

Major Materials Procurement Exhibit

THIS EXHIBIT MODIFIES THE TERMS AND CONDITIONS FOR MATERIALS AND RELATED SERVICES AS FOLLOWS:

The following Definitions are added to DEFINITIONS of Edison Terms and Conditions:

Certified Drawing: Final outline and interface drawings which have been approved by EMS or Customer and which are stamped with a certification for construction that the Material, as received by EMS or Customer, shall conform to such drawings pursuant to Section 1.2 of the Terms and Conditions for Materials.

Contractor Representative: The Contractor employee who is authorized to act on behalf of Contractor for the purposes of the Agreement, or such employee's designated representative.

Technical Services: Field technical services provided by Contractor as stated in the, Statement of Work or Agreement such as field engineering, technical direction, advice, consultation, and training of Customer's or EMS's or their contractors' personnel for the installation, erection, startup, testing, initial operation and maintenance of the Material; but excluding supervision of Customer's, EMS's or their contractors' personnel.

The following provisions are added to Section 2, COMMERCIAL TERMS, to the Terms and Conditions for Materials:

2.10 Holdback Amounts.

(A) Lump Sum Payment: Ninety-five percent (95%) of the Authorized Amount shall be invoiced on the date of receipt at destination of the last of all Material items and other Deliverables and after all Work has been performed. The retained five percent (5%) of the Authorized Amount shall be invoiced on Acceptance of the Material.

(B) Progress Payments: Ninety-five percent (95%) of each progress payment shall be invoiced on achieving the applicable milestone date for the progress payment as specified in the Agreement. Progress payments shall be based on milestones contained in the production schedule pursuant to Section 3.6 of the Terms and Conditions. The retained five percent (5%) of the Authorized Amount shall be invoiced upon Acceptance of the Material.

(C) Partial Shipment Payments: Ninety-five percent (95%) of each partial shipment price, as specified in the Agreement, shall be invoiced on the date of receipt at destination of the partial shipment. The retained five percent (5%) of the partial shipment price shall be invoiced upon Acceptance of the Material.

2.11 Technical Services Payment.

Technical Services pursuant to Section 3.10 of the Terms and Conditions shall be paid as follows:

(A) The daily or hourly field service rates, as set forth in the Agreement, shall be paid as applicable for each calendar day, or portion thereof, during the period that each Technical Service engineer is at the Jobsite. Such rates shall include the salary, and all other costs including overhead and profit except for local travel and local living expenses. Application of straight time, overtime and double-time rates shall be in accordance with Applicable Laws.

(B) Labor:

(1) For time that the Technical Service engineer travels on the initial and final days of the assignment, the labor charge shall be at the straight time rate for the hours traveled from the Jobsite (or local residence) to the Technical Service engineer's home or home base up to a maximum of eight (8) hours, whether or not traveling on overtime.

(2) No travel time shall be paid for local travel.

(3) Should EMS or Customer request the Technical Service engineer to be on call on any weekend which falls between the commencement and completion of the Work, EMS shall reimburse Contractor at the straight time rate for such time as the engineer remains on call and to the extent that Contractor actually pays the engineer for such time.

(C) Air Travel: Air travel shall be pre-approved by EMS and reimbursed at published Coach Class rates.

(D) Local Travel and Living Expenses: Local travel and living expenses while at the Jobsite shall be pre-approved by EMS and reimbursed at the fixed daily per diem rate stated in the Agreement. Such per diem shall include local car rental, accommodations, meals, and all other local expenses.

(E) Invoices and Payment:

(1) Timesheets for the Technical Service engineer showing the hours worked shall be presented daily to the Edison Representative for approval.

(2) At the end of each month or upon completion of the Work, whichever occurs first, Contractor shall submit its invoice listing the name of the person, dates and hours worked and applicable rate.

(3) Invoices for travel and living expenses shall identify the dates and per diem rates.

(4) EMS shall pay such invoices within thirty (30) days after receipt as approved by the Edison Representative, less any unsubstantiated or incorrect charges.

The following subsection 3.6 replaces subsection 3.6 in Section 3, MATERIAL, of the Terms and Conditions for Materials and Related Services:

3.6 Schedule.

Time is of the essence for Contractor to perform the Work and provide Deliverables. Contractor shall furnish to the Edison Representative, or designee, within thirty (30) days after receipt of a Purchase Order, a production schedule displaying the critical path for the following phases and the start and completion dates for each: engineering, delivery of drawings, procurement, fabrication, assembly, testing, and preparation for shipment. Thereafter, Contractor shall furnish to the Edison Representative, or designee, a monthly status report (in triplicate on the first working day of each month) showing the actual status of each such production phase. If the actual milestones lag such production schedule date, an explanation shall accompany the status report stating the problem area, measures taken to eliminate the problem, and when the item will be back on schedule. The Edison Representative, or designee, shall be notified immediately of any potential problem situations which may affect the Delivery Date or delivery of drawings.

The following provisions are added to Section 3, MATERIAL, of the Terms and Conditions for Materials and Related Services:

3.10 Technical Services.

(A) As specified in the Agreement, Contractor shall provide Technical Services to Customer, or to Customer's contractor, and shall schedule any appropriate Subcontractor field service personnel as required by Customer.

(B) If Contractor is to provide Technical Services to Customer or to Customer's contractor for technical direction of installation of the Material, Contractor shall certify in writing and represent and warrant to Customer that to its knowledge the installation has been performed in accordance with Contractor's design and instructions of its Technical Service personnel. Contractor's Technical Services personnel shall immediately notify the Edison Representative and confirm in writing if such instructions are not being followed, or if the installation is not being performed in accordance with Contractor's design or procedures.

(C) Customer shall provide suitable office facilities at the Jobsite for Contractor's Technical Services personnel at no cost to Contractor.

3.11 Shipment.

(A) Notification. On the date of each shipment, whether F.O.B. place of shipment or F.O.B. place of destination, Contractor shall inform the Edison Representative of the following: the rail car numbers or motor carrier billing reference, the final routing and destination instructions, and a list of the items being shipped and shall forward the carrier's Bill of Lading to the Edison Representative.

(B) F.O.B. Place of Shipment. If shipment is to be F.O.B. place of shipment as stated in the Agreement, Contractor shall submit to the Edison Representative, three (3) months prior to the first shipment, a summary of shipping schedules, routes, origin points, weights, dimensions, any requirement for specialized shipping equipment (such as air-ride trailer, etc.) and descriptions of all items to be shipped. EMS shall then furnish Contractor with the necessary shipping instructions, arrange for the carrier, and shall coordinate all carrier movements of the Material from point of origin to the "Ship To" location specified in the Agreement. Shipment shall be "Freight Collect" and EMS shall pay the freight charges directly to the carrier. If Contractor is located in Canada, EMS shall furnish Contractor the instructions for clearing U.S. Customs; however, EMS shall be responsible for clearing U.S. Customs.

(C) F.O.B. Place of Destination. If shipment is to be F.O.B. place of destination as stated in the Agreement, then Contractor shall submit to the Edison Representative, three (3) months prior to the first shipment, a summary of shipping schedules, origin points, proposed routings, weights, dimensions and description of all items to be shipped. EMS shall have the right to review and approve all carriers selected by Contractor. If EMS directs Contractor to use a different shipment method or routing from that normally selected by Contractor which results in additional costs to Contractor, EMS shall reimburse Contractor for such additional costs. Contractor shall be responsible for clearing U.S. Customs and the related costs. EMS or its representatives shall off-load the Material at the "Ship To" location specified on the Agreement after inspection of the Material by the carrier and EMS.

(D) F.O.B. Quay (Dock):

(1) The F.O.B. point for delivery by an ocean carrier shall be on the dock at the Port of Los Angeles or Long Beach (as chosen by Contractor). Contractor shall be responsible for the shipment, unloading of the Material and setting it on the dock and until release of the Material by the stevedores (contracted for by the ocean carrier). EMS shall inspect the Material for visible shipment damage and accept passage of title and risk of loss upon such inspection.

(2) Contractor shall be responsible for correcting any damage to the Material and for filing any claims for loss or damage which may occur while under the carrier's and stevedore's custody. Contractor shall bear all expenses to the F.O.B. point including providing reasonable amounts of Marine Insurance and Protection and Indemnity club coverages, cost for unloading at the harbor and terminal charges. The ocean bill of lading shall reflect, where necessary, the conditions as identified above.

(3) Contractor shall furnish to the Edison Representative certified copies of the commercial invoices, packing slip, ocean bill of lading and any other documents required by U.S. Customs. EMS shall be responsible for clearing the Material through U.S. Customs and the related cost, and for arranging and paying for loading and shipment of the Material to the Jobsite.

(4) Contractor shall submit to the Edison Representative, three (3) months prior to shipment, the shipping schedule, ocean carrier, port of entry, list of items, weights and dimensions, and any other pertinent information about the shipment and transportation of the Material and the insurance of the vessel carrying the Material.

(5) Contractor shall notify the Edison Representative, no later than seventy-two (72) hours before the ship's arrival, of the date the ship is to arrive at the dock and the date of unloading the Material so that EMS may observe the unloading.

3.12 Contractor Representative.

A Contractor Representative shall be assigned to the Work and shall be the normal Contractor contact on all matters between Contractor and EMS, Customer or EMS's or Customer's contractors.

The following subsection 7.2 replaces sub subsection 7.2 in Section 7, WARRANTIES, of the Terms and Conditions for Materials and Related Services:

7.2 Warranty Period.

(A) The Warranty period for Work and Deliverables shall be for the number of years in the Purchase Order, or for five years if not so specified, commencing upon the earlier of: (i) Acceptance; or (ii) unless Customer or EMS has given notice to Contractor of the Work's or Deliverable's nonconformance, the expiration of 180 days after receipt of the Work or Deliverable by EMS or Customer.

(B) The Warranty period for replacement parts shall be for five (5) year from the earlier of (i) installation, or (ii) 18 months from the date of Customer's receipt of the replacement parts.

The following sub-section 7.3(C) is added to sub-section 7.3 in Section 7, WARRANTIES, of the Terms and Conditions for Materials and Related Services:

7.3 Remedies

(C) Should Contractor fail to promptly make the necessary corrections of non-conforming Work or Deliverables, EMS or Customer, upon notification to Contractor, may perform or have performed the necessary Warranty correction work and back charge Contractor for the associated costs. Any Warranty correction work conducted by or on behalf of EMS or Customer pursuant to this Section 7.3(C) shall not void the provisions of this Warranty section.

The following provision is added to sub-section 11.1 in Section 11, INSURANCE, of the Terms and Conditions for Materials and Related Services:

(E) Umbrella/Excess Liability Insurance, written on an occurrence, not claims-made basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Commercial Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than \$3,000,000 per occurrence. Contractor shall continue to maintain this coverage for a minimum period of three (3) years following final Acceptance of the Work and Deliverables by Edison.

The following sub-section 11.2 replaces sub-subsection 11.2 in Section 11, INSURANCE, of the Terms and Conditions for Materials and Related Services:

11.2 Primary Insurance/Waiver of Subrogation/Additional Insured. The insurance required above shall apply as primary insurance to, without a right of contribution from, any other insurance or self-insurance maintained by or afforded to EMS and Customer, and their respective subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Contractor's policies to the contrary. To the extent permitted by law, Contractor and its insurers shall be required to waive all rights of recovery from or subrogation against EMS and Customer, and their respective subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name EMS and Customer, and their respective subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of the acts or omissions of Contractor, its employees or agents and for liability arising out of Contractor's products, for both ongoing operations and completed operations.

The following sub-section 11.4 replaces sub-section 11.4 in Section 11, INSURANCE, of the Terms and Conditions for Materials and Related Services:

11.4 Non-Compliance Remedies. If Contractor fails to comply with any of the provisions of this Section 11, Contractor, among other things and without restricting EMS's or Customer's remedies under the law or otherwise, shall, at its own cost and expense, provide Edison with the same protections and benefits that an insurer would have, had the insurance been maintained in accordance with provisions of this Section 11. With respect to the required Commercial General Liability, Umbrella/Excess Liability and Commercial Automobile Liability insurance, Contractor shall provide a current, full and complete defense to EMS and Customer, their respective subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. Edison shall have the right to withhold payment otherwise due Contractor if Contractor or its Subcontractors are not in compliance with their insurance obligation.

The following Section 19, Quality Control, is added to the Terms and Conditions for Materials and Related Services:

19. QUALITY CONTROL

19.1 Inspections and Tests.

All portions of the Work and Deliverables shall be subject to independent monitoring, witnessing, inspecting and testing by Customer or its authorized representative. Contractor shall provide appropriate facilities, labor, instrumentation, equipment and access to the facilities of Contractor and Subcontractors as required for all inspections and tests. Contractor shall repair or replace all or any part of the Work and Deliverables not in compliance with the Agreement as determined by such inspections and tests. Such interim inspections and tests shall not constitute any Acceptance of any part of the Work.

19.2 Reimbursement for Nonconformance; Additional Costs.

(A) If EMS or Customer is required to modify any engineering or construction of the balance of plant as a result of the Material not conforming to the Certified Drawings, Contractor shall reimburse EMS for the costs resulting from such modifications.

(B) If EMS or Customer incurs additional costs from its installation contractor or if Customer is required to use its own construction forces because of: (i) shipment of incorrect components of the Material; (ii) interference between the Material and Customer's facility; or (iii) component parts of the Material do not properly fit together when being assembled, then Contractor shall reimburse EMS for such costs.

19.3 Witness Points.

Contractor shall submit to the Edison Representative a list of the important inspection and test witness points during the manufacture, assembly, and testing activities for the Material (including subcontracted components), and EMS or Customer shall designate the ones which EMS or Customer shall witness.

19.4 Notification.

The Edison Representative shall be notified by telephone or in writing at least seven (7) working days in advance of the date of inspections or tests designated as witness points. If Customer, after notice, fails to appear to make such inspections or to witness such tests, or to give Contractor a written release to proceed without witness, Contractor shall proceed with the Work.

19.5 Quality Verification Documents.

Contractor shall submit to EMS a list of the quality verification documents to be provided to Customer such as certificates of compliance, code stamps, and qualification or test reports. The quality verification documents shall clearly identify the material being certified, including the manufacturer's name, project name, item name and drawing number.