

Software Licensing Agreement

Southern California Edison Company (SCE), a California corporation, and _____ (Licensee), a _____ corporation, enter into this Software Licensing Agreement (Agreement) as of _____ (Effective Date). SCE and Licensee may be individually referred to as “Party” and, collectively, as “Parties” below.

1. SCE has developed certain software that SCE has been using internally to analyze data generated by the Phasor Data Concentrator.
2. Licensee has expressed a desire to use this Software and SCE has agreed that Licensee may use the Software under the terms and conditions in this Agreement.

Based on the facts described in the recitals and the mutual promises described below, the Parties agree as follows:

Article 1 – Definitions

Software is defined for purposes of this Agreement to include: (i) the computer program referred to by SCE as the Synchronized Phasor Measurement “Power System Outlook program”; (ii) any computer that contains this computer program or a variation on it; and (iii) any information about this computer program that is created by Licensee under this Agreement or is provided by SCE to the Licensee under this Agreement, including information described by the following written documentation: Synchronized Phasor Measurement Power System Outlook Program – User’s Guide – Version 2.10 dated October, 2002.

Article 2 – License Terms

Section 2.1 – License Grant

SCE hereby grants, and Licensee hereby accepts, a non-transferable and non-exclusive license to use the Software, as further described below.

Section 2.2 – Limitations on License

Licensee may use the Software to perform internal analysis of data generated by the Phasor Data Concentrator but this Agreement does not grant Licensee any rights to use the Phasor Data Concentrator. Licensee acknowledges that it is responsible for procuring and obtaining a separate license from Bonneville Power Administration (BPA) for use of the Phasor Data Concentrator.

Licensee acknowledges that the Software is being provided to Licensee on an “as is” basis and that, in exchange for the right to use the Software as described in this provision, Licensee agrees to provide SCE with comments, information, and suggestions about ways in which the SCE could enhance the usability of the Software, as further described in Article 5.

Section 2.3 –Copies of Software

Licensee shall not copy the Software or any portion of the Software for any purpose without the prior written approval of SCE.

Section 2.4 – Licensee’s Responsibilities

Licensee shall be solely responsible for any use that is made by Licensee of the Software. This shall include, without limit, responsibility for the correctness or usability of any data that is generated by Licensee using this Software and for protecting the proprietary interests of SCE as described in Article 3 below. Licensee shall protect the Software from misuse, unauthorized copying, modifications or unauthorized disclosure to any third party.

Section 2.5 – License Period

The license granted herein shall automatically expire on December 31, 2004 and may be terminated sooner by written notification from SCE. At the point of termination of this license, the Licensee shall return the Software to SCE, if requested to do so by SCE.

Article 3 – Proprietary Rights of SCE

Section 3.1 – Title to Software

Licensee agrees and acknowledges that SCE is and shall remain the sole owner of the Software and no ownership rights are being granted to Licensee by this Agreement.

Section 3.2 – Trade Secret

Licensee acknowledges that the Software is confidential in nature and constitutes a trade secret belonging to SCE. Licensee agrees not to sell, rent, license, distribute, transfer or directly or indirectly disclose, or permit any sale, rental, licensing, distribution, transfer or disclosure of the Software, or of its contents, to other than employees of Licensee who are authorized to use the Software for the purpose permitted under this Agreement.

Section 3.3 –Maintainence of Trade Secret

Licensee agrees that it will not attempt to remove the Software from a computer after it has been installed on the computer as further described in Section 5.1 below. Licensee also agrees to implement access and use restrictions that are designed to prevent disclosure of the Software, and related information, to unauthorized persons. Such access and use restrictions shall not be less strict than those applicable to Licensee's own trade secrets or to the standards that a reasonable person would apply to protect this type of information.

Section 3.4 – No Unauthorized Use or Disclosure

Licensee agrees that any use or disclosure of the Software or of a computer that has the Software loaded onto it, except as authorized explicitly herein, will constitute a material breach of this Agreement and shall entitle SCE to terminate this Agreement and reclaim possession of the Software as well as to pursue any other remedies available to the SCE under this Agreement or otherwise at law or equity.

Licensee further agrees that it shall be strictly liable for all damages to SCE that results from any disclosure of the Software in violation of the above provisions.

Section 3.5 –Software Markings

Licensee further agrees not to remove, deface or destroy any copyright, patent notices, trademarks, service marks or other proprietary markings or confidential legends placed on or within the Software.

Article 4 – Commercial Terms

Licensee is not required to pay for its use of the Software as described in this Agreement. Instead, use of the Software on a trial basis is being provided by SCE in exchange for Licensee's agreement to provide SCE with comments and suggestions on how to improve the Software, as further described in Sections 5.3 and 5.4 below.

Article 5 – Conditions and Terms for Use of the Software

Section 5.1 – Software Installation.

Licensee and SCE must agree on the computers and users that will be given access to the Software prior to the date scheduled for installation of the Software and if the parties are unable to reach such an agreement then this license agreement shall be considered null and void. SCE will spend no more than one day installing the Software on Licensee's computers. Licensee agrees to fully cooperate with SCE so SCE's time spent in installing the Software is minimized. After installation of the Software is complete, SCE shall deliver one copy of the printed materials described above to the Licensee.

Section 5.2 – Risk of Loss or Damage

Licensee agrees to accept the Software in “as is” condition, as further described in Section 2.2 above, and to accept all risk of loss or damage to or as a result of the Software, including any damage to Licensee’s computers that may result from installation or disablement of the Software.

Section 5.3 – Software Testing

Licensee shall use its best efforts to use the Software on a reasonably continuous basis during the term of this Agreement so Licensee can provide SCE with useful comments about Licensee’s experiences using the Software, as described in Section 5.4 below. Licensee agrees that its use and testing of the Software shall be conducted with the care that is normally used in testing this type of Software.

Section 5.4 – Comments from Tests

Licensee will provide SCE with comments about Licensee’s experiences using the Software in a form that is likely to be useful to SCE in considering improvements or revisions to the Software. If requested by SCE, these comments shall be provided in writing. Further, Licensee agree that SCE may ask Licensee for specific information about the Licensee’s experiences in testing the Software, including about any cases where the Software did not perform as desired by the Licensee. Licensee agrees that all comments submitted by Licensee about the Software shall be the sole property of SCE. SCE shall have an unrestricted right to use these comments as SCE determines appropriate, including in revising this test version of the Software and making the Software available on a commercial basis to Licensee and others. Licensee agrees that it will not assert any ownership or other rights in the Software or any later version of the Software.

Section 5.5 – Training and Support for Use of Software

SCE shall have no obligation to provide training on or support for the Licensee’s use of the Software either based on SCE’s initial installation of the Software or otherwise.

Article 6 – Warranty and Disclaimer

Licensee acknowledges that the Software is being provided on test basis and without warranties of any type. SCE does not guarantee that the Software will work or be useful to Licensee and Licensee agrees that Licensee's sole and exclusive remedy hereunder shall be limited to whatever corrective action SCE elects to take based on the nature of any problems identified by Licensee during its use of the Software. Further, Licensee acknowledges that the express warranty set forth in this Agreement is in lieu of all other warranties expressed or implied including without limitation any warranties of merchantability or fitness for a particular purpose. Licensee further agrees that SCE shall not be liable to Licensee for any damages including any loss profits, loss savings or other incidental or consequential damages arising out of its use or inability to use the Software or the breach of any expressed warranty even if SCE has been advised of the possibility of such damages.

Article 7 – Termination and Events of Default

Section 7.1 – Termination

The license granted herein shall terminate automatically and without further notice upon the occurrence of any of the following: (a) expiration of the license term specified in Section 2.2; (b) disclosure of the Software to a third-party, whether directly by Licensee or indirectly and whether inadvertently or otherwise, except where such disclosure is authorized in writing by SCE; and (c) commission by Licensee of an event of default, as defined in Section 7.3 below.

Section 7.2 – Disablement of the Software

Upon termination of this Agreement, Licensee agrees to return the Software to SCE. If requested by SCE, this shall include providing SCE with access to all computers where the Software has been installed so SCE can remove or disable the Software.

Section 7.3 – Events of Default

Licensee shall have committed an event of default, and this Agreement and the license granted herein shall be subject to termination as described above, if any of the following occur: (a) Licensee attempts to use, copy, license, disclose, or convey the Software in a manner contrary to the terms of this Agreement; and (b) Licensee fails or neglects to perform or observe any of its other obligations under this Agreement.

Article 8 – General Terms and Conditions

Section 8.1 – Indemnity Licensee shall defend, indemnify and hold harmless SCE and its directors, officers, agents, employees, representatives, successors, assigns, shareholders, and affiliates from and against any loss, liability, damage, or claim, including reasonable attorney’s fees, in connection with any claim, action, suit, or proceeding or threat thereof arising from Licensee’s violations of the terms of this Agreement.

Section 8.2 – Governing Law This Agreement shall be construed in accordance with and governed by the laws of the State of California.

Section 8.3 – Entire Agreement and Amendments This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings, whether written or oral, regarding its subject matter. No amendment, modification, or supplement to this Agreement shall be binding on either Party unless it is in writing and duly executed by each Party.

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as of the date first above written.

“SCE”

“Licensee”

SOUTHERN CALIFORNIA EDISON
COMPANY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address for Notices:

Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California 91770
Attn.: Legal Department -- Contracts

Address for Notices:

Tel: _____
E-mail _____