-day extension on its access rights commensurate with any extensions provided pursuant to Section 8.6. During the first three (3) weeks after the start of the first fall semester after the Construction Completion Date, Licensee's non-emergency access shall be between the hours of 2:00 p.m. and 7:00 p.m. on Fridays and 9:00 a.m. and 6:00 p.m. on Saturdays. After the Construction Completion Date and except for the first three weeks as provided in the prior sentence, non-emergency access to the Site and Licensed Areas (1) shall be Monday through Friday between the hours of 7:00 a.m. and 7:00 p.m.; (2) shall require at least twenty-four (24) hours prior notice to University representative (as identified below) for scheduling purposes; and (3) Licensee must contact the University departments referenced below to schedule all non-emergency access to the Site or the Licensed Areas.

**EMERGENCY ACCESS** – Licensee shall be permitted to access the Site and Licensed Area twenty-four (24) hours a day, seven (7) days a week for emergency purposes, as reasonably determined by the Licensee. Within twenty-four (24) hours of such access, Licensee shall provide the University representative (as identified below) with a written explanation of the emergency).

- 1) **Weekday Emergencies** – For emergencies between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday, Licensee shall follow the protocol described above for non-emergency access except that the twenty-four (24) hours prior notice shall not be required. Licensee is required to contact the University representative.
- 2) **Weekday Evening Emergencies** – For emergencies between the hours of 7:00 p.m. and 7:00 a.m. Monday through Friday, Licensee shall contact the University representative. The University representative (or their designee) shall meet Licensee's authorized representative at the Site and escort Licensee's representative. Alternately, access cards and/or keys may be issued to Licensee's representative when available.
- 3) **Weekend and Holiday Emergencies** – For emergencies between Fridays 7:00 p.m. to Monday 7:00 a.m. or on any holiday observed by University, Licensee shall contact the University representative. The representative of the University (or its designee) shall meet Licensee's authorized representative at the Site and escort Licensee's representative.

**LICENSEE**

Names, Company Names, Company Addresses for Access Notice and Phone Numbers of Licensee's Employees, Agents and Contractors Permitted Access to the Facility.

|                   |                   |
|-------------------|-------------------|
| Contractor: XXX   | Contractor: XXX   |
| Name: XXX         | Name: XXX         |
| Address: XXX      | Address: XXX      |
| Office Phone: XXX | Office Phone: XXX |
| Cell Phone: XXX   | Cell Phone: XXX   |

The California State University [Campus]: Names/Titles, Facility Address for Access Notice and Phone Numbers of University Contacts

|                       |                                 |
|-----------------------|---------------------------------|
| Facility Contact: XXX | Alternate Facility Contact: XXX |
| Name: XXX             | Name: XXX                       |
| Address: XXX          | Address: XXX                    |
| Office Phone: XXX     | Office Phone: XXX               |
| Cell Phone: XXX       | Cell Phone: XXX                 |

IN THE EVENT OF AN EMERGENCY if no direct contact is made with the representatives of the California State University [Campus] listed above, Licensee is to contact the University Police Department at the following phone number:

UNIVERSITY POLICE DEPT: Phone Number:

**End of Rider D**

## RIDER E - SCHEDULE

### DEVELOPMENT & INSTALLATION AND CONSTRUCTION

| DEVELOPMENT   |   |                       |  |
|---|---|-----------------------|--|
| Task  | Milestone <sup>1</sup>  | Responsible Party     | Reference  |
| Notice of Intent to Award   |   | Trustees              |  |
| Fully Executed Energy Storage and Site License Service Agreement                          | Due on or before [month, day year]                                | Trustees and Licensee |  |
| Licensee pays 1st Transaction Fee   | Due after month, day, year before [month, day year]               | Licensee              | Section 3.9 of the Agreement.  |
| Notice to Proceed to Design   |   | Trustees              |  |
| Project Kick-off Meeting  | Before or at delivery of Schematic Design                         | Licensee & University | As mutually agreed to by the Parties   |
| Schematic Designs   | On or before [month, day year]                                    | Licensee              | Section 7.8 of the Agreement includes schematics, equipment data sheets and proposed schedule                |
| Review of Schematics  | Five (5) Business Days  | Trustees              | Section 7.8 of the Agreement   |
| Resubmittal of Schematics (if required) and approval                                      | 15 days from receipt of Trustees' changes and/or comments         | Trustees              | Section 7.11 of the Agreement  |
| 95% Construction Documents  | On or before [month, day year]                                    | Licensee              | Section 7.9 Agreement includes detailed plans, specifications, engineering calculations and updated schedule |
| Trustees' Review of Construction Documents  | Fifteen (15) Business Days from receipt of Construction Documents | Trustees              | Section 7.9 of the Agreement   |
| Technical Review of Construction Documents  | Concurrent with Trustees' review                                  | Trustees and Licensee | State Fire Marshal, Seismic, Mechanical Review Board   |
| Re-submittal of Construction Documents (if required), and proposed abatement contractor   | 15 days from receipt of Trustees' changes and/or comments         | Licensee              | Sections 3.3.1 and 7.11 of the Agreement   |
| Final Back Check of Construction Documents and approval of CD's, and abatement contractor | On or before [month, day year]                                    | Trustees              |  |
| Performance Bond and Insurance Certificates   | Due prior to beginning any construction                           | Licensee              | Section 8.9 and Article 18 of the Agreement  |

<sup>1</sup> Milestones for which Licensee is the responsible party, including the Guaranteed Construction Completion Date, will be extended on a day-for-day basis for any delays in Trustee's performance of its obligations under this Agreement.

| INSTALLATION AND CONSTRUCTION                                  |   |                       |   |
|--|---|-----------------------|---|
| Task   | Milestone   | Responsible Party     | Reference   |
| NOTICE TO PROCEED  | 5 working days from approval of Construction Documents  | Trustees              | Section 8.2 of the Agreement  |
| Licensee pays 2nd Transaction Fee                              | To be paid on or before [month, day year]   | Licensee              | Section 3.9 of the Agreement.   |
| Actual Construction Start Date                                 | Within 10 days, but no sooner than [month, day year]  | Licensee              | Section 8.3 of the Agreement  |
| Construction and Installation (including Trustees' inspection) | Work may occur between [month, day year] and [month, day year].                               | Licensee and Trustees | Section 8.15 of the Agreement inspection of the work for compliance with approved plans, applicable codes and regulations |
| Construction Installation and Completion                       | Written notification no less than 10 days and no more than 15 days before COD                 | Licensee              | Section 8.7 of the Agreement  |
| As-built Drawings including Project Manual                     | Prior to COD or in accordance with the Agreement  | Licensee              | Section 7.13 of the Agreement<br>Section 9.5 of the Agreement   |
| Final Inspection and Testing as required by Trustees           | After written notification and prior to COD   | Trustees              | Requires utility sign off and execution of interconnection agreement  |
| Notice of COD  | Written notice within 24 hours of occurrence  | Licensee              | Section 8.7 of the Agreement  |
| Commercial Operation Date                                      | No later than [month, day year]   | Licensee              | Section 8.4 of the Agreement  |
| Licensee pays 3rd Transaction Fee                              | To be paid within 15 days of the date the Licensee achieves financial close in its financing. | Licensee              | Section 3.9 of the Agreement.   |
| Punch List   | Within 15 days after Notice of COD  | Trustees              | Section 8.8 of the Agreement  |
| Completion of Punch List                                       | Within 30 days of receipt   | Licensee              | Section 8.8 of the Agreement  |
| Legal Description  | Within 60 days of COD   | Trustees              | Section 3.13.3 of the Agreement   |

### End of Rider E

Know All Persons by These Presents:

THAT WHEREAS, the State of California acting by and through the Trustees of the California State University, hereinafter called the Trustees, has awarded to:

Contractor  
Address  
City, ST Zip

as Principal, hereinafter designated as the “Contractor,” a Contract for the Work described as follows:

Project Number: <insert Project Number>  
Project Name: < insert Project Name>  
University: < insert Campus Name>

AND WHEREAS, the Contractor is required to furnish a bond in connection with said Contract, to secure the payment of claims of laborers, mechanics, and other persons, as provided by law:

NOW, THEREFORE, we the undersigned Contractor and Surety are held and firmly bound unto the State of California through the said Trustees in the amount required by law, in the sum of:

<copy agreement amount from p.1 of Agreement>

for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such,

That if the Contractor, his, her, or its heirs, executors, administrators, successors or assigns, or subcontractors shall fail to pay any of the persons referred to in Civil Code section 9100 or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, that the Surety or Sureties herein will pay for the same, in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought on this bond, the said Surety will pay a reasonable attorney’s fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons referred to in Civil Code section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond. Any such right of action shall be subject to the provisions of Civil Code sections 8608 and 9566.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this XXX day of, 201X

|             |                                   |
|-------------|-----------------------------------|
| CONTRACTOR: | Contractor Name: _____            |
| AS          |                                   |
| PRINCIPAL   | Contractor Address: _____ ( SEAL) |
|             | By: _____                         |
| SURETY      | Surety Name: _____                |
|             | Surety Address: _____ ( SEAL)     |
|             | By: _____                         |

Signatures executed in behalf of the Surety must be properly acknowledged

PERFORMANCE BOND

Contract No. <insert #>

Know All Persons by These Presents:

THAT WHEREAS, the State of California acting by and through the Trustees of the California State University, hereinafter called the Trustees, has awarded to:

Contractor  
Address  
City, ST Zip

as Principal, hereinafter designated as the "Contractor," a Contract for the Work described as follows:

Project Number: <insert Project Number>  
Project Name: <insert Project Name>  
University: <insert Campus Name>

AND WHEREAS, the Contractor is required to furnish a bond in connection with said Contract, guaranteeing the faithful performance thereof:

NOW, THEREFORE, we the undersigned Contractor and Surety are held and firmly bound unto the State of California through the said Trustees in the sum of:

<copy agreement amount from p.1 of Agreement>

to be paid to the said Trustees, State or its certain attorney, its successors and assigns: for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such,

That if the above bounden Contractor, his, her, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made as therein provided, on his, her, its or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the State of California, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this XXX day of XXX, 201X

CONTRACTOR: Contractor Name: \_\_\_\_\_

AS

PRINCIPAL: Contractor Address: \_\_\_\_\_ (SEAL)

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

SURETY Surety Name: \_\_\_\_\_

Surety Address: \_\_\_\_\_ (SEAL)

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

Signatures executed in behalf of the Surety must be properly acknowledged.



## CERTIFICATION

Contract No. <insert #>  
Project No. <insert #>

This is to certify that I am the: \_\_\_\_\_ of  
(Insert title such as Secretary or Assistant Secretary)

\_\_\_\_\_.  
(Insert name of corporation/limited liability company)

Company Type/Certification Statement (check one):

☐ Corporation:

The attached resolution is a true and accurate copy, as the same appears in the Minutes of the Board of Directors of the Corporation; and that said resolution was duly adopted by the Board of Directors of the Corporation at its meeting on \_\_\_\_\_.

☐ Limited Liability Company (LLC):

The attached Articles of Organization is a true and accurate copy, as filed with the Secretary of State on \_\_\_\_\_.

Dated: Choose an item.  
(Insert date)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title of Person Making Certification

### IMPORTANT NOTE

(Be sure to attach to this certification a copy of the resolution authorizing a person to execute Contract Documents or to execute a bid submittal. If attaching more than one resolution, modify the form to reflect that fact.)

**End of Rider F**

## RIDER G

### TRUSTEES Consent and Estoppel Certificate Template (THE “CERTIFICATE”)

#### EXAMPLE: SUBJECT TO NEGOTIATION PURSUANT TO SECTION 12.3 AND 12.4

Definitions: Except as specifically provided to the contrary in this Rider G, all defined terms in this Rider G shall have the same definition as set forth in Article 1 of the Agreement as defined below.

Premises: The Licensed Area, as defined in Exhibit A of the Agreement, located on the California State University [Campus], (the “Premises”).

License. The Energy Storage Site License Service Agreement (as further amended from time to time, the “Agreement”) dated: [redacted], 20[redacted], by and between the Trustees of the California State University on behalf of the California State University [Campus] (“Trustees”), on the one hand, and [Insert Licensee’s Name] (together with its permitted successors and assigns, “Licensee”), on the other hand.

1. Acknowledgment and Consent. Trustees hereby acknowledge and consent to the following:

- 1.1. Sale-Leaseback Transaction. Trustees acknowledge that they have been advised that [redacted] (“System Lessor”) is providing financial accommodations to Licensee to finance the System which has been installed at the Premises. Trustees have been advised that Licensee and System Lessor intend to enter into a lease financing transaction (the “Transaction”), pursuant to which System Lessor will purchase the System from Licensee pursuant to a Master Purchase and Sale Agreement, dated as of [redacted], 20[redacted] (the “Master Purchase and Sale Agreement”), and Licensee will lease the System from System Lessor pursuant to a Master Lease Agreement, dated as of [redacted], 20[redacted] (the “Master Lease Agreement”), with [Name of System Lessor] acting as “System Lessor”, as such term is defined in the Agreement.
- 1.2. Personal Property. Trustees acknowledge that the System constitutes personal property, and not a fixture.
- 1.3. Further Assurances. Trustees will at any time and from time to time, upon the reasonable written request of System Lessor, work in good faith with System Lessor in order to effectuate more fully the purposes of the Trustees Consent and Estoppel Certificate (the “Certificate”).
- 1.4. Limitation on System Lessor’s Obligations under the Agreement. Except as provided otherwise in this Certificate, Trustees agree that Licensee is solely responsible for Licensee’s performance under the Agreement and that System Lessor shall not be responsible for Licensee’s obligations thereunder.
- 1.5. Default under Agreement. If an event of default (as defined in Section 15.1, of the Agreement) by Licensee has occurred and is continuing, and provided that Licensee has provided Trustees written notice regarding the existence and contact information for the System Lessor, Trustees shall, before terminating the Agreement or exercising any other remedy, notify Licensee and System Lessor simultaneously of such default, and System Lessor shall be afforded the same period of time in which to cure (or cause to be cured) such event of default as Licensee is afforded under such Agreement. If System Lessor prosecutes such cure with all due diligence and despite such efforts cannot cure such default in the same time period, Trustees shall, upon timely written notice from System Lessor, grant System Lessor an additional time not to exceed thirty (30) days to cure all of Licensee’s defaults under the Agreement.
- 1.6. Step In Rights. If System Lessor desires to step in as the Substitute Licensee and System Lessor notifies Trustees, in accordance with Section 19.9 of the Agreement, that it has elected to be so recognized, then System Lessor shall be recognized as a “Substitute Licensee” if it complies with Section 12.5 of the Agreement.
- 1.7. Bankruptcy. If any of the events described in Subsection 15.1.4 of the Agreement has occurred, and the Agreement is terminated by rejection, or otherwise, during a case in which Licensee is the debtor under Title 11, United States Code, or other similar federal or state statute, System Lessor shall have the rights set forth in Subsection 15.4.5 of the Agreement.
- 1.8. System Lessor Reliance. Trustees acknowledge that System Lessor will be deemed to be the “Lender” or “System Lessor” as such terms are defined in the Agreement.
- 1.9. Conflicts. In the event of a conflict between any provision of this Certificate and the provisions of the Agreement, the provisions of the Agreement shall prevail.

2. Certifications. The undersigned duly authorized representative of Trustees hereby certifies to System Lessor, holder of a first priority security interest in the Agreement, and collateral assignee of the Agreement, that:
- 2.1. The Agreement is presently in full force and effect and unmodified except as indicated at the end of this Certificate.
  - 2.2. The Agreement became effective on [REDACTED], 20[REDACTED] (Effective Date) and the Term will expire [REDACTED] after the Commercial Operation Date.
  - 2.3. The address for notices to be sent to (a) Trustees and Licensee, is as set forth in Section 19.9 of the Agreement, or (b) to System Lessor, is as set forth in Attachment 1 hereto.
  - 2.4. Trustees and, to the best of Trustees knowledge, the Licensee, are not in default under the Agreement, nor do any conditions exist nor has any event occurred that, with the giving of notice or the passage of time, would ripen into a default under the Agreement.
  - 2.5. Trustees have the full right and authority to enter into, execute, deliver, and perform their obligations under the Agreement.
  - 2.6. Trustees have taken all requisite action to approve the execution, delivery, and performance of the Agreement.
  - 2.7. Each Trustees signatory to the Agreement was duly authorized to enter into, execute and deliver the Agreement on behalf of Trustees.
  - 2.8. The Agreement constitutes the legal, valid and binding obligation of Trustees, enforceable against Trustees in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally.
  - 2.9. To the best of Trustees' knowledge, the consummation and execution of the Agreement (including the installation of the System will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.

- 2.10. Trustees are aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to System Lessor's ownership interest therein. The undersigned has full right and authority to execute and deliver this Certificate on behalf of Trustees.
- 2.11. This Certificate has been duly authorized, executed and delivered by Trustees.
- 2.12. This Certificate constitutes the legal, valid and binding obligation of Trustees.

Dated: \_\_\_\_\_, 20\_\_\_\_

The Trustees of the  
California State University  
Office of the Chancellor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Consented to by the California State University [Campus]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

[Full Legal Name of Contractor]

By: \_\_\_\_\_ (Contractor's Authorized Signature)\_\_\_\_  
Name: \_\_\_\_\_ (Printed Name)\_\_\_\_  
Title: \_\_\_\_\_ (Title of Person Signing for Contractor)\_\_\_\_  
Date: \_\_\_\_\_

**End of Rider G**

## **RIDER H**

### **LICENSEE SAMPLE PEAK DEMAND REDUCTION INVOICE**

Insert Licensee's sample peak demand reduction invoice at a minimum the invoice should provide the following information:

Peak Demand and Peak Demand Charge counter-factual bill (without battery energy storage service)  
minus Actual Peak Demand and Demand charges.

The formula for an actual shared savings agreement shall be  
counter-factual bill demand charge  
minus actual bill demand charge  
multiplied by the percent of shared savings payable to the Licensee.

The formula for a synthetic shared savings agreement shall be  
counterfactual bill demand charge  
minus actual bill demand charge  
multiplied by the price per peak demand reduction in KW.

These costs and benefits shall be trued up annually under a performance guarantee to ensure benefits to the Trustees.

Round trip efficiency input/output KWh and unit costs/value  
Cost or value of energy arbitrage

**End of Rider H**

## RIDER I

### SCOPE OF WORK, Final ESSLSA PRICE AND LAYOUT

|   |                       |
|---|-----------------------|
| A. Premises                             | Physical Address: XXX |
| Site diagram attached:                  |                       |
| B. Description of Energy Storage System |                       |
| Interconnection Agreement Type:         |                       |
| Energy Storage System Size:             |                       |
| Inverter Size                           |                       |
| Inverter:                               |                       |
| Control System                          |                       |
| C. Scope of Work                        |                       |
| Overview:                               |                       |
| Requirements:                           |                       |
| D. Anticipated Subsidy or Rebate        |                       |
| E. Additional Disclosure                |                       |
| F. Final ESSLSA Price                   | \$0.XXXX/KW           |

## **RIDER I CONTINUED**

1ST LICENSED AREA PROPOSED LAYOUT(S) (X,XXX kWdc)

**End of Page**

**RIDER I CONTINUED**

2ND LICENSED AREA PROPOSED LAYOUT (XXX kWdc)

**End of RIDER I**



## **RIDER J**

UNIVERSITY PREMISES SPECIFIC GEOTECHNICAL REPORT(S)

[CAMPUS TO INSERT ANY RELEVANT OWNER SUPPLIED GEOTECHNICAL REPORTS]

**End of Rider J**

**TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY**

**REQUEST FOR PROPOSAL  
NO. [XXXX]**

**SYSTEMWIDE ENERGY STORAGE  
MEA PROJECTS**

**Energy Storage Site License and Service Agreement and All Addenda**

**PROJECT NO. [XX-XXX]**

**Campus Specific Storage MEA Coversheet and attachments**

**[Campus to Insert Completed Battery MEA Coversheet and Attachments]**

| <b>Rider K - University Specific Energy Storage MEA Coversheet</b>           |  |
|--|--|
| <b>[Campus Name]</b>   |  |
| University Contact Information for Solicitation                              | [Name, Title, Phone, Email]  |
| RFP Issue Date   | [Month Date, Year @ Time]  |
| Technical Proposal Due   | [Month Date, Year @ Time]  |
| Cost Proposal Due  | [Month Date, Year @ Time]  |
| SECTION I – OVERVIEW   |  |
| Interconnection Fees Treatment   | Please Choose  |
| Basis of Award   | Please Choose  |
| Selection and award schedule dates   |  |
| <i>Deadline for RFP Questions</i>  | [Month Date, Year @ Time]  |
| <i>Job Walk</i>  | [Month Date, Year @ Time]  |
| <i>Issuance of Addenda – if necessary</i>                                    | [Month Date, Year @ Time]  |
| <i>Technical Proposal Due Date</i>   | [Month Date, Year @ Time]  |
| <i>Cost Proposal Opening</i>   | [Month Date, Year @ Time]  |
| <i>Notice of Intent to Award</i>   | [Month Date, Year @ Time]  |
| <i>Contract Award</i>  | [Month Date, Year @ Time]  |
| Construction schedule dates  |  |
| <i>Start of Construction</i>   | [Month Date, Year @ Time]  |
| <i>Construction Completion Date</i>  | [Month Date, Year @ Time]  |
| <i>Interconnection and Project Completion</i>                                | [Month Date, Year @ Time]  |
| SECTION IV – SCOPE OF SERVICES   |  |
|  | <b>Battery Energy Storage</b>  |
| Local Electric Utility   | Please Choose  |
|  | Please Choose  |
| Construction Delays  | Please indicate [\$X,000] for [X site] if "Assessed by Liquidated Damages " was chosen |
| CEQA Status  | Please Choose  |
| Net Energy Metering (NEM) Availability                                       | Please Choose  |
| Attach All Existing Interconnection Agreements                               | [Number of Pages xxx]  |
| SECTION V – TECHNICAL PROPOSAL REQUIREMENTS AND EVALUATION                   |  |
| Campus Standards, Guidelines and policies                                    |  |
| <i>Campus Electrical Conduit Standards (Rigid Vs. EMT)</i>                   | Insert link to standards   |
| <i>Campus Contractor Safety Handbook</i>                                     | Insert link to standards   |
| <i>Campus Design Criteria</i>  | Insert link to standards   |
| <i>Campus Risk Management and Environmental Health &amp; Safety Policies</i> | Insert link to standards   |
| <i>Campus Meters Standards</i>   | Insert link to standards   |
| <i>Lighting Standards</i>  | Insert link to standards or choose   |
| <i>Required Conductor Type</i>   | Please Choose  |
|  |  |
| Penalty Rate for Non-Operation   | \$ [xxx]/Day   |
| Voltage at High and low side of campus main meter                            | 12,000 V - 12,000V   |
| Incentives   | <b>SGIP</b>  |
|  | Please Choose  |
| Tariff Rate  |  |
| Attach 12 months of 15-Minute Interval Data                                  | [Number of Pages xxx]  |
| Attach Electrical Single Line Diagram  | [Number of Pages xxx]  |
| Attach campus as-built drawings and data                                     | [Number of Pages xxx]  |
| Riders   |  |
| Attach Map and Definition of Site and Licensed Area                          | [Number of Pages xxx]  |
| Site Details (Geotechnical reports, enclosure aesthetics, etc)               | [Number of Pages xxx]  |
| Others   |  |
|  |  |

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- FORM 3 - SUSTAINABILITY CAPABILITIES
- FORM 4 - EXPECTED AND GUARANTEED PEAK DEMAND REDUCTION

## 1. SECTION– OVERVIEW

### 1.1. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit proposals from the System Providers selected from the Systemwide Energy Storage Master Enabling Agreement (MEA).

Multiple awards are possible from this RFP for Energy Storage Site License and Service Agreements (ESSLSAs) depending on how many campus coversheets are included with this RFP.

### 1.2. SUMMARY

System Provider shall finance, design, engineer, construct, own, operate, and maintain, energy storage systems and sell storage services to Trustees on a 10th of a cent/kW (AC) basis at a competitive rate, pursuant to fully-executed 3rd party owned and operated energy storage license and service agreements at locations described in the Campus Specific Energy Storage MEA coversheet.

System provider shall also submit a cost proposal with a cash purchase price that at the campus' sole option may be selected.

Proposer shall be solely responsible for all costs related to, and necessary for, the implementation and on- going operations of the energy storage systems as proposed. In addition, Proposer should reference Section 3.9, Transaction Fee, within the Energy Storage License and Services Agreement (ESSLSA) which shall reimburse the Trustees for incurred project costs.

Proposer should assume there was no pre-feasibility evaluation done to appropriately energy storage systems for any of the locations and conditions offered. Proposer is responsible for ascertaining relevant site conditions and making its own findings and determinations regarding appropriate system sizes and associated energy production.

The integration of each on-site energy storage system with the electrical systems serving the site will be the responsibility of the Proposer. Proposers shall assume \$250,000 in Rule 21 interconnection costs and complete the schedule below in the event actual costs are less than or greater than \$250,000. In no event, shall the Peak Demand Reduction rate be permitted to exceed the Campus Hurdle Rate on the Campus Specific Energy Storage MEA Coversheet.

| Change in interconnection costs | Change in Peak Demand Reduction Price (\$/KW) |
|---------------------------------|---|
| -\$50,000                       |   |
| -\$40,000                       |   |
| -\$30,000                       |   |
| -\$20,000                       |   |
| -\$10,000                       |   |
| +\$10,000                       |   |
| +\$20,000                       |   |
| +\$30,000                       |   |
| +\$40,000                       |   |
| +\$50,000                       |   |

Proposals will be evaluated using a points system. The quality points (600 points) will be added to the cost proposal points (400 points) for a total point score. The cost proposal points will be determined using the following formula: Total cost proposal points will be awarded based on the price per peak demand reduction measured in KW. Price per peak demand reduction measured in KW will be calculated by the Trustees using the tariff rate(s) for demand charges, as reflected in the bid sheets. Total cost proposal points will be scored in direct relation to the price per peak demand variance from the lowest price. The lowest price will receive the maximum score of 400 points. The proposal offering the highest total points specified in the RFP will be recommended for award by the Trustees at its sole discretion.

### 1.3. SCHEDULE OF EVENTS

The schedules contained in the campus specific storage MEA coversheet outline critical timelines associated with the RFP and subsequent award. System Provider may be disqualified for failing to adhere to the dates and times specified below (all times Pacific [Daylight or Standard]Time):

The Trustees reserve the right to adjust this schedule at any time.

### 1.4. TERM

The Term of this Agreement is described in the Campus Specific Energy Storage MEA coversheet and shall commence on the

Effective Date and shall continue for the period indicated from the Commercial Operation Date of the System unless terminated earlier pursuant to the provisions of the ESSLSA.

#### 1.5. ENERGY STORAGE SITE LICENCE SERVICE AGREEMENT (ESSLSA)

The Energy Storage Site License Service Agreement (ESSLSA) has been memorialized in the Energy Storage Master Enabling Agreement. The terms of the ESSLSA include a definition of the scope of work, requirements for the use of Trustees facilities, construction and installation requirements, operations and maintenance provisions, insurance requirements, pricing mechanism, billing requirements, termination rights, events of default, default remedies, assignment, termination fee, end of term provisions, including option to buy out the system, and other terms and conditions. Upon award, Successful Proposer shall sign and be responsible for complying with the terms and conditions of the ESSLSA as agreed to in the Energy Storage Master Enabling Agreement.

#### 1.6. QUESTIONS

All questions, interpretations or clarifications, either administrative or technical regarding this RFP must be submitted in writing and directed to the staff identified in the Campus Contact Information for Solicitation field of the campus Specific Energy Storage MEA Coversheet. All questions submitted will be answered in writing and conveyed via written addenda to all Proposers. Oral statements concerning the meaning or intent of the contents of this RFP by any person is unauthorized and invalid. The deadline for all questions is located on the Campus specific Energy Storage MEA coversheet.

#### 1.7. SUBMISSION OF PROPOSALS

Technical Proposals and Cost Proposals must be delivered to Campus Contact provided on the Campus Specific Energy Storage MEA Coversheet on or before the time and date set forth in the Request for Proposal. PROPOSALS WILL NOT BE RECEIVED AT ANY OTHER LOCATION. It is the Proposer's responsibility to ensure that both proposals are received at the correct time and place. Mistakes or delays in the mail or other means of delivery employed by the Proposer are entirely the responsibility of the Proposer. LATE SUBMITTALS WILL NOT BE ACCEPTED.

##### Technical Proposals:

Technical Proposals must be received on or before the date and time indicated on the Campus Specific storage MEA Coversheet. Sealed packages shall be marked as follows:

Technical Proposal  
Systemwide Energy Storage MEA  
California State University,  
[Campus Name From Energy Storage Coversheet]  
Proposer's Name and Address

##### Cost Proposals:

Cost proposals must be submitted on the Cost Proposal Form provided by the Trustees, on or before the date and time indicated on the Campus Specific Energy Storage MEA Coversheet. Sealed envelope shall be marked as follows:

Cost Proposal  
Systemwide Storage MEA  
California State University,  
[Campus Name from Energy Storage Coversheet]  
Proposer's Name and Address

## 2. SECTION – RFP GENERAL PROVISIONS

#### 2.1. COMPLETION OF PROPOSAL

Proposals shall be completed in all respects as required by the RFP provisions. A proposal may be rejected if conditional, incomplete, inaccurate in its representation, or if it contains any alterations of form or other irregularities of any kind. Proposals which contain false or misleading statements, or which provide references that do not support an attribute(s) or conditions(s) claimed by the Proposer, may be rejected. All statements made by the Proposer shall also be without ambiguity and with adequate elaboration where necessary for clear understanding.



## 2.2. REJECTION OF PROPOSALS

The Trustees reserve the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received. The Trustees' waiver of an immaterial defect shall in no way modify the RFP documents or excuse the Proposer from full compliance with the specifications if proposer is awarded an Agreement. Proposals which include terms and conditions other than the Trustees terms and conditions, may be rejected as being non-responsive.

## 2.3. CANCELLATION OF PROPOSAL

This solicitation does not obligate the Trustees to enter into an Agreement. The Trustees reserve the right to cancel this RFP at any time, for any reason deemed in the best interests of the Trustees. No obligation either expressed or implied, exists on the part of the Trustees to make an award or to pay any costs incurred in the preparation or submission of a proposal.

## 2.4. COST OF PROPOSALS

All costs associated with responding to this Request for Proposal are entirely the responsibility of the Proposer and shall not be chargeable in any way to the Trustees.

## 2.5. USE OF PROPOSALS

The Trustees may use any or all ideas or concepts presented in any proposal without compensation to the Proposer. Selection or rejection of the proposal does not affect this right. All materials submitted in response to this RFP will become the property of the Trustees.

## 2.6. ALTERNATIVE PROPOSALS

Proposer shall submit only one proposal. Multiple proposals will result in the rejection of all proposals submitted by the Proposer.

## 2.7. ADDENDA

The Trustees may modify this Request for Proposal or any of its contents or attachments, prior to the date fixed for submission of proposals by issuance of a written addendum. All Addenda will be dated and numbered consecutively. All addenda must specifically be acknowledged and accepted in the proposal.

## 2.8. NON-COLLUSION AFFIDAVIT

By signing the proposal response, Proposer hereby certifies that the proposal is not made in the interest of, or on behalf of, any undisclosed party; that the proposal is genuine and not collusive, false, or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham bid, and has not directly or indirectly agreed with any proposer or anyone else to put in a false or sham bid, or to refrain from bidding; that the Proposer has not in any manner, directly or indirectly, sought to fix any overhead, profit or cost element of the bid, of that of any other Proposer, or to secure any advantage against the public body awarding the contract or anyone interested in the proposed contract.

## 2.9. ERRORS AND OMISSIONS

Before submitting a response to this solicitation, Proposers should thoroughly review and identify any and all errors or omissions for clarification and confirm compliance requirements with the RFP. Proposers should submit all relevant inquiries regarding contents of the RFP, including the ESSLSA in a timely manner in accordance with the RFP timelines.

## 2.10. CONFIDENTIALITY

The Trustees shall make every effort to protect the confidentiality of submitted proposals however, Proposer clearly understands California State University, is a public entity subject to disclosure laws.

## 2.11. ON-ENDORSEMENT

Once a proposal is accepted and an award is made, the successful Proposer shall not issue any news releases or other statements pertaining to the award or servicing of the Agreement which state or imply Trustees endorsement of Proposer's services.

## 2.12. DISPUTES

The Trustees encourage all Proposers to resolve issues regarding the requirements or the procurement process through written correspondence and discussions. The Trustees wish to foster cooperative relationships and to reach fair and objective resolutions in a timely manner. In the event a Proposer feels that the specifications and/or requirements may be unfair or unreasonable, written notification must be submitted to the Contracts and Procurement Office prior to the scheduled proposal submittal deadline.

### 2.13. PROTESTS

Proposer's filing a protest must do so within three (3) working days after Notice of Intent to Award is issued. The Proposer shall submit a full and complete written statement detailing the facts in support of the protest. Protests must be sent by certified or registered mail, or delivered in person to the Director, or designee, at the Campus Contact Information for Solicitation listed on the Campus Specific Energy Storage MEA Coversheet.

An impartial evaluator(s) selected by the Trustees shall perform a review of the protest. Selection of the evaluator shall be at the discretion of the campus. The evaluator shall review the merits and timeliness of the protest and submit a decision in writing within ten (10) working days. The decision will be sent via email or certified or registered mail, to the protesting firm. THE DECISION OF THE TRUSTEES IS FINAL.

## 3. SECTION– PROCUREMENT REQUIREMENTS

### 3.1. PREVAILING WAGE

Successful Proposer, and any subcontractor thereof shall pay the rate of wages for regular, overtime and holiday work plus employer payments for all benefits generally prevailing in the locality in which the work is to be performed, to the extent required by law, as outlined in the ESSLA.

### 3.2. INSURANCE

Prior to commencement of work, Successful Proposer shall provide evidence of insurance as required in the MEA and ESSLA.

### 3.3. CONTRACTOR'S LICENSE INFORMATION

The Successful Proposer shall be an individual or firm licensed to do business in California and shall obtain at his/her expense all license(s) and certification(s) required by law for accomplishing any work required in connection with the MEA and ESSLA.

The following license(s) are required for this solicitation:

- A. At a minimum, the installation Proposer must have a General Contractor's license and a C- 10 Electrical Contractor.
- B. Any licensing or certification requirements as developed and required for the receipt of any subsidies and incentives. These may include, but not necessarily limited to, an active A (General Engineering Contractor, where applicable to unique projects), B (General Contractor), C-10 (Electrical Contractor). For energy storage systems, a Class B license is required.
- C. Any company that subcontracts installation work to a C-10 must have a Class B license.

### 3.4. SMALL BUSINESS PREFERENCE

The State of California requires agencies to provide a 5% preference when awarding contracts to small businesses or a non-small business that commits 25% of the contract value to a certified small business. Only small businesses certified by the Office of Small Business and DVBE Services (OSBDS) or a non-small business that commits 25% of the contract value to a certified small business are eligible to receive the preference. Proposers wishing to claim the Small Business Preference must comply with and complete the Small Business Preference and Certification Request Form, Form 1.

### 3.5. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) AND INCENTIVES

Disabled Veteran-Owned Business Enterprise participation requirements have been waived for this solicitation in the best interests of the University, however the following DVBE incentives are still offered.

| Proposed DVBE Participation Level | DVBE Incentive % |
|-----------------------------------|------------------|
| 4% to 4.99%                       | 1%               |
| 5% to 5.99%                       | 2%               |
| 6% or more                        | 3%               |

The minimum incentive a qualifying Proposer can receive is 1%. The combination of preferences with a DVBE incentive cannot exceed 10% or \$100,000, whichever is less. A non-small business cannot displace a California certified small business from the top-ranked position due to application of preferences or incentive.

## 4. SECTION SCOPE OF SERVICES

### 4.1. SPECIFICATIONS AND REQUIREMENTS

This Section delineates the minimum technical and installation specifications required of the Successful Proposer by the Trustees for this Project.

The Successful Proposer must guarantee a portion of the peak demand reduction savings as described in Rider C.

The design of the energy storage systems will be the responsibility of the Successful Proposer; however, the systems must be compliant with applicable Trustees design guidelines.

#### 4.2. DESIGN

Proposer shall provide complete architectural, engineering, and consulting services as required to construct the project in all details in accordance with good practice, applicable building codes, CSU guidelines, and this RFP. System design documents shall be prepared, stamped, and signed by an engineer or engineers licensed in the State of California. Proposer also understands that System design documents that are submitted for review without the appropriate professional engineering stamp will not be reviewed and will be returned to Proposer as incomplete and insufficient System documentation.

Successful Proposer shall submit system design documents in three phases, as described in Section IV, paragraph five. System design documents will include, but not be limited to, the following:

- A. Site plan
- B. System layout
- C. System schematics
- D. System capacity calculations - Power capacity should be included separately for each site location and should be measured at the inverter AC output.
- E. System production simulations
- F. System single line electrical diagrams
- G. Points of interconnection single line electrical diagrams
- H. Construction documents—plans, elevations, sections, details, specifications, etc.
- I. Structural calculations and structural and mounting details
- J. Wind loading and seismic calculations
- K. List of equipment and materials schedule
- L. Manufacturers' data and cut sheets on batteries, inverters and balance of systems equipment
- M. Geotechnical report as applicable
- N. Construction Specifications
- O. Lighting Plan and Photometrics
- P. Monitoring system design and documentation
- Q. Operations and Maintenance Plan
- R. Training Plans and training materials

The Successful Proposer agrees to design and construct the System in accordance with all applicable building codes and standards. System design documents will expressly identify the applicable building codes and standards. The system design documents shall be submitted to the Trustees for review and approval. The Successful Proposer shall allow sufficient time in the project schedule for this review to take place and not be less than 10 working days.

Proposer shall:

- A. Provide comprehensive project management services for the duration of the project, commencing at contract execution. Proposer shall be responsible for assigning a single project manager who will act as the lead for the design and construction phases of the project. Proposer shall be responsible for conducting weekly project management meetings, producing agendas and minutes for the weekly meetings, and keeping an up-to-date issues/actions log. Proposer shall implement and maintain an internal records management and document control system as required, to support the project. Additionally, Proposer shall be responsible for developing a CPM schedule, which shall be updated and submitted weekly, showing the project's critical path as well as all activities required to complete the work (including the design, construction, testing, and close-out phases of the project) in sufficient detail to manage the complete scope of the project. The project schedule shall include all activities necessary to coordinate the work with other parties (e.g., campus, consultants, inspectors, etc.) and will explicitly show the dependencies between all tasks. At the Trustees' option, Proposer shall submit the schedule in either MS Project or Primavera format. In addition, schedules must also be submitted in Adobe Acrobat format.

- B. Conduct detailed site audits and geotechnical studies to confirm the existing site conditions. The geotechnical analysis shall be provided by Proposer and performed by a qualified geotechnical engineering firm. The results of the analysis shall be used when designing the foundations for the structures on the site(s). As part of the site audit, and upon request of Proposer, Trustees will provide information related to each site, including information regarding: (1) the utility service account number associated with the Site where the System installed; (2) twelve (12) months of billing data for the meter behind which the System will be installed; (3) a general description of Trustees operations at the site; (4) the energy or capacity reductions related to the system and consumption by Trustees at the site; and (5) a legal description of the physical location of the system and the property where the utility service account associated with the site is located (6) existing geotechnical studies of the site.
- C. Complete the design for all elements of the project, including but not limited to: civil, structural, electrical, and specialty consulting areas. Drawings shall be prepared and stamped by an engineer (or engineers) licensed in the State of California.
- D. Incorporate the requirements of permitting agencies as may become apparent in the course of design. The Licensee will apply for and secure all required permits and provide all necessary reports, studies and support required to obtain any permits for any agency that has jurisdiction.
- E. Include the cost of all permit fees. This comprises the Office of State Fire Marshal, California Environmental Quality Act (CEQA), and Campus Building Inspector.
- F. Submit design for review at 50% completion of construction documents; at initial 100% completion of construction documents; and after incorporating any corrections and changes required by the Trustees, for back-check of 100% complete construction documents, before commencing construction. After each submittal the Proposer will attend “comments resolution meeting.” The Proposer will review the Trustees comments at this meeting and will be prepared, with the appropriate people in attendance, to resolve the Trustees’ comments. All comments will be resolved to the Proposer’s and the Trustees’ mutual satisfaction. The Trustees may employ peer reviewers at its expense as part of the review process.
- G. Proposer shall develop and review the construction documents, considering quality of materials and equipment to ensure an efficient design. Proposer shall initiate design decisions by providing information, estimates, schemes, and recommendations regarding construction materials, methods, systems, phasing, and costs that shall provide the highest quality building within the budget and schedule. The plans and specifications shall identify the design codes, standards, and requirements used for the development of the plans, including the edition and applicable sections. The construction documents shall include a quality control program and an implementation plan to ensure that the completed project complies with the approved project criteria. The design professional-of-record shall specify within the construction documents all tests and inspections that are required by the building code and those that are appropriate to achieve compliance with the ESSLSA. Proposer shall retain the design professional-of record to provide in a professional capacity, timely construction administration services. These services shall include shop drawing review, response to requests for information regarding the construction documents, and periodic visits to the site to observe the quality of the work. The final, approved-for-construction set of construction documents shall be signed and stamped by the respective California-licensed professionals who prepared the documents, certifying their compliance with codes, standards, practices and regulations. The design professionals-of-record shall retain full responsibility for the design
- H. Prepare draft Operations and Maintenance Plan to serve two functions: (1) the Plan shall specify the services to be provided, their frequency, and the reporting and documentation that will be made available to the Campus throughout the duration of the project, consistent with the O&M requirements specified herein; and (2) the Plan shall be the basis for preparing the final Operations Manual(s) during the Construction phase. Provide all submittals on CD in AutoCAD 2015 (or latest version) for drawings and Microsoft Word for specifications; in addition, provide three sets of half-size drawings on white bond paper for all reviews, and three sets of full-size drawings on white bond paper at the time of construction. Provide the As-built Documents on CD as noted above, as well as three sets of full-size As-built Documents on white bond paper at the completion of construction.

#### 4.3. CONSTRUCTION

The Successful Proposer shall construct the Project in accordance with Trustee-approved plans, specifications and submittals prepared by the Licensee to meet or exceed all requirements of the Trustees.

Proposer shall:

- A. Conduct weekly meetings, as necessary, with the Trustees to provide schedules, status updates and technical input. The Licensee is responsible to provide meeting notes, in electronic format within three (3) working days from conclusion of the meeting.
- B. Provide required shop drawings and material data submittals. All shop drawings shall be submitted as full-size drawings at a scale usual for the given system, and sufficient to fully show and explain all relevant features, dimensions, etc.
- C. Provide complete management, supervision, and reporting of all aspects of the construction of this Project, including but not limited to scheduling and conducting weekly meetings with the Trustees.
- D. Provide resident engineering and contract administration, and pay for all inspections and other related services via the Trustees Transaction Fees, as described in the ESSLSA, including special inspections, necessary for the functional, safe, and on-schedule completion of the Project, starting with the issuance of a Notice-to-Proceed from the Trustees and extending through issuance of Notice of Completion and Acceptance. The Trustees staff will perform inspection to verify compliance with the contract documents.
- E. Ensure compliance with applicable local, state, and federal codes, building and environmental permit requirements.
- F. Provide any laboratory, surveying, and other contracted services as required to complete project construction.
- G. Continue to prepare and maintain a schedule for the duration of a project, consistent with the requirements in Section 4.2, above. The schedule will be updated and presented at the weekly meeting with the Trustees.
- H. Continue to maintain an internal records management and document control system as required, to support project operations.
- I. Implement a Safety Program. This includes but is not limited to the following activities:
- J. Assign a Safety Engineer to monitor and control this program for the Project.
- K. Develop an on-site Project Safety Plan for review and approval by the Trustees.
- L. Administer and apply the Trustee approved on-site Project Safety Plan.
- M. Enforce all Project Safety Plan requirements at all times pertaining to safety and health issues relating to all personnel on the Project Site including workers, consultants, subcontractors, material suppliers, equipment suppliers, and visitors.
- N. Report accidents, claims, and other on-going safety related issues to the Trustees.
- O. Adhere strictly to construction access requirements as established by the Trustees and provided in writing during the entire length and scope of the project construction. This shall include the Successful Proposer, its employees, contractors, and/or agents.
- P. Realistic schedules including a brief narrative of resources and planning should be included. Electrical shutdown needs to be coordinated with the Trustees well in advance, should be conducted during periods when least disruptive to normal operations, and receive prior approval from the Trustees.

#### 4.4. ELECTRIC POWER REQUIREMENTS:

Electricity from the System must be provided at 60 Hertz and at the appropriate voltage for electrical interconnection to the Site at the voltage service level, which will be specified by Trustees.

The System components must comply with all standards relevant to the operation and installation of energy storage equipment by UL or other nationally recognized testing facility. Batteries, enclosures, inverters and components must be certified to comply with the following requirements:

- A. UL Subject 1741, “Standard for Static Inverters and Charge, Converters, Controllers and Interconnection System Equipment for use with Distributed Energy Resources”
- B. UL Subject 1973 “Batteries for Use in Light Electric Rail Applications and Stationary Applications”
- C. UL Subject 1642 “Standard for Lithium Batteries”
- D. UL Subject 508 “Standard for Industrial Control Panels”

- E. Any and all requirements as listed by the SGIP incentive program and/or the CEC for the installation of energy storage systems.
- F. Other codes that will apply include, but are not limited to: ANSI C12.1-2008; (electricity metering)
- G. NFPA 70 (including NFPA 70E Arc flash)
- H. IEEE 1547 (interconnections)

#### 4.5. ENERGY STORAGE SYSTEM INSTALLATION

The Proposer shall provide the labor necessary to install all equipment, materials, and components to interconnect to the local utility grid with the exception of required equipment supplied and/or installed by the Trustees.

Installation must comply with the following codes and regulations:

- A. Systems must be installed in compliance with all applicable State building codes including OSHA and the State Building Standards Code
- B. NFPA 855, Standard for the Installation of Stationary Energy Storage Systems
- C. National Electrical Safety Code – ANSI C2-2012
- D. ANSI/IEEE 519 2014
- E. 2013 California Code of Regulations Title 24 – California Building Code part 2 - vol. 1 and 2, California Fire Code - part 9, and California Electrical Code – part 3

All Balance of Systems (wiring, component, wiring, conduits, and connections) must be suited for conditions for which they are to be installed. Inverters shall be installed in all-weather enclosures (NEMA4) suitable for exterior location.

#### 4.6. RULE 21 APPLICATION

The Successful Proposer must submit Rule 21 generating facility interconnection applications for each location on campus to local electric utility as described in the campus specific Energy Storage MEA coversheet. These applications will require new or amended Interconnection Agreements between the campus and local electric utility. The Successful Proposer will comply with any and all operational standards and requirements imposed by the Utility, and comply with the electrical interconnection requirements as stated in the applicable and controlling Utility tariff.

#### 4.7. UTILITY GRID INTERCONNECTION

Proposer shall supply, install, and deliver all equipment required to interconnect to the Trustees' distribution system and the local utility's grid. The Proposer shall fulfill all requirements to complete the interconnection process. Proposers shall include a \$250,000 allowance for the interconnection. In the event that actual costs are less than or greater than \$250,000 the PPA price shall be adjusted per the table in Section 1.2 and the Cost Proposal Form. Interconnection standards will comply with all codes and regulations listed in Section 4.4, 4.5, 4.6 4.7 and 4.8.

#### 4.8. METERS AND MONITORING

Successful Proposer will provide two meters per system. Meters shall be a revenue grade Interval Data Recording (IDR) meters for each system complete with any telemetry required by the local electric utility under Rule 21 Interconnection Agreement and the Trustees. The interval data meters must be installed to measure the AC output of the inverters. The meters for the Trustees systems are specified in the campus specific Energy Storage MEA coversheet.

A turnkey data acquisition, data export using representational state transfer (REST) application program interface (API) is strongly preferred. The display system shall be included in the proposal to monitor and track the energy input/output of each system and to diagnose underperformance. The monitoring system shall be accessible by the Trustees and the public and will track electrical production at maximum 15- minute intervals and with energy totaled by local electric utility time or use periods as specified in ESSLSA.

#### 4.9. WIRE, CABLE, CONDUIT AND CONNECTORS

Contractor shall provide information about proposed wire, cable, and connectors, including all underground facilities. All electrical wiring shall be either copper or aluminum, as indicated on the Campus Specific Energy Storage MEA Coversheet. Cable shall be designed and installed for a service life of 30 years. Cable for DC feeders and interconnect shall be 2-kilovolt 90°C (wet or dry) power cable type USE-2 or RHH/RHW-2 with XLPE jacket and UL 1581, VW-1 rating or approved equal for intended use capable of meeting DC collection system design current requirements. Externally installed cables shall be sunlight and ultraviolet resistant, suitable for direct burial, and conform to NEC 300.5 Underground Installation, Table 300.5 Minimum Cover Requirements, rated to the maximum DC voltage of the System(s). connectors shall be: (i) latching, polarized, and non-interchangeable with receptacles in other systems, and (ii) tap branch connectors with multi-contact termination connectors.

Grounding member shall be first to make and last to break contact with mating connector and shall be rated for interrupting current without hazard to operator. Cables shall be listed and identified as wire as stated in NEC Article 690. If a cable tray is utilized, there shall be no self-tapping screws, only a clamping mechanism to secure the top. All underground cable shall be identified in the as-built drawings. Galvanized, rigid metal conduit where underground cable is exposed above ground or stubbed up to junctions or poles shall be used except where protected by concrete caissons. Rigid metal conduit shall be included in the corrosion mitigation plan and shall be designed for a 30-year life in the Site(s) soils and conditions. All 90-degree bends shall follow NEC minimal bend requirements. There shall be no direct burial of cables. No underground cable splicing shall be acceptable under any circumstance. All cable splices shall be brought above ground and housed in a suitable enclosure or, if below grade, placed in a suitable vault that is clearly marked.

#### 4.10. STRUCTURAL REQUIREMENTS

- A. All structures shall be designed to resist dead load, live load, plus wind and seismic loads representative of the geographic area.
- B. Systems must be able to withstand winds of maximum regional speeds.
- C. Thermal loads caused by fluctuations of component and ambient temperatures must be combined with all the above load combinations
- D. All structural components shall be designed in a manner commensurate with attaining a minimum 30-year design life. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- E. As indicated on the Campus Specific Battery MEA Coversheet, paint shall be either powder-coated or baked enamel. In all cases, fascia shall be either powder-coated or baked enamel with a Trustee-selected color.
- F. The Trustees will oversee construction for conformance to CSU requirements and standards of care in the field through the Trustees' Project Manager and the State Fire Marshal.
- G. It is also expected the Proposers installer will adhere to any stationary energy storage Guidelines promulgated by the Fire Protection Office of the State Fire Marshal.

#### 4.11. OPERATIONS AND MAINTENANCE

The system is privately-owned by the Successful Proposer; therefore, the Proposer is responsible for all costs associated with operations and maintenance. All system warranties and workmanship guarantees will be in effect during the entire term of the ESSLSA. Services shall include the following:

- A. The Successful Proposer will be responsible for all necessary maintenance to ensure optimal performance of the systems at the Proposers sole cost and will assure that there will be no disruption to the Trustees' operations.
- B. The Proposer shall provide notification to the Trustees as early as practical, but in no event less than five days, prior to any planned repairs or maintenance.
- C. The Proposer will provide a minimum of ten (10) days notification to the Trustees of any planned repairs or maintenance that will result in interruption to electrical service at any Trustees-owned owned facility.

The Trustees will not provide any maintenance. All system warranties and workmanship guarantees will be in effect during the ESSLSA period.

#### 4.12. EMERGENCY SHUT DOWN

As part of the acceptance of the system by the Trustees, Proposer shall instruct and provide operations manuals on how to shut down the system in the event of an emergency at the Trustees facilities. The Proposer shall insure that emergency first responders can easily identify what to do in the event of an emergency and perform these tasks quickly and safely.

#### 4.13. COMMISSIONING AND ACCEPTANCE TEST

Prior to the commissioning of the system, the Proposer shall:

- A. Conduct a walk-through with the Trustees and address comments as necessary with to generate a completion punch list and subsequently to confirm all items are complete.
- B. Administer and coordinate the project contract closeout process and resolve any warranty provision issues.
- C. Report progress of project contract closeout to the Trustees.

The completeness of the construction will be formally verified by the Trustees against design documents. The Trustees shall observe and verify the system's performance. The acceptable productive power output will be measured in kW (AC) at the building electrical interconnection point, and must be consistent with the specifications for the system. Approvals as required by

the State Fire Marshal and local electric utility will be a pre-requisite for acceptance and for authorization to energize the system(s). A Certification of Acceptance will be issued by the Trustees to the Proposer upon the approval of the Commissioning and Acceptance Test.

#### 4.14. WARRANTIES AND GUARANTEES

The Successful Proposer shall provide evidence of the following warranties:

- A. Complete system warranty: minimum 10-year to provide for no-cost repair and replacement of the system for expenses not otherwise covered by manufacturer's warranties

#### 4.15. TRAINING AND MAINTENANCE MANUALS

The Successful Proposer shall provide training manuals and training sessions for University building operators on emergency operations sequences. Proposer shall provide to the Trustees two (2) sets of site-specific operation, maintenance, and parts manuals for each installed system. These O&M Manuals shall cover all components, options and accessories supplied. The Manuals shall include maintenance, trouble-shooting, and safety precautions specific to the supplied equipment at the site.

#### 4.16. LIGHTING

All systems shall include LED lighting in compliance with Title 24 standards as part of the design and must include occupancy controls. The amount of lighting required is specified by the Trustees in the campus specific Energy Storage MEA coversheet.

#### 4.17. RECORD DOCUMENTS

The Proposer shall also provide one (1) set of As-built Documents in AutoCAD 2015 or higher (for drawings) and Microsoft Word (for specifications). These requirements shall be delivered prior to acceptance of the site-specific system.

#### 4.18. PAINT

All exposed elements (steel, etc.) shall be factory primed and painted per Trustees standards and protocol including quality and color.

#### 4.19. PERMITS AND ENVIRONMENTAL CLEARANCES

The Trustees are self-certifying therefore all building permits are issued by the Trustees, and not local jurisdictions with building and permitting authority. The Office of the State Fire Marshall is the authority having jurisdiction for Fire Code and the Division of State Architect is the authority having jurisdiction for accessibility review.

The "permit" to install and construct a system at the Trustees host facility will come in the form of a "Notice to Proceed," after the system plans and drawings have been reviewed and approved for both compliance with the applicable California Building Codes and Standards and achieving constructability requirements as dictated by the Trustees.

Constructability requirements typically mean the system plans and drawings indicate that the system can be installed as engineered and designed, and that the construction schedule, tasks and activities have been reviewed to ensure coordination with host facility operations and requirements. All outside permitting and inspection costs shall be covered by the Proposer.

#### 4.20. STRUCTURAL REQUIREMENTS AND CEQA

Any and all structures and structural elements necessary for the installation and operation of the system shall be designed in accordance with all applicable California Building Codes and Standards that pertain to the erection of such structures.

An analysis of the potential impacts associated with Proposers proposed Systems is required under CEQA. The Successful Proposer shall not commence construction of the Systems until the Trustees have complied with CEQA, per the ESSLSA.

Projects will either be exempt under CEQA, will be addressed by the Trustees, or will be the responsibility of the Proposer, as indicated in the Campus Specific Storage MEA Coversheet.

The Successful Proposer shall provide structural calculations, stamped and signed by a licensed professional structural engineer in good standing with the State of California, as part of the plan check and review requirement.

All structural components shall be designed in a manner commensurate with attaining a minimum 30-year design life (even if the system is warranted for 10 years) and consistent with any host facility specific design guidelines and standards. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals such as aluminum and steel, or corrosive soils. Successful Proposer must warrant and maintain the full structural integrity of the system for the full term of the ESSLSA.

The Successful Proposer will be responsible for ascertaining relevant site conditions and making their own finding of appropriate system installation conditions prior to signing the ESSLSA. The Trustees facilities are in an "as is" state of condition, and



Proposers should not anticipate that the Trustees host facilities will make any accommodations or efforts to assist in installation of the system.

#### 4.21. CONSTRUCTION COMPLETION AND LIQUIDATED DAMAGES

All construction work shall be completed no later than the Construction Completion Date indicated on the Campus Specific Energy Storage MEA coversheet.

The Successful Proposer shall ensure all affected license areas are fully restored and available for public parking as scheduled.

Liquidated damages will be assessed at a per day cost listed on the Campus Specific Battery MEA coversheet. All such liquidated damages shall be assessed for each day beyond the Construction Completion Date.

#### 4.22. PERFORMANCE GUARANTEE REQUIREMENTS

Proposer must guarantee performance as described in Rider C unless proposing a shared savings model.

#### 4.23. RESTORATION OF SITE

Proposer is responsible for repairing any damage to the existing facilities or grounds that occur as a result of the construction including but not limited to asphalt marking, stains, track marks, cracks, holes, or damage to any vegetation. Proposer shall document all existing conditions prior to the start of construction and executing repair and methods, which are to be reviewed and approved by the Trustees prior to implementation. Asphalt repair shall include two slurry coats and striping.

Contractor is responsible for maintaining the existing functionality of equipment and services impacted by the resulting work; including, but not limited to, existing irrigation functionality and control and lighting. Contractor will be responsible for maintaining current functionality of adjacent lighting that will not be replaced as part of the project.

#### 4.24. TREES, LIGHT POLES AND BOLLARDS

Proposer's responsibilities for tree trimming and removal shall be as indicated in the Campus Specific Storage MEA Coversheet. All trees requiring trimming or removal shall be identified in the 50% construction document set and shall be approved by the Trustees. Should the in-lieu fee option be selected in the Campus Specific Storage MEA Coversheet, fees shall be calculated based on the number of trees identified in the 50% construction document set and the current in-lieu fee in effect at the time. Exposed finish should be patched smooth and flush with adjacent grade.

#### 4.25. GUIDELINES

The following guidelines can be found at the following links:

- A. CSU Access Compliance Design Guidelines
- B. CSU Mechanical and Electrical Basis of Design Guidelines
- C. Seismic Requirements

### 5. SECTION TECHNICAL PROPOSAL REQUIREMENTS AND EVALUATION

Proposals will be evaluated by the CSU's Evaluation Team using a points system. The evaluators will examine each proposal to determine, through the application of uniform criteria, that the Proposer has met the proposal submission requirements. Proposals that have not followed the format, do not meet minimum content and quality standards, or take unacceptable exceptions to the terms and conditions shall be eliminated from further consideration. Proposers should focus on conveying project specific information, excluding generic process information; and editing for brevity. The Proposal shall be organized with tabs corresponding to Section 7.3 Proposal Format and will be scored based on the Evaluation Criteria and Possible Points Table below.

The CSU will provide the technical score in whole numbers. The CSU will calculate the fee score to two decimal places and will add it to the technical score. The winner will be the Proposer with the highest combined technical and fee scores. In the event of a tie for first place in the total score, the winner will be the tied Proposer with the lowest rate. If the proposed fees are equal the winner will be selected by a coin toss in the presence of both parties and managed by the CSU. The CSU require that the tied Proposers agree to the coin toss procedure in writing before the toss. The proposal offering the highest point score will be recommended for award. The CSU are under no obligation to award this project to the Proposer whose proposal represents the lowest cost.

Technical proposal Evaluation Criteria and Possible Points Table:

The average of all quality points per category awarded by individual evaluators will be added together to compile a quality points total.

A maximum total of 600 points is available for each proposal as detailed below:

| Criteria   | Quality Points |
|--|----------------|
| Energy Storage System Size and Output                | 86             |
| System Locations and Layouts                         | 60             |
| Technical Description                                | 68             |
| Metering and Monitoring Description with Data Access | 43             |
| Project Schedule                                     | 74             |
| Project Team Organization                            | 13             |
| Qualifications of Key Personnel                      | 34             |
| Past Project Experience                              | 30             |
| References   | 13             |
| Management and Staffing Plan                         | 26             |
| Operations and Maintenance Plan                      | 64             |
| Billing Plan   | 21             |
| Exceptions to ESSLSA                                 | 25             |
| Capital Finance Structure                            | 17             |
| Sustainability Capabilities                          | 26             |
| Simulated Peak Demand Reduction Data                 | Pass/Fail      |
| Total  | 600            |
| Cost Proposal Points                                 | 400            |
| Total Possible Points                                | 1,000          |

5.1. SYSTEM SIZE AND OUTPUT  
86 POINTS

Include an overview of proposed project including locations and site area to be utilized, including total size (kW/kWh (AC)). Also provide the minimum guaranteed system output (kW/kWh (AC)/year) i.e. the expected and projected Actual Peak Demand Reduction as specified in Rider C.

Expected and guaranteed minimum peak demand reduction kW (AC) for each proposed site and in aggregate, including methodology and assumptions used to develop the estimates; Expected annual system degradation rate over the ten-year term.

5.2. SYSTEM LOCATIONS AND LAYOUTS  
60 POINTS

Provide drawings depicting the general arrangement of system installed locations. System locations shall reflect RFP requirements and indicate the type of system.

5.3. TECHNICAL DESCRIPTION  
68 POINTS

Attach design documents and narrative that communicate the following information for each site.

- A. System description
- B. Equipment details and description
- C. Conceptual Plan/System Layout

- D. Rendering, altered photo, etc. showing a clear visual of the system
- E. Description of landscape, fencing, and/or aesthetic features, including landscape removal, lighting, parking islands, etc.
- F. List of proposed materials, including batteries, inverters, racking and support systems, structural materials and balance of systems equipment
- G. List any plans to address the impact on existing Trustees warranties, and the plan for assumption of any impact resulting to Trustees property from installation, maintenance, or operation of the Systems
- H. Performance of equipment, subsystems, and site-specific components
- I. Integration of systems with Trustees' existing electrical systems
- J. Electric utility provider interconnection requirements
- K. Controls, instrumentation, monitoring, and data management capabilities
- L. Proposed locations for the system equipment and related components
- M. Proposer shall provide the following technical description of the technologies proposed for installation at the specific sites:
  - Configuration, including tilt angle and aspect
  - Structural requirements
  - Typical useful life of significant components
  - Benefits specific to the systems proposed
  - Any product or warranty enhancements being offered
  - Description of the manufacturer of the batteries and relevant information regarding the manufacturer's environmental plan, such as ISO 14001
  - Other relevant information

Note: The Trustees will review and approve all system design and construction documents, particularly for its visual impact on surrounding buildings and public spaces, visibility to passersby, glare and reflectivity, and the appearance of exposed edge of panels. Inclusion of photographs and architectural elevations are required. Please include the height(s) of the proposed system(s).

#### 5.4. METERING & MONITORING DESCRIPTION WITH DATA ACCESS 48 POINTS

Proposer shall provide a description of the monitoring system that will be installed at the specific sites, including:

- A. Equipment/instrumentation – proposed system to monitor and track system electrical energy output and diagnose system underperformance
- B. Monitoring data points – values being monitored and stored by the system
- C. Analysis and data reduction of monitored values – results presented and stored by the system
- D. Format and storage of raw and reduced data – protocol and format of stored data
- E. Access to raw, reduced and stored data – protocol for accessing data
- F. Maintenance and operation requirements including calibration frequency
- G. Comprehensiveness of data collection, effectiveness of data presentation, ease of data access, ease of integration
- H. Demonstration and display features for educational, training and research purposes;
- I. Proposer should assume that data storage, management and display shall be included within the proposal.
- J. Systems shall be accessible by the Trustees with real time data that includes 15-minute demand intervals and energy totaled by the time of use periods in local utility company applicable tariff(s) rate noted on the Campus specific MEA coversheet.

Proposer shall provide a plan for metering, monitoring, diagnosing, and tracking the battery energy input/output of the systems consistent with Trustees requirements. A minimum requirement for the data monitoring and access is a web-based monitoring and tracking system accessible to the Proposer, Trustees. This system must include real-time or near real-time data on electricity input/output by the system as an open and accessible source to Trustees.

#### 5.5. PROJECT SCHEDULE 74 POINTS

Proposer shall provide a detailed CPM project schedule (timeline) below, for each proposed installation as well as an overall

completion schedule, showing all major events, planned start and finish dates, dependencies between tasks, proposed deliverable dates, and significant milestones. Proposer must also include proposed options for the continuation or removal of the system at the end of the contract term as specified in the ESSLSA.

As indicated on the Campus Specific Storage MEA Coversheet, the Successful Proposer shall be required to address failure to meet all installation deadlines in one of the two following ways: (1) make the site safe and return the site to its original use (e.g., parking spaces, and parking lot driveways are available for public parking); or (2) pay a per liquidated damages for each day a site is unavailable.

#### 5.6. PROJECT TEAM ORGANIZATION

##### 13 POINTS

The Trustees require that a Team Organizational Chart be developed and provided as part of the Proposal. Please identify all of the proposed key personnel, as identified in Section 5.6, below, of each team component and how the team will be managed. Once accepted, any changes to the Project Team or Key Personnel must be approved by the Trustees. The Trustees reserve the right to interview each new team member to confirm its acceptance of the new team member and any new Key Personnel. If the Trustees do not accept a proposed new team member, Proposer will provide alternative team members of equal or better qualifications until such time that the Trustees accepts the proposed new team member. The Trustees expects the Successful Proposers Key Personnel to be committed to the Design and Installation portion of the Project for the duration of their role, and the Successful Proposer will not roll personnel on and off the Project without approval of the Trustees. The Trustees also reserve the right to ask Proposer to remove a person from the Project team at the Trustees discretion In addition to the Team Organizational Chart, Proposer shall include the following team information:

- A. Names of other team member firms and the persons from those firms dedicated to this program;
- B. Roles and responsibilities of each team member, and the relationship between the team members, include an organizational chart;
- C. A brief description of each team member's firm and their ability to contribute to successful energy storage program implementation (history, performance of similar scope of services, etc.);
- D. History of past projects that the team members have worked on together. If a single firm submits the proposal, then the following information shall be provided:
  - Roles and responsibilities of key personnel
  - Organizational chart
- E. Identify any subcontractors Proposer intends to employ in execution of the program. Discuss their role and provide information on subcontractors' experience performing similar work. Provide information as to how Proposer plans to manage subcontractors to ensure that the needs of the Trustees will be met and all subcontractors meet any and all applicable laws and campus procedures.

#### 5.7. QUALIFICATIONS OF KEY PERSONNEL

##### 34 POINTS

Proposer shall include resumes of key personnel who will be assigned to this project. Key personnel are defined as, but not limited to the following: Project Manager, Project Engineer, Project Planner, Structural Engineer, Project Architect, Construction Project Manager, and Construction Field Superintendent.

#### 5.8. PAST-PROJECT EXPERIENCE

##### 30 POINTS

Proposer shall provide a brief description of three (3) completed battery energy storage projects/programs that are similar in nature and size as those expected to result from this RFP. The description for each project/program should include:

- A. Project name
- B. Location
- C. Project size (total cost and project AC capacity in kW)
- D. Project type – turnkey or third-party demand reduction sales
- E. Project performance – expected vs. actual output
- F. Year completed
- G. Name of project manager
- H. Name of client and contact information

- I. Brief physical description of the project (equipment manufacturer, model, etc.)
- J. Photographs, if available
- K. Describe experience with California's Rule 21 electrical interconnection, particularly for non- export generating facilities
- L. A brief discussion of any specific challenges and how they were overcome
- M. Review of project schedule – award date, installation completion date and date of commercial operation

5.9. REFERENCES

13 POINTS

For each of the projects in Section 5., above, Proposer shall provide below the client reference information - including name of client contact, company name, title, address, phone number, email address. At a minimum, at least three of the projects must have been completed within past five years and been for demand reduction on battery energy storage projects/programs. The references shall be for projects of comparable size to the proposed installation and for projects that were installed, owned, operated and maintained by Proposer.

5.10. MANAGEMENT AND STAFFING PLAN

26 POINTS

Proposer shall be responsible for developing a Management and Staffing plan which illustrates the management approach to performing the Work to meet the project schedule and deadlines.

The Management and Staffing Plan must indicate all staff required to complete the Work through all phases. Proposer shall also provide a table or matrix showing Proposers current and pending major project commitments. Proposer must provide a detailed project schedule with a timeline including dates and milestones.

5.11. OPERATION AND MAINTENANCE PLAN

64 POINTS

Proposers shall submit an Operation, Maintenance, Service, and Monitoring Plan for the project, as described in Items 1 and 2 below. Additionally, a Billing Plan consistent with the Price Proposal is required for the duration of the contract term, as described below. Proposer shall provide Operations and Maintenance (O&M) services for the full project term as set forth in the ESSLSA.

Proposer shall describe the proposed O&M procedures for the System(s) and shall describe its experience providing such services for similar energy storage installations and shall provide information on the personnel performing the O&M service.

5.12. BILLING PLAN

21 POINTS

Proposer shall submit a Billing Plan that includes the following:

- A. The billing system to the Trustees shall be consistent with the Cost Proposal Form
- B. A method to document the demand reduction and costs of energy system inputs/outputs.
- C. An annual/monthly adjustment or true-up process to ensure accounting that is compliant to guarantees.

- D. A preferred method for the sharing of billing data and information such as online, email, or third-party access
- E. The monthly billing period should coincide with the local utility provider billing cycle and shall include the following:
  - Peak Demand Reduction in kW (AC) during time of use periods and season (winter/summer)
  - Total kWh (AC) input by time of use period
  - Total kWh (AC) output by time of use period
  - Calculated round trip efficiency as percent.
  - Total kWh (AC) costs by inputs delivered to the Trustees by time of use period
  - Total kWh (AC) costs by outputs delivered to the Trustees by time of use period
  - Value or cost of energy arbitrage
  - Price of Peak Demand Reduction in \$/kW for the month
  - Amount due for peak demand reduction sold to the Trustees within the billing period
  - Past due amounts
  - Total Bill

5.13. EXCEPTIONS TO ESSLSA  
25 POINTS

Proposer shall list any and all exceptions to the Energy Storage Site License Service Agreement (ESSLSA) on an item-by item basis and cross-referenced with ESSLSA document.\* If no exceptions are taken, Proposer must expressly state there are no exceptions taken to receive full points. 2 points will be deducted from the 25 total points available for each minor exception, 4 points for exceptions to major items such as appropriations, indemnification, consequential damages, and insurance.

\*NOTE: Proposers are reminded that unacceptable exceptions taken to RFP or ESSLSA provisions may render Proposer's submittal non-responsive and subject to disqualification.

5.14. CAPITAL FINANCE STRUCTURE  
17 POINTS

Proposer shall provide information regarding the capital finance structure of the privately-owned system, which should include:

- A. Description of relevant financing structure for proposed project
- B. Identification of funding sources
- C. Examples of previously funded or financed third-party owned projects
- D. Commitment letter from anticipated funding source and the credit rating of each funding source
- E. For financing team members, provide Moody's, Fitch, or Standard & Poor credit rating and three years annual report or audited financial statements

5.15. SUSTAINABILITY CAPABILITIES  
26 POINTS

Proposer shall complete Form 3 Sustainability Capabilities.

5.16. SIMULATED PEAK DEMAND REDUCTION  
DATAPASS/FAIL

Proposer shall provide simulated hourly Peak Demand Reduction data (i.e., 8760) for each system in Microsoft Excel format. This information will not be scored separately and should not be provided in printed form. This data should be provided electronically on USB along with the electronic submission of the main proposal.

## 6. SECTION COST PROPOSAL

All proposals shall be submitted with the understanding that the prices quoted shall remain in effect for the entire term of the Energy Storage Site License Service Agreement (ESSLSA).

### 6.1. COST PROPOSAL SUBMITTAL

Cost proposals must be submitted on the Cost Proposal Form provided by the Trustees, on or before the date and time listed on the Campus specific storage MEA coversheet. Sealed envelope shall be marked as follows:

Cost Proposal  
Systemwide Storage Project  
California State University,  
[Campus Name From Storage MEA Coversheet]  
Proposer's Name and Address

### 6.2. ACTUAL PEAK DEMAND REDUCTION PRICE

The pricing for the Actual Peak Demand Reduction will be a fixed price rate rounded to the nearest 10th of a cent per Kw (AC) with either no annual escalator. The price shall include any applicable Renewable Energy Credits (REC's) over the ESSLSA term.

### 6.3. BASIS FOR AWARD

Award shall be based on the highest point total.

### 6.4. ESTABLISHMENT OF SUCCESSFUL PROPOSAL

At the Cost Proposal opening the following formula will be used to determine the points awarded to the cost proposal. The Cost Proposal will be scored in direct relation to its variance from the lowest cost based on the average cost. The lowest Cost Proposal will receive the maximum score. Cost per kW will be calculated by the Trustees using the proposed rate, as reflected in the bid sheets. Proposers that elect shared savings percentage pricing will be scored by Trustees converting shared savings fractions into price per kW for comparison purposes. Note: Trustees favor true shared savings for sharing of risk and will award 30 Bonus points for shared savings proposals.

For example:

| Proposed \$/kW | Variation from<br>Lowest \$/kW=<br>Proposed \$/kW–<br>Lowest \$/kW | % Variation =<br>Variation from lowest \$/kW /<br>Average \$/kW | Points to deduct<br>from 300 points | Fee Score   |
|----------------|--|---|-------------------------------------|-------------|
| \$5/KW         | 5-5=0  | 0/5.5=0   | 300 x 0=0                           | 300-0=300   |
| \$5.50/KW      | 5.5-5=0.5  | 0.5/5.5=9%  | 300 x 9=27                          | 300-27= 273 |
| \$6/KW         | 6-5=1  | 1/5.5=18%   | 300 x 18=54                         | 300-54=246  |

Sample Calculation: Average \$/kW = (5+5.50+6)/3 = 5.50

### 6.5. AWARD

Award will be made to the Proposal having the greatest sum of technical and cost proposal total points. Projects will be awarded by Campus, or by groups of Campuses, as indicated in the Campus Specific Storage MEA Coversheet. THE DECISION OF THE TRUSTEES IS FINAL

### 6.6. NOTICE OF INTENT TO AWARD

A "Notice of Intent to Award" will be emailed to all Proposers effective for a time period of three (3) working days prior to award.

To: Campus Contact: XXX Date: XXX California State University, [Campus Name]

1. In compliance with your Request for Proposal, our bid is as follows:

Cost for Trustees Sites X, X, and X with M&O \$XXX per kW (AC)  
 Or Percentage of Peak kW Savings: XXX

2. In compliance with your Request for Proposal, our cash price bid is as follows:

Cash Price option for CSU Sites X, X, and X \$XXX

3. Proposers shall assume \$250,000 in Rule 21 interconnection costs as part of their bid price entered above and complete the schedule below in the event actual costs are less than or greater than \$250,000.

| Change in interconnection costs | Change in rate (\$/KW) |
|---------------------------------|------------------------|
| -\$50,000                       |                        |
| -\$40,000                       |                        |
| -\$30,000                       |                        |
| -\$20,000                       |                        |
| -\$10,000                       |                        |
| +\$10,000                       |                        |
| +\$20,000                       |                        |
| +\$30,000                       |                        |
| +\$40,000                       |                        |
| +\$50,000                       |                        |

I hereby agree to perform said work in accordance with the terms and conditions set forth in the above-referenced Request for Proposal and executed ESSLSA.

Signature

Name/Title: XXX  
 Name of Company as Licensed: XXX  
 Contractor License Number (If Applicable): XXX  
 Address: XXX  
 City, State Zip: XXX  
 Telephone Number: XXX  
 Federal I.D.: XXX



## 7. SECTION 7 – PREPARATION AND FORMAT

All proposals shall be submitted in the format identified in this section. All requirements and requested information shall be addressed. The Trustees reserve the right to request information deemed missing from a Proposer's submittal or request clarifying information as necessary to ensure that each Proposal is complete according to the requirements of this RFP.

### 7.1. NUMBER OF COPIES

Proposer shall provide one (1) original set of the proposal (marked as such) and one electronic copy (CD or USB).

### 7.2. DELIVERY OF PROPOSALS

Sealed proposals shall be delivered by mail or in person to:

[Campus Contact for Solicitation]

California State University,

[Campus Name]

[Campus Address From Coversheet]

Proposals must be received no later than the date and time specified on the cover page.

LATE PROPOSALS WILL NOT BE ACCEPTED.

Proposals shall be labeled:

Systemwide Storage  
Project – [CSU Campus]  
Technical Proposal

Delays due to the various methods used to transmit the proposal including delays by the internal mailing system at the University will be the responsibility of the Proposer. Delays due to inaccurate directions given, even if by University staff, shall also be the responsibility of the Proposer. The proposal must be completed and delivered in sufficient time to avoid disqualification for lateness due to any and all difficulties in delivery.

### 7.3. PROPOSAL FORMAT

Proposals shall adhere to the format identified in this Section. Proposals must be divided into the individual sections listed below, indexed and tabbed.

Request for Proposal Requirements

Cover Letter

Proposer is required to submit a signed cover letter with the proposal response. The signature on the cover letter shall be from a duly-authorized officer representing the Proposer's firm having legal authority in such transactions. Unsigned proposals shall be rejected.

The cover letter shall include the following:

- A. Company name, address, telephone, email address, fax number and Federal ID number
- B. Acknowledgement of receipt of any RFP addenda
- C. Name, title, address, phone and email address of contact person

#### Tab 1 Table of Contents

Proposer shall provide a table of contents in a format consistent with the proposal requirements and format set forth herein.

#### Tab 2 Exceptions to RFP Terms and Conditions

Proposer shall list any and all exceptions to the RFP on an item-by-item basis and cross-referenced with the RFP document.\* If there are no exceptions, Proposer must expressly state that no exceptions are taken.

#### Tab 3 Exceptions to ESSLSA Terms and Conditions

Proposer shall list any and all exceptions to the Energy Storage Site License Service Agreement (ESSLSA) on an item-by-item basis and cross-referenced with ESSLSA document.\* If no exceptions are taken, Proposer must expressly state there are no exceptions taken.

\*NOTE: Proposers are reminded that unacceptable exceptions taken to RFP or ESSLSA provisions may render Proposer's submittal non-responsive and subject to disqualification.

Technical Proposal

|        |  |
|--------|--|
| Tab 4  | Small Business, DVBE, and Incentives<br>Reference Section III, Paragraph 3.4 and Paragraph 3.5 |
| Tab 5  | System Size and Output<br>Reference Section V, Paragraph 5.1                                   |
| Tab 6  | Technical Description<br>Reference Section V, Paragraph 5.2                                    |
| Tab 7  | Metering and Monitoring Description with Data Access<br>Reference Section V, Paragraph 5.3     |
| Tab 8  | Project Schedule<br>Reference Section V, Paragraph 5.4   |
| Tab 9  | Project Team Organization<br>Reference Section V, Paragraph 5.5                                |
| Tab 10 | Qualifications of Key Personnel<br>Reference Section V, Paragraph 5.6                          |
| Tab 11 | Past-Project Experience<br>Reference Section V, Paragraph 5.7                                  |
| Tab 12 | References<br>Reference Section V, Paragraph 5.8   |
| Tab 13 | Management and Staffing Plan<br>Reference Section V, Paragraph 5.9                             |
| Tab 14 | Operation and Maintenance Plan<br>Reference Section V, Paragraph 5.10 (Sections 1 and 2)       |
| Tab 15 | Billing Plan<br>Reference Section V, Paragraph 5.11  |
| Tab 16 | Lighting<br>Reference Section V, Paragraph 5.12  |
| Tab 17 | Capital Finance Structure<br>Reference Section V, Paragraph 5.13                               |
| Tab 18 | Attachments<br>Reference Section V, Paragraph 5.14   |
| Tab 19 | Simulated Charge/Discharge Data<br>Reference Section V, Paragraph 5.15                         |

**THE CALIFORNIA STATE UNIVERSITY**  
**SMALL BUSINESS PREFERENCE AND CERTIFICATION REQUEST**  
(Bidders requesting a 5% Small Business Preference must sign below and enclose this form in the Bid Package)

Project No. **XXX**

Project Name: **XXX**

The undersigned hereby requests preference as a “Small Business” and further certifies under penalty of perjury, that the firm still meets the requirements of the California Code of Regulations, Title 2, Section 1896 et seq.

NOTICE TO ALL BIDDERS: Section 14835 et seq. of the California Government Code, requires that a five percent preference be given to bidders who qualify as a small business. The rules and regulations of this law, including the definition of a small business for the delivery of service, are contained in Title 2, California Code of Regulations, Section 1896, et seq. A copy of the regulations is available upon request.

If your firm is a Small Business and wishes to claim the small business preference, which may not exceed \$50,000 for any bid, your firm must have its principal place of business located in California, have a complete application (including proof of annual receipts) on file with the Small Business & DVBE Services Branch, in the Procurement Division of the State of California Department of General Services, by 5:00 p.m. on the date bids are opened, and be verified by such office.

Or, if your firm is a Non-Small Business and wishes to claim the small business preference, your firm must notify the CSU by signing below, that your firm commits to subcontract at least 25% of its net bid price with one or more small businesses, submit a timely responsive bid, list the small business subcontractors and include name, address, phone number, portion of the work to be performed, and the dollar amount and percentage per subcontractor, and be determined a responsible bidder.

Questions regarding the preference approval process should be directed to Small Business & DVBE Services, telephone (800) 559-5529 or (916) 375-4940, address: 707 Third Street, First Floor-Room 400, West Sacramento, CA 95605, or if by mail: Box 989052, West Sacramento, CA 95798-9052. You can also reach them via email ([osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov)) or on the Internet: [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus).

**IMPORTANT NOTICE (Read before signing)**

The “Small Business Preference and Certification Request” must be signed in the same name style in which the bidder is licensed by the Contractors State License Board. Bidders bidding jointly or as a combination of several business organizations are specially cautioned that such bidders must be jointly licensed and approved in the same form and style in which the bid is executed.

---

Legal Name Style of Bidder(s)

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Signature of Bidder      Date

In the event the bidder has received assistance in obtaining bonding for this project, it shall set forth the name and nature of the firm providing such assistance. Should the firm be listed as a subcontractor, bidder shall set forth the percentage of the contract to be performed by the subcontractor.

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Name of Firm

Is Firm Above a Listed Subcontractor? ☐ Yes ☐ No Percentage: **XXX**

Special attention is directed to section 1896.16 for penalties for furnishing incorrect supporting information in obtaining preference

**THE CSU OF THE CALIFORNIA STATE UNIVERSITY**  
**Disabled Veteran Business Enterprise (DVBE) Participation Requirement**

**I. STATEMENT OF DVBE PARTICIPATION GOAL REQUIREMENT**

State law requires that state agencies achieve a goal of three (3) percent participation for disabled veteran business enterprises (DVBE) in state contracts.

Read this document carefully. Failure to comply with the DVBE requirement may cause your bid to be deemed nonresponsive and your firm ineligible for award of this contract.

**II. DEFINITIONS**

The following definitions have general applicability throughout this document.

- A. CSU as used herein, means the Board of CSU of the California State University and includes any division or campus thereof which has been delegated the authority to enter into contracts on behalf of the CSU, and any person acting under authority of such delegation.
- B. Bidder as used herein means any person or entity making an offer or proposal, competitively or non-competitively, for the purpose of securing the awarding or letting of a contract by the CSU.
- C. Disabled Veteran as used herein means a veteran of the military, naval or air services of the United States with at least a 10 percent service-connected disability who is a resident of the State of California.
- D. Disabled Veteran Business Enterprise (DVBE) as used herein means a business concern certified by the Office of Small Business and DVBE Services Certification Programs.

**III. SATISFACTION OF THE DVBE PARTICIPATION GOAL REQUIREMENT**

In order to satisfy and be responsive to this requirement, the bidder must meet the DVBE Participation Goal as follows:

**A. DVBE Participation Goal Attainment**

The three (3) percent Disabled Veteran Business Enterprise (DVBE) Participation Goal is attained when:

- (1) The bidder is not a DVBE and is committed to use DVBEs for not less than three (3) percent of the contract dollar amount; or
- (2) The bidder is a DVBE and committed to performing not less than three (3) percent of the contract dollar amount with its own forces or in combination with those of other DVBEs.

**B. Approved Utilization Plan**

**(1) General**

In satisfaction of the DVBE participation goal requirement, State law permits bidders bidding on contracts for materials, supplies, or equipment, including electronic data processing (“EDP”) goods and services to submit a DVBE Utilization Plan that has been approved, prior to the final bid due date, by the California State Department of General Services (DGS) Procurement Division in Sacramento. For more information contact DGS. Also see their internet site: <http://www.pd.dgs.ca.gov/Publications/utilization.htm>

AN APPROVED UTILIZATION PLAN MAY NOT BE USED TO SATISFY THE DVBE PARTICIPATION GOAL REQUIREMENT FOR ANY PUBLIC WORKS CONTRACT.

#### IV. DVBE PARTICIPATION GOAL DOCUMENTATION REQUIREMENTS

##### A. General

The bidder must clearly document how it intends to meet the DVBE participation goal requirement by completing the required forms and (if appropriate) disclosing any relevant information about their planned use of DVBE's.

##### B. Required Documentation

The DVBE documentation forms that must be completed are as follows and instructions for completing the required forms correctly are included to assist the bidder.

###### (1) DVBE Transmittal Form

Bidders must fill out and attach the DVBE Transmittal Form as a cover sheet to the required documents and submit it and the additional required documentation within the timeframe specified in the bid solicitation, or if not specified therein, within a timeframe otherwise designated by the CSU. All requested DVBE documentation must be completed on the forms provided and submitted with the DVBE Transmittal Form.

###### (2) Summary of Disabled Veteran Owned Business Participation (Attachment 1)

Attachment 1, Summary of Disabled Veteran Owned Business Participation, must be completed showing the type of work and company proposed for DVBE participation, their subcontractors (if any), and other related information. Complete the form providing the information as follows:

- (a) Company Name - list the name of the company proposed for DVBE participation. If the prime contractor is a DVBE, its name must also be listed to receive participation credit.
- (b) Nature of Work - identify the proposed work or service to be provided by the listed company.
- (c) Contracting With - list the name of the department or company with which the company listed is contracting.
- (d) TIER - the contracting tier should be indicated with the following level designations:
  - 0 = Prime contractor;
  - 1 = First tier subcontractor/supplier;
  - 2 = Second tier subcontractor/supplier of first tier subcontractor/ supplier; 3 = Third tier subcontractor/supplier of second tier subcontractor/ supplier; etc.
- (e) Claimed DVBE Value - the total dollar amount of the value claimed by a disabled veteran business enterprise.
- (f) Percentage of Contract - compute the percentage (%) the claimed DVBE value is of the total contract dollar amount.
- (g) DVBE Certification - The bidder must include one copy of the DVBE certification letter from the Office of Small Business Services and DVBE Services Certification Programs for each DVBE firm listed on the Summary of Disabled Veteran Owned Business Participation.

###### (3) Bidder's Certification (Attachment 2)

The bidder must sign and include the Bidder's Certification, certifying that each firm listed on the Summary of Disabled Veteran Owned Business Participation (Attachment 1) complies with the legal definition of DVBE.

##### C. Timeframe for Submitting Documentation

The DVBE participation documentation must be submitted within the timeframe specified in the bid solicitation, or if not specified therein, within a timeframe otherwise designated by the CSU. Failure to submit full and accurate documentation within the specified or designated timeframe will result in your firm being deemed non-responsive, and thus ineligible for award of the contract.

V. USE OF PROPOSED DVBE

If awarded the contract, the successful bidder must use the DVBE subcontractors and/or suppliers proposed in its bid proposal unless it has requested substitution and has received approval of the CSU in compliance with the Subletting and Subcontracting Fair Practices Act.

Failure to adhere to at least the DVBE participation proposed by the successful bidder may be considered a material breach of the contract and cause for contract termination and recovery of damages under the rights and remedies due the CSU under the default section of the contract.

VI. REPORTING OF DVBE UTILIZATION

If awarded the contract the successful bidder shall report to the campus, on a periodic basis established in the contract, the dollar amount of DVBE participation.

VII. ADDITIONAL DVBE INFORMATION SOURCES

- A. For more information regarding DVBE certification, copies of directories or for general DVBE information, contact:

Office of Small Business and DVBE Services, Room 1-400  
P.O. Box 989052,  
West Sacramento, CA 95798-9052 (mailing address)

Office of Small Business and DVBE Services 707 Third Street, First Floor, Room 400  
West Sacramento, CA 95605 (physical address)

Telephone number: (800) 559-5529 or (916) 375-4940 or by fax at (916) 375-4950  
Email: [osdchelp@dgs.ca](mailto:osdchelp@dgs.ca)  
Or, via the Internet at <http://www.pd.dgs.ca.gov/dvbe/aboutcerts.htm>

VIII. CONTRACT AUDITS

Contractor agrees that the CSU or its delegate will have the right to obtain, review, and copy all records pertaining to performance of the contract, including but not limited to reports of payments made to subcontractors during the term of a contract. Contractor agrees to provide the CSU or its delegate with any relevant information requested and shall permit the CSU or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. Contractor further agrees to maintain such records for a period of three (3) years after final payment under this contract.

**THE CSU OF THE CALIFORNIA STATE UNIVERSITY**

**Disabled Veteran Business Enterprise (DVBE) Participation Requirement**

**DVBE Transmittal Form**

The DVBE Transmittal Form is to be attached and used as a cover sheet for the required DVBE documentation that must be submitted within the time frame specified in the bid solicitation.

Campus: XXX

Project Name: XXX

Project Number: XXX

Bid Date: XXX

Name of Contractor Submitting Bid: XXX

---

Please check off the following to insure you have included them in your documentation:

- ☐ Attachment 1: Summary of DVBE Participation
- ☐ Attachment 2: Bidder's Certification of DVBE Status of Subcontractors and Suppliers
- ☐ Attachment of Any Additional Supporting Documentation

**THE CSU OF THE CALIFORNIA STATE UNIVERSITY**

**SUMMARY OF DISABLED VETERAN OWNED BUSINESS PARTICIPATION**

| COMPANY<br>NAME | NATURE<br>OF WORK | CONTRACTING<br>WITH | TIER | CLAIMED<br>DVBE<br>VALUE \$ | PERCENTAGE<br>CONTRACT<br>(%) | OSDS DVBE<br>CERTIFICATION |
|-----------------|-------------------|---------------------|------|-----------------------------|-------------------------------|----------------------------|
|                 |                   |                     |      |                             |                               |                            |
|                 |                   |                     |      |                             |                               |                            |
|                 |                   |                     |      |                             |                               |                            |
|                 |                   |                     |      |                             |                               |                            |
|                 |                   |                     |      |                             |                               |                            |
|                 |                   |                     |      |                             |                               |                            |
|                 |                   |                     |      |                             |                               |                            |



I declare under penalty of perjury, under the laws of the State of California, that the information herein is true and correct to the best of my knowledge.

Executed on: \_\_\_\_\_ at \_\_\_\_\_ in the state  
of \_\_\_\_\_  
Date City

\_\_\_\_\_  
Signature of Contractor or Authorized Agent

\_\_\_\_\_  
Project Name

\_\_\_\_\_  
Project Number

\_\_\_\_\_  
Printed Name


\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone

**THE CSU OF THE CALIFORNIA STATE UNIVERSITY**

**BIDDER'S CERTIFICATION  
DISABLED VETERAN BUSINESS ENTERPRISE  
STATUS OF SUBCONTRACTORS AND SUPPLIERS**

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representations made herein and, to the best of my knowledge and belief, each firm set forth in this bid as a disabled veteran business enterprise complies with the relevant definition set forth in law. In making this certification, I am aware of Section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims against the State, Section 10115.10 of the Public Contract Code making it a crime to intentionally make an untrue statement in this certificate, and the provisions of Section 999.9 of the Military and Veterans Code.

  
Date

\_\_\_\_\_  
Signature of Authorized Agent

  
Title

**CALIFORNIA STATE UNIVERSITY, CHANCELLOR’S OFFICE**

**REQUEST FOR PROPOSAL XXX**

**SUSTAINABILITY CAPABILITIES**

Proposer shall respond to the information requested in this Section by responding ‘yes’ or ‘no’ to the stated questions and/or elaborating when requested. Responses to the following questions shall be worth 10 points each.

1. Do the manufacturers of the batteries you employ participate in take-back and recycling programs? Yes ☐  
No ☐

2. Does your company have an environmental policy statement?  
If yes, please paste the policy below, or provide a link to it. Yes ☐  
XXX

If no, please describe any plans and timelines to implement one. No ☐  
XXX

3. What policies do you have to monitor and manage your supply chain regarding environmental issues?  
XXX

**End of Form 3**

**CALIFORNIA STATE UNIVERSITY, CHANCELLOR’S OFFICE**

**REQUEST FOR PROPOSAL XXX**

**EXPECTED AND GUARANTEED PEAK DEMAND REDUCTION**

The CSU expect that the System will deliver to the Interconnection Point the amount of Peak Demand Reduction in kW defined as the Expected Peak Demand Reduction, for each Contract Year, as set forth in the Table below. The Successful Proposer warrants that it shall at least deliver to the CSU at the Interconnection Point the Guaranteed Peak Demand Reduction in kW for each Contract Year also set forth in the Table below:

| Electricity Production in kWh |                                |                                  |               |                                |                                  |
|-------------------------------|--------------------------------|----------------------------------|---------------|--------------------------------|----------------------------------|
| Contract Year                 | Expected Peak Demand Reduction | Guaranteed Peak Demand Reduction | Contract Year | Expected Peak Demand Reduction | Guaranteed Peak Demand Reduction |
| 1                             |                                |                                  | 6             |                                |                                  |
| 2                             |                                |                                  | 7             |                                |                                  |
| 3                             |                                |                                  | 8             |                                |                                  |
| 4                             |                                |                                  | 9             |                                |                                  |
| 5                             |                                |                                  | 10            |                                |                                  |

Each Proposer shall also indicate the following:

- Project capacity:  kW/kWh
- Annual degradation factor:  %

\*Provide one sheet per site.

**End of Form 4**

[Campus Letterhead]

Date

Contractor  
Address  
City, ST Zip

Subject: Notice of Intent to Award  
[Project Name], Project Number [#]  
[Campus]

Dear : XXX

This letter is to notify that the Trustees of the California State University intend to accept your bid proposal in the amount of \$[bid amount] as submitted on [bid date]. This bid proposal was submitted for the purpose of [Project Name], Project Number [#], on the [name of campus], campus. Acceptance of your bid will occur upon execution of the contract by both parties and the signature of the Trustees' attorney as required by Public Contract Code section 10820.

The Trustees' Construction Administrator for this project is [name]. All correspondence should be addressed to him (or her) at the following address:

Name  
Construction Administrator  
Campus Name  
Department  
Address  
City, CA Zip  
Telephone:   
Fax:

Enclosed are two counterparts (copies) of the subject contract.

1. Please sign both counterparts. The Attorney-in-Fact who executes the bonds must provide an effectively dated Power of Attorney for each individual bond form for a total of four, and each signature must be notarized.
2. A resolution must be attached to the certification form indicating who is legally authorized to execute contractual documents for your company. If your firm is a sole proprietorship, please execute the certification form, but no resolution is required.
3. Please include the Certificate of Insurance when you return the contract counterparts as required by Article 18 of the ESSLSA. Ensure that the certificate indicates the coverage as required. Failure to include all provisions will prevent execution of this contract.
4. Please return both of the contract counterparts, with the bonds attached, to this office within ten working days. We will forward your executed copy to you after approval by our legal department.

[Campus Letterhead]

You are reminded that no contract shall be binding upon the Trustees until it has been approved by the attorney appointed according to law and authorized to represent the Trustees (Contract General Conditions Article 3.04 and Public Contract Code section 10820). The Notice to Proceed, which starts the contract time of performance, will be issued within fifteen days of the contract's approval by our legal department.

Sincerely,

Name  
Title  
Department

Initials

Enclosures

cc: Executive Facilities Officer (if not the signatory on this letter)  
Construction Administrator  
Campus Architect  
Campus Facility Planner  
Campus Energy Manager

[Campus Letterhead]

The Trustees of  
The California State University  
Project No. XXX  
Contract No. XXX

This endorsement is attached to and forms part of the Certificates of Insurance dated XXX in favor of: XXX

The insurance policies shall contain, or be endorsed to contain, the following provisions.

1. For General and Automobile Liability Policies
  - A. General Liability:  
The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds;
  - B. Automobile Liability:  
Contractor shall use Insurance Service Office (ISO) Form Number CA 0001 covering “any auto”.
2. For any claims related to the work, the Contractor’s insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor’s insurance and shall not contribute with it.
3. Each insurance policy required by this Article shall state that coverage shall not be canceled by either party, except after thirty days prior written notice by certified mail, return receipt requested, has been given to the Trustees.
4. The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
5. Course of construction coverage shall contain the following provisions:
  - A. The Trustees shall be named as loss payee; and
  - B. The insurer shall waive all rights of subrogation against the Trustees.

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Authorized Signature

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Date

[Campus Letterhead]

Date

Licensee Contact  
Licensee Name  
Licensee Address  
Licensee Address 2

Dear Licensee Contact:

[Project Name], [Project Number]  
[Campus]  
Authorization to Proceed to Design – MEA Number [insert]

In accordance with the provisions of the Master Enabling Agreement Number [XXXXXX] you are hereby authorized to commence design under Exhibit A – ESSLSA number [XXXXXX].

The Licensee shall not perform services in excess of this Service Order without prior written authorization to proceed from the University.

Service Provider shall report to:

[CSU Campus Name]  
[Campus Department]  
[Executive Dean or Designated Campus Project Manager]  
[Campus Address]  
[Campus Project Manager's Phone Number]

Questions regarding this authorization shall be directed to the above-named project manager.

Approved:

Fund Certified:

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[Name]  
[Department Head]  
[Department]

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[Name]  
[Accounting/Fiscal Officer]  
[Department]





## NOTICE TO PROCEED TO CONSTRUCTION

Date

Licensee Name

Attention: [Insert Name]

Licensee Address

Licensee City, ST Zip

MEA Contract No. [insert #]; Contract Amount: \$[insert amount]  
[insert Project Name and No.]  
DIR Project Identification No. [insert # from PWC100]  
[insert Campus]

Dear [insert Mr./Ms. + last name from above],

In accordance with the provisions of the Systemwide Energy Storage: ESSLSA MEA Exhibit A, ESSLSA number [XXXXXXX], you are hereby notified to commence work on the subject contract on [insert start date] and are to complete fully the work within [insert # of days\*] consecutive calendar days in accordance with your contract completion date of [insert completion date].

The contract provides for assessment of liquidated damages of \$[insert amount] for each consecutive calendar day that is required to finish the work after the contract completion date.

Share the above-referenced DIR public works project identification number with each subcontractor on this project, as he or she will need this number to submit certified payroll records into DIR's electronic certified payroll reporting (eCPR) database.

Sincerely,

Name

Construction Administrator  
Department

Licensee Letterhead

Date

Campus Contact  
Campus Name  
Campus Address  
Campus Address 2

Dear [Campus Construction Administrator]:

[Project Name], [Project Number]  
[Campus]

Notice of Commercial Operation Date – MEA Number XXXXXX

In accordance with the provisions of the Systemwide Master Enabling Agreement Number [XXXXXXX] you are hereby notified that the following project sites have been granted Permission To Operation (PTO) from the utility company and reached Commercial Operation as of the date indicated. The campus has fifteen (15) days to submit a punch list of items to be rectified under Exhibit A – ESSLSA number [XXXXXXX]

| Premise/license<br>area name | Site Address | Service<br>number | Account | KW/kWh<br>capacity(AC) | Date of Commercial<br>Operation |
|------------------------------|--------------|-------------------|---------|------------------------|---------------------------------|
|                              |              |                   |         |                        |                                 |

Licensee reports that all of these facilities have been successfully commissioned and are operating

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[Name]  
[Department Head]  
[Department]

**RECORDING REQUESTED BY OWNER:**

**CSU** The California State University

**WHEN RECORDED MAIL TO:**

Campus Name  
Department  
Address  
City, ST Zip

**ATTN:**

- SPACE ABOVE THIS LINE FOR RECORDER'S USE -  
Exempt from fees pursuant to Government Code section 27383

**NOTICE OF COMPLETION**

Notice pursuant to Civil Code section 9204 must be filed within 15 days after completion.

The Trustees of the California State University, owners in fee on behalf of the State of California, address listed above, pursuant to Education Code section 66606, certify that the following contract work has been accepted as complete on \_\_\_\_\_, 20\_\_\_\_, on the campus of: {state full campus name and address}

Contract Number, Project Number and Project Title:

Architect (or Engineer):

Address of Architect (or Engineer):

Name of Contractor:

Address of Contractor:

The contract was completed on a California State University Campus within or near the City of \_\_\_\_\_, County of \_\_\_\_\_, California, and the work is described as follows: {name of project and very brief description}

THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

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

\_\_\_\_\_  
Name of Construction Administrator, Title

Verification

*I am a representative of the Board of Trustees of the California State University, the owner of the aforementioned property described in this Notice, and I am authorized to make this verification for and on its behalf. I have read the foregoing Notice of Completion, and know the contents thereof, and certify on that ground that the facts stated in the foregoing document are true and correct.*

*Executed on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, California.*

*I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.*

THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

\_\_\_\_\_  
Name and Title (of same person who signed above)