



**SAN DIEGO GAS AND ELECTRIC COMPANY**  
ELECTRIC AND FUEL PROCUREMENT DEPARTMENT  
8315 CENTURY PARK COURT, CP21D  
SAN DIEGO, CA 92123

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**2015**

**REQUEST FOR PROPOSALS**

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INDEPENDENT EVALUATORS

**ISSUED**  
AUGUST 7, 2015

**OFFERS DUE**  
SEPTEMBER 2, 2015

**RFO WEBSITE**  
<http://www.sdge.com/procurement/2015IERFP>

**EMAIL QUESTIONS/COMMENTS TO**  
[IERFP@semprautilities.com](mailto:IERFP@semprautilities.com)

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## 1.0 INTRODUCTION

San Diego Gas & Electric Company (SDG&E) is a regulated utility that provides electric service to approximately 3.5 million customers in San Diego County and the southern portion of Orange County through 1.4 million electric meters and approximately 868,000 gas customers. The electric customer base is comprised of 89% residential and 11% commercial and industrial customers. The utility's service area spans 4,100 square miles. Providing exceptional customer service is a priority of SDG&E. SDG&E is a subsidiary of Semptra Energy (NYSE: SRE), a Fortune 500 energy services holding company based in San Diego.

## 2.0 RFP BACKGROUND

Decision D.07-12-052 (Decision), issued in December 2007 by the California Public Utilities Commission (CPUC), requires all investor-owned utilities (IOUs) to utilize an independent evaluator (IE) to monitor long-term solicitations that may involve affiliate, utility-owned or utility-turnkey bids and for all competitive solicitations seeking products greater than three months in length regardless of potential bidders. The Decision required reevaluation of IE's on a two year cycle, however this cycle was extended to three years in D.14-02-040 and the Decision requires IOUs to:

- a. have a pool of at least three IEs;
- b. involve the CPUC's Energy Division (ED) in developing the IE scope of work, drafting the IE contract and issuing the IE solicitation; and
- c. work with the IOU's Procurement Review Group<sup>1</sup> (PRG) and the ED to develop comprehensive conflict-of-interest disclosure requirements for IEs

In accordance with the requirements of the Decision, this Request for Proposals (RFP) is being issued for the purpose of identifying qualified parties to be a part of SDG&E's IE pool. SDG&E encourages IE's currently in the IE pool to submit a bid if they wish to remain in the IE pool during the 2016-18 period. SDG&E has consulted with both the ED and the PRG in developing this solicitation and will continue to involve both parties in the evaluation and selection process.

Parties submitting responses to this solicitation (Respondents) should be aware that joining SDG&E's IE pool does not obligate SDG&E to execute a consulting contract. If SDG&E selects an IE from its pool to monitor a specific solicitation, bilateral negotiation or contract amendment, SDG&E and the selected IE will enter into a Standard Service Agreement (SSA) at that time. The SSA would incorporate the Scope of Work detailed in Section 3.0 of this solicitation, a Declaration Regarding Conflict of Interest in Appendix 1 and Terms and Conditions in Appendix 2 of this solicitation.

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<sup>1</sup> SDG&E's PRG is comprised of over fifty representatives from the following organizations: the California Department of Water Resources, the California Public Utilities Commission – Energy Division, the California Public Utilities Commission – Office of Ratepayers Advocates, The Utility Reform Network and the Union of Concerned Scientists.

### Participation from Diverse Business Enterprises:

SDG&E encourages Diverse Business Enterprises (DBEs), as defined in G.O. 156,<sup>2</sup> to participate in this RFP. Additional information on SDG&E's DBE program can be found at:

<http://www.sempra.com/about/supplier-diversity/> and  
<http://www.cpuc.ca.gov/puc/supplierdiversity/>

DBEs can request additional information by contacting SDG&E at [vendorrelations@semprautilities.com](mailto:vendorrelations@semprautilities.com).

SDG&E is seeking to increase opportunities for diverse business entities to compete for SDG&E's business, through both direct and indirect contracting. In the event of a tie between qualified candidates, a DBE will receive qualitative preference if the business has been DBE-certified.

### **3.0 SCOPE OF WORK**

The function of the IE is to consult with SDG&E (and ED if needed) on the design, administration, and evaluation of Requests for Offers (RFOs) seeking capacity, energy, renewable energy and other generation or electricity-related products. The IE provides guidance to SDG&E, the PRG, and Energy Division on whether the overall scope of the solicitation and whether the solicitation process is open, transparent and free from anti-competitive behavior. If an affiliate of SDG&E submits a proposal, the IE shall review SDG&E's processes affecting whether the affiliate has an advantage over other bidders and assist SDG&E's efforts to ensure that the selection process is fair and free from influence by the affiliate relationship. Additionally, IE oversight may also be requested for bilateral negotiations for capacity, energy, renewable energy or other generation or electricity-related products.

The IE will participate in meetings with, and report findings to, SDG&E's PRG, the ED and the CPUC. If called upon to testify, the IE may serve as expert witness in proceedings.

The IE does not make binding decisions on behalf of SDG&E. The IE makes recommendations to SDG&E during the procurement process, but does not have the authority to require SDG&E to follow its recommended course of action. The IE will not negotiate with any bidder on SDG&E's behalf.

The IE will be given reasonable access to information, negotiations, meetings, and communication related to offers submitted by all bidders.

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<sup>2</sup> See <http://www.thesupplierclearinghouse.com/eligibility/default.asp> for the definition of a DBE.

The IE function requires multiple competencies. The IE must (i) possess technical expertise germane to evaluating capacity, energy and other electricity-related products; (ii) be familiar with relevant industry practices, various standard contracts and California- specific regulatory framework; and (iii) be able to quickly examine and evaluate offers for power purchase agreements, buyout options and turn-keys on a side-by-side basis. All personnel providing material support must be at a senior level in terms of qualifications and experience.

The IE will immediately report to ED, the PRG, and SDG&E management any perceived attempt by any party involved in the solicitation process to improperly influence any findings determined by the IE or to challenge or interfere with their independent role in the solicitation process.

#### **RESPONSIBILITIES AND TASKS**

In support of the functions discussed above, IE responsibilities and tasks will include (but may not be limited to) the following:

- a) Advise on the consistency of RFO activities with the Commission's procurement-related rules and procedures and the utility's Commission-approved Long Term Procurement Plan ("LTTP") and/or Renewable Portfolio Standard Procurement Plan ("RPS Plan").
- b) Assist in the development, design and review of RFOs. Promptly submit any recommendations consistent with the objective of ensuring a fair, competitive, open and transparent process, and to ensure that the overall scope of the RFO process is not unnecessarily broad or too narrow.
- c) Attend (in person or over the phone) all negotiations with affiliate counterparties and monitor negotiations with non-affiliate counterparties.
- d) Provide recommendations and reports, if required, concerning the definitions of products sought and price and non-price evaluation criteria, so that all aspects of the products are clearly understood allowing all bidders to effectively respond to the solicitations, as applicable.
- e) Review the comprehensive quantitative and qualitative bid evaluation criteria and methodologies and assess whether these criteria are applied to all bids in a fair and non-discriminatory manner. The IE will be provided reasonable access to SDG&E's personnel, modeling tools, and meeting documentation in order to evaluate the bid valuation and selection processes.
- f) Report on the outcome of RFOs using the appropriate CPUC Independent Evaluator Report Template, as may be amended from time to time.
- g) Monitor the RFO bilateral negotiation or contract amendment process and promptly submit recommendations to SDG&E's management to ensure that no bidder has an advantage and that all bidders or counterparties (if applicable), receive access to relevant communications in a non-discriminatory manner. This task may include monitoring contract negotiations and/or keeping apprised of negotiation status and major issues.

- h) Provide periodic presentations as requested to SDG&E's management, the PRG, and ED (if requested) concerning the IE's findings. Communicate periodically with the ED as a check on the RFO process.
- i) Provide a final written assessment as to whether or not SDG&E's final contract selection was unfairly influenced by its affiliate relationship in cases of affiliate offers / negotiations / contracting.
- j) Provide a final written assessment as to whether or not the solicitation, bilateral negotiation and contract amendment processes were open, transparent and fair and whether any bidder received material information that gave them a competitive advantage or disadvantage relative to other bidders.
- k) Provide a final written assessment as to whether or not the solicitation, bilateral negotiation and contract amendment processes were fair and whether any affiliate counterparty received material information that gave such counterparty a competitive advantage or disadvantage relative to other counterparties.
- l) Provide a final written assessment as to whether or not SDG&E's evaluation criteria and methodologies were reasonable and appropriate and were applied in a fair and non-discriminatory manner to all offers received.
- m) Prepare or assist in the preparation of direct and/or rebuttal testimony, and participate as a witness and/or in an advisory capacity during administrative hearings, as required, before the CPUC and / or FERC in any associated proceedings.
- n) Attend annual IE roundtable meetings with ED and other IEs.

#### **4.0 EVALUATION CRITERIA**

All Respondents will be pre-screened to assess the potential for a conflict of interest, as contemplated in the attached Declaration Regarding Conflict of Interest document. To the extent SDG&E, its PRG or the Energy Division believes a Respondent has a potential conflict of interest, that Respondent shall not be selected to join SDG&E's IE pool.

Only respondents that pass the pre-screening process will be considered. SDG&E will score proposals using a qualitative quantitative scoring methodology. The quality of a bid will be assessed by judging relevant experience of key personnel, pricing, and feasibility of the supplier's diversity plan. Respondents will be ranked based on weighted scores (10 highest, 1 lowest). There are two main categories of evaluation: 1) Costs, Contracts and Certificate of Insurance and 2) Professional Background and Expertise with both assigned 50%. SDG&E's IE pool is required to contain at least three qualified entities; therefore, SDG&E will be selecting more than one high quality bid for the new pool for the 2016-2018 period.

## 5.0 RFP SCHEDULE

The following schedule applies to this RFP. SDG&E reserves the right to revise this schedule at any time and at SDG&E's sole discretion.

NO.	ITEM	DATE
1.	IE Request for Proposals issued.	AUGUST 7, 2015
2.	DEADLINE TO SUBMIT QUESTIONS Question submittal cut-off date. Answers to all questions will be posted on the website no later than August 25, 2015	AUGUST 17, 2015 5PM LOCAL PREVAILING TIME
3.	DEADLINE TO REGISTER Participants are required to register for the RFP on PowerAdvocate®	AUGUST 26, 2015 5PM LOCAL PREVAILING TIME
4.	CLOSING DATE: Offers must be uploaded to and received by PowerAdvocate® no later than 5:00 PM (Pacific Prevailing Time)	SEPTEMBER 2, 2015 5PM LOCAL PREVAILING TIME
5.	SDG&E Begins Bid Evaluation Process	SEPTEMBER 3, 2015
6.	SDG&E's preliminary recommendations sent to the PRG	SEPTEMBER 18, 2015
7.	PRG interviews respondents identified in step 6	SEPTEMBER 21 - OCTOBER 2, 2015
8.	PRG provides recommendations to SDG&E	OCTOBER 16, 2015
9.	SHORTLIST NOTIFICATIONS SDG&E notifies Shortlisted Respondents	OCTOBER 21, 2015
10.	Finalize contracts with Shortlisted Respondents	OCTOBER 30, 2015
11.	Send appreciation notices to unsuccessful respondents	NOVEMBER 2, 2015
12.	Send request to ED for approval of SDG&E's IE pool for 2016-2018	NOVEMBER 3, 2015
13.	Receive ED approval	DECEMBER 11, 2015
14.	Execute Contracts	DECEMBER 18, 2015

## 6.0 SUBMITTAL INSTRUCTIONS

Respondents may submit offers to this solicitation by submitting the forms listed below via the PowerAdvocate® website no later than the Closing Date (defined above). The failure to provide the required information may result in the offer being deemed non-conforming and may disqualify the offer from further consideration.

### Required Forms:

- Appendix 1 – Declaration Regarding Conflict of Interest.** This is to be filled out by each potential IE; a minimum of one per firm is required.
- Appendix 2 - Standard Service Agreement.** This RFP is subject to the attached Standard Service Agreement. Any proposed revisions to the

terms set forth in the Standard Service Agreement must be noted by “redlining” the relevant contract term with proposed alternative language and providing such “redlined” changes in your response to this RFP. Failure to propose revisions to the terms of the Standard Service Agreement in your response to the RFP constitutes waiver of the right to propose revisions to the Standard Service Agreement, and will be deemed to be acceptance of all terms in the Standard Service Agreement at time of award.

Please provide pricing within the redlined agreement.

3. **Appendix 3 - Independent Evaluator Questionnaire.** Please enter your responses directly into Appendix 3.
4. **Certificate of Insurance** to reflect adherence to SDG&E’s Insurance Requirements as stated in Article 14 of SDG&E’s Standard Services Agreement in SCHEDULE A - GENERAL TERMS AND CONDITIONS.

These files are available for download from the RFP Website (<http://www.sdge.com/procurement/2015IERFP>) and the 2015 IE RFP event on the PowerAdvocate® website (**note:** the PowerAdvocate® website will be the only means to submit the required files and prospective respondents should register on PowerAdvocate® to receive a user name and password no later than August 26, 2015). Proposals shall clearly demonstrate compliance with all requirements in this RFP and shall include a cover letter signed by an authorized representative.



## **7.0 RFP CONDITIONS**

### **PROPOSAL PROPERTY**

All materials submitted by potential IEs become the property of SDG&E, subject to any confidentiality agreements between SDG&E and the Respondent. SDG&E assumes no responsibility for returning submitted materials.

SDG&E reserves the right to investigate the references and past performance of any Respondent with respect to, among other factors, compliance with specifications, completion or delivery on schedule, and lawful payment of Contractors, sub-Contractors and workers prior to any contract award.

### **CONFIDENTIALITY**

Except with the prior written consent of SDG&E, Respondent may not disclose (other than by attendance alone at any meeting to which more than one Respondent is invited by SDG&E) to any other Respondent or potential Respondent their participation in this RFP, and Respondents may not disclose, collaborate on, or discuss with any other Respondent, offer strategies or the substance of offers, including without limitation the price or any other terms or conditions of any indicative or final offer.

SDG&E will use the higher of the same standard of care it uses with respect to its own proprietary or confidential information or a reasonable standard of care to prevent disclosure or unauthorized use of Respondent's confidential and proprietary information that is labeled as "proprietary and confidential" on the offer page on which the proprietary information appears ("Confidential Information"). Respondent shall summarize those elements of the offer, if any, that are Confidential Information; in particular, the summary must clearly identify whether or not price is to be considered Confidential Information. Confidential Information may be made available on a "need to know" basis to SDG&E's directors, officers, employees, contractors, consultants, agents and advisors ("representatives") for the purpose of evaluating respondent's offer, but such representatives shall be required to observe the same care with respect to disclosure as SDG&E.

Notwithstanding the foregoing, SDG&E may disclose any of the Confidential Information if it is necessary to do so in order to comply with any law, rule, or regulation, or any order, decree, subpoena or ruling or other similar process of any court, securities exchange, control area operator, governmental agency or governmental or regulatory authority, at any time even in the absence of a protective order, confidentiality agreement or non-disclosure agreement, as the case may be, without notification to the Respondent and without liability or any responsibility of SDG&E to the Respondent.

It is expressly contemplated that materials submitted by Respondent in connection with this RFP will be provided to the CPUC, its staff, and the PRG. SDG&E will seek confidential treatment pursuant to Public Utilities Code § 583, CPUC General Order 66-C and/or other relevant law, with respect to any Respondent Confidential Information submitted by SDG&E to the CPUC for the purposes of obtaining regulatory approval. SDG&E will also seek confidentiality and/or non-disclosure agreements with the PRG. SDG&E cannot, however, ensure that the CPUC will afford

confidential treatment to Respondent's Confidential Information or that confidentiality agreements or orders will be obtained from and/or honored by the PRG or CPUC.

SDG&E, its representatives, Sempra Energy, and any of their subsidiaries disclaim any and all liability to Respondent for damages of any kind resulting from disclosure of any of Respondent's information.

#### **COST LIABILITY**

SDG&E is not obligated to reimburse Respondents for any costs incurred in preparing and submitting a response to this RFP. In addition, no IE awarded a contract as a result of this RFP may charge these costs back to SDG&E at any time.

#### **NEWS RELEASE**

SDG&E shall have the right to approve or disapprove any press copy regarding this RFP before release by the successful Respondent. News releases pertaining to an RFP award will be made only with the prior written consent of SDG&E. SDG&E's names and logos shall not be used for any purpose, without the prior written authorization in accordance with SDG&E's Co-Branding Policy.

#### **8.0 COMPANY REPRESENTATIVES - QUESTIONS**

Respondents shall not contact any current or former SDG&E employee, or any employee of a Sempra Energy-owned entity, or any contractor providing services to Sempra Energy or its affiliates, regarding this RFP, the designated SDG&E representative team for this RFP. Any such contact shall be grounds for immediate disqualification from participating in the RFP process. All questions regarding this RFP must be submitted to [IERFP@semprautilities.com](mailto:IERFP@semprautilities.com). Questions must be received by the Deadline to Submit Questions, as indicated on the RFP schedule in Section 5 of this solicitation. All questions and answers shall be posted at <http://www.sdge.com/procurement/2015IERFP>.

## **APPENDIX 1: DECLARATION REGARDING CONFLICT OF INTEREST**

## INDEPENDENT EVALUATOR'S DECLARATION REGARDING CONFLICT OF INTEREST

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I, [NAME], declare:

1. I am [POSITION] at [FIRM NAME]. As such, I make this Declaration on behalf of myself, [NAME], in my capacity as [POSITION] of [FIRM NAME], the contracting entity with San Diego Gas & Electric Company ("SDG&E") in this matter.
2. Pursuant to California Public Utilities Commission decision 07-12-052 (the "Decision"), SDG&E will utilize an "Independent Evaluator" (as such term is used in the Decision) in solicitations or bilateral negotiations.
3. [FIRM NAME] has submitted a proposal (the "Proposal") to SDG&E to act as Independent Evaluator in future solicitations. [FIRM NAME] agrees that as a condition of entering into a Standard Service Agreement with SDG&E under which [FIRM NAME] would act as Independent Evaluator in future solicitations, it, through its duly authorized representative, will be required to sign this Declaration. [FIRM NAME] also agrees that each of its agents, employees and subcontractors who will or might perform substantive work for SDG&E will also sign a duplicate original Declaration in his or her individual capacity.
4. I, my family, my employees, and my business interests do not have a financial interest in any of the potential bidders (or any Semptra Energy affiliate, regardless of whether or not such affiliate is a potential bidder) in future solicitations or in the outcome of future solicitation processes, other than as disclosed in Appendix 3: Independent Evaluator's Questionnaire attached hereto.
5. Further, I covenant that I will, upon SDG&E's request, demonstrate that I, my family, my employees, and my business interests do not have, to the best of my knowledge, a financial interest in any of the potential bidders (or any Semptra Energy affiliate, regardless of whether or not such affiliate is a potential bidder) in any future solicitations, bilateral negotiations or contract amendments.
6. If at any time I become aware of any financial interest (as described in paragraph 5) in any of the potential bidders (or any Semptra Energy affiliate, regardless of whether or not such affiliate is a potential bidder) in a future solicitation or in the outcome of a solicitation process or in any of the potential bidders (or any Semptra Energy affiliate, regardless of whether or not such affiliate is a potential bidder) or counterparty or in the outcome of the process of such future activities, I shall promptly notify SDG&E and the PRG of such financial interest and SDG&E may (but is not required to) exercise any or all of the rights and remedies under any Standard Service Agreement entered between SDG&E and [FIRM] as discussed in paragraph 4 above, including without limitation section 20 of the Terms and Conditions that would be attached to such Standard Service Agreement.

7. I represent and warrant that I have read and become familiar with the Decision, particularly Section 3.2 at pp. 131-142. Consistent with the Decision, I represent, warrant and covenant that I have complied and will comply with the appropriate guidelines established by the Fair Political Practices Commission (“FPPC”) concerning conflict of interest, including the guidelines as set forth under the heading “New Conflicts of Interest Regulations (June 10, 2015)” on the FPPC’s website at <http://www.fppc.ca.gov/index.php?id=247#4>).
8. I understand that in the event that [FIRM NAME] and SDG&E enter into a Standard Service Agreement as discussed in Paragraph 4, this declaration will be in addition to, and will not supersede or replace, any part of the Standard Service Agreement, including without limitation, the Terms and Conditions that would be attached to the Standard Service Agreement.
9. I understand that for the duration of the Standard Service Agreement I shall be required to disclose the potential of a conflict should one arise.
10. I understand that for the duration of the Standard Service Agreement I may be required to resign this Declaration when requested by SDG&E.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Declaration was executed in \_\_\_\_\_ on \_\_\_\_\_, 201\_\_.

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

\_\_\_\_\_  
Title:

## **APPENDIX 2: STANDARD SERVICE AGREEMENT**



**San Diego Gas & Electric Company Standard Service Agreement for Labor and/or Services**

<b>PROJECT:</b>	<b>SDG&amp;E Independent Evaluator Consulting Services</b>	
<b>CONTRACTOR:</b>	<b>Company Name Address</b>	<b>MAIL ORIGINAL INVOICE TO San Diego Gas &amp; Electric Company ACCOUNTS PAYABLE P.O. BOX 129007  San Diego, CA - 92112</b>

This Standard Service Agreement ("Agreement") is made effective as of 1/1/2016 between San Diego Gas & Electric Company ("Company") and [Company Name] ("Contractor").

The Parties hereby agree as follows:

SCOPE

Contractor shall perform, at its own proper cost and expense, in the most substantial and skillful manner, to the satisfaction of Company, the following generally described services ("Services"):

Provide independent evaluator services as needed for SDG&E in accordance with [company name]'s proposal dated, [date]. [Note – this proposal will be in response to the IE RFO SDG&E will issue on 8/7]

PROJECT LOCATION

Various, including but not limited to:  
San Diego, CA (Company offices)  
San Francisco, CA (Company offices or California Public Utilities Commission offices)

AUTHORIZED REPRESENTATIVES

Company designates the individual or individuals named below as Company Representatives for all matters relating to the performance of the Services. The actions taken by the Company Representatives shall be deemed acts of the Company. Company may at any time upon written notice to Contractor change the designated Company Representative.

Company Representative: Elizabeth Paluso

Contractor designates the individual or individuals named below as Contractor Representative for all matters relating to the performance of Services. The actions taken by Contractor Representative shall be deemed acts of Contractor. Contractor Representative or designated superintendent shall be at the jobsite at all times during the Services. Contractor may at any time upon written notice to Company change the designated Contractor Representative.

Contractor Representative: [Name]

### COMPENSATION

Contractor shall be compensated for the Services at the rates set forth below in an amount Not-To-Exceed (“NTE”) \$750,000.00. Contractor shall notify Company in writing when the costs incurred under this Agreement based upon this Compensation Article equal ninety percent (90%) of \$750,000.00. Company will not be required to pay Contractor for the Services more than the NTE price unless and until, at Company’s sole option, Company elects in writing to increase the NTE price of the Agreement.

Contractor hereby agrees to accept as full compensation for satisfactory performance of the Services the following labor rates / Compensation Schedule:

<b>Hourly Rates</b>				
<b>Name</b>	<b>Rank or Level</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<Names of Contractor Employees>	<Managing Consultant>	<rate 1>	<rate 1>	<rate 1>
<Names of Contractor Employees>	<Principal Consultant>	<rate 2>	<rate 2>	<rate 2>
<Names of Contractor Employees>	<Associate Consultant>	<rate 3>	<rate 3>	<rate 3>
<Names of Contractor Employees>	<Analyst>	<rate 4>	<rate 4>	<rate 4>

<b>Classification</b>	<b>Hourly Rate or Price</b>
Reimbursable Expenses	\$50,000.00
Total NTE Price	\$750,000.00

Contractor will be reimbursed for travel and expenses authorized in writing in advance by Company Representative. Travel and expense reimbursement will be at cost without any overhead or other mark-ups. Travel expenses will not exceed \$50,000 unless prior written authorization is provided by Company

Reimbursable Expenses (See Schedule B)

### COMMENCEMENT AND COMPLETION OF SERVICES

This Agreement shall commence as of 1/1/2016 and shall be in full force and effect through 12/31/2018, unless terminated earlier or extended by Company in accordance with the terms of this Agreement. Contractor agrees to commence and perform the Services in accordance with the requests of Company Representative identified herein. The nature of the Services is such that timely performance is critical to the orderly progress of related work and to the operating schedule of Company.

### NON-ELECTRONIC INVOICING INSTRUCTIONS

Contractor shall invoice Company in accordance with the Compensation Schedule. All invoices submitted shall reference the Standard Service Agreement Number and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.

### ELECTRONIC INVOICING INSTRUCTIONS (Preferred Method)

All invoices submitted must reference the Agreement number (xxxxxxxxxx) and the Invoice Contact and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.



Contractor should submit invoices via e-mail to:  
SDG&E Accounts Payable: AP\_Invoices\_Sempra&SDG&E@semprautilities.com

**EVALUATED RECEIPT SETTLEMENT (ERS) INSTRUCTIONS**

Contractor shall, upon request of Company, be compensated via Evaluated Receipt Settlement (ERS). In an ERS transaction, invoicing by Supplier shall not be required on certain orders.

**PAYMENT**

Company shall make payment Net 30 days after receipt and approval of an undisputed invoice to the following address or to the address on each Release, if applicable:

<address>

**PAYMENT METHODS**

At no additional cost, Company shall make payment through check, credit card, or wire transfer protocol.

**COMPLETE AGREEMENT**

This Agreement, including all Schedules attached hereto and which are incorporated by reference, constitutes the complete and entire Agreement between the parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein. **THE PARTIES HEREBY AGREE THAT NO TRADE USAGE; PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.** The following Schedules are attached hereto and incorporated herein by this reference:

**SCHEDULE A - GENERAL TERMS AND CONDITIONS**

**SCHEDULE B - REIMBURSABLE EXPENSES**

**SCHEDULE C - Reserved**

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of 1/1/2016.

San Diego Gas & Electric Company	[Contractor name]
By:	By:
Name: David V. Ray	Name:
Title: Contracting Agent	Title:

## SCHEDULE A - GENERAL TERMS AND CONDITIONS

**1 PARTIES.** This Standard Service Agreement ("Agreement") is entered into between Company and Contractor. Contractor is the firm, person, corporation, or business entity performing the work specified in this Agreement.

**2 CONTRACT FORMATION.** By this Agreement, Company offers to contract with Contractor solely upon the terms and conditions stated herein. Any additional or different terms and conditions proposed by Contractor prior to the execution of this Agreement are not agreed to, and hereby expressly rejected. Any additional or different terms and conditions proposed by Contractor after the date of this Agreement shall be of no force and effect unless expressly agreed to in writing by Company. Contractor accepts and shall be bound by the terms and conditions of this Agreement upon the earlier of (a) the date on which it executes and returns the acknowledgment copy or (b) when it commences performance. No other form of acceptance shall be binding on Company.

**3 CHANGE ORDERS.** Company may at any time, in writing, direct or authorize Contractor to make changes or modifications to the work within the general scope of this Agreement. If such changes or modifications necessitate (a) an increase, or (b) decrease in the amount due, or (c) the nature or quantity of the goods and services or (d) in the time required for performance, or (e) otherwise, such matters shall be agreed upon in writing prior to proceeding with the change. No payment shall be required from Company for any change or modification which is not authorized in writing.

**4 INVOICING.** If Contractor's invoice price does not match the Agreement price, Company shall pay Contractor the lesser of the amount payable under the Order or the Invoice. Contractor will be notified of the reason for the adjustment. When Contractor is considered to be a retailer, Contractor's invoices shall properly identify California sales or use tax as a sales or use tax, and separately state the amount of such tax and any freight, installation, technical service or other charge which is excludable from such tax.

**5 PERFORMANCE.** Contractor shall perform the Services in accordance with established professional business standards and ethics and in conformity with each and every term of this Agreement. Contractor shall remedy any and all deficiencies in its Services that result from Contractor's failure to adhere to the Scope of Work.

**6 WARRANTIES.** Contractor expressly represents and warrants that all the Services performed hereunder shall be in compliance with the performance standards, drawings, specifications and any other description of services set forth in the Scope of Work, and the terms and conditions of this Agreement. Company may reject any Services furnished hereunder failing to meet such standards, and require Contractor to promptly repeat, correct or replace such defective Services, at NO charge to Company" or, at Company's election, Company may hire a third party to complete the Services at Contractor's expense. Contractor further warrants and agrees that none of the material to be furnished by Contractor and its subcontractors, if any, in the performance of the Scope of Work shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available.

**7 INSPECTION.** All Services performed by Contractor shall be subject to the inspection and approval of Company at all times, but such right of inspection of the Services shall not relieve Contractor of responsibility for the proper performance of the Services, nor shall such inspection waive Company's right to reject the Services at a later date. Contractor shall provide Company access to Contractor's facility or facilities where the Services are being performed and sufficient, safe and proper work conditions for such inspection. Contractor shall furnish Company such information concerning its operations and/or the performance of the Services as Company may request.

**8 ADHERENCE TO COMPANY'S RULES.** Contractor shall conduct its operations in strict observation of access routes, entrance gates or doors, parking and temporary storage areas as designated by Company. Under no circumstances shall any of Contractor's personnel, vehicles or equipment enter, move or be stored upon any area not authorized in writing by Company.

**9 COMPANY AND REGULATORY SECURITY PROCEDURES.** Contractor shall abide by all Company Security procedures, rules and regulations and shall cooperate with Company Security personnel whenever on Company's property whether owned or leased. Contractor shall comply with and observe all applicable regulatory security procedures and requirements, including applicable Federal Energy Regulatory Commission Critical Infrastructure Protection Reliability Standards published at <http://www.ferc.gov/whats-new/comm-meet/2009/101509/M-1.pdf> and [http://ftp.cpuc.ca.gov/gopher-data/energy\\_division/affiliate/D9808035.doc](http://ftp.cpuc.ca.gov/gopher-data/energy_division/affiliate/D9808035.doc).

**10 PROHIBITION ON NON-PUBLIC INFORMATION SHARING.** Contractor understands that the California Public Utilities Commission ("CPUC") and the Federal Energy Regulatory Commission ("FERC") have issued certain Affiliate Rules, including, without limitation, *CPUC Decision ("D") 06-12-029*; FERC Order 697 (18 C.F.R. Section 35.39(g)); and FERC Order No. 2004. Contractor and its permitted subcontractors may be in receipt of or have access to non-public information which is subject to the foregoing rules. In accordance with those rules, Contractor understands and agrees, and shall cause its permitted subcontractors to understand and agree not to disclose or allow access to: (1) any non-public information of San Diego Gas & Electric Company and/or Southern California Gas Company with any entity affiliated with such utilities by virtue of substantial, even if not majority, direct or indirect ownership other than the ultimate parent company of both such entities, Semptra Energy (each, a "Semptra Subsidiary"); (2) any non-public electric or gas marketing, procurement or transmission-related information of any Semptra Subsidiary with any other Semptra Subsidiary; (3) any non-public transmission-related information of any Semptra Subsidiary's transmission operations with persons participating in the performance of the same Semptra Subsidiary's or any other Semptra Subsidiary's electric and/or gas procurement, marketing or other merchant functions; or (4) any gas procurement, marketing or merchant information associated with Southern California Gas Company's merchant function with persons participating in the performance of Southern California Gas Company's and/or San Diego Gas & Electric Company's gas operations function.

**10.1 Training.** Contractor and permitted subcontractors understand and agree that they may be required to complete training regarding the foregoing at the Company's sole discretion

**11 INDEPENDENT CONTRACTOR.** It is agreed that Contractor is an independent business separate from Company and shall perform the Services under this Agreement as an independent contractor, and no principal-agent or employer-employee relationship or joint-venture partnership shall be created with Company. Contractor represents to Company that Contractor and its subcontractors, agents, and employees are properly licensed, fully experienced and qualified (including having all necessary authorizations) to perform the class and type of Services as specified in this Agreement, in addition to being properly insured, equipped, organized, staffed, and financed to handle such Services. Contractor acknowledges that it is responsible for its debts and obligations. Subject to Section 38, Contractor acknowledges that it is free to contract with others for similar services. Contractor shall provide and maintain its own business premises, equipment, and supplies at its sole expense. Subject to and without limiting Contractor's obligation to perform as required under this Agreement, Contractor understands and agrees that Company has no authority to direct or control Contractor, its subcontractors, suppliers, agents, or employees. Contractor shall perform the Services in an orderly and professional manner in accordance with industry standards. Contractor shall not employ for the Services any personnel or subcontractor unskilled in the work assigned. Contractor shall use prudent business practices in its relationships with subcontractors, suppliers, agents, and employees. Contractor shall not hold itself or its employees out as employees or agents of Company.

Prior to commencing Services and upon request of Company, Contractor will provide a list of employees and subcontractor's employees who will directly execute Services under this Agreement. The employee list will disclose any individuals who are former employees of Company or of any affiliate, parent or subsidiary of Company. Company has the right to disapprove the use of one or more of Contractor's or subcontractor's employees who will be executing the Services, and upon such notice of disapproval, Contractor shall immediately cease the use of such individual(s) in executing the Services

**12 OWNERSHIP OF INTELLECTUAL PROPERTY.** Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, enhancement, modification, development or discovery (hereinafter, collectively, "Invention"), whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that Contractor may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Services shall be owned by Company and shall be delivered to Company upon completion of the Services. Contractor agrees that any copyrightable Invention, including without limitation, Contractor's preliminary formulations and other work on which the copyrightable Invention is based on or derived from, shall constitute a "work made for hire". Contractor hereby assigns and grants to Company, without royalty or any further consideration, Contractor's entire right, title and interest in and to any such Inventions, including any work made for hire. At Company's request, Contractor shall execute an assignment or other document confirming such transfer upon the completion of any work made for hire.

12.1 Contractor hereby grants to Company an irrevocable, assignable, nonexclusive royalty-free unrestricted license to use, copy, distribute and make derivatives of any proprietary rights or specialized knowledge of Contractor that are part of any "Work Product" (defined below) furnished by Contractor to Company under this Agreement.

12.2 If requested by Company, Contractor agrees to take all actions necessary, at Company's sole cost and expense, to obtain, maintain or enforce patents, copyrights, trade secrets and other proprietary rights in connection with any Invention, and Contractor agrees that its obligations under this Article shall survive termination or expiration of this Agreement.

12.3 Any and all material and tangibly expressed information prepared, accumulated or developed by Contractor, any subcontractor or their respective employees or representatives, including, without limitation, documents, drawings, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith (hereinafter, collectively "Work Product"), shall become the sole property of Company without any further consideration to be provided therefore when (i) prepared or in process, in connection with the Services and (ii) whether or not delivered by Contractor. Contractor shall deliver the Work Product, or any portion thereof, to the Company on request, together with any other requested materials and/or equipment furnished to Contractor by Company hereunder, and, in any event, upon termination or expiration of this Agreement.

13 **INDEMNITY.**

13.1 As between Company and Contractor, Contractor shall be solely responsible for and Contractor shall indemnify, defend and hold Company, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns (collectively, including Company, the "Indemnitees") harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses including without limitation, reasonable attorneys' fees (including fees and disbursements of in-house and outside counsel) of any kind whatsoever resulting from: (a) injuries to or death of any and all individuals, including, without limitation, members of the general public, or any employee, agent, independent contractor or consultant or affiliate of either Company or Contractor, arising out of or connected in any manner with the performance of Services by Contractor, its subcontractor or any other person performing on behalf of Contractor, (b) damage to, loss, and/or destruction of property, including, without limitation, to, property of Company or Contractor arising out of or connected in any manner with the performance of Services by Contractor, its subcontractor or any other person performing on behalf of Contractor, or (c) third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any manner to Contractor's or any of its subcontractor's acts or omissions in breach of this Agreement. This indemnification obligation shall not apply to the extent that injuries, death, loss, damage or destruction is caused by either the willful misconduct of Company or Company's sole negligence.

13.2 Contractor shall indemnify, defend and hold the Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses, including reasonable attorneys' fees (including fees and disbursements of in-house and outside counsel), of any kind whatsoever arising from or in connection with: (a) actual or alleged infringement or misappropriation by Contractor or any subcontractor or other representative of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the Services, including without limitation, any deliverable or related "work product"; and (b) Contractor's violation of any third party license to use intellectual property in connection with the Services, including, without limitation, any deliverable or related "work product."

13.3 If any claim or action is brought against Company arising out of or related to this Agreement or the Services provided hereunder, then Contractor shall assume the defense of such claim or action, with counsel reasonably acceptable to Company, unless in the opinion of counsel for Company a conflict of interest between Company and Contractor may exist with respect to such claim or action. If a conflict precludes Contractor from assuming the defense, then Contractor shall reimburse Company on a monthly basis for Company's defense costs through separate counsel of Company's choice. If Contractor assumes the defense of Company with acceptable counsel, Company, at its sole option and expense, may participate in the defense with counsel of Company's own choice without relieving Contractor of any of its obligations hereunder.

13.4 Contractor's obligation to indemnify Company under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation, penalty or benefits payable by or for Contractor under any statutory scheme, including without limitation, any Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

14 **INSURANCE.**

**GENERAL REQUIREMENTS.** Insurance requirements are set forth as follows, but shall not in any way limit the amount or scope of liability of Contractor under this Agreement. This Article 14 constitutes the minimum insurance and requirements relating thereto.

14.1 **EFFECTIVENESS, CERTIFICATES, NOTICE OF CANCELLATION.** On or before the effective date of this Agreement, and thereafter during its term, Contractor shall provide Company with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Article. Contractor shall not commence Services until Contractor has obtained all insurance required by this Article and has provided acceptable certificates of insurance. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) calendar days prior written notice being given to Company, ten (10) days for non-payment of premium. Contractor shall provide Company with renewal certificates of insurance or binders within five (5) business days prior to or after such expiration. Insurance shall be maintained without lapse in coverage during the term of this Agreement. Company shall also be given certified copies of Contractor's policies of insurance, upon request.

14.2 **AS CONTRIBUTION FROM COMPANY.** The required policies, and any of Contractor's policies providing coverage excess of the required policies, shall provide that the coverage is primary for all purposes and Contractor shall not seek any contribution from any insurance or self-insurance maintained by Company.

14.3 **RATING.** All required policies of insurance shall be written by companies having an A. M. Best rating of "A - VII" or better, or equivalent.

14.4 **DEDUCTIBLE.** Contractor shall be solely responsible for any deductible or self-insured retention on insurance required hereunder.

14.5 **ADDITIONAL INSURED.** , and its subsidiaries, affiliates and their respective officers, directors, employees, agents, representatives, successors and assigns shall be named as an additional insured for all policies listed below in 14.7.1 and 14.7.4. Commercial General Liability insurance listed in 14.6.1 shall provide a severability of interest or cross-liability clause.

14.6 **Waiver of Subrogation.** Each policy of insurance maintained by Contractor below in sections 14.7.1, 14.7.3 and 14.7.4 shall contain a waiver of subrogation in favor of.

14.7 Types of insurance required to be provided by Contractor:

14.7.1 **Commercial General Liability Insurance.** Contractor shall carry and maintain an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Contractor for Work performed under this Agreement. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$1,000,000.00 per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.

14.7.2 **Commercial Automobile Liability Insurance.** Contractor shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property, (including loss of use thereof), and occurring in any way related to the use by or on behalf of Contractor, in pursuit of the Services, including loading or unloading of any of Contractor's automobiles (including owned, non-owned, leased, rented/or hired vehicles). Such coverage shall be in an amount of not less than \$1,000,000.00 combined single limit.

14.7.3 **Workers' Compensation & Employers' Liability Insurance.** In accordance with the laws of the State(s) in which the Work shall be performed, Contractor shall maintain in force workers' compensation insurance for all of its employees. If applicable, Contractor shall obtain U.S. Longshoremen's and Harbor Workers compensation insurance, separately, or as an endorsement to workers' compensation insurance. Contractor shall also maintain Employer's Liability coverage in an amount of not less than \$1,000,000.00 per accident and per employee for disease. In lieu of such insurance, Contractor may maintain a self-insurance program meeting the requirements of the State(s) in which the Services shall be performed along with the required Employer's Liability insurance.

14.7.4 **Pollution Liability Insurance.** If applicable to scope of work under this Agreement, Contractor shall maintain pollution liability insurance or insurance policies insuring against liability arising out of activities contemplated under this Agreement or as might be required by federal, state, regional, municipal and local laws, in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.7.5 **Professional Liability Insurance.** If the Contractor is providing professional design, engineering or other professional services (including Design-Build), Contractor shall maintain Professional Liability insurance covering liability arising out of error, omission, or negligent act in the performance, or lack thereof, of professional services contemplated under this Agreement in an amount of not less than \$1,000,000 per claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per claim limit.

14.8 **Contractor's Subcontractors.** In accordance with the Article of this Agreement entitled "SUBCONTRACTORS", Contractor shall accept total responsibility to require all other persons, firms and corporations engaged or employed by Contractor in connection with the performance of the Scope of Work to carry and maintain coverage with limits not less than those required in this Article. Contractor shall incorporate insurance requirement by reference within any contract executed by Contractor and its subcontractors, sub-subcontractors, suppliers, and agents shall cause each subcontractor, sub-subcontractor, supplier, and agent to comply with the terms of this Agreement. Contractor will obtain and verify accuracy in their entirety of certificates of insurance evidencing required coverage prior to permitting its subcontractors, sub-subcontractors, suppliers, and agents from performing work or services on the property of Company. Contractor will furnish original certificates of insurance with additional insured endorsements from all of its subcontractors, sub-subcontractors, suppliers, and agents as evidence thereof as Company may reasonably request.

14.9 **Reports.** Contractor shall immediately report to Company, and promptly thereafter confirm in writing, the occurrence of any injury, loss or damage incurred by Contractor or its consultants, subcontractors, sub-subcontractors, suppliers, agents or Contractor's receipt of notice or knowledge of any claim by a third party of any occurrence that might give rise to such a claim over \$100,000. Upon completion of Contractor's Services, Contractor shall submit to Company a written summary of all such injuries, losses, damage, notices or third party claims and occurrences that might give rise to such claims. Nil reports are required.

15 **SUPPLIER DIVERSITY.** It is the policy of Company to provide maximum opportunity for women; minority and service disabled veteran business enterprises, hereinafter referred to as DBE (Diverse Business Enterprises), to participate in the performance of contracts. Company expects as satisfactory performance to this Agreement, Contractor to utilize DBE subcontractors and suppliers and to use good faith efforts to set and attain goals in parity with Company goals when contracting for work with Company. Contractor shall submit on a timely basis any documentation required by Company to report Contractor's DBE expenditures in connection with this Agreement.

16 **ASSIGNMENT.** Contractor shall give personal attention to the execution of the Services herein provided for, and shall not permit this Agreement to be assigned voluntarily, involuntarily or by operation of law; nor employ any subcontractor for the execution of the same or any part thereof, without the express prior written authorization of Company. No such written authorization, however, shall be construed as discharging or releasing Contractor in any way from the performance of the Services or the fulfillment of any obligation specified in this Agreement. Contractor shall remain jointly and severally liable with any permitted assignee for any failure to comply fully with all applicable obligations hereunder this Agreement. Company may assign in whole or in part its rights and obligations under this Agreement at any time without the consent of Contractor.

17 **TIME.** Time is expressly agreed to be of the essence in any performance related to this Agreement and each, every and all of the terms, conditions and provisions herein.

18 **GOVERNING LAW.** The formation, interpretation, performance and enforcement of this Agreement shall be governed by and enforced under the laws of the State of California, without reference to principles of conflicts of laws.

19 **COMPLIANCE WITH LAWS.** Contractor and its subcontractors at all times during performance of the Services shall comply with and observe, all applicable federal, state, regional, municipal and local laws, ordinances, rules, codes, regulations, executive orders, applicable employment, safety and environmental orders and any applicable orders or decrees of administrative agencies, courts or other legally constituted authorities having jurisdiction or authority over Contractor, Company or the Services furnished under this Agreement, as in effect from time to time, including, but not limited to, the Immigration Control Act of 1968 and the Foreign Corrupt Practices Act (15 USCS §§ 78A and 78m et seq).

20 **TERMINATION.** It is also expressly agreed that Company shall have the right to terminate this Agreement, or any part thereof, at any time for its sole convenience upon two (2) business days written notice to Contractor. Contractor shall fully justify and document to Company in writing any termination charges claimed by Contractor (which shall not exceed 110% of the reasonable and actual cost already incurred of direct labor, materials and overhead). In no event shall Contractor be entitled to payment for any Services which has not been authorized by Company, or is not yet performed, or any anticipated profits for any Services that have not been authorized or performed. Any payment of termination charges shall occur within thirty (30) days of receipt of Contractor's written submittal of charges and justification to Company's satisfaction. Company shall have the right to review and verify by independent audit, any termination charges claimed by Contractor prior to payment.

21 **LIENS.** Without limiting the generality of any other provisions herein, Contractor shall indemnify, defend, and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any mechanics lien or stop notice claim against Company by Contractor, subcontractors, employees or agents pertaining to the Services specified in this Agreement. If Contractor fails to remove or discharge by bond, payment or otherwise any lien or claim within five (5) business days after Company's written demand to do so, Company may offset the compensation otherwise payable to Contractor under this Agreement or any other agreement in order to pay such lienors directly.

22 **RETENTION.** Company shall have the right to withhold a retention from payments due Contractor. The amount of the retention shall be paid within 45 days after completion as defined by California Civil Code Section 3260. Provided, however, the Company may require Contractor to provide conditional or unconditional lien releases, as a condition to withhold the retention and such additional amounts due Contractor as necessary until such liens have been satisfied by Contractor. In addition, Company may use the retention to satisfy directly the claim of any lienor.

23 **AUDIT.** Company reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any Services performed under this Agreement. Any such audit or examination may be undertaken by Company or its contracted representative at reasonable times during normal business hours and in conformance with generally accepted auditing standards. Contractor agrees to fully cooperate with any such audit(s).

23.1 Contractor shall include a similar clause in its arrangements with its subcontractors reserving the right to designate Contractor's own employee representative(s), its contracted representative(s) from a certified public accounting firm, and/or representative(s) from Company, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item related to the Services.

23.2 Contractor shall be notified in writing of any exception taken as a result of an audit of Contractor or a subcontractor. Contractor shall refund the amount of any exception to Company within ten (10) days. If Contractor fails to make such payment, Contractor shall pay interest on any unpaid portion of such payment, accruing monthly, at a rate equal to the lesser of ten percent (10%) per annum or the maximum lawful rate. Interest shall be computed from the date of written notification of exception(s) to the date Contractor reimburses Company in full for any exception(s). In the event an audit in accordance with this Article discloses an overcharge of five percent (5%) or greater, then Contractor shall reimburse Company for the cost for the performance of such audit.

23.3 Company's right to audit shall extend for a period of five (5) years following the date of final payment under this Agreement. Contractor and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

24 **TAXES.** Contractor assumes exclusive liability for and shall pay before delinquency, all federal, state, regional, municipal or local sales, use, excise and other taxes, charges or contributions imposed on, or with respect to, or measured by the equipment, materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with, the performance of the Services. Provided that the conditions of indemnification as set forth in this Agreement are satisfied, Contractor shall indemnify, defend and hold Company, and its current and future, direct and indirect parent company(ies), subsidiaries, affiliates and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns harmless from and against any claim, liability, penalty, interest and expense arising by reason of Contractor's failure to pay such taxes, charges or contributions.

24.1 Without limiting the generality of this Article, Contractor agrees to treat all individuals performing the Services under this Agreement as employees of Contractor for purposes of federal and state income taxes, Social Security and Medicare taxes, unemployment and disability insurance premiums. No exceptions shall be permitted under this Article without a written Amendment to this Agreement prior to any individual performing any required Services under this Agreement. Contractor agrees that, at any time during the performance of this Agreement, Company shall have the right to audit Contractor's compliance with this provision in accordance with the Article entitled "AUDIT".

24.2 To the extent any portion of the Services are performed in the State of California, either (a) Contractor represents that Contractor is a California



resident and shall provide Company with an original and a copy of Form 590, Certificate of Residence, in accordance with California Revenue and Taxation Code Section 18662 and regulations thereunder; or (b) seven percent (7%) of all compensation payable to Contractor for Services performed in California shall be withheld in accordance with applicable California Franchise Tax Board ("FTB") or successor regulations, unless Company has been notified in writing by FTB that withholding is waived or a lower rate or withholding is authorized.

24.3 Contractor and Company shall make commercially reasonable efforts to cooperate with each other to minimize the tax liability of both parties to the extent legally permissible (and with no duty to increase either parties tax liability), including separately stating taxable charges on Contractor's invoices and supplying resale and exemption certificates, if applicable, and any other information as reasonably requested.

24.4 Notwithstanding anything to the contrary set forth herein or in any other written or oral understanding or agreement to which the Parties are parties or by which they are bound, the Parties acknowledge and agree that: (i) any obligations of confidentiality contained herein and therein do not apply and have not applied from the commencement of discussions between the Parties to the tax treatment and tax structure of any transaction related to the Services or any other transactions or arrangements; and (ii) each Party (and each of its employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction and all materials of any kind (including opinions or other tax analyses) that are provided to such Party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that the foregoing is not intended to affect any privileges that each Party is entitled, in its sole discretion, to maintain, including with respect to any confidential communications with its attorney or any confidential communications with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code.

25 **VALIDITY.** The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.

26 **DISPUTES.** Any dispute that cannot be resolved between Contractor Representative and Company Representative shall be referred to Company Director – Supply Management and an officer of Contractor for resolution. If Company and Contractor cannot reach an agreement within a reasonable period of time, Company and Contractor shall have the right to pursue litigation as provided for herein. In no event shall the litigation of any controversy or the settlement thereof delay the performance of this Agreement.

26.1 In the event of any litigation to enforce or interpret any terms of this Agreement, unless the parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in either the County of San Diego or the County of Los Angeles (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in either the U.S. District Court for the Southern or Central District of California), and the parties hereby submit to the exclusive jurisdiction of said courts.

26.2 In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses, (including expert testimony) and reasonable attorneys' fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing party.

27 **CONFIDENTIALITY.** For purposes of this Agreement, the term "Confidential Information" means proprietary information concerning the business, operations and assets of Company its parent company(ies), subsidiaries and/or affiliates, including, without limitation, the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of Services under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential Information shall not include: (a) information known to Contractor prior to obtaining the same from Company; (b) information in the public domain at the time of disclosure by Contractor; (c) information obtained by Contractor from a third party who did not receive same, directly or indirectly, from Company; or (d) information approved for release by express prior written consent of an authorized officer of Company. Contractor shall have the burden of proof in establishing that its use of Company information is permitted by (a), (b), (c) and/or (d) of this provision.

27.1 Contractor hereby agrees that it shall use the Confidential Information solely for the purpose of performing Services under this Agreement and not in any way detrimental to Company, its parent company(ies), subsidiaries and/or affiliates. Neither Contractor nor its directors, officers, employees, agents or representatives shall use the Confidential Information for their own benefit.

27.2 Contractor agrees to use at least the same degree of care Contractor uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Contractor shall keep confidential and not disclose the Confidential Information. Contractor shall cause each of its directors, officers, employees, agents, representatives, subcontractors and suppliers to become familiar with, and abide by, the terms of this Agreement.

27.3 Notwithstanding any other provisions of this Article, Contractor may disclose any of the Confidential Information in the event, but only to the extent, that, based upon advice of counsel, Contractor is required to do so by the disclosure requirements of any law, rule, regulation or any order, decree, subpoena or ruling or other similar process of any court, governmental agency or regulatory authority. Prior to making or permitting any such disclosure, Contractor shall provide Company with prompt written notice of any such requirement so that Company (with Contractor's assistance if requested by Company) may seek a protective order or other appropriate remedy.

27.4 Subject to Section 27.2, Contractor shall not, without the prior written consent of Company, disclose to any third party the fact that such Confidential Information has been made available to Contractor.

27.5 At any time upon the request of Company, Contractor shall promptly deliver to Company or destroy if so directed by Company (with such destruction to be certified to Company) all documents (and all copies thereof, however stored) furnished to or prepared by Contractor that contain Confidential Information and all other documents in Contractor's possession that contain or that are based on or derived from Confidential Information.

27.6 Notwithstanding the return or destruction of all or any part of the Confidential Information, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to specific Confidential Information until the date that is five (5) years after the date of disclosure of such Confidential Information, except as to GIS Data and Confidential Information regarding or attributable to Company's or its Affiliates' customers ("Confidential Customer Information"). Such term shall be perpetual for GIS Data and Confidential Customer Information. Moreover, Contractor represents, warrants, and covenants that security procedures and practices appropriate to the nature of the GIS Data and Confidential Customer Information involved are in place and will be used at all times with respect thereto to protect it from unauthorized access, destruction, use, modification, or disclosure.

27.7 The parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of Contractor are specifically enforceable. Accordingly, the parties agree that in the event of a breach or threatened breach of this Agreement by Contractor, Company, its parent company(ies), subsidiaries and/or affiliates, who shall be third party beneficiaries of this Agreement, shall be entitled to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to Company, its direct and indirect parent company(ies), subsidiaries or affiliates.

## 28. ENVIRONMENTAL TERMS

28.1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

28.1.1. **"Hazardous Materials"** means any chemical, substance, material, controlled substance, object, product, by-product, residual, condition, solid, gas or waste or combination thereof which is hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or effects. Hazardous Materials include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, and substances defined as "hazardous substances," "hazardous material," "hazardous wastes," or "toxic substances" in, under or pursuant to any Environmental Law (as that term is defined below). "Hazardous Materials" shall also include oil or petroleum and petroleum products, asbestos, and any asbestos containing materials, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which now are, or become in the future, listed, defined or regulated in any manner by any Environmental Law (as that term is defined below). For purposes of this Agreement, the terms "encumbrance" and "encroachment" shall not be deemed to include the presence of any Hazardous Material contamination on, in or under the Property or its underlying groundwater.

28.1.2. **"Environmental Law"** means applicable federal, state, regional, county or local law, regulation, decision of the courts, ordinance, rule, code,

order, directive, guideline, permit, or permit conditions which, now or in the future, relate in any way to worker or workplace safety, environmental conditions, environmental quality or policy, or health and safety issues or concerns (including product safety). Environmental Law includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 USC, §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC, §§6901 et seq.), the Federal Water Pollution Control Act (33 USC §§ 1251 et seq.), the Safe Drinking Water Act (42 USC §§300 et seq.), the Hazardous Materials Transportation Act (49 USC §§ 1801 et seq.), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code, §§25300 et seq.), the Toxic Substance Control Act (15 USC §§2601, et seq.), the California Hazardous Waste Control Law (California Health & Safety Code, §§25100 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), the Safe Drinking Water and Toxic Enforcement Act (California Health & Safety Code §§25249.5, et seq.), the California Occupational Safety and Health Act (California Labor Code §§6300 et seq.), the Porter-Cologne Water Quality Control Act (California Water Code §§ 13000 et seq.), and applicable regulations or rules promulgated thereunder.

28.1.3. Governmental Agency shall mean any federal, state regional, municipal or local governmental agency or other public or political body having the jurisdiction, mandate, authority or power to regulate, implement, coordinate, administer or enforce any Environmental Law.

28.2. Materials and Licenses. Contractor agrees that all materials and equipment to be supplied or used by Contractor, its subcontractors, if any, in the performance of its obligations under this Agreement, including, but not limited to vehicles, loading equipment, and containers, shall be in good condition and fit for the use(s) for which they are employed by Contractor or its subcontractor, if any. Contractor further agrees that none of the materials to be supplied or used by Contractor and its subcontractors, if any, in the performance of its obligations under this Agreement shall contain asbestos or asbestos-containing materials, unless feasible alternatives or commercially reasonable replacements do not exist or are not available. The materials, equipment and Services shall comply with all applicable Environmental Laws as of its delivery and installation and Contractor shall comply with applicable provisions of Environmental Laws, including, but not limited to, providing any Proposition 65 warnings and Material Safety Data Sheets. All materials and equipment used in the Services (including any warranty re-installation) shall at all times be maintained, inspected and operated as required by applicable Environmental Law. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by any Environmental Law or Governmental Agency shall be procured and maintained for such materials and equipment at all times during the use of the same by Contractor or its subcontractors, if any, in the performance of any of Contractor's obligations under this Agreement.

28.3. Duty to Comply with Laws. Contractor specifically agrees that in the performance of its obligations under this Agreement, Contractor shall at all times fully comply with and cause each of its subcontractors, if any, to fully comply with all applicable Environmental Laws. Contractor further agrees that Contractor shall have and cause its subcontractors, if any, to have and keep in effect all licenses, permits, registrations, certificates, training, and approvals required by any Environmental Law or by any Governmental Agency for the Services undertaken by Contractor or its subcontractors, if any, in the performance of Contractor's obligations under this Agreement.

28.4. Indemnification. Contractor hereby specifically agrees to indemnify, defend and hold the Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, demands, causes of action, costs and expenses including, but not limited to, all reasonable consulting, engineering, attorneys' (in-house and outside counsel) or other professional fees including disbursements, which Indemnitees, or any of them, may incur or suffer by reason of:

- (1) any unauthorized release of a Hazardous Material;
- (2) any enforcement or compliance proceeding commenced by or in the name of any Governmental Agency because of an alleged, threatened or actual violation of any Environmental Law;
- (3) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Environmental Law; and/or
- (4) any other cause of whatsoever nature arising out of or in any way connected with the performance under this Agreement by Contractor, its subcontractor or any other person performing on behalf of Contractor, except to the extent the same were caused by the willful misconduct or sole negligence of the Indemnitees.

28.5. Release. In the event of any unauthorized release of a Hazardous Material, Contractor shall perform the following actions:

- (1) Take all reasonable steps necessary to stop and contain said release;
- (2) Make any report of such release as required under Environmental Law;
- (3) Clean up such release as required by the applicable Governmental Agency.

28.6. Notification. Contractor shall immediately notify Company Representative of the following upon the occurrence of any unauthorized release of Hazardous Material in connection with the Services:

- (1) A description of the release;
- (2) The identification of the Hazardous Material and the volume released;
- (3) Death of any person;
- (4) Property damage;
- (5) Any communication from any Governmental Agency that alleges that Contractor is not acting in compliance with Environmental Law.
- (6) Any communication from any Governmental Agency that affects any of Company's contractor's, or any subcontractor's permits or licenses.

28.7. Reports. Contractor shall submit within 36 hours of the unauthorized release to Company Representative a written report, in a format required by Company describing in detail any event of any unauthorized release of a Hazardous Material which shall include the following information:

- (1) Name and address of Contractor and any subcontractor(s) involved.
- (2) Name and address of Contractor's commercial and environmental liability insurance carrier.
- (3) Name and address of any injured or deceased persons, if applicable.
- (4) Name and address of any property damage, if applicable.
- (5) A detailed description of the release including the identification of the Hazardous Material, the date and time of the release, the volume released, and the nature of the any environmental contamination.
- (6) A determination of whether any of Company's personnel, equipment, tools or materials was involved.
- (7) A detailed description of all reports made to any Governmental Agency, and a description of the actions taken to respond to the release.

28.8. No Transportation of Company's Hazardous Material. Contractor shall NOT (a) transport any Hazardous Material that Company generated for purposes of treatment, storage, recycling and/or disposal; or (b) conduct any treatment, storage, recycling and/or disposal of any Company generated Hazardous Material unless specifically authorized by Company to perform such activities in writing. If Contractor is authorized by Company to perform such activities then the following terms and conditions shall apply:

28.9. Authorized Treatment Facility. Contractor shall not transport any Company generated Hazardous Material to any treatment, storage, recycling and/or disposal facility (hereinafter called "TSDF") not authorized by Company in writing. Prior to transporting Company generated Hazardous Material in each case, Contractor shall confirm that the TSDF has procured and maintained in effect all licenses, permits, registrations, certificates or other authorizations required by any Environmental Law or Governmental Agency to lawfully receive, handle, transport, store, treat, recycle, incinerate, dispose of, or otherwise manage or use such Hazardous Material. Contractor shall not transport any Company generated Hazardous Material to any TSDF which is unable or fails to provide such confirmation and Contractor shall immediately notify Company. Company reserves the right at any time, in Company's sole discretion, to cancel its authorization of any TSDF by written notice to Contractor.

28.10. Hazardous Waste Manifest. Company shall, when required by Environmental Law, provide Contractor with a complete and executed Hazardous Waste Manifest or other shipping documentation for Company generated Hazardous Material to be transported for treatment, storage, recycling and/or disposal. Contractor's transportation, recycling, treatment, storage, and/or disposal of any such Hazardous Material in accordance with this Agreement shall be documented by Contractor utilizing, among other things, the Hazardous Waste Manifest tracking system or other records as required by Environmental Law, copies of which shall be provided to Company within ten (10) days of shipment.

28.11. No Asbestos or Asbestos-Containing Materials (ACM). Contractor shall not supply, sell, deliver or furnish to Company any Products or Goods, pursuant to this Agreement, that contain asbestos or ACM in any concentration or amount whatsoever, unless otherwise consented to in writing by Company, on the basis that no feasible replacement Products or Goods (that do not contain asbestos or ACM) are available.

## 29. HAZARDOUS MATERIALS

29.1. Hazardous Materials and Toxic Chemicals. Contractor shall provide the following to Company for each material which Contractor furnishes under this Agreement: (a) a completed Material Safety Data Sheet (MSDS) for each material which contains a *hazardous material* as defined above;

and (b) a written statement for each material that is a Mixture or Trade Name Product which contains a *Toxic Chemical* subject to the reporting requirements of Section 313 or EPCRA (40 CFR Section 372 et seq.) including: (1) the name and associated CAS (Chemical Abstract Services Registry) number of the *Toxic Chemical*; (2) the specific concentration at which each such *Toxic Chemical* is present in each such Mixture or Trade Name Product; and (3) the weight of each such *Toxic Chemical* in each such Mixture or Trade Name Product. Contractor shall indemnify, defend and hold Indemnitees harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, administrative actions, judgments, costs or expenses including expert witness, consulting and attorneys' fees (including fees and disbursements of in-house and outside counsel) that Company suffers as a result of Contractor's failure to comply with these requirements.

29.2. Proposition 65. If any part of the Services would require that a warning pursuant to Proposition 65 (California Health & Safety Code sections 25249.5, et seq.), be provided to exposed individuals, then Contractor shall provide such warning to those individuals, including but not limited to members of the public, Company's employees, Contractor's employees, and any subcontractor's employees.

30. USE OF COMPANY EQUIPMENT.

In the event Company loans Contractor any equipment for use under this Agreement, title to said property shall remain in Company. Notwithstanding the foregoing, Contractor shall be responsible for loss, damage, destruction, theft, maintenance, and repair of said property while in the possession of Contractor. Prior to use, Contractor shall have inspected said property and have satisfied Contractor that the property is in good repair and working condition. Contractor shall only allow qualified personnel to operate said equipment. Contractor shall surrender possession of said equipment upon demand by Company.

31. REMEDIES. Contractor agrees that if: (a) Contractor abandons the Services, or (b) Contractor shall become bankrupt or insolvent, or shall assign this Agreement, or sublet any part thereof, without the express prior written authorization of Company, or (c) Contractor, in the sole opinion of Company Representative, violates any of the provisions of this Agreement, or (d) Contractor executes this Agreement in bad faith, or (e) Contractor, in the sole opinion of the Company Representative is not performing the Services in accordance with the terms of this Agreement, Company may notify Contractor, to discontinue all or any part of the Services and Contractor shall thereupon discontinue the Services or such parts thereof. Company shall thereupon have the right to continue and complete the Services or any part thereof, by contract or otherwise, and Contractor shall be liable to Company for any and all loss, penalties, fines, excess cost and consequential, special, incidental and indirect damages incurred by Company in completing the Services caused by Contractor's failure to execute the requirements of this Agreement. The remedies herein shall be inclusive and additional to any other rights or remedies in law or equity, and no action by Company shall constitute a waiver of any such other rights or remedies. If it is determined for any reason by a tribunal of competent jurisdiction that Contractor was not in default, the parties rights and obligations shall be the same as if notice of termination had been issued pursuant to the Article entitled "TERMINATION."

32. OFFSET. Company may upon written notice to Contractor, setoff any amount due from Contractor, whether or not under this Agreement, against any amount due Contractor or claimed to be due by Contractor under this Agreement. In addition, Company may withhold from Contractor any amount sufficient to reimburse Company for any loss, damage, expense or liability for Contractor's actual, alleged or reasonably probable failure, based on factual evidence, to comply with the terms and conditions of this Agreement.

33. SURVIVAL. The obligations imposed on Contractor pursuant to each Article of this Agreement, which by its terms contains subject matter which relates to time periods subsequent to the term of this Agreement, including without limitation the following Articles, Warranty, Indemnity, Disputes, Confidentiality, and this Survival provision, shall survive completion of the Services or termination of the Agreement.

34. EQUAL OPPORTUNITY. This Agreement incorporates Executive Orders No. 11246, 11625, 11701, 11738 and 12138, the Vietnam Era Veterans Readjustment Act of 1974, the Vocational Rehabilitation Act of 1973, and the regulations thereunder, as amended from time to time, to the extent applicable. Contractor agrees not to discriminate in employment opportunities on the basis of race, color, religion, sex or national origin. Contractor further agrees to comply with applicable laws regarding environmental protection and with respect to affirmative action for qualified veterans and for qualified handicapped persons.

35. NO PUBLICITY. Contractor shall not, without Company's prior written consent, engage in advertising, promotion or publicity related to this Agreement, or make public use of any Company identification in any circumstances related to this Agreement or otherwise. "Identification" means any corporate name, trade name, trademark, service mark, insignia, symbol, logo or any other product, service or organization designation, or any specification or drawing owned by Company or its affiliates or any representation thereof.

36. EXCUSABLE DELAYS. Contractor shall notify Company in writing immediately of any delay or anticipated delay in Contractor's performance of this Agreement due to causes or circumstances beyond the reasonable control of Contractor. Notice shall include the reason for and anticipated length of the delay. Company may determine, in its sole judgment, to extend the date of performance for a period equal to the time lost by reason of the delay. Contractor shall not be eligible under any circumstances for additional compensation due to any such extension of time. Any extension of time pursuant to this Article shall be documented by a written amendment to this Agreement signed by both Parties. Examples of such possibly excusable delays are natural calamities, strikes and boycotts, war or civil unrest or governmental actions and other events that are commonly deemed Force Majeure. None of the foregoing, however, shall require Company to grant any extension of time for completing the Services.

37. REPORTS. Contractor shall provide periodic status reports as requested by Company Representative. The status reports shall make periodic comparisons of the Services rendered to date against the Scope of Work including, any milestones and costs. Such reports shall include an explanation of any significant variations, an identification of any potential or known developments that may impact Company or the Services and any corrective actions implemented.

38. SUBCONTRACTORS. Contractor must obtain Company's written consent prior to retaining subcontractor(s) to perform any of the Services. If Company authorizes Contractor to utilize any subcontractors under this Agreement, Contractor shall at all times be responsible for the acts and omissions of subcontractors and agents employed directly or indirectly by Contractor. Contractor shall be responsible for performance of all the Services, whether performed by Contractor or its subcontractors or agents. This Agreement shall not give rise to any contractual relationship between Company and any subcontractor or agent of Contractor. Company shall not undertake any obligation to pay or to be responsible for the payment of any sums to any subcontractor or agent of Contractor. Upon request of Company, Contractor shall furnish to Company copies of any executed subcontracts entered into between Contractor and any subcontractor or agent.

39. SUSPENSION OF SERVICES. Company may, at any time, by written notice, require Contractor to stop all, or any portion, of the Services for a period of up to ninety (90) days ("Suspension Period") and any further period to which the Parties agree. Upon receipt of notice, Contractor shall immediately cease performance under this Agreement for the entire Suspension Period. Prior to the expiration of the Suspension Period, Company shall either: (a) cancel the Suspension Period; (b) permit the Suspension Period to expire whereupon Contractor shall resume its performance of the Services; or (c) terminate this Agreement pursuant to the provisions of the Article entitled "TERMINATION". If the suspension is canceled or permitted to expire, Contractor shall be granted a corresponding adjustment to all time periods and completion dates. Company shall not be liable for any payments to Contractor for expenses incurred during the Suspension Period.

40. NO WAIVER. The failure of Company to insist upon or enforce, in any instance, strict performance by Contractor of any of the terms or conditions of this Agreement, or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert, or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in a written notice issued pursuant to this Agreement.

41. INCORPORATION OF FAR AND DFARS CLAUSES. The Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) clauses, to the extent applicable, are incorporated herein by reference, with the same force and effect as if they were given in full text, including any notes following the clause citation, during the performance of this Agreement. The full text of the FAR clauses may be found at <https://www.acquisition.gov/FAR/>. The full text of the DFARS clauses may be found at <http://farsite.hill.af.mil/vdfara.htm>. The full text of the clause from the Department of Labor can be found at <http://edocket.access.gpo.gov/2010/pdf/2010-11639.pdf>, page 28399. Any reference to a "Dispute" or "Disputes" shall mean a dispute as provided in the Article of this Agreement entitled "Disputes".

42. NO ORAL MODIFICATIONS. No modification of any provisions of this Agreement shall be valid unless in writing and signed by duly authorized representatives of both Parties. Company Representative is not the duly authorized representative for amendments to this Agreement. Representatives of both Parties internally authorized to execute such documents pursuant to its corporate policies shall sign any amendments to this Agreement.

43. CAPTIONS. The captions in this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

44 **COUNTERPARTS.** This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument.

45 **AUTHORITY.** Each individual executing this Agreement on behalf of the Parties represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of their Party and that this Agreement is binding upon their Party in accordance with its terms and conditions.

46 **CONSTRUCTION OF AGREEMENT.** Both Parties have participated in the negotiating and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either Party as the drafting party.

47 **NOTICES.** All notices to be given under this Agreement shall be in writing and either sent by: (1) pre-paid U.S. first-class mail, in which case notice will be deemed delivered as of two business days after mailing; (2) a nationally recognized pre-paid overnight courier service, in which case notice shall be deemed delivered as of the date shown on the courier's delivery receipt; or (3) telecopy sent during business hours of the recipient, in which case notice shall be deemed delivered when transmitted provided that a transmission report is generated reflecting the accurate transmission of the notice. All correspondence shall reference the Agreement number. Notices shall be directed to the addresses of the parties on the front page of this Agreement.

48 **SEVERAL LIABILITY.** In the event that more than one legal entity acquires goods and Services hereunder from Contractor and is a party to this Agreement, compensation payable or other obligations owed by each such entity with respect to any goods and/or Services provided by Contractor under this Agreement shall be exclusively the obligation of the entity that acquires such goods and/or Services. No such entity shall have any liability whatsoever (whether by direct payment, offset or otherwise) in connection with goods and/or Services acquired by any other such entity. Each such entity is severally and not jointly liable to Contractor hereunder, and each such entity disclaims any and all financial or other responsibility, except with respect to goods and/or services that are furnished and invoiced to such entity.

49 **CONFLICT OF INTEREST.** Contractor represents and warrants, and covenants for the entire term of this Agreement, the following:

(1) Neither Contractor nor any of its agents, representatives, employees or subcontractors have or will have a financial interest in any bidder, potential bidder or counterparty (or Semptra Energy affiliate, regardless of whether or not such affiliate is a potential bidder) in connection with any request for offer, request for proposal, contract negotiation or contract amendment negotiation for which Contractor is providing Services hereunder, or in the outcome of the process of such activities;

(2) If at any time Contractor or any of its agents, representatives, employees or subcontractors become aware of any financial interest in any bidder, potential bidder or counterparty (or Semptra Energy affiliate, regardless of whether or not such affiliate is a potential bidder) in connection with any request for offer, request for proposal, contract negotiation or contract amendment negotiation for which Contractor is providing Services hereunder, or in the outcome of the process of such activities, Contractor shall promptly notify Company and the Company's Procurement Review Group of such financial interest (in which case Company may, but is not required to, exercise any or all of the rights and remedies under this Agreement in connection therewith, including without limitation Section 20 above);

(3) Contractor has read and is familiar with California Public Utilities Commission decision 07-12-052, particularly Section 3.2 at pp. 131-142 thereof, and that Contractor has complied and will comply with the appropriate guidelines established by the Fair Political Practices Commission ("FPPC") concerning conflict of interest, including the guidelines as set forth under the heading "New Conflicts of Interest Regulations (June 10, 2015)" on the FPPC's website at <http://www.fppc.ca.gov/index.php?id=247#4>; and

(4) Each individual who will or might perform the Services on behalf of Contractor hereunder (including any agent, representative, employee and subcontractor) shall execute a declaration in the form attached hereto as **Appendix 1 – Declaration Regarding Conflict of Interest** in his or her individual capacity prior to performing such Services.



## SCHEDULE B - REIMBURSABLE EXPENSES

All invoices for reimbursable expenses shall include the Standard Service Agreement Number, an itemized listing supported by copies of the original bills, invoices, expense accounts and other miscellaneous supporting data. All authorized travel either to San Diego/Los Angeles or from San Diego/Los Angeles to other locations shall be approved in writing in advance by Company Representative. Travel time shall NOT be reimbursed except for travel during normal/regular business hours.

**1. Auto Mileage**

Auto mileage shall be reimbursed at \$0.55 per mile, or at the current rate as specified by the United States Internal Revenue Service.

**2. Air Travel**

Airfares shall be reimbursed based on the most direct route at coach class travel rates. Upgrading (coach to a higher class) of airline tickets shall only be reimbursed when approved by Contract Manager, and only when the business schedule requires immediate travel and only higher class accommodations are available. Downgrading (exchange) of airline ticket where Contractor receives financial or personal gain shall NOT be permitted. If a trip is postponed, reservations shall be canceled immediately. Contractor shall provide copies of passenger receipts to Company to receive travel expense reimbursement. Travel arrangements shall be made as early as possible (preferably three [3] weeks) to take advantage of advance reservation rates.

**3. Combining Business Travel with Personal Travel**

Contractor may combine personal travel with Company business only if the personal travel does NOT increase the reimbursable cost to Company.

**4. Air Travel Insurance**

Company shall NOT pay for air travel insurance.

**5. Accommodations**

Company shall reimburse hotel room fees at preferred corporate or contract rates. Company may reimburse hotel room fees at the standard rate based on single room occupancy in cases where a corporate or contract rate is NOT available.

**6. Laundry**

Any laundry and dry cleaning charges shall ONLY be paid if Contractor is on travel for Company assignment for a period in excess of six (6) consecutive days.

**7. Entertainment**

Company shall NOT pay for the rental of premium channel movies, use of health club facilities or other forms of entertainment.

**8. Meals**

Meals shall be reimbursed on an actual cost basis up to a maximum of \$50.00 (Fifty Dollars) per day of travel. Itemized receipts are required and shall be submitted for all meals in the form of a credit card receipt or cash register tape. Company shall NOT pay for alcoholic beverages. In lieu of itemizing meal expenses and submitting receipts, Contractor may claim a standard \$31.00 (Thirty-One Dollars) per diem for the duration of the business travel.

**9. Telephone Usage**

Contractor shall submit support documentation regarding all telephone calls charged to Company. The support documentation shall include the name of the party being called and the purpose of the call. Company shall NOT pay for additional business calls unless directly related to this Agreement. Personal telephone calls shall NOT be reimbursed.

**10. Ground Transportation**

Public transportation shall be utilized whenever possible, however if necessary, rental car expenses shall be reimbursed for authorized travel only. Cab fare (on a shared basis whenever possible) is reimbursable. Receipts shall be required to document all ground transportation charges.

**11. Car Rental**

If authorized, Company shall reimburse reasonable car rental charges including gas actually purchased for authorized travel ONLY. Contractor shall be required to rent at an economy car level classification or equivalent, unless the size or purpose of the group using the vehicle dictates a larger size in accordance with the following table:

Travelers	Classification
1-2	Economy/Compact
3	Medium/Intermediate
4-5	Full Size/Standard
6-8	Van

Contractor shall fuel rental cars prior to rental return as rental companies normally add a large surcharge to refueling services.

**12. Parking**

Contractor shall be reimbursed at cost for reasonable parking expenses incurred in the performance of Services while on Company business.

**13. Tolls and Fees**

Contractor shall be reimbursed at cost for reasonable transportation-related toll and fees incurred in the performance of Services while on Company business.

**14. Baggage Handling**

Contractor shall be reimbursed for baggage handling service fees at standard reasonable rates.

**15. Other Business Expenses**

Any business supplies, equipment rental, reprographics and facsimile expenses shall be reimbursed at cost when traveling on Company business.

**16. Non-Allowable Expenses**

Company shall NOT provide any reimbursement for travel expenses for family members, personal items, charitable contributions, or for any other type of reimbursable.

**APPENDIX 3: INDEPENDENT EVALUATOR QUESTIONNAIRE**

## INDEPENDENT EVALUATOR'S QUESTIONNAIRE

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The experience and qualifications of individuals being proposed for this RFP may be conveyed by responding to this questionnaire. Responses should be based upon the sum qualifications and experience of the proposed project team members currently on staff. Please provide resumes for proposed critical team personnel with the lead team member clearly identified. Insert responses directly in the box below. Boxes may be expanded as necessary. As a follow up, SDG&E, the PRG or the ED may request additional information based on these responses.

1. **Summarize your professional background directly related to utility resource planning, portfolio optimization, and project management.**

<Insert response here.>

2. **Summarize your professional working experience directly related to the California ISO energy, ancillary services, and ex-post markets.**

<Insert response here.>

3. **Address the following items directly related to your professional expertise and experience concerning the evaluation of Power Purchase Agreements (PPA's) and proposed new electrical generation facilities. Please specifically note any experience that you may have directly related to renewable energy projects and generation asset development.**

- a. **Experience and level of responsibility in negotiating and evaluating energy contracts.**

<Insert response here.>

- b. **Expertise directly related to the analysis and structuring of data and complex issues associated with new generation facilities and with the associated regulatory and environmental requirements.**

<Insert response here.>

- c. Expertise directly related to the identification and assessment of various cost components in terms of reasonableness, completeness, variability and risk in bids for PPA's, Investor-Owned Utilities (IOU) build and new turnkey generation facilities.

<Insert response here.>

- d. Expertise in evaluating PPA's, turn-key plants and IOU build plants with different characteristics and constraints on a side-by-side basis.

<Insert response here.>

- e. Experience in assessing the valuation of non-price components in new generation facilities, such as contractual legal and credit risk, site location, development risks, reliability, transmission access, etc.

<Insert response here.>

- f. Expertise with various models and sophisticated quantitative methodologies used to evaluate power products, including energy, demand response, capacity and ancillary services.

<Insert response here.>

- g. Experience in the performance of comprehensive credit and risk analysis.

<Insert response here.>

- h. Expertise directly related to the analysis and evaluation of Combined Heat and Power offers.**

<Insert response here.>

- i. Expertise directly related to the analysis and evaluation of Energy Storage offers.**

<Insert response here.>

- 4. Describe your qualifications and experience directly related to the task of reviewing and auditing the documentation, design, and administration of a solicitation process or similar vehicle, and providing recommendations to the IOU and Procurement Review Group that were adopted**

<Insert response here.>

- 5. Describe your qualifications and experience directly related to the task of reviewing solicitation documentation for the purpose of ensuring clarity of definition for price and non-price factors and products sought, to ensure that all bidders effectively responded to the solicitation.**

<Insert response here.>

- 6. Describe your professional experience in interacting with the PRG, CPUC, & Federal Energy Regulatory Commission (FERC) and the context of your interactions.**

<Insert response here.>

- 7. Describe your experience testifying in the capacity of an expert witness before state and federal regulatory agencies. Please cite document references to applicable proceedings.**

<Insert response here.>

- 8. Identify each key member of the project team that may support you during the assignment period with the lead team member clearly identified, and summarize their expected role in the process.**

<Insert response here.>

- 9. Describe your level of experience preparing and orally delivering significant presentations to diverse audiences.**

<Insert response here.>

- 10. Provide two references with contact information concerning work assignments you have performed that demonstrate application of the range of skills, experience, and qualifications required for the Independent Evaluator assignment.**

<Insert response here.>

- 11. What particular topics would you anticipate to be included in the terms and conditions of a) PPA and b) turn-key contract for a power plant?**

<Insert response here.>

- 12. In your opinion, what contract terms and conditions are toughest to evaluate, and why? Cite examples from your experience, as appropriate (use generic descriptions to avoid disclosing confidential information).**

<Insert response here.>

- 13. In your opinion, which cost components are difficult to evaluate while making cross-comparison between PPAs and turn-key contracts for power plants, and why?**

<Insert response here.>

- 14. Capital expenses associated with new power plant construction are anticipated to be a significant element in determining the cost for both PPA Offers and utility turn-key Offers. What capability and experience does your proposed project team have in determining whether such capital expenses are reasonable as presented in the Offers received by SDG&E?**

<Insert response here.>

- 15. Operating characteristics of power plants are anticipated to be a significant element of each Offer. a) What capability and experience does your proposed project team have with how operating characteristics are specified in contracts of the type SDG&E may execute? b) What capability and experience does your proposed project team have with how operating characteristics specified in an Offer and/or contract may be represented in models used to assess the value of the Offer and/or contract?**

<Insert response here.>

- 16. Describe the ability and experience of your proposed project team in verifying transmission characteristics that may affect the suitability of certain bids.**

<Insert response here.>



17. Describe the ability and experience of your proposed team to evaluate different types of renewable resources.

<Insert response here.>

18. In your experience, what evaluation criteria and methodologies have been used in assessing and selecting among Offers in long-term Requests for Offer (RFO) and Request for Proposal (RFP)?

<Insert response here.>

19. SDG&E has proposed to use Least Cost Valuation and Portfolio Best Fit as two evaluation criteria in their RFO's. (Least Cost Valuation means how a bid's total costs compare to the other bid's total cost. Portfolio Fit means how well a bid's features match SDG&E's portfolio needs.) How would you independently verify the analysis performed by SDG&E?

<Insert response here.>

20. How would you determine whether or not the RFO process is transparent and fair?

<Insert response here.>

21. Conflict of Interest: [NOTE TO RESPONDENTS: The existence of a conflict of interest in response to the questions listed under Section 21(a) and (b) and Section 22 shall not necessarily disqualify a Respondent. Furthermore, the threshold amounts contained in question (a)(iii)(1) and (2) below shall be considered triggers for additional inquiry as to conflict of interest and shall not be considered thresholds for disqualification.]

a) Do you have an existing contractual relationship with, or financial interest in, a market participant (including SDG&E and any other Sempra affiliate, but excluding Independent Evaluator work performed for any other California utilities; please identify any contracts with California

utilities ) in the California energy markets? ii) Does any member of your proposed project team have an existing contractual relationship with, or financial interest in, a market participant (including SDG&E and any other Sempra affiliate, but excluding Independent Evaluator work performed for any other California utility) in the California energy markets? iii) Does the business entity that would be the contracting party for the Independent Evaluator engagement, or any of its affiliates or subsidiaries or directly related companies, have an existing contractual relationship with, or financial interest in, a market participant (including SDG&E and any other Sempra affiliate, but excluding Independent Evaluator work performed for any other California utility) (1) in an aggregate amount of more than One Million Dollars or (2) having more than 20 percent of contract revenue with any entity buying or selling energy in California, excluding work conducted as an approved Independent Evaluator (as such term is used in referenced in Decision 07-12-052)? iv) Are there any other business or personal relationships that you, a family member, your employees or your company has that could possibly influence your judgment or create an appearance of impropriety in executing the duties of the Independent Evaluator?

<Insert response here.>

b) For a period of five years prior to the issuance of this RFP, did you have a contractual relationship with, or financial interest in, a market participant (including SDG&E and any other Sempra affiliate, but excluding Independent Evaluator work performed for other California utilities; please identify any contracts with California utilities) in the California energy markets? ii) For a period of five years prior to the issuance of this RFP, did any member of your proposed project team have a contractual relationship with, or financial interest in, a market participant (including SDG&E and any other Sempra affiliate, but excluding Independent Evaluator work performed for other California utilities) in the California energy markets? iii) For a period of five years prior to the issuance of this RFP, did the business entity that would be contracting party for the Independent Evaluator engagement, or any of its affiliates or subsidiaries or directly related companies, have a contractual relationship with, or financial interest in, a market participant (including SDG&E and any other Sempra affiliate, but excluding Independent Evaluator work performed for other California utilities) (1) in an aggregate amount of more than One Million Dollars or (2) having more than 20 percent of contract revenue with any entity buying or selling energy in California, excluding work conducted as an approved Independent Evaluator (as such term is used in referenced in Decision 07-12-052) in the California energy markets?

<Insert response here.>

22. Do you, any member of your proposed project team, the business entity that would be contracting party for the Independent Evaluator engagement, or any of its affiliates or subsidiaries or directly related companies, own or operate power facilities or otherwise participate in any manner in the California energy market?

<Insert response here.>

- 23. Present the fee structure applicable to each member of the project team for the duration of the service agreement. Please identify the primary team member who will be involved in assigned projects. Include all incidental charges such as travel expenses, material costs and/or taxes if applicable. Discuss how you will work to minimize cost to SDG&E ratepayers without sacrificing quality of the services.**

<Insert response here.>