Request for Proposals (RFP) 2026-03
Measurement and Verification Provider – Virtual Power Plant Program
July 16, 2026

MCE seeks proposals from an experienced, independent **Measurement and Verification (M&V) Provider** capable of supporting **MCE's Virtual Power Plant (VPP)** program ("Program") through rigorous, transparent, and scalable performance measurement. The selected bidder will serve as a core member of MCE's VPP project team and will work in close coordination with MCE staff, VPP partners, and the California Energy Commission (CEC) under Grant Agreement No. EPC-24-040, awarded under CEC-funded GFO-23-309 - Virtual Power Plant Approaches for Demand Flexibility (VPP-FLEX) award ("Grant", Attachment F). MCE intends to select a single bidder to fulfill the M&V role for the VPP program.

Target bidders include firms with demonstrated experience in utility program evaluation, CEC-funded grant projects, demand response and distributed energy resources (DERs) performance measurement, pay-for-performance (P4P) program administration, or wholesale market-aligned load flexibility verification. The selected bidder's independent analysis and reporting will be foundational to building stakeholder confidence, supporting future market participation, and enabling the VPP to function as a durable, revenue-generating grid resource.

This solicitation is issued in support of MCE's CEC Agreement EPC-24-040. The approved agreement budget identifies this procurement as an RFP for a California vendor to perform Measurement and Verification services. Bidders must demonstrate that they are qualified to perform M&V services for a California-based CEC-funded project and must describe their California nexus, including, as applicable, California headquarters or office location, California Secretary of State registration or authorization to do business in California, California-based staff or subcontractors, prior California project experience, and ability to comply with all applicable California and CEC requirements.

MCE reserves the right to determine bidder eligibility and responsiveness based on the requirements of the CEC agreement, CEC guidance, and MCE's procurement requirements. MCE may request additional information, seek CEC clarification, issue an addendum, or take other appropriate action before award if needed to ensure alignment with the approved CEC agreement.

I. ABOUT MCE

MCE's mission is to confront the climate crisis by eliminating fossil fuel greenhouse gas emissions, producing renewable energy, and creating equitable community benefits.

MCE is a not-for-profit public agency and the preferred electricity provider for more than 600,000 customer accounts and 1.5 million residents and businesses across Contra Costa, Marin, Napa, and Solano counties. Setting the standard for clean energy in California since 2010, MCE leads with 100% renewable power at competitive rates, delivering a 1200 MW peak load and significantly reducing greenhouse emissions and reinvesting millions in local programs.

MCE's vision is to lead California to an equitable, clean, affordable, and reliable energy economy by serving as a model for community-based renewable energy, energy efficiency, and cutting-edge clean-tech products and programs.

II. PROJECT BACKGROUND

MCE's VPP is an aggregation of DERs synchronized to respond to dispatch signals sent by MCE. The Program builds on past pilot efforts in Richmond, California, and expands the offering to commercial, industrial, agricultural, public agency, and low-income residential customers throughout MCE's entire service area in Marin, Contra Costa, Solano, and Napa Counties.

As part of the VPP, residential and non-residential DERs—such as energy storage, building energy management systems, smart thermostats, EV chargers, lighting controls, heat pump water heaters, and other load-shifting equipment or technologies—will be integrated into a unified, managed program that leverages MCE's Enterprise Distributed Energy Resource Management System (eDERMS) to send and coordinate load-modification and VPP events. This eDERMS will shift loads, collect data, and optimize energy use to aggregate flexible capacity into wholesale energy markets. This will include participation in the California Independent Systems Operator (CAISO) markets to generate revenue that can be shared with customers as well as VPP partners.

MCE will leverage P4P contracts with customers and VPP partners to share value generated by the deployment and dispatch of DERs and will pay partners for the flexible capacity that they facilitate within the VPP. As established under MCE's value-sharing tariff (Appendix 1) and incorporated into the VPP Agreement (Appendix 2), residential customers receive stackable flat credits per enrolled device, and commercial and industrial customers are compensated through a third-party validated P4P model based on measured and verified load flexibility and an annual true-up payment. VPP partners receive compensation based on the value they deliver to the VPP tailored to partner type. Performance-based compensation to customers and VPP partners is <u>based on a well-defined value-sharing plan and validated through a robust M&V process.</u> Standard form contracts will be established between MCE and VPP partners to establish performance-based compensation terms.

Long-Term Program Vision

MCE's VPP is supported through the Grant that <u>establishes a 20% return on investment target for VPP performance</u>. As such, MCE's long-term vision is for its VPP to evolve into a self-sustaining, market-integrated program that operates independently of ongoing grant subsidy. This vision will be supported by transparent, defensible performance data that enables MCE to:

- Demonstrate net value creation through revenue generated through participation in CAISO wholesale energy and ancillary service markets;
- Achieve significant cost-avoidance through non-market use cases;

- Calculate avoided energy and capacity procurement costs;
- Implement and validate advanced performance evaluation methodologies (PEM);
- Quantify the economic benefits of VPP participation to MCE, VPP partners, and participating customers;
- Share value with customers through a customer tariff validated through a third-party M&V process;
- Compensate VPP partners through a performance-based payment strategy; and
- Inform program design refinements that improve cost-effectiveness, scalability, and long-term financial sustainability

III. PROPOSED SCOPE OF WORK

The selected M&V provider will be responsible for independently measuring, validating, and reporting load modification and DER performance resulting from MCE-dispatched VPP events to satisfy the Grant. This role is central to ensuring the integrity of MCE's value-sharing tariff, customer and VPP Partner compensation amounts, and market participation activities.

To execute this role effectively, the selected M&V provider must be capable of operating within a complex, multi-system data environment, including MCE's cloud environment, MCE's eDERMS, third-party aggregator and original equipment manufacturer (OEM) assets, telemetry data, meter data, and CAISO market indicator data.

A contract awarded as a result of this Request for Proposals will include the following proposed scope of work, subject to revision:

- Review and validation of performance data including but not limited to raw meter data, revenue/settlement quality meter data, VPP capacity and value forecasts, DERMS dispatch signals, and device level telemetry;
- Validation of tariff payments customers and performance based payments VPP partners, including annual true-up payment calculations;
- Development, testing, and refinement of new PEMs for CAISO approval, including advanced normalized metered energy consumption (NMEC); and
- Transparent, auditable reporting suitable for regulatory review, program evaluation, and stakeholder confidence.
- Support and advisory as MCE transitions from flat VPP Tariffs to dynamic VPP Tariffs after an initial program launch period

The initial term of this agreement will be until **March 30, 2029**, with the option to extend for additional one-year terms at the sole discretion of MCE. Proposals shall include a detailed cost proposal not to exceed **$390,000**.

Key Tasks

Throughout the contract term, the selected M&V provider will accomplish the following key tasks:

1) Develop M&V Plan
    a) Outline proposed methodologies, data sources, assumptions, and analytical approaches that will be used to measure and verify VPP performance
    b) Align plan with CEC reporting requirements
    c) Submit Draft M&V Plan for review and comment by MCE
    d) Incorporate feedback from MCE and submit Draft M&V Plan to CEC
    e) Incorporate feedback from CEC and submit Final M&V Plan to CEC

2) Data Infrastructure and Systems Coordination
    a) Coordinate directly with MCE's Technology and Analytics team to align data pipelines, methodologies, and reporting requirements across systems
    b) Integrate, reconcile, and validate data from third-party cloud-based systems (e.g., OEM platforms, aggregator portals, and analytics tools) and eDERMS-generated outputs (e.g., OpenADR reports, dispatch signals, event metadata, and aggregated performance outputs)
    c) Ensure secure data exchange, version control, and auditable data workflows suitable for regulatory, financial, and market-facing use cases
    d) Responsibly manage personally identifiable information (PII) in MCE's Data Cloud, DERMS, and third-party or equipment manufacture/VPP Partner IT platforms

3) Measurement and Verification of VPP Performance
    a) Develop and maintain energy performance baselines suitable for settlement quality meter data (SQMD) processing using industry-standard methodologies, including NMEC control group methodologies, and other CAISO-approved methodologies
    b) Validate MCE's eDERMS by ingesting and reconciling data from AMI systems, DER telemetry, vendor/equipment provider platforms, and the eDERMS
    c) Manage and analyze customer load profiles, including full 8760 hourly datasets and sub-hourly interval data where available
    d) Quantify load reduction, load shifting, and DER dispatch resulting from MCE-initiated VPP events
    e) Conduct independent, third-party analysis and validation of Program efficiency and effectiveness to support return on investment analysis, including verification of value created for:
        i) MCE
            (1) Cost savings and value created through non-market integrated use cases
            (2) Revenue, including through CAISO market integration

ii) Customers
    (1) Monthly performance-based bill credits and annual true-up payments for commercial and industrial customers
    (2) Customer benefit realized through VPP participation, including customer demand charge savings, TOU rate optimization, and customer rebates and incentives

iii) VPP Partners
    (1) Performance-based payments to select VPP partners

f) Use M&V of VPP performance to support modifications to value-sharing methodologies as the VPP program scales or evolves

4) Implement New Performance Evaluation Methodology
    a) Test and refine new NMEC-based PEM for CAISO approval
    b) Explore other PEMs, as applicable

5) Coordination and Review Process
    a) Develop CEC-related deliverables in coordination with MCE's technology, analytics, and program management teams, while maintaining independent technical judgment and analytic conclusions
    b) Participate in MCE-led subcommittee and coordination meetings to support information sharing, clarification of requirements, and review of interim findings
    c) Conduct internal meeting and analyses independently of MCE to ensure objective evaluation, quality control, and methodological consistency
    d) Respond to comments and revise deliverables as necessary to reflect independent professional judgment while addressing relevant feedback necessary for acceptance

6) Reporting and Documentation
    a) Provide clear, auditable reports at participant, portfolio, and program levels
    b) Document methodologies, assumptions, data sources, and calculation logic
    c) Support MCE reporting requirements for internal analysis, regulatory compliance, CEC grant reporting, and potential CAISO market participation

CEC Reporting and Deliverables

The selected M&V provider will be responsible for producing required M&V deliverables in support of the Grant. These deliverables shall align with applicable CEC reporting requirements, timelines, and approval processes. At a minimum, the M&V provider shall prepare and submit the following deliverables:

1) **Draft M&V Plan:** The Draft M&V Plan shall outline the proposed methodologies, data sources, assumptions, and analytical approaches that will be used to measure and verify

VPP performance. The Draft M&V Plan will be submitted for review and comment by MCE and the CEC. The Draft Plan shall include, at a minimum:

- Description of M&V provider, including roles and services
- Specification of measurement system, including monitoring and data collection equipment, data sources, parameters to be measured, sampling frequency and operating conditions (e.g., steady-state requirements), and procedures for data quality assurance, validation, and auditability
- Description of baseline methodologies across customer classes and DER technologies, including definition of baseline operating conditions, system operating modes, and approaches for comparing baseline and post-event performance
- Description of analytic methods used to quantify VPP performance, including flexible capacity (kWh/MWh) delivered to MCE's VPP, load reduction, load shifting, and DER dispatch attributable to VPP events
- Approach for validating OpenADR dispatch signals and event response
- Preliminary methodology for calculating performance-based customer bill credits under MCE's VPP Tariff, incorporating Time-of-Use (TOU) rates, NEM, and successor tariffs, and P4P payments to MCE's VPP partners
- Identification of additional information that will be necessary to complete the M&V tasks (e.g., costs for implementing baseline design vs. proposed design)
- Alignment with CEC reporting requirements and MCE program objectives

2) Final M&V Plan: Following review and incorporation of comments, the M&V Provider shall submit a Final M&V Plan that reflects approved methodologies and serves as the governing document for all subsequent verification activities. The Final M&V Plan shall:
   - Incorporate feedback from MCE and the CEC
   - Clearly define finalized performance metrics, baselines, and calculation methodologies
   - Establish reporting formats, schedules, and data governance protocols
   - Serve as the authoritative reference for program evaluation, customer and VPP Partner compensation, and market-facing analysis

3) M&V Parameters Report: The M&V Provider shall prepare an M&V Verification Parameters Report documenting key assumptions, parameters, and boundary conditions used in program evaluation to describe, define, and validate baseline for best-in-class and industry standard equipment. This report will support transparency and reproducibility of results and shall include:
   - Definitions of verified load flexibility, event performance windows, and measurement intervals
   - Treatment of exclusions, data gaps, and anomaly handling
   - Documentation of any adjustments made to account for rate impacts, weather normalization, or operational constraints

- Description of aggregation logic across devices, sites, and customer segments *(as provided by MCE)*

4) **M&V Findings Reports (Three Reports):** The M&V Provider shall prepare three formal M&V Performance Findings Reports over the course of the project period at the end of each calendar year to validate the DERMS, VPP program performance, and performance-based compensation payments to customers and VPP partners. Crucially, these reports will be used to calculate annual true-up payments to commercial and industrial customers to be disbursed by March 31. These reports shall provide detailed analysis of VPP performance and shall be suitable for submission to MCE and the CEC.

   Each report shall include, at a minimum:

   - Summary of VPP events and dispatch activity during the reporting period
   - Measured and verified load modification and DER performance
   - Progress toward program goals, including flexible capacity delivery and customer participation
   - Validation of annual true-up payments to commercial and industrial customers
   - Calculation of monthly bill credits to be disbursed to commercial and industrial customers
   - Calculation of performance-based payments to VPP partners
   - Analysis of operational efficiency, market value realization, and emerging ROI metrics
   - Identification of lessons learned, risks, and recommendations for program refinement

   Reporting periods, content emphasis, and submission timelines will be coordinated with MCE to align with CEC grant milestones.

IV. MINIMUM QUALIFICATIONS

Qualified bidders must demonstrate:

- Experience providing M&V services for utility/CCA programs and CEC grants, including demand response, DER aggregation, and/or VPPs
- Familiarity with California energy markets, rate structures, and regulatory requirements
- Ability to manage large-scale interval data sets and integrate multiple data sources, including multiple enterprise and third-party systems
- Technical capability to operate within an OpenADR-enabled DERMS environment
- Independence from OEMs, developers, or aggregators in a manner that preserves objectivity and transparency

V. INSTRUCTIONS TO BIDDERS

The evaluation phase of the competitive process will begin upon receipt of proposals until the contract has been awarded. Bidders must not have any contact with MCE personnel nor should they lobby evaluators or any member of the staff or Board of Directors during the evaluation process. Any communications outside of the procedures set forth in this RFP may result in disqualification of bidder.

MCE has requested a determination from the California Department of Industrial Relations ("DIR") regarding whether the services contemplated under this solicitation are subject to California prevailing wage requirements. As of the issuance date of this solicitation, DIR has not issued a determination. MCE is not making a final determination in this RFP regarding whether California prevailing wage requirements apply to the services contemplated under this solicitation.

Accordingly, bidders shall submit pricing under both scenarios:

1. Pricing assuming California prevailing wage requirements do not apply to the services provided under the resulting agreement; and
2. Pricing assuming California prevailing wage requirements apply to the services provided under the resulting agreement.

For each pricing scenario, bidders shall identify the assumptions, labor classifications, labor categories, billable rates, cost impacts, and any other pricing assumptions used to develop the proposed costs.

MCE's standard form agreement (see Attachment E) includes prevailing wage provisions. MCE reserves the right to require compliance with California prevailing wage requirements.

To complete proposals, bidders shall:

1) Complete all required fields in the Bidder Qualification Form (Attachment A)
    - Organizational Chart (required)
    - Resumes of Key Personnel (required per individual)
    - Project Examples (Reports, Regulatory Submissions, etc.) (optional)
2) Complete narrative proposal by responding to prompts in the Proposal Form (Attachment B) *(not to exceed 10 pages)*
    - Sample Calculation or Modeling Approach (one total required)
    - Project Timeline or Gantt Chart for Proposed Project (required)
3) Complete the Cost Proposal Form (Attachment C)
    - Detailed Cost Proposal (optional)
4) Complete the Proposal Completion Checklist (Attachment D)

5) Submit all documents and forms via the following Egnyte upload link, in either .pdf or .docx (Word) file format:

   https://mea.egnyte.com/ul/lKqsbJZjS6

   Egnyte will prompt the following required fields:
   - Name: List company name
   - Email Address: List email address of the contact submitting the response
   - Company Name: Leave blank

6) Submit all responses **no later than 4:00 p.m. PDT on Sunday, August 30, 2026**.

Incomplete submissions may be disqualified. Any submissions received after the deadline will not be considered.

VI. EVALUATION CRITERIA

Evaluation Process

Upon submission of all proposal materials, applications will be evaluated by a selection committee comprised of MCE staff. MCE will evaluate the proposals based on the evaluation categories below. Upon completion of independent scoring, scores will be tallied, and the 4 top bidders attaining the highest scores will be invited to provide interviews. The responsive bidder with the highest overall score will be selected as the vendor, subject to MCE's reserved rights, responsibility review, and successful contract negotiation. In evaluating applications, MCE will use the following evaluation criteria:

Point Allocation by Evaluation Category

Evaluation Category	Maximum Points
Bidder Information, Relevant Experience, & Organizational Qualifications (Attachment A: Bidder Qualification Form)	25
Technical Approach to Measurement and Verification (Attachment B: Proposal Form – Methodologies, Pay-for-Performance, & Scalability)	25
Data Integration and Management (Attachment B: Proposal Form – Data Integration & Data Management Process)	20
Cost Proposal (Attachment C: Cost Proposal Form)	20
Project Management (Attachment B: Proposal Form – Project Management)	10

Total Possible Points to Determine Interview Status	**100**
Interview Performance, *as applicable*	20
Total Possible Points	**120**

VII. KEY DEADLINES

Deadline	*Date*
Date Issued	Thursday, July 16, 2026
Pre-Bid Webinar	2:00 PM PST on Wednesday, August 5, 2026
Deadline for Questions	5:00 PM PST on Friday, August 7, 2026
MCE Responses to Questions	Tuesday, August 18, 2026
Submission Deadline	**4:00 PM PST on Sunday, August 30, 2026**
Anticipated Selection of Contractor	Monday, September 21, 2026

Notice of Interest: A notice of interest in submitting a proposal is not required; however, it is useful for the evaluation process. No later than the deadline for submitting questions, all parties interested in responding to this RFP are encouraged, but not required, to notify MCE via email of the intent to submit a proposal. This notice creates no obligation to submit a proposal but will ensure that interested parties are copied on MCE's responses to questions submitted by potential bidders. Notices must be sent to contracts@mcecleanenergy.org and should include the company's name and email contact information, referencing "MCE RFP 2026-03 Notice of Interest" in the subject line.

Pre-Bid Webinar: This webinar will be held on Wednesday, August 5, 2026.

Register here:
https://us02web.zoom.us/j/86241753080?pwd=0ckH99aRmv1EpVOOOnbVa0ymQerEwf.1
Webinar ID: 862 4175 3080
Passcode: 617372

Deadline for Questions: Any questions related to the content of this RFP must be submitted to the Contracts Manager **no later than 5:00 p.m. PST on Friday, August 7, 2026.**

MCE Deadline for Responses: MCE Responses to all questions received will be sent to all bidders who submitted questions and/or provided a complete Notice of Interest via email by **Tuesday, August 18, 2026.**

Submission Deadline: To be eligible for consideration, all responses must be submitted via the Egnyte upload link utilizing the Bidder Qualification Form (Attachment A) ***no later than 4:00 p.m. PDT on Sunday, August 30, 2026.***

Selection of Contractor: Subject to the General Terms and Conditions below, MCE anticipates that the contractor selection process will be completed by **Monday, September 21, 2026.**

GENERAL TERMS AND CONDITIONS

MCE's Reserved Rights: MCE may, at its sole discretion: withdraw this Request for Proposals at any time, and/or reject any or all offers or proposals submitted without awarding a contract. Bidders are solely responsible for any costs or expenses incurred in connection with the preparation and submittal of an offer or proposal.

Public Records: All documents submitted in response to this Request will become the property of MCE upon submittal, and will be subject to the provisions of the California Public Records Act and any other applicable disclosure laws. Upon submission, all proposals shall be treated as confidential until the selection process is completed. Once a contract is awarded, all proposals shall be deemed public record. MCE is required to comply with the California Public Records Act as it relates to the treatment of any information marked "confidential." **Bidders requesting that portions of its submittal should be exempt from disclosure must clearly identify those portions with the word "Confidential" printed on the lower right-hand corner of the page.** Each page shall be clearly marked and separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. MCE will consider a bidder's request for an exemption from disclosure; however, if MCE receives a request for documents under the California Public Records Act, MCE will make a decision based upon applicable laws. Bidders should not over-designate material as confidential, and any requests or assertions by a bidder that the entire submittal, or significant portions thereof, are exempt from disclosure will not be honored.

No Guarantee of Contract: MCE makes no guarantee that a contractor and/or firm submitting documents under this solicitation will result in a contract. The successful vendor, if any, will enter into an agreement for services based on MCE's Standard Form Agreement, attached hereto as Attachment E. By submitting a response, you agree to abide by the terms included in the attached Agreement; however, MCE reserves the right to modify the terms based on the scope of work agreed to by MCE and the selected vendor. Please review MCE's Standard Form Agreement (Attachment E) with your Legal department. If bidder requires any deviations from MCE's standard contract terms, bidder must provide a redline with requested edits or list the terms where bidder will require an edit with sufficient detail explaining the need for such an edit.

Insurance: Selected vendors shall provide proof of insurance coverage meeting or exceeding the following minimum requirements prior to contracting with MCE: Commercial General Liability ($2,000,000 per occurrence, $4,000,000 aggregate for bodily injury and property damage), Motor Vehicle Liability Insurance ($1,000,000), Workers' Compensation and Employer's Liability Insurance (per statute), Professional Liability Insurance ($1,000,000) and Privacy and Cybersecurity Liability ($5,000,000).

VIII. QUESTIONS

To promote accuracy and consistency of information provided to all participants, questions will only be accepted via email submitted to MCE Contracts Manager at contracts@mcecleanenergy.org and the subject line of the email must read "MCE RFP 2026-03 Question." The deadline for submitting questions is 5:00 p.m. PST on Friday, August 7, 2026.

MCE will provide a written response to the questions submitted via email by Tuesday, August 18, 2026 to all bidders who submitted questions and/or provided a complete Notice of Interest. MCE reserves the right to combine similar questions, rephrase questions, or decline to answer questions, at its sole discretion.

All questions must be submitted through the above process. No questions will be answered over the telephone or in person. Bidders may not have any contact regarding this procurement with any MCE official or staff from the time of issuance of this solicitation until the award of contract, other than through the process for submitting questions. Any contact in violation of these provisions will be grounds for disqualification.

Thank you for your interest!

APPROVED

Date: September 5, 2025

MARIN CLEAN ENERGY

Electric Schedule for Virtual Power Plant Tariff (VPPT)

APPLICABILITY: The Virtual Power Plant Tariff (VPPT) is available to MCE customers that have executed the MCE Virtual Power Plant Agreement (VPPA), and that have installed one or more qualified and fully operational distributed energy resources (DER) using an MCE-authorized Designee, with remote monitoring and dispatchable direct load control capabilities, behind the customer's utility electric meter, as verified by MCE. Customers that participate in MCE's Virtual Power Plant (VPP) Pilot can reduce their annual electricity costs, increase their resiliency, contribute to improving the health of their local grid conditions, support the advancement of cutting-edge innovative energy technology, while also earning valuable monthly bill credits for participation through this tariff.

SERVICE AREA: This schedule is available to MCE customers.

SUBSCRIPTION LIMIT: Subscription to this schedule is limited to 50,000 customers.

ELIGIBILITY: This optional schedule is available to MCE customers that meet the conditions detailed below. To be eligible for the VPPT, a customer must meet and maintain the following requirements:

1. Customers must have an active MCE residential, commercial, or industrial account with service address that is in good standing.

2. The customer account may not be enrolled in utility or third-party demand response programs or other behind-the-meter DER aggregations, including MCE's programs like Peak FLEXmarket. Accounts that are enrolled in a utility or other third-party demand response program or aggregation must disenroll in the third-party program prior to enrolling in the VPP. Enrollment can be determined using a standard form, the Customer Information Service Request (CISR) form.

3. Customers participating in the VPP must comply with the terms and conditions described in their governing VPPA, and have installed a qualified and fully operational DER compatible for monitoring and dispatchability by MCE pursuant to this tariff.

4. Customer DER installations must be compliant with the rules, stipulations, and restrictions of all manufacturer warranties and state and local codes and regulations, including applicable interconnection requirements. By enrolling in the VPP, customers warrant that they have all necessary authorizations and authority to enroll, and have provided any necessary notices to property owners, managers, or other stakeholders.

5. Customers must be enrolled in one of the following rate schedules:
    a. Residential: E-TOU-A, E-TOU-B, E-TOU-C, E-TOU-D, EV2, E-6 and EM-TOU.
    b. Commercial: B-1, B1-ST, B-6, B-10, B-19, B-20, BEV and SB.

    Other rate schedules as determined by MCE will be noted at www.mcecleanenergy.org/rates

6. Customers who change onto an ineligible rate schedule will be removed from the VPPT and monthly bill credits will be discontinued immediately.

7. Customers must have an installed revenue grade meter, such as an AMI Meter (aka- "Smart Meter"), MV-90 Meter, or equivalent load meter capable of providing 15-minute interval data.

8. Customers must provide any information reasonably requested by MCE or its authorized designees that is necessary for MCE to administer this VPPT, such as specifications for pre-existing DER installations.

9. If a participating customer opts-out of MCE service, the customer will be immediately removed from the VPPT on the effective date of the opt out and will be ineligible for further bill credits, including any applicable Program Year True-Up Payment, as defined below.

10. All customers taking service under the VPPT must have their DER located behind the utility electric meter and the enrolled DERs must be fully operational for as long as they remain on the VPPT. If the customer anticipates that the DER will become non-operational for any reason for a period longer than 30-days, the customer must notify MCE at least 30-days prior to the start of the period of non-operation and provide MCE with the expected start and end dates of the non-operation. In such instances, and subject to MCE's verification and approval, MCE may suspend bill credits for up to 90-days. If the DER becomes non-operational for longer than 30-days, and the customer has not received approval for a temporary suspension of the bill credits, the customer may be removed from this VPPT and the bill credits will be discontinued immediately. If a DER unexpectedly becomes unresponsive, the customer may receive a notice via email from MCE or an MCE-authorized designee alerting them to the malfunction. Notified customers will have 30 days from the date of their notice to reconnect the unresponsive DER before MCE may disenroll the customer from the VPP and terminate future bill credits.

11. Participants who have completed a VPPA, agree to allow MCE and its authorized designees, to operate the DER consistent with this tariff and guidelines contained in the VPPA. A participating customer shall allow MCE to operate the DER at MCE's discretion, subject to the following limitations:
    a. MCE may, at its discretion, dispatch the DERs (i.e., charge, discharge, load shift, load shed, load shape, load shimmy, and/or otherwise affect asset behavior), no more than recommended by the applicable DER vendor and/or manufacturer's warranty, except as outlined in the Special Conditions a and b below.

    b. MCE and partners intend to program the DERs to shift customer load to non-peak hours to reduce cost and reliance on fossil fuel, except as described in Special Condition a below.

    c. If connectivity to MCE's VPP is lost (including due to unplanned outages, emergencies, or other instance), DERs will be preprogrammed to go into an autonomous, self-operating mode until the situation is resolved and connectivity is resumed; see Special Conditions a, b, and c below.

16. MCE reserves the right to withhold incentives for any participating customers determined to be violating the terms and conditions of the governing VPPA.

17. Customers may elect to disenroll from the VPP and stop participation in VPPT at any time by contacting MCE at: virtualpowerplant@mcecleanenergy.org. All applicable terms and conditions of the governing VPPA will apply to any withdrawal. Termination of participation in VPPT, and the credits for participation, will be effective at the end of the customer's current billing cycle.

18. All VPP participants may elect to continue service under the VPPT upon expiration of their existing VPPA, through execution of a new VPPA.

Special Conditions for Participants:

a) Public Safety Power Shutoffs. In the event that PG&E calls a pending Public Safety Power Shutoff event (PSPS) in the vicinity of a customer, MCE will attempt to charge the participating energy storage system (ESS) that are expected to be impacted by the outage to full capacity in advance of the PSPS event. If necessary, MCE may charge the ESS to full capacity during any time of day, including "peak" periods, to maximize resiliency benefits for customers. Once the PSPS event has been resolved, and power has been restored, MCE will resume its normal dispatching of all DERs.

b) Unplanned Grid Outages. MCE will instruct the participating DERs to operate independently in the event of an unplanned outage of the electric grid. If the DER is an ESS, it will be charged using on-site generation resources if available, and only discharged to provide power for on-site usage. Once grid power has been restored, MCE will resume its normal dispatching of the DER.

c) Loss of Connectivity. It is the customer's responsibility to ensure continued connectivity of the DERs to the VPP. If MCE loses connectivity to a DER, such as due to interruption of internet or cellular connection, the DER will revert to autonomous control until connectivity is restored.

RATES AND INCENTIVES:

Rate Schedule: All usage billed under this schedule will be in accordance with the customer's otherwise-applicable MCE rate schedule.

Monthly Bill Credits: In addition, customers served under this schedule will receive a performance payment in the form of a monthly bill credit. The monthly bill credit amount will be determined as follows:

Residential MCE VPP Customer

Residential customers are compensated for participation in the MCE VPP based upon the number and type of DER devices enrolled by the customer, detailed below. Equipment specifications (including make, model, etc.) will be detailed in the customer agreement. This Residential Monthly Advanced Payment (RMAP) will be paid monthly, subject to the maximum credit amount listed below, in the form of a bill credit. The monthly bill credit amount will be based on the RMAP Product Menu below.

RMAP Product Menu:

- $2/month per enrolled smart major appliance (limited to eligible washers, dryers, dishwashers, refrigerators, freezers, and smart outlets with $\geq$ 1kW load)
- $5/month per enrolled eligible HAN/Smart Gateway
- $5/month per enrolled eligible smart thermostat (limited to all-electric HVAC systems)
- $5/month per enrolled eligible mini-split air conditioner
- $5/month per enrolled eligible heat pump hot water heater
- $10/month per enrolled eligible Level 2 electric vehicle (EV) charger
- $20/month per enrolled eligible bi-directional (i.e., V2B, V2G, V2X) Level 2 EV charger
- $10/month per enrolled eligible battery energy storage system under 20 kWh
- $20/month per enrolled eligible battery energy storage system equal or over 20 kWh

  The maximum RMAP bill credit for a customer utilizing the California Alternate Rates for Energy (CARE) or Family Electric Rate Assistance (FERA) discounts is $50/month. The maximum RMAP bill credit for all other eligible residential customers (i.e., who are not on a CARE or FERA rate schedule) is $40/month.

Commercial or Industrial MCE VPP Customer

Commercial and Industrial customers are paid a Commercial Monthly Advanced Payment (CMAP) in the form of a bill credit as well as an annual performance payment of $0.11 per kWh of measured load flexibility shift that is delivered to MCE's VPP annually. The monthly bill credit amount will be based on the CMAP Load Shift Calculation methodology and subject to the maximum credit amount. CMAP will be calculated for the Program Year (January 1st through December 31st) in which a customer is enrolled in the VPP.

At the end of a Program Year, if the customer has generated more credit during the Program Year than has been paid to the customer through their CMAP for that Program Year, the customer is eligible to receive the balance owed, subject to the maximum bill credit amounts listed below (Program Year True-Up Payment). The Program Year True-Up Payment will be paid out as an additional bill credit prior to March 31st of the following Program Year. The calculation, as detailed below, is based on the total kWh of flexible load delivered to MCE's VPP, using MCE's Measurement and Verification (M&V) method and independently validated through third-party audit (as detailed in the VPPA).

CMAP Load Shift Calculation:

A. FIRST PROGRAM YEAR: In the First Program Year that the customer enrolls in the VPP, MCE and/or MCE Authorized Designee will provide an Estimated Annual kWh of Load Shift for the proposed installations. Customer will receive a monthly bill credit valued at 33% of the Estimated Annual kWh Load Shift multiplied by $0.11, then divided by 12, subject to the maximum bill credit listed below.

B. AFTER THE FIRST PROGRAM YEAR: For each Program Year thereafter, the previous Program Year's Actual Verified kWh of Load Shift, as validated annually through MCE's M&V method, will be used to set the Delivered kWh of Load Shift Amount. Customer will receive a monthly bill credit valued at 50% of the DKLSA multiplied by $0.11, then divided by 12, subject to the maximum bill credit listed below.

The maximum CMAP bill credit for an eligible commercial customer to receive is $300/month. The maximum CMAP bill credit for an eligible industrial customer to receive is $750/month.

Appendix 2

MCE Internal Use Only: Group 1 ☐ Group 2 ☐ Group 3 ☐

Marin Clean Energy (MCE) Virtual Power Plant Agreement (VPPA) Cover Page

A. Participant Information

Participant Name		Contact Name (if Participant is an entity)
Title (if applicable)	Phone	e-mail

B. Project Developer (MCE Authorized Designee)

Company Name	Contact Name	Phone & e-mail

C. Project Installer (Subcontractor to Project Developer and is an MCE Authorized Designee, if applicable)

Company Name		
Contact Name	Phone	e-mail

D. Project Site Information

Site Address	City	State	Zip

Last 4 digits for each of the PG&E Service Account ID (SAID) Number(s) for the building(s) where equipment will be installed.
___ ___ ___ ___ // ___ ___ ___ ___ // ___ ___ ___ ___
Eligible electric Rate Schedule per Virtual Power Plant Tariff *(as of date of agreement)*: ____________
Attachments: ☐ Proof of change to a rate schedule eligible for the Virtual Power Plant Tariff *(if applicable)*

E. MCE Battery Energy Storage System (BESS) Gap Funding

$ *Total Cost of BESS*	BESS Installer:
$ *MCE BESS Rebate Amount*	Payee*:

F. Richmond Advanced Energy Community Grant Funding Allocation

$ *Total Grant Funding Allocated*	Payee*:

G. Monthly Bill Credit for Distributed Energy Resource (DER) Management and Control

(Residential Participants, insert Total Monthly RMAP from Worksheet A; Non-Residential Participants, insert 1st Year CMAP Amount in Worksheet B, Line c)

$ /month	Last four digits of SAID Number*: ____________________ **Payee*:** ______________________________

If Payee is someone other than the Participant, then Participant must assign the funding, bill credit, and/or true-up payment to the third-party Payee via executing the Virtual Power Plant Funding Assignment Agreement attached hereto as part of this Agreement. ☐ Virtual Power Plant Funding Assignment

H. Term

Term Duration (years from Commercial Operation Date):	Estimated Commercial Online Date:

I. Installation Deadline

All work related to this Agreement must be installed and Fully Operational no later than _________. Failure to meet this deadline due to withdrawal or delay due to actions and/or inaction by Participant may result in adjustment or forfeiture of MCE Agreement Funding hereunder.

J. Participant Agreement and Signature

This Agreement is made and entered into by and between Marin Clean Energy ("MCE") and Participant as of the date of execution of the agreement. By my signature below, Participant represents to MCE that (i) Participant has read, understands, and agrees to be bound by the terms, conditions and requirements of this contract between MCE and Participant (including this Cover Page, the Virtual Power Plant Agreement Terms, and all attachments hereto) ("Agreement") and the Conditions and Requirements of the Virtual Power Plant Tariff, (ii) if Participant is an entity rather than an individual, its authorized representative listed below ("Authorized Representative") has the authority to sign this Agreement on behalf of the Participant, and (iii) all accompanying Project documentation is complete, true, and accurate to the best of my knowledge.

Consent to Electronic Disclosure and Contracting. By signing below, Participant consents and agrees to receive electronically all communications, agreements, documents, notices, records, legal disclosures, and other information (collectively, "Electronic Records") that MCE provides in connection with this Agreement. Participant further agrees and consents to the use of electronic signatures (such as clicking, checking, signing using a digital pen, or otherwise manifesting assent) in the processing of Electronic Records. Participant has the right to withdraw this consent at any time by calling 1 (888) 632-3674 or emailing info@mcecleanenergy.org. Participant must notify MCE of any change in Participant's e-mail address by using the contact information above.

Consent to Sharing Agreement with MCE Authorized Financer (Only Applicable for Residential Customer Participants). By signing below, Participant hereby consents and agrees to the provision of this Agreement and/or data contained in this Agreement to the National Energy Improvement Fund ("NEIF") for evaluation of your eligibility for financing of the Project. Any such financing arrangements shall be negotiated and subject to a further agreement between Participant and NEIF. If you are approved, financing will be provided by NEIF.

Authorized Representative of Participant *(if Participant is an entity; please print)*	Title	Date
Signature of Participant or Authorized Representative of Participant *(if Participant is an entity)*		

Virtual Power Plant Agreement Terms, Conditions and Requirements

1. Overview. MCE's Virtual Power Plant Pilot (VPP Pilot) provides certain payments and funding options to MCE customers installing behind-the-meter Distributed Energy Resources in exchange for MCE to have the ability to monitor and dispatch the Distributed Energy Resource to reduce local peak demand, reduce overall cost of service to eligible customers, reduce greenhouse gas emissions, and provide resiliency benefits for eligible customers during grid outages.
2. Definitions.
   a. "**Agreement**" refers to this Virtual Power Plant Agreement, including the Cover Page, the Virtual Power Plant Agreement Terms, Conditions and Requirements and all attachments hereto
   b. "**CPUC**" refers to the California Public Utilities Commission
   c. "**DERMS**" refers to MCE's distributed energy resources management system
   d. "**DER**" refers to one or more behind-the-meter Distributed Energy Resources installed within the Project
   e. "**Fully Operational**" refers to all the following occurring: (1) the DER has been completely installed at the Site; and (2) the Participant has received utility's permission to operate the DER; and (3) MCE has verified that the participating DERs are successfully connected to MCE's VPP.
   f. "**MCE**" refers to Marin Clean Energy or its contractors, subcontractors or agents
   g. **"MCE Agreement Funding"** has the meaning set forth in Section 12.b
   h. "**MCE Authorized Designee**" refers to a vendor that has been approved by MCE or its VPP Pilot Implementer to work in the VPP Pilot and is identified on the Cover Page
   i. "**M&V**" refers to measurement and verification
   j. "**Participant**" has the meaning set forth on the Cover Page
   k. "**Party**" (individually) or "**Parties**" (collectively) refers to MCE and Participant
   l. **"Personally Identifiable Information"** refers to any information that relates to an identified or identifiable individual, including, but not limited to, an individual's name, address, telephone number, email address, or as otherwise recognized as "personal information," "personal data," or "personally identifiable information" in accordance with applicable laws and regulations
   m. "**Project**" refers to the design, engineering and installation of the DER pursuant to the terms of this Agreement as described in Section E. of the Cover Page
   n. "**Project Developer**" refers to an MCE-authorized installer of the DER and can be an MCE Authorized Designee
   o. "**Qualifying DER**" refers to a DER supplied by an MCE Authorized Designee that is capable of being controlled by MCE's DERMS
   p. "**Site**" refers to the site (or sites) where the DER will be located
   q. "**Tariff**" or "VPPT" refers to the MCE Virtual Power Plant Tariff (VPPT) applicable to Participants of the Virtual Power Plant Pilot
3. Agreement Eligibility. Participants must, for the Term of the Agreement: (i) be and remain an active MCE customer and (ii) meet and maintain all Agreement requirements herein and those listed in the Virtual Power Plant Tariff.
4. Authorization. Participant must be authorized to approve the installation of a DER, including any necessary modifications to the electrical system, either: (i) as the legal Site owner; (ii) as the duly authorized representative of the Site owner; or (iii) with prior, written authorization and approval from the legal owner of the Site.
5. Ownership. Participant must be the owner and title holder to the DER during the Term of the Agreement, unless agreed to otherwise in writing by MCE. If the site has a solar panel system owned by a person or entity other than the Participant, MCE must be notified immediately. MCE does not anticipate that its control of the DER will interfere with the operation of the solar panel system or impact the terms of any agreement with the third-party owner of the solar panel system (i.e., a lease, prepaid lease, or power purchase agreement), however MCE does not guarantee that this Agreement does not conflict with any agreement with a third-party owner of the solar panel system and takes no responsibility or liability for any such conflict. Participant is solely responsible for confirming the terms of any agreement with the third-party owner of the solar panel system does not conflict with this Agreement and obtaining any required consent to this Agreement of the third-party owner of the solar panel system.
6. DER Requirements. Participant agrees to: (i) install a Fully Operational Qualifying DER with equipment and/or software using an MCE Authorized Designee (ii) provide the DER with continuous access to a functioning broadband internet connection with a speed of at least 1 Mbps with one (1) wired Ethernet port (preferred), a wireless Internet connection and standard electrical outlet, or its own mobile data connection.
7. DER Operations. Participant agrees to operate and maintain the DER and all associated equipment in accordance with the rules, stipulations and restrictions of all manufacturer requirements and warranties as well as all State and local codes and regulations. **Participant is responsible for operation and maintenance of the DER and therefore must provide for or arrange for the provision of operations and maintenance services on the DER.** Except for any required shutdowns for safety or maintenance, Participant further agrees to ensure that the solar panel system is operated and maintained such that it is generating at its expected capacity (as per manufacturer's projections) during the Term.
8. No Modification of DER. Participant may not modify, disconnect, or uninstall the DER equipment and/or software during the Term, unless required for maintenance, repair, or safety reasons and Participant has provided advance notice to MCE (if possible, due to safety considerations), after which the DER must be restored to original condition, connection, and specifications. Participant must notify MCE immediately if there have been any modifications to the DER equipment and/or software by any person or entity, or if there has been any damage to or removal of the DER. Notwithstanding the foregoing, manufacturer-recommended software upgrades are permitted without needing to notify MCE, so long as such upgrades do not impact MCE's ability to monitor and control the DER.
9. Site Access and Inspections. Participant agrees to allow MCE, and/or MCE Authorized Designee, access to the Site during reasonable hours and upon reasonable notice during the Term to: (i) specify, install, operate, maintain, repair and remove equipment used to measure Project-related kW Usage; (ii) perform Agreement related audits; and (iii) perform Agreement-related inspections. MCE Authorized Designee may conduct a Site inspection during installation or after installation is complete. If the MCE Authorized Designee determines that the DER was not installed in a manner consistent with the approved Project or within the provisions of this Agreement, or Participant has taken measures that counter the Agreement's goals such as going off-grid or removing the DER from

Site, MCE may, at its sole discretion, require immediate repayment of the MCE Agreement Funding and/or eliminate future MCE Agreement Funding. MCE Authorized Designees may perform up to two (2) inspections per year during the Term.

10. Measurement and Verification Equipment. MCE Authorized Designee will develop an M&V plan for the purpose of measuring DER performance and subsequent energy savings from deployed use cases subject to the limitations of the Tariff, on an ongoing basis for the Term of this Agreement. Participant agrees: (i) to allow MCE and/or MCE Authorized Designee to install M&V equipment; and (ii) to allow for such equipment to remain in place and functional for the entire Term of this Agreement; and (iii) not to remove, modify, or tamper with installed M&V equipment. MCE may modify the M&V conditions in the Tariff from time to time in its sole discretion.
11. Project Installation. The Project must be developed and installed by an MCE Authorized Designees. Participant is responsible for negotiating an installation contract with the Project Developer or MCE Authorized Designee, monitoring the work, and managing and resolving any disputes that may arise between Participant and Project Developer or MCE Authorized Designee with respect to the contract or the work performed under the contract. Participant shall require its Project Developer or MCE Authorized Designee to install the DER in accordance with all applicable federal, California State and local law. MCE does not guarantee or warranty, and is not responsible for, any acts or omissions of any Project Developer or MCE Authorized Designee.
12. Available Funding.
    a. SGIP Incentives. Eligible Participants or Project Developer may apply for incentives from PG&E's Self-Generation Incentive Program (SGIP). SGIP is a CA State-funded Program that provides financial incentives for installing on-site electrical generation and storage systems. Eligibility and receipt of SGIP incentives is solely determined by the SGIP program administrator.
    b. MCE Agreement Funding. Participant understands and agrees that their eligibility to receive any MCE Agreement Funding, if applicable, or the eligibility of MCE Authorized Designee or its Subcontractor to receive any MCE Agreement Funding, if applicable, requires compliance with the terms and conditions of this Agreement for the full Term. MCE Agreement Funding includes all amounts provided to Participant from this Section 12 b. pursuant to this Agreement. Pursuant to Section 14, MCE may require repayment of DER Gap funding, PV Gap funding, and/or Richmond Advanced Energy Community Grant Funding on a pro-rated basis:
        i. DER Gap Funding as set forth on the Cover Page to cover some of the DER costs not covered by SGIP and other incentives, depending on SGIP eligibility rules and final award of funds and determined on a case-by-case basis. Gap Funding is provided in return for integration with the MCE DERMS.
        ii. Solar Photovoltaic (PV) Gap Funding Participants may be eligible for additional MCE Agreement Funding as indicated on the Cover Page for installing a Solar PV with GRID Alternatives, or other MCE Authorized Designee.
        iii. Richmond Advanced Energy Community Grant Funding as set forth on the Cover Page to cover a portion of the DER costs not covered by SGIP, MCE Gap Funding and other applicable incentives, depending on SGIP eligibility rules and final award of funds, and determined on a case-by-case basis.
        iv. DER Management & Control Payments: Participants are eligible to receive a monthly bill credit as defined in the Tariff and pursuant to the applicable Worksheet A or B, attached. Non-Residential Participants are eligible for an additional Program Year True-Up Payment as defined in the Tariff and Worksheet B paid annually once Fully Operational. MCE reserves the right to change the Tariff at any time for any reason.
    c. Cap on Total Funding. The combined total of MCE Agreement Funding and any other incentives (including, but not limited to SGIP incentives and Investment Tax Credit, if applicable) received for the Project shall not exceed the Total Eligible Project Costs, as defined in the current SGIP Handbook. If Participant is not receiving SGIP Incentives, the total of MCE Agreement Funding and any other incentives cannot exceed 100% of the DER costs.
13. Term. Standard terms are 5 years for residential sites and 7 years for non-residential sites. Term end date will be 5 or 7 years, as indicated based on the Cover Page, from the latter of (1) Participant receives utility's permission to operate the DER, if applicable and (2) DERMS software platform is installed and enabling MCE to monitor and control the DER. For clarity, the Term Start Date is the date Participant signs this Agreement.
14. Early Termination. If MCE terminates this Agreement pursuant to the terms set forth in Section 15, or if Participant terminates this Agreement prior to the end of the Term, MCE may, at its sole discretion, require immediate repayment of the MCE Agreement Funding. Upon termination, all monthly bill credits and any applicable Program True-Up Payment will terminate.
15. Breach of the Agreement. If Participant does any of the following, it shall constitute a material breach of this Agreement by Participant ("Breach"): (a) Participant opts out of MCE service; (b) Participant abandons the Site, or for any reason other than selling, leasing or renting the Site to another MCE customer, terminates service with MCE; (c) Participant modifies, removes, disconnects, decommissions, fails to properly maintain or operate the DER or has the DER interconnection agreement revoked for any reason; (d) the DER is destroyed or damaged other than as a result of the negligence of MCE; or (e) the DER is not installed by the Installation Deadline set forth on the Cover Page. In the event of a Breach that has not been resolved by Participant within ten (10) days of such Breach, MCE shall have the right to terminate this Agreement and MCE may, at its sole discretion, require immediate repayment of the MCE Agreement Funding and/or eliminate future MCE Agreement Funding.
16. Command and Control of the DER. As a condition of participating in the Agreement and receiving any Agreement Funding, Participants must allow MCE to monitor and control the DER for the Term of this Agreement.
    a. MCE Control. Participant agrees MCE will be the sole entity controlling and dispatching the DER for the Term and agrees not to allow any other person or entity to control DERs interconnected at this Site.
    b. Dispatching DER. MCE will dispatch the DER at its discretion subject to the limitations defined in the Tariff and as applicable, the requirements of the California Independent System Operator ("CAISO") Open Access Transmission Tariff ("OATT").
    c. Access to DER Data. Participants agree to provide access to the DER telemetry and usage data for the Term of this Agreement. Such data includes, but is not be limited to information regarding how frequently the DER operates, charges and discharges, the timing and amount of such operation, and may include data relating to the solar panel system production or Site's energy usage (hereinafter, collectively referred to as the "Data"). Participants consent to MCE's collection, processing, use, and retention for its own purposes of any Data in de-identified and aggregated form, including Data collected under this Agreement, or derived from participation in this Agreement. Participants acknowledge, agree and, to the extent necessary or appropriate

as determined in MCE's sole discretion, provide consent to MCE for MCE to obtain such Data in de-identified and aggregated form. Without limiting the generality of the foregoing, MCE will not disclose Data without the consent of Participant, except in the following circumstances: (1) to MCE's agents, independent contractors and subcontractors as necessary in connection with MCE's performance under the Agreement; (2) where the Data does not contain Personally Identifiable Information (including where Data has been de-identified or aggregated); (3) if MCE is required to do so by any law or regulation or in the good-faith belief that such action is necessary to comply with any law, regulation, order or other legal process; (4) if MCE believes, in good faith, disclosure is appropriate or necessary to (A) take precautions against liability, (B) protect MCE or others from fraudulent, abusive, or unlawful uses or activity, (C) investigate or defend against any third-party claims or allegations or (D) protect the security or integrity of MCE's services and any facilities or equipment used to make MCE's service available.

d. CAISO Participation. MCE, at its sole discretion and without requiring any additional approvals from or notice to Participant, may enroll or disenroll the DER in any program, product, or market (including any distributed energy resource aggregation) under the CAISO OATT. MCE shall be entitled to all revenue received from the DER's participation in such program, product, or market.

17. Indemnification. MCE shall have no liability for any claims arising from work performed by Project Developer or MCE Authorized Designee, including, but not limited to, damage to the Site, the DER or any persons or property at or about the Site, or the performance of the DER. MCE shall have no liability for any claims or damages caused by the DER, including, but not limited to, any defects therein. Participant hereby releases MCE from any claims or liabilities relating to the installation of the Project. To the fullest extent permitted by applicable law, Participant shall indemnify, defend, and hold MCE and its employees, officers, directors, authorized designees, and agents, harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or in connection with the Agreement by any actual or alleged act or omission of Participant, Project Developer, MCE Authorized Designee, or any subcontractor, agent, or third party, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

18. LIMIT OF LIABILITY. MCE AND PARTICIPANT WAIVE ANY AND ALL CLAIMS AGAINST EACH OTHER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, MULTIPLE, AND PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE CULPABLE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MCE'S TOTAL AGGREGATE LIABILITY TO PARTICIPANT UNDER THIS AGREEMENT ON ALL CLAIMS OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, INDEMNITY, OR BREACH OF CONTRACT, IS LIMITED TO THE MCE AGREEMENT FUNDING PAID TO PARTICIPANT UNDER THIS AGREEMENT.

19. No Warranty. MCE DOES NOT WARRANT OR GUARANTEE (1) THE AMOUNT OF ENERGY PRODUCED BY THE DER FOR ANY PERIOD, (2) ANY COST SAVINGS, OR (3) THE EXISTENCE OF OR PRICING ASSOCIATED WITH ANY NET METERING AGREEMENT, OR UTILITY OR GOVERNMENT INCENTIVE AGREEMENT. CUSTOMER LOAD, ELECTRICITY RATES AND RATE STRUCTURES ARE SUBJECT TO CHANGE. PROJECTED SAVINGS FROM THE DER ARE THEREFORE SUBJECT TO CHANGE. TAX INCENTIVES ARE SUBJECT TO CHANGE OR TERMINATION BY EXECUTIVE, LEGISLATIVE OR REGULATORY ACTION.

20. Removal of Equipment. Participant agrees to remove and dispose of any batteries and/or equipment being replaced by the DER in accordance with all laws, rules, codes and regulations. Participant agrees not to reinstall the DER anywhere in California or transfer it to any other party for installation in California for the Term of the Agreement.

21. Miscellaneous.

a. Agreement/Terms and Conditions Changes. The VPP Pilot may be modified, suspended or terminated by MCE at any time, without prior notice. In the event of termination of this VPP Pilot, MCE or its Authorized Designees shall be granted immediate access to the Site in order to remove M&V Equipment.

b. Taxes. Participant shall be responsible for the payment of any and all taxes associated with the Project or incurred as a result of the SGIP incentives, Monthly Bill Credits, Program Year True-Up Payment, or any MCE Agreement Funding.

c. Insurance. Participant has and agrees to maintain during the entire Term customary property and liability insurance with respect to the Site, including sufficient coverage for any damage to the Solar Panel System and/or the DER.

d. Use of Non-Usage Data. Participant agrees to allow MCE and its authorized contractors and agents to use Participant's name, Site location, size of DER installed, and any other information gathered as part of participating in the Agreement ("Non-Usage Data") for use in regulatory and grant reporting, ordinary business use, industry forums, case studies or other activities deemed necessary to MCE.

e. Acknowledgment. Participant agrees to have MCE designed stickers containing MCE's logo and/or the generation service (i.e., Light Green, Deep Green, Local Sol) placed on the installed DER. The applicable stickers will be provided by MCE and Participant authorizes MCE and/or its MCE Authorized Designee to place such stickers on the installed DER.

f. Amendment. This Agreement may not be amended without the mutual, written agreement of both Parties.

g. Assignment. This Agreement may not be assigned by either MCE or Participant without the prior written consent of the other party, not to be unreasonably withheld, conditioned, or delayed. Subject to ten (10) days prior written notice, Participant may assign this Agreement if the new Site owner or lessee enters into a written assignment and assumption agreement assuming all the obligations of Participant prior to the transfer of Site ownership or control.

h. Jurisdiction and Venue. This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California.

i. Survival. The following sections will survive the termination of this Agreement: 11, 15, 17-20.

j. Severability. In the event any provision in this Agreement is found to be legally invalid or unenforceable, that provision will be revised to the degree allowed by law to give it the maximum effect allowed by law, or, if revision is not possible, will be severed and the remaining provisions of this Agreement will remain in full force and effect.

Worksheet A

Residential MCE VPP Customer

This Worksheet is to be completed by a Project Developer or MCE Authorized Designee who is authorized to provide services relating to MCE's Virtual Power Plant Pilot.

Residential Monthly Advance Payment (RMAP)					
DER Classification	Make and Model	Quantity	Monthly Bill Credit per unit	kW Capacity	Line-Item Bill Credit
Smart Refrigerator			$2		
Smart Freezer			$2		
Smart Outlet* *(*with 1 kW minimum peak load)*			$2		
Smart Thermostat			$5		
HAN/Smart Gateway			$5		
Mini-split			$5		
Heat-Pump Water Heater			$5		
Level 2 EV Charger			$10		
Bi-directions Level 2 EV Charger			$20		
ESS under 20kWh			$10		
ESS larger than 20kWh			$20		
			Total kW Capacity:		
TOTAL MONTHLY RMAP**: *(**Maximum monthly RMAP is $50 for CARE and FERA customers. Maximum monthly RMAP is $40 for non-CARE and non-FERA customers)*					$

Worksheet B

Commercial MCE VPP Customer

This Worksheet is only to be completed by a Project Developer or MCE Authorized Designee who is authorized to provide services relating to MCE's Virtual Power Plant Pilot.

First Year CMAP and Program Year True-up Payment	
Estimated Total Annual kWh of Load Shift:	*a.*
Estimated Total Annual Performance Payment - multiply Line a. by 0.11:	*b.*
First year's CMAP* - multiply Line b. by 0.33 and divide by twelve:	*c.*
Program Year True-Up Payment - Calculation Below	
Program Year Verified Total Annual kWh of Load Shift**:	*d.*
First Year Annual Performance Payment - multiply Line d. by $0.11:	*e.*
Number of program participation months this program year (Jan.1st to Dec. 31st):	*f.*
Total annual CMAP - multiply Line c. by line f.:	*g.*
Program Year True-Up Payment - subtract line g. from Line e:	*h.*

**Maximum monthly CMAP $300 for customers on a commercial rate schedule. Maximum monthly CMAP $750 for customers on an industrial rate schedule.*
***Total kWh of measured load shift delivered to the MCE VPP during each Program Year (January 1st to December 31st) will be verified by MCE and its program partners at the conclusion of each program year using the MCE approved Measurement and Verification methodology, which will be independently validated through third-party audit. The Program Year True-Up Payment will be delivered to participating customers no later than March 31st of each applicable program year.*

After First Year CMAP and Program Year Annual Performance Payments	
Total Delivered Annual kWh of Load Shift in previous year (verified kWh from Line d.):	*i.*
Estimated Annual Performance Payment - multiply Line i. by 0.11:	*j.*
After First Year CMAP* - multiply Line j. by 0.5 and divide by twelve:	*k.*
Program Year True-Up Payment - Calculation Below	
Program Year verified total annual kWh of Load Shift**:	*l.*
After First Year Annual performance payment - multiply Line l. by $0.11:	*m.*
Number of program participation months this year (Jan.1st to Dec. 31st):	*n.*
Total annual CMAP - multiply Line k. by line n.:	*o.*
Program Year True-up Performance Payment - subtract Line o. from Line m.:	*p.*

**Maximum monthly CMAP $300 for customers on a commercial rate schedule. Maximum monthly CMAP $750 for customers on an industrial rate schedule.*
***Total kWh of measured load shift delivered to the MCE VPP during each Program Year (January 1st to December 31st) will be verified by MCE and its program partners at the conclusion of each program year using the MCE approved Measurement and Verification methodology, which will be independently validated through third-party audit. The End of Program Year True-Up Payment will be delivered to participating customers no later than March 31st of each applicable program year.*

****All calculations are done pursuant to MCE's M&V plan for the VPP Pilot, which may be updated from time to time by MCE.*

CUSTOMER INFORMATION SERVICE REQUEST FOR SHARE MY DATA (CISR-SMD)

IMPORTANT INFORMATION FOR CUSTOMERS – BE SURE TO READ FIRST
THIS IS A LEGALLY BINDING CONTRACT – READ IT CAREFULLY

This form allows you to voluntarily create a new Authorization to grant a Third Party of your choice access to your PG&E personal, energy usage, energy billing and other program data about you via PG&E's Share My Data (SMD) platform or to modify or revoke an existing Authorization you currently have on the Share My Data platform. This form should be completed by the main Customer Account Holder (name on the PG&E bill).

Pacific Gas and Electric Company's (PG&E's) Gas and Electric Rules 27 and its corresponding privacy policies, which can be found at www.pge.com/about/company/privacy/customer, do not allow for the disclosure of customers' personal information, such as your name, address, phone number, or electric account and billing information, to third parties for purposes other than providing utility services to you or as otherwise required by law, unless you expressly authorize us to do so. This form allows you to exercise your right to disclose personal and energy-related information about you to a Third Party under PG&E's Electric Rule 25 which can be found at https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_RULES_25.pdf. This form may be used to authorize the release of electric-related information for Bundled, Community Choice Aggregation (CCA), Direct Access (DA) customers, and gas-related information for Core End-Use and Noncore End-Use customers. Once you authorize access by a Third Party to personal and energy-related information about you, you are responsible for and agree that you are solely responsible for ensuring that the Third Party safeguards this information from further disclosure without your consent.

If you want to provide data to a Demand Response Provider (DRP), please use "Customer Information Service Request For Demand Response Provider" (CISR-DRP), Form 79-1152.

This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction, including, without limitation, revisions to the types of customer information to be released.

STEP 1: AUTHORIZATION DETAILS

- ***Please select the action you wish to take:***

  [ ] **CREATE** A NEW AUTHORIZATION – Please Complete SECTION 1
  [ ] **MODIFY** AN EXISTING AUTHORIZATION – Please Complete SECTION 2
  [ ] **REVOKE** AN EXISTING AUTHORIZATION – Please Complete SECTION 3

- ***Your Contact Information:***

  First Name: ______________________ Last Name: ______________________________

  Mailing Address: ____

  Email Address (Optional): ____
  (The email address you provide here will be used for all transactional emails relating to this Authorization.)

† Information collected on this form is used in accordance with PG&E's Privacy Policy. The Privacy Policy is available at pge.com/privacy.

[SECTION 1: CREATE A NEW AUTHORIZATION]

- ***Third Party:***

  Please provide the name of the Third Party you authorize to access your data via the Share My Data platform. You may authorize only those third parties who have registered with PG&E to use the Share My Data platform. This form will not be processed if you list a Third Party who has not registered to use the Share My Data platform.

  Name of Third Party: ____

  (PLEASE NOTE: PG&E has not conducted vendor security reviews on the Share My Data registered Third Parties. Please be sure to read Terms and Conditions offered by the Third Party prior to authorizing the Third Party to access your data.)

- ***Data Elements:***

  Please select the data elements you wish to authorize (you may select more than one data element):

  [ ] **Basic Information** (Includes name and service address)
  [ ] **Billing Information** (Includes up to 48 months historical, current, and ongoing billing records, billing and meter read dates, rate schedule, and voltage class.)
  [ ] **Account Information** (Includes account number(s), service agreement number(s), and service start date.)
  [ ] **Usage Information** (Includes up to 48 months of historical, current, and ongoing electric and/or gas usage data used for bill calculations, interval usage, and interval time-of-use indicators.)
  [ ] PG&E **Program Enrollment Information** (Includes current and ongoing PG&E Demand Response program name and status, as well as the name and status of other PG&E programs in which you are enrolled.)

- ***Authorization Period:***

  The Third Party will automatically have access to up to 48 months of historical data from the date the Authorization is created.

  Please select the period of time you wish to authorize the Third Party, listed above, to have ongoing access to the data elements selected above:

  [ ] Ongoing Access Until _______________ or until I revoke this Authorization.
  [Date]

  OR

  [ ] Indefinitely until I revoke this Authorization.

  In all cases, the Authorization for a Service Agreement will be automatically revoked when the Service Agreement is closed by the Customer.

- ***Service Agreement IDs to be Authorized:***

  Please list the Account Number(s) and Service Agreement ID(s) you, as the Customer Account Holder, are authorizing the specified Third Party to access via the Share My Data platform:

Account Number	Service Agreement ID

(For more than three Service Agreement IDs please attach a separate file)

[SECTION 2: MODIFY AN EXISTING AUTHORIZATION]

- ***Subscription ID:***

  Please provide the Subscription ID associated to the Authorization you wish to modify. Your Subscription ID can be found in the confirmation email sent to you when the Authorization was initially created. If you cannot find your Subscription ID, please contact PG&E Customer Service at (800) 743-5000 for assistance.

  Subscription ID: ______________________

- ***Authorization Period:***

  [ ] Ongoing Access Until _______________ or until I revoke this Authorization.
  [Date]

  OR

  [ ] Indefinitely until I revoke this Authorization.

  In all cases, the Authorization for a Service Agreement will be automatically revoked when the Service Agreement is closed by the Customer.

- ***Service Agreement IDs to be added and/or removed from Authorization by the Customer Account Holder***

  If you would like to add or remove Service Agreement IDs from this Authorization, please specify them below.

Account Number	Service Agreement ID	Add	Remove
		☐	☐
		☐	☐
		☐	☐

(For more than three Service Agreement IDs please attach a separate file)

[SECTION 3: REVOKE AN EXISTING AUTHORIZATION]

- ***Subscription ID:***

  Please provide the Subscription ID associated to the Authorization you wish to revoke. Your Subscription ID can be found in the confirmation email sent to you when the Authorization was initially created. If you cannot find your Subscription ID, please contact PG&E Customer Service at (800) 743-5000 for assistance.

  Subscription ID: ______________________________

CUSTOMER INFORMATION SERVICE REQUEST FOR SHARE MY DATA (CISR-SMD)

STEP 2: AGREE TO SHARE MY DATA TERMS AND CONDITIONS

Important information: Please read carefully. This is a legally binding agreement.

- ***Create a New Authorization or Modify an Existing Authorization:***

  I, (First and Last Name of Customer of Record), ________________________________, authorize the designated Third Party to access the Customer of Record Account Holder's personal energy data in accordance with these terms and conditions for the designated Service Agreement(s) as indicated in Section 1 for new Authorizations or Section 2 for modifying an existing Authorization. I understand PG&E reserves the right to verify any authorization request submitted before releasing information on my behalf.

  I declare that I am authorized to execute this Authorization manually or electronically on behalf of the Customer of Record Account Holder, and that I have authority to bind the Customer of Record Account Holder. I hereby release, hold harmless, and indemnify PG&E from any liability, claims, demands, and causes of action, damages, or expenses resulting from: (1) any release of information to the Third Party pursuant to this Authorization; (2) the unauthorized use of this information by the Third Party or any other third party; and (3) any actions taken by the Third Party pursuant to this Authorization. I understand that I may revoke this Authorization at any time by submitting a newly completed copy of this form with the Revocation check box selected. I hereby indicate my consent to execute and submit this Authorization electronically.

  ____ ________________

  Signature of Customer Date

- ***Revoke an Existing Authorization:***

  I, (First and Last Name of Customer of Record), ________________________________, revoke the Authorization of the designated Third Party to access personal data about me from the designated Service Agreement(s).

  I declare that I am authorized to execute this Revocation manually or electronically on behalf of the Customer of Record Account Holder, and that I have authority to bind the Customer of Record Account Holder. I hereby release, hold harmless, and indemnify PG&E from any liability, claims, demands, causes of action, damages, or expenses resulting from: (1) any negligent conduct relating to this Revocation; (2) any refusal to release information to the Third Party pursuant to this Revocation; and (3) any conduct by the Third Party in connection with this Revocation. I hereby indicate my consent to execute and submit this Revocation electronically.

  ____ ________________

  Signature of Customer Date

STEP 3: SUBMIT FORM VIA EMAIL OR MAIL

Forms can be emailed to:
sharemydata@pge.com

Forms can be mailed to:
Pacific Gas and Electric Company
Share My Data
300 Lakeside Drive
Oakland, CA 94612

CUSTOMER INFORMATION SERVICE REQUEST FOR DRP (CISR-DRP)

IMPORTANT INFORMATION FOR CUSTOMERS – BE SURE TO READ FIRST
THIS IS A LEGALLY BINDING CONTRACT – READ IT CAREFULLY

Pacific Gas and Electric Company's (PG&E's) Electric Rule 27 and its corresponding privacy policies, which can be found at www.pge.com/about/company/privacy/customer, generally do not allow for the disclosure of customers' personal information, such as your name, address, phone number, or electric or gas account and billing information, to third parties unless you expressly authorize us to do so. This form allows you to exercise your right to disclose your personal electricity-related information to up to two third-party Demand Response Providers (DRPs), pursuant to PG&E's Electric Rule 24 (Rule 24), so that you may obtain Demand Response services offered by DRP(s). Rule 24 can be accessed at https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_RULES_24.pdf. This form may be used for authorization to release Bundled, Community Choice Aggregation (CCA), and Direct Access (DA) customer's information. In some cases two different DRPs may work in concert to help a customer obtain Rule 24 Demand Response services. Accordingly, this form allows for disclosure of your information to both a First DRP and an optional Second DRP. Alternatively, each DRP may submit its own CISR-DRP forms with your consent to receive personal information about you. Once you authorize access by the DRP(s) to your personal information, you are responsible for ensuring that the DRP(s) safeguards this information from further disclosure without your consent. Authorization for PG&E to release your information under Rule 24 is separate from commitments you may have or may make with the DRP(s) for their services.

This form grants the First DRP the ability to request that PG&E make limited changes to the PG&E electric meter(s) serving your Service Agreement(s), as specified in Section C below.

I, (Customer),

Customer Name According To PG&E Records				
Contact Name *(if different from above)*	First		Last	
E-Mail			Phone	

(You are required to provide at least your e-mail or phone number.)

do hereby ☐ AUTHORIZE ☐ REVOKE (*check only one*) the following DRP(s):

Name of First DRP		PG&E Rule 24 ID	
E-Mail		Phone	

(Complete the following table only if the customer is authorizing data to be released to one additional DRP)

Name of Second DRP		PG&E Rule 24 ID	
E-Mail		Phone	

Access to the following electric Service Agreements:

STREET ADDRESS	SERVICE CITY	SERVICE AGREEMENT ID

(You can include an additional 15 service agreements by attaching a list to this form.)

† Information collected on this form is used in accordance with PG&E's Privacy Policy. The Privacy Policy is available at pge.com/privacy.
*Automated Document, Preliminary Statement, Part A
Document Version 3

FOR AUTHORIZATION USE ONLY

A. TIMEFRAME OF AUTHORIZATION (Check only one option below.)

☐ Begin today and continue until ______________ (mm/dd/yyyy) or until revoked by Customer or DRP.

☐ Begin today and continue indefinitely or until revoked by Customer or DRP.

In all cases, the Authorization for a Service Agreement will be automatically revoked when the Service Agreement is closed by the Customer.

B. SUMMARY OF INFORMATION AUTHORIZED TO BE RELEASED

I, (Customer), authorize PG&E to disclose to the above DRP(s) for the Service Agreements(s) listed above or attached to this form: 1) customer agreement and account information (e.g., name, service address, rate schedule), 2) access up to 48 months historical and ongoing interval meter data and/or monthly usage data, 3) current PG&E demand response programs in which you are known to participate, and 4) other information identified in Section D of Rule 24.

C. CHANGES YOU AUTHORIZE THE DRP TO MAKE ON YOUR BEHALF

I, (Customer), grant the First DRP permission to request that PG&E shorten the interval length of my electric meter(s), as available by PG&E, for the Service Agreement(s) listed above or attached to this form, when the DRP has successfully enrolled my Service Agreement with the CAISO, if PG&E is the Meter Service Provider.

I, (Customer), grant the above DRP(s) permission to revoke this authorization on my behalf and a revocation submitted by any one party shall revoke this Authorization for all of the other parties to this authorization.

D. CUSTOMER AGREEMENT

I, (Customer), authorize the actions and changes to be made (or undertaken) by PG&E as specified in this authorization. I further understand that my information may be transmitted to the DRP(s) even after the Authorization has ended, limited to updates to the data for the time period during which this Authorization was valid.

I, (Customer), understand and agree that if I am on Peak Day Pricing (PDP), then I will automatically be unenrolled from PDP when my Service Agreement has been successfully setup by the DRP in the CAISO's Demand Response systems. I agree to bear any resulting financial consequences, including without limitation, loss of bill protection, incentive payments, and reimbursements to PG&E of incentives, related to my participation in PDP, other PG&E DR programs, or DR enabling technology.

I, (If not Customer of Record), declare that I am authorized to execute this Authorization manually or electronically on behalf of the Customer of Record listed at the top of this form and that I have authority to financially bind the Customer of Record.

I understand PG&E reserves the right to verify any authorization request submitted before releasing information or taking any action on my behalf. I hereby release, hold harmless, and indemnify PG&E from any liability, claims, demands, and causes of action, damages, or expenses resulting from: (1) any release of information to the DRP pursuant to this Authorization; (2) the unauthorized use of this information by the DRP or any third party; and (3) any actions taken by the DRP pursuant to this Authorization. I understand that I may revoke this Authorization at any time by submitting a newly completed copy of this form with the revoke check box selected. I hereby indicate my consent to execute and submit this authorization electronically.

Authorized Signature of Customer or Agent	Date Signed (mm/dd/yyyy)

*Automated Document, Preliminary Statement, Part A

E. FIRST DRP'S AGREEMENT REGARDING CUSTOMER RELEASE AUTHORIZATION
I, (First DRP), hereby agree to comply with this agreement, and to release, hold harmless, and indemnify PG&E from any liability, claims, demand, causes of action, damages, or expenses resulting from the use of customer information obtained pursuant to this Authorization. I hereby indicate my consent to execute and submit this authorization electronically.

Authorized Signature of First DRP	Date Signed (mm/dd/yyyy)

F. SECOND DRP'S AGREEMENT REGARDING CUSTOMER RELEASE AUTHORIZATION
I, (Second DRP), hereby agree to comply with this agreement, and to release, hold harmless, and indemnify PG&E from any liability, claims, demand, causes of action, damages, or expenses resulting from the use of customer information obtained pursuant to this Authorization. I hereby indicate my consent to execute and submit this authorization electronically.

Authorized Signature of Second DRP	Date Signed (mm/dd/yyyy)

G. JURISDICTION OF CPUC
This agreement at all times shall be subject to such modifications and access to information as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction, including, without limitation, revisions to the types of customer information to be released under Rule 24.

FOR REVOCATION USE ONLY

H. CUSTOMER REVOCATION OF AUTHORIZATION
I, (Customer), declare that I am authorized to execute this Revocation manually or electronically on behalf of the Customer of Record listed at the top of this form and that I have authority to financially bind the Customer of Record. I hereby revoke the authorization to release information to the DRP listed above. I hereby release, hold harmless, and indemnify PG&E from any liability, claims, demands, causes of action, damages, or expenses resulting from: (1) any negligent conduct relating to this revocation; (2) any refusal to release information to the DRP pursuant to this revocation; and (3) any conduct by the DRP in connection with this revocation. I hereby indicate my consent to execute and submit this revocation electronically.

Authorized Signature of Customer or Agent	Date Signed (mm/dd/yyyy)

I. DRP REVOCATION OF AUTHORIZATION/DISENROLLMENT FROM DRP(S) DEMAND RESPONSE SERVICE
I, (DRP), hereby revoke the authorization to release the Customer's information to the above designated DRP. Further, I hereby notify PG&E that the date of the Customer's actual or anticipated disenrollment from my Demand Response services is ______________ (mm/dd/yyyy). I hereby release, hold harmless, and indemnify PG&E and its agents from any liability, claims, demands, causes of action, damages, or expenses resulting from: (1) revocation of the authorization to release information to the above designated DRP, (2) any refusal to release information to the DRP pursuant to this revocation, (3) any conduct by the DRP in connection with this revocation, and (4) my failure to timely notify PG&E of the Customer's disenrollment from my Demand Response services. I also hereby indicate my consent to execute and submit this revocation electronically.

Authorized Signature of DRP	Date Signed (mm/dd/yyyy)

*Automated Document, Preliminary Statement, Part A

ATTACHMENT A: BIDDER QUALIFICATION FORM (REQUIRED)

Responses to Sections A-D below must be completed and submitted with the application. Incomplete submissions or those that are not submitted in a timely fashion may be disqualified.

SECTION A: BIDDER INFORMATION | 5 Points

1. Company Information

Please fill in the following table.

Company Information	
Legal Company Name	
Primary Point of Contact: Name, Title	
Primary Point of Contact: Phone Number	
Primary Point of Contact: Email Address	
Company Address	
Company Website	
Company Phone Number	
Years in Operation	
Relevant Certifications or Professional Licenses	
Number of Employees (FTE)	

Please provide:

- Organizational Chart (required)

2. Key Personnel

Please provide information about key personnel (add additional rows as needed).

Key Personnel Name	Role	Relevant Qualifications

Please provide:

- Resumes of Key Personnel (required per individual)

3. Insurance

Please check all that apply:

- ☐ We are currently insured at or above the required levels for this solicitation.
- ☐ We will provide proof of insurance at or above the required levels prior to contract execution.

4. Legal

Please check all that apply:

- ☐ We are comfortable committing to the provided Terms and Conditions and Sample Contract in Attachment E without modification.
- ☐ We request modifications to the Terms and Conditions and/or Sample Contract, as indicated in the attached Redlined/Annotated Copies of those documents.

SECTION B: RELEVANT EXPERIENCE AND ORGANIZATIONAL QUALIFICATIONS | 20 Points

1. M&V Experience

In the following table, please provide the requested information for two M&V projects that are representative of your experience delivering M&V services. Please highlight experience providing services for the following project types:

- Utility- or CCA-administered demand response, DER aggregation, or VPP programs
- California-specific programs, energy markets, rate structures, and regulatory environments
- Projects that require management of large-scale interval data sets and integration of multiple data-sources, including multiple enterprise and third-party systems
- Pay-for-performance initiatives

Bidders **must** cite at least one project that was funded through a CEC Grant. Bidders are encouraged to include at least one project owned by a CCA.

Relevant Project #1	
Project Title	
Brief Project Description	
Program Administrator (utility, CCA)	
Service Area	
Program Type (demand response, DER aggregation, VPP program)	
CAISO Market Participation (Y/N)	
Pay-for-Performance Initiative (Y/N)	

OpenADR-Enabled Environment (2.0, 3.0, N/A)	
Associated CEC Grant (if applicable)	
Bidder's Role (Prime/Subcontractor)	
Project Budget	
Project Duration (# of months)	
Project Economics (e.g., M&V cost per verified kWh, M&V cost as % of total project cost)	
Professional Reference: Name, Title	
Professional Reference: Phone Number	
Professional Reference: Email Address	
Relevant Project #2	
Project Title	
Brief Project Description	
Program Administrator (utility, CCA)	
Service Area	
Program Type (demand response, DER aggregation, VPP program)	
CAISO Market Participation (Y/N)	
Pay-for-Performance Initiative (Y/N)	
OpenADR-Enabled Environment (2.0, 3.0, N/A)	
Associated CEC Grant (if applicable)	
Bidder's Role (Prime/Subcontractor/CM)	
Project Budget	
Project Duration (# of months)	
Project Economics (M&V cost per verified kWh OR M&V cost as % of total project cost)	
Professional Reference: Name, Title	
Professional Reference: Phone Number	
Professional Reference: Email Address	

2. Additional Information (Optional)

If the above project selection does **not** feature the following project elements, please provide additional project information below:

- CEC-Funded Grants
- OpenADR-Enabled Environments
- CAISO Market Participation

Written Response (optional, please limit responses to 500 words):

3. M&V Project Examples (Optional)

If available, bidders may attach examples of previous M&V project work, such as short case studies or regulatory submissions.

Attachment (Optional):

- Project Examples (Case Studies, Reports, Plans, etc.)

SECTION C: INDEPENDENCE STATEMENT | Pass/Fail

Explain independence from OEMs, developers, aggregators, or entities being evaluated in a manner that preserves objectivity and transparency.

Written Response (required):

ATTACHMENT B: PROPOSAL FORM (REQUIRED)

To complete the Proposal, bidders must respond to the required questions below by creating a clear, concise narrative proposal (not to exceed 10 pages).

- **Methodologies | 10 Points**

Describe your approach for measuring:

- Load reduction, load shifting, DER dispatch
- Baseline determination and load variability treatment
- CAISO-approved performance evaluation methodologies (PEMs), including:
- 10-in-10
- 5-in-10
- Meter Generator Output (MGO)
- Normalized Metered Energy Consumption (NMEC)
- Event-level, monthly, and annual performance metrics
- Annual VPP capacity (kWh) and value ($/MWh) forecast error

Please attach:

- Sample Calculation or Modeling Approach (one total required)

- **Pay-for-Performance | 10 Points**

Explain how your methodologies account for:

- Dynamic and/or flat VPP tariff structures
- Dynamic and/or flat performance-based payment strategies
- TOU rates, NEM, or export/load separation
- Additionality and/or double-counting

- **Scalability | 5 Points**

Describe how your methodology can scale across customer segments and DER technologies while maintaining data integrity and transparency, highlighting the benefits or advantages versus typical approaches.

- **Data Integration | 10 Points**

Describe experience integrating any of the following data sources. Be sure to describe portfolio-level, program-level, and participant-level analytics, including reporting and data visualization.

- Interval/sub-hourly telemetry (AMI, DER devices)
- CAISO Market Data (e.g., OASIS)
- OEM platforms, aggregators, and eDERMS
- OpenADR payloads and reports
- Weather and air quality data
- Qualitative data (i.e., customer surveys, VPP Partner performance assessments, etc.)

- **Data Management Process | 10 Points**

Describe quality controls, validation procedures, and auditability. Describe your team's data needs, process for managing data, preferred data environment and/or any system access requirements.

Note: Responses to this question will help the reviewers determine what types of resources MCE will need to provide to the M&V provider to complete their work.

- **Project Management | 10 Points**

Describe your project management plan, demonstrating comprehension of dependencies, review periods, and coordination steps.

Please attach:

- Project Timeline or Gantt Chart for Proposed Project (required)

- **Additional Information (Optional)**

If applicable, bidders may provide responses to the following:

- **Innovation:** Provide a description of innovative M&V approaches or analytics.
- **Alignment:** Indicate alignment with MCE mission and public-purpose objectives.
- **Long-Term Scalability:** Provide a description of long-term scalability and market evolution.

ATTACHMENT C: COST PROPOSAL FORM (REQUIRED)

To complete this cost proposal, please provide billable labor rates for project personnel (Table 1) and costs associated with key deliverables by project year (Table 2). Please note that the total cost of this project should not exceed $390,000. Bidders may also attach a more detailed cost proposal.

Prevailing Wage Price Requirement

MCE is awaiting a determination from DIR regarding the applicability of California prevailing wage requirements to the services contemplated under this solicitation. Please provide pricing both with and without California prevailing wage requirements.

Bidders must provide pricing under both the following scenarios by filling out a separate Table 1 for each scenario:

1. Scenario 1 — Non-Prevailing Wage Pricing: Pricing assuming California prevailing wage requirements do not apply to the services provided under the resulting agreement.

2. Scenario 2 — California Prevailing Wage Pricing: Pricing assuming California prevailing wage requirements apply to the services provided under the resulting agreement.

Bidders shall clearly identify all assumptions, labor classifications, labor categories, billable rates, cost impacts, and any differences between Scenario 1 and Scenario 2. Bidders may use the tables below or attach a more detailed cost proposal, provided that the proposal clearly separates Scenario 1 pricing from Scenario 2 pricing.

Table 1: Billable Labor Rates

Personnel (Name/Title)	Role on Project/labor classification & category	Billable Labor Rate (Fully Loaded for Scenario 1 and CA prevailing wage rate for Scenario 2)

Please add more rows as needed.

Table 2: Key Deliverables by Project Year

Deliverable	**Year 1**	**Year 2**	**Year 3**	**Total Cost**
Draft M&V Plan (Year 1)				
Final M&V Plan				
M&V Parameters Report (Year 1)				
M&V Performance Report (Year 1)				
M&V Performance Report (Year 2)				
M&V Performance Report (Year 3)				
Total Cost				

If available, please attach:

- Detailed Cost Proposal (optional)

ATTACHMENT D: PROPOSAL COMPLETION CHECKLIST (REQUIRED)

To complete proposals, bidders shall:

- ☐ Complete all required fields in the Bidder Qualification Form (Attachment A)

- ☐ Complete narrative proposal by responding to prompts in the Proposal Form (Attachment B) *(not to exceed 10 pages)*

- ☐ Complete the Cost Proposal Form (Attachment C)

- ☐ Complete the Proposal Completion Checklist (Attachment D)

- ☐ Provide the following additional attachments, as required:
  - Organizational Chart (required)
  - Resumes of Key Personnel (required per individual)
  - Project Examples (Reports, Regulatory Submissions, etc.) (optional)
  - Sample Calculation or Modeling Approach (one total required)
  - Project Timeline or Gantt Chart for Proposed Project (required)
  - Detailed Cost Proposal (optional)

- ☐ Review MCE's Standard Form (Attachment E) with your Legal department and provide a redline with requested edits or list the terms where bidder will require an edit with sufficient detail explaining the need for such an edit.

- ☐ Submit all documents and forms via the following Egnyte upload link, in either .pdf or .docx (Word) file format:

  https://mea.egnyte.com/ul/lKqsbJZjS6

  Egnyte will prompt the following required fields:

  - Name: List company name
  - Email Address: List email address of the contact submitting the response
  - Company Name: Leave blank

- ☐ Submit all responses no later than 4:00 p.m. PDT on Sunday, August 30, 2026.

MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT FOR VENDORS RECEIVING MCE DATA

(FIRST) AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND (CONTRACTOR)

THIS (FIRST) AGREEMENT ("Agreement") is made and entered into on [**Date]** by and between MARIN CLEAN ENERGY (hereinafter referred to as "MCE") and [**CONTRACTOR name**], [a [**state**] [**corporate form**]] with principal address at: [**address**] (hereinafter referred to as "Contractor") (each, a "Party," and, together, the "Parties").

RECITALS:

WHEREAS, MCE desires to retain Contractor to provide the services described in **Exhibit A** attached hereto and by this reference made a part hereof ("Services");

WHEREAS, MCE is the recipient under California Energy Commission (CEC) Grant Agreement No. EPC-24-040, awarded under GFO-23-309;

WHEREAS, MCE is retaining Contractor as a vendor to provide measurement and verification services to MCE in support of MCE's performance under the CEC Grant Agreement No. EPC-24-040; and

WHEREAS, Contractor desires to provide the Services to MCE.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the Services in accordance with the terms and conditions of this Agreement. "Services" shall also include any other work performed by Contractor pursuant to this Agreement.

1.1 VENDOR STATUS. Contractor acknowledges it is engaged as a vendor and not as a subrecipient under the CEC Grant Agreement. Contractor shall not make binding decisions on MCE's behalf regarding CEC grant objectives, scope, budget, reporting, or compliance obligations, except to provide independent technical analysis and recommendations within the Services. Contractor shall not represent itself as the CEC, as MCE, or as a CEC subrecipient.

1.2 DEFINITIONS. "CEC Grant Agreement" means California Energy Commission Grant Agreement NO. EPC-24-040 between the CEC and MCE, including all exhibits, attachments, amendments, and incorporated documents.

2. FEES AND PAYMENT SCHEDULE; INVOICING:

The fees and payment schedule for furnishing Services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement ("Term"). Contractor shall provide MCE with Contractor's Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Unless otherwise specified in Exhibit B, Contractor shall email invoices to MCE on a monthly basis for any Services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond ninety (90) days will not be reimbursable. Contractor shall submit all final invoices, supporting documentation, deliverables, and closeout materials no later than sixty (60) calendar days before the end date of the CEC Grant Agreement, or within (30) days of completion or termination of the Agreement, whichever timeframe occurs first. Contractor acknowledges that MCE must submit its final payment request, including retention, to the CEC no later than the CEC Grant Agreement end date and that late or incomplete Contractor invoices may be non-reimbursable under the CEC Grant Agreement. MCE will process payment for undisputed invoiced amounts within thirty (30) days.

3. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the Services to be provided herein exceed the maximum sum of **$[___],000**.

4. TERM OF AGREEMENT:

This Agreement shall commence on [**Date**] ("Effective Date") and shall terminate on [**Date]**, unless earlier terminated pursuant to the terms and conditions set forth in Section 12.

5. REPRESENTATIONS; WARRANTIES; COVENANTS:

5.1. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor represents, warrants and covenants that (a) [it is a [**corporation/limited liability company**] duly organized, validly existing and in good standing under the laws of the State of **[insert state of organization]]**, (b) it has full power and authority and all regulatory authorizations required to execute, deliver and perform its obligations under this Agreement and all exhibits and addenda and to engage in the business it presently conducts and contemplates conducting, (c) it is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder, (d) it is qualified and competent to render the Services and possesses the requisite expertise to perform its obligations hereunder, (e) the execution, delivery and performance of this Agreement and all exhibits and addenda hereto are within its powers and do not violate the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, (f) this Agreement and each exhibit and addendum constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, and (g) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt.

5.2. COMPLIANCE WITH APPLICABLE LAW: At all times during the Term and the performance of the Services, Contractor shall comply with all applicable federal, state and local laws, regulations, ordinances and resolutions ("Applicable Law").

5.3. LICENSING. At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all required permits, licenses, certificates and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

5.4. NONDISCRIMINATION AND HARASSMENT. Contractor shall not unlawfully discriminate, harass, or permit harassment against any employee or applicant for employment on the basis of race, color, ancestry, religious creed, national origin, sex, sexual orientation, gender identity, physical disability, mental disability, medical condition, age, marital status, denial of family care leave, or any other characteristic protected by applicable law. Contractor shall ensure that the evaluation and treatment of employees and applicants are free from unlawful discrimination and harassment. Contractor shall comply with all applicable federal, state, and local nondiscrimination laws, including the California Fair Employment and Housing Act and its implementing regulations. Contractor shall include the requirements of this Section in all subcontracts relating to the Services and require its subcontractors to comply with them.

5.5. PERFORMANCE ASSURANCE; BONDING. At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall obtain and maintain, at its sole cost and expense, all bonding requirements of the California Contractors State License Board ("CSLB"), as may be applicable. Regardless of the specific Services provided, Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.

5.6. SAFETY. At all times during the performance of the Services, Contractor represents, warrants and covenants that it shall:

(a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;

(b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;

(c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Contractor from time to time;

(d) provide all necessary training to its employees, and require Subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement;

(e) have in place an effective Injury and Illness Prevention Program that meets the requirements of all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time;

(f) be responsible for initiating, maintaining, monitoring and supervising all safety precautions and programs in connection with the performance of the Agreement; and

(g) monitor the safety of the job site(s), if applicable, during the performance of all Services to comply with all applicable federal, state, and local laws and to follow safe work practices.

5.7. BACKGROUND CHECKS.

(a) Contractor hereby represents, warrants and covenants that any employees, members, officers, contractors, Subcontractors and agents of Contractor (each, a “Contractor Party,” and, collectively, the “Contractor Parties”) having or requiring access to MCE’s assets, premises, customer property (“Covered Personnel”) shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual’s educational background, employment history, valid driver’s license, and court record for the seven (7) year period immediately preceding the individual’s date of assignment to perform the Services.
(b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Contractor permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual’s date of assignment to perform the Services, or at any time after the individual’s date of, assignment to perform the Services, for any of the following (“Serious Offense”): (i) a “serious felony,” similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations(“RICO”) Statute (18 U.S.C. Sections 1961-1968)).
(c) To the maximum extent permitted by applicable law, Contractor shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.
(d) To the extent permitted by applicable law, Contractor shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Contractor shall also immediately prevent that employee, representative, or agent from performing any Services.

5.8. FITNESS FOR DUTY. Contractor shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform the Services properly and safely. Contractor shall, and shall cause its Subcontractors to, have policies in place that require their employees, contractors, subcontractors and agents to report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

5.9. QUALITY ASSURANCE PROCEDURES. Contractor shall comply with the following requirements (the “Quality Assurance Procedures”): **[________].** Additionally, Quality Assurance Procedures must include, but are not limited to: (i) industry standard best practices; (ii) procedures that ensure customer satisfaction; and (iii) any additional written direction from MCE.

5.10. ASSIGNMENT OF PERSONNEL. The Contractor shall not substitute any personnel for those specifically named in its proposal, if applicable, unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

5.11. ACCESS TO CUSTOMER SITES: Contractor shall be responsible for obtaining any and all access rights for Contractor Parties, from customers and other third parties to the extent necessary to perform the Services. Contractor shall also procure any and all access rights from Contractor Parties, customers and other third parties in order for MCE and California Public Utilities Commission (“CPUC”) employees, representatives, agents, designees and contractors to inspect the Services.

6. __INSURANCE__:

At all times during the Term and the performance of the Services, Contractor shall maintain the insurance coverages set forth below. All such insurance coverage shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, directors, officers, and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of Services. Certificate(s) of insurance must be current as of the Effective Date, and shall remain in full force and effect through the Term. If scheduled to lapse prior to termination date, certificate(s) of insurance must be automatically updated before final payment may be made to Contractor. Each certificate of insurance shall provide for thirty (30) days’ advance written notice to MCE of any cancellation or reduction in coverage. Insurance coverages shall be payable on a per occurrence basis only, except those required by Section 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing in this Section 6 shall be construed as a limitation on Contractor's indemnification obligations in Section 17 of this Agreement.

Should Contractor fail to provide and maintain the insurance required by this Agreement, in addition to any other available remedies at law or in equity, MCE may suspend payment to the Contractor for any Services provided during any period of time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required insurance coverage.

6.1. GENERAL LIABILITY. The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than **[two million dollars ($2,000,000)/two million dollars ($2,000,000)] with a [four million dollars ($4,000,000)/four million dollar ($4,000,000)]** aggregate limit. "Marin Clean Energy" shall be named as an additional insured on the commercial general liability policy and the certificate of insurance shall include an additional endorsement page (see sample form: ISO - CG 20 10 11 85).

6.2. AUTO LIABILITY (REQUIRED IF CHECKED ☐). Where the Services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said Services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit ($1,000,000).

6.3. WORKERS' COMPENSATION. The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, it shall comply with this requirement and a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of Services.

6.4. PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒). Contractor shall maintain professional liability insurance with a policy limit of not less than $1,000,000 per incident. If the deductible or self-insured retention amount exceeds $100,000, MCE may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund, or that Contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon. Coverages required by this subsection may be provided on a claims-made basis with a "Retroactive Date" prior to the Effective Date. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond termination of this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Effective Date, Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after termination of this Agreement.

6.5. PRIVACY AND CYBERSECURITY LIABILITY (REQUIRED IF CHECKED ☒). Contractor shall maintain privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least $5,000,000 US per occurrence.

7. <u>FINANCIAL STATEMENTS</u>:

Contractor shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles.

8. <u>SUBCONTRACTING</u>:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior, written approval of MCE, except for any subcontract work expressly identified herein in Exhibit A. If Contractor hires a subcontractor under this Agreement (a "Subcontractor"), Subcontractor shall be bound by all applicable terms and conditions of this Agreement, and Contractor shall ensure the following:

8.1. Subcontractor shall comply with the following terms of this Agreement: Sections 9, 10, Exhibit A.

8.2. Subcontractor shall provide, maintain and be bound by the representations, warranties and covenants of Contractor contained in Section 5 hereof (as may be modified to be applicable to Subcontractor with respect to Section 5.1(a) hereof) at all times during the Term of such subcontract and its provision of Services.

8.3. Subcontractor shall comply with the terms of Section 6 above, including, but not limited to providing and maintaining insurance coverage(s) identical to what is required of Contractor under this Agreement, and shall name MCE as an additional insured under such policies. Contractor shall collect, maintain, and promptly forward to MCE current evidence of such insurance provided by its Subcontractor. Such evidence of insurance shall be included in the records and is therefore subject to audit as described in Section 9 hereof.

8.4. Subcontractor shall be contractually obligated to indemnify the MCE Parties (as defined in Section 17 hereof) pursuant to the terms and conditions of Section 17 hereof.

8.5. Subcontractors shall not be permitted to further subcontract any obligations under this Agreement.

Contractor shall be solely responsible for ensuring its Subcontractors' compliance with the terms and conditions of this Agreement made applicable above and to collect and maintain all documentation and current evidence of such compliance. Upon request by MCE, Contractor shall promptly forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the Parties shall create any legal or contractual relationship between MCE and any Subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its Subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any monies to any Subcontractor.

9. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor shall keep and maintain on a current basis full and complete records and documentation pertaining to this Agreement and the Services, whether stored electronically or otherwise, including, but not limited to, valuation records, accounting records, documents supporting all invoices, employees' time sheets, receipts and expenses, and all customer documentation and correspondence (the "Records"). Contractor shall retain such Records for at least three (3) years after payment of MCE's final invoice under the CEC Grant Agreement. Records relevant to intellectual property, royalty, repayment, or commercialization obligations shall be retained for at least ten (10) years after payment of MCE's final invoice under the CEC Grant Agreement. MCE, the CEC, the Bureau of State Audits, any other authorized state agency, and/or their designated auditors shall have the right during regular business hours to examine, copy, and audit such Records at reasonable times and may interview Contractor personnel who may reasonably have information related to such Records. Such audit rights shall continue for the applicable retention period specified above. Any review or audit may be conducted on Contractor's premises, or, at MCE's option, Contractor shall provide all Records within a maximum of fifteen (15) days upon receipt of written request from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings and shall promptly refund any overpayments made by MCE based on undisputed audit findings. Contractor shall require substantially similar audit rights in any subcontract related to the Services.

10. DATA, CONFIDENTIALITY AND INTELLECTUAL PROPERTY:

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

"Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the Parties dated **[MONTH, DAY, YEAR]**.

10.2. a) DEFINITION OF "PERSONAL INFORMATION". "Personal Information" includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines or networks. Contractor shall comply with all applicable federal, state and local laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information.

b) INFORMATION PRACTICES ACT COMPLIANCE. Contractor acknowledges that the Services may involve access to confidential information and personal information subject to CEC Grant Agreement. Contractor shall comply with the California Information Practices Act (California Civil Code Sections 1798 et seq.), MCE's Non-Disclosure Agreement, and all applicable requirements relating to the receipt, use, protection, retention, return, destruction, and disclosure of confidential information and personal information. Contractor shall have no ownership, license, or other rights in any personal information received or accessed in connection with the Services except as necessary to perform the Services under this Agreement.

c) CEC SPECIAL TERMS FOR CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION. Before Contractor or any Contractor Party receives any confidential information or personal information from the CEC or a third party for purposes of the CEC Grant Agreement, Contractor shall agree to, comply with, and flow down to all individuals and lower-tier subcontractors, vendors, and project partners with access to such information, the CEC's special terms for confidential information and personal information, including any requirements for an information security program plan and individual nondisclosure agreements. Contractor shall not access, use, disclose, or permit access to such information until MCE confirms in writing that required CEC special terms and access conditions are satisfied.

10.3. MCE DATA SECURITY MEASURES. Prior to Contractor receiving any MCE Data, Contractor shall comply, and at all times thereafter continue to comply, in compliance with MCE's Data security policies set forth in MCE Policy 009 (available upon request) and MCE's Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy ("Security Measures") and pursuant to MCE's Confidentiality provisions in Section 5 of the Marin Clean Energy Non-Disclosure Agreement between the parties dated **[DAY MONTH YEAR**] (attached hereto as Exhibit E), and as set forth in MCE Policy 001 - Confidentiality. MCE's Security Measures and Confidentiality provisions require Contractor to adhere to reasonable administrative, technical, and physical safeguard protocols to protect the MCE's Data from unauthorized handling, access, destruction, use, modification or disclosure.

10.4. CONTRACTOR DATA SECURITY MEASURES. Additionally, Contractor shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and MCE Data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

10.5. RETURN OF MCE DATA. Promptly after this Agreement terminates, (i) Contractor shall securely destroy all MCE Data in its possession and certify the secure destruction in writing to MCE, and (ii) each Party shall return (or if requested by the disclosing Party, destroy) all other Confidential Information and property of the other (if any), provided that Contractor's attorney shall be permitted to retain a copy of such records or materials solely for legal purposes.

10.6. OWNERSHIP AND USE RIGHTS.

a) **MCE Data.** Unless otherwise expressly agreed to in writing by the Parties, MCE shall retain all of its rights, title and interest in MCE's Data.

b) **Intellectual Property.** Unless otherwise expressly agreed to in writing by the Parties, any and all materials, information, or other intellectual property created, prepared, accumulated or developed by Contractor or any Contractor Party under this Agreement ("Intellectual Property"), including finished and unfinished inventions, processes, templates, documents, drawings, computer programs, designs, calculations, valuations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, manuals, visual materials, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, shall be owned by MCE. MCE shall have the exclusive right to use Intellectual Property in its sole discretion and without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide Intellectual Property to MCE or to any party MCE may designate upon written request. Contractor may keep one file reference copy of Intellectual Property prepared for MCE solely for legal purposes and if otherwise agreed to in writing by MCE. In addition, Contractor may keep one copy of Intellectual Property if otherwise agreed to in writing by MCE.

c) **Intellectual Property shall be owned by MCE upon its creation.** Contractor agrees to execute any such other documents or take other actions as MCE may reasonably request to perfect MCE's ownership in the Intellectual Property. Contractor acknowledges that MCE may be required to provide Intellectual Property, work product, reports, analyses, data, and other materials created under this Agreement to the California Energy Commission ("CEC") in connection with the Grant Agreement. Contractor agrees to execute such documents and grant such rights as may be reasonably necessary to permit MCE to satisfy its obligations to the CEC with respect to such materials.

d) **Contractor's Pre-Existing Materials.** If, and to the extent Contractor retains any preexisting ownership rights ("Contractor's Pre-Existing Materials") in any of the materials furnished to be used to create, develop, and prepare the Intellectual Property, Contractor hereby grants MCE on behalf of its customers, the California Energy Commission, and the CPUC for governmental and regulatory purposes an irrevocable, assignable, non-exclusive, perpetual, fully paid up, worldwide, royalty-free, unrestricted license to use and sublicense others to use, reproduce, display, prepare and develop derivative works, perform, distribute copies of any intellectual or proprietary property right of Contractor or any Contractor Party for the sole purpose of using such Intellectual Property for the conduct of MCE's business and for disclosure to the CPUC for governmental and regulatory purposes related thereto. Unless otherwise expressly agreed to by the Parties, Contractor shall retain all of its rights, title and interest in Contractor's Pre-Existing Materials. Any and all claims to Contractor's Pre-Existing Materials to be furnished or used to prepare, create, develop or otherwise manifest the Intellectual Property must be expressly disclosed to MCE prior to performing any Services under this Agreement. Any such Pre-Existing Material that is modified by work under this Agreement is owned by MCE.

10.7. EQUITABLE RELIEF. Each Party acknowledges that a breach of this Section 10 would cause irreparable harm and significant damages to the other Party, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that MCE shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of MCE Data or Personal Information, in addition to any other rights and remedies that it may have at law or otherwise; and Contractor shall have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of Contractor's Pre-Existing Materials, in addition to any other rights and remedies that it may have at law or otherwise.

11. FORCE MAJEURE:

A Party shall be excused for failure to perform its obligations under this Agreement if such obligations are prevented by an event of Force Majeure (as defined below), but only for so long as and to the extent that the Party claiming Force Majeure ("Claiming Party") is actually so prevented from performing and provided that (a) the Claiming Party gives written notice and full particulars of such Force Majeure to the other Party (the "Affected Party") promptly after the occurrence of the event relied on, (b) such notice includes an estimate of the expected duration and probable impact on the performance of the Claiming Party's obligations under this Agreement, (c) the Claiming Party furnishes timely regular reports regarding the status of the Force Majeure, including updates with respect to the data included in Section 10 above during the continuation of the delay in the Claiming Party's performance, (d) the suspension of such obligations sought by Claiming Party is of no greater scope and of no longer duration than is required by the Force Majeure, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the Force Majeure; (f) the Claiming Party shall exercise commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the Affected Party; (g) when the Claiming Party is able to resume performance of the affected obligations under this Agreement, the Claiming Party shall give the Affected Party written notice to that effect and promptly shall resume performance under this Agreement. "Force Majeure" shall mean acts of God such as floods, earthquakes, fires, orders or decrees by a governmental authority, civil or military disturbances, wars, riots, terrorism or threats of terrorism, utility power shutoffs, strikes, labor disputes, pandemic, or other forces over which the responsible Party has no control and which are not caused by an act or omission of such Party.

12. TERMINATION:

12.1. If the Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, violates any Applicable Law, makes an assignment of any general arrangement for the benefit of creditors, files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it, otherwise becomes bankrupt or insolvent (however evidenced), or becomes unable to pay its debts as they fall due, then MCE may terminate this Agreement by giving five (5) business days' written notice to Contractor.

12.2. Either Party hereto may terminate this Agreement for any reason by giving thirty (30) calendar days' written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent by registered mail or by email to the email address listed in Section 19.

12.3. In the event of termination not the fault of the Contractor, the Contractor shall be paid for Services performed up to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s). Notwithstanding anything contained in this Section 12, in no event shall MCE be liable for lost or anticipated profits or overhead on uncompleted portions of the Agreement. Contractor shall not enter into any agreement, commitments or subcontracts that would incur significant cancelation or termination costs without prior written approval of MCE, and such written approval shall be a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12. Also, as a condition precedent to the payment of any cancellation or termination charges by MCE under this Section 12, Contractor shall have delivered to MCE any and all Intellectual Property (as defined in Section 10.1(b)) prepared for MCE before the effective date of such termination.

12.4. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

12.5. Without limiting the foregoing, if either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the parties cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only, and the remaining provisions will remain in full force and effect.

12.6. Upon termination of this Agreement for any reason, Contractor shall and shall cause each Contractor Party to bring the Services to an orderly conclusion as directed by MCE and shall return all MCE Data (as defined in Section 10.1(a) above) and Intellectual Property to MCE.

12.7. Notwithstanding the foregoing, this Agreement shall be subject to changes, modifications, or termination by order or directive of the CPUC. The CPUC may from time to time issue an order or directive relating to or affecting any aspect of this Agreement, in which case MCE shall have the right to change, modify or terminate this Agreement in any manner to be consistent with such order or directive.

12.8. Notwithstanding any provision herein to the contrary, Sections 2, 3, 8.4, 9, 10, 12, 15, 16, 17, 18, 19, 20, 21, 22, 24, Exhibit B of this Agreement shall survive the termination or expiration of this Agreement.

13. ASSIGNMENT:

The rights, responsibilities, and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

14. AMENDMENT; NO WAIVER:

This Agreement may be amended or modified only by written agreement of the Parties. Failure of either Party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

15. DISPUTES:

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

16. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and the Parties hereto agree that venue shall be in Marin County, California.

17. INDEMNIFICATION:

To the fullest extent permitted by Applicable Law, Contractor shall indemnify, defend, and hold MCE and its employees, officers, directors, representatives, and agents ("MCE Parties"), harmless from and against any and all actions, claims, liabilities, losses, costs, damages, and expenses (including, but not limited to, litigation costs, attorney's fees and costs, physical damage to or loss of tangible property, and injury or death of any person) arising out of, resulting from, or caused by: a) the negligence, recklessness, intentional misconduct, fraud of all Contractor Parties; b) the failure of a Contractor Party to comply with the provisions of this Agreement or Applicable Law; or c) any defect in design, workmanship, or materials carried out or employed by any Contractor Party.

18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.). Pursuant to MCE's Joint Powers Agreement, MCE is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations, and liabilities accruing and arising out of this Agreement. No Contractor Party shall have rights and nor shall any Contractor Party make any claims, take any actions, or assert any remedies against any of MCE's constituent members in connection with this Agreement.

19. INVOICES; NOTICES:

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org

All other notices shall be given to MCE at the following location:

Contract Manager:	
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	
Telephone No.:	(415)

Notices shall be given to Contractor at the following address:

Contractor:	
Address:	
Email Address:	
Telephone No.:	

20. ENTIRE AGREEMENT; ACKNOWLEDGMENT OF EXHIBITS:
This Agreement along with the attached Exhibits marked below constitutes the entire Agreement between the Parties. In the event of a conflict between the terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement shall govern.

	☒	***Check applicable Exhibits***	**CONTRACTOR'S INITIALS**	**MCE'S INITIALS**
EXHIBIT A.	☒	**Scope of Services**		
EXHIBIT B.	☒	**Fees and Payment**		
EXHIBIT C.	☒	**Labor Code and Prevailing Wage Requirements**		
EXHIBIT D.	☒	**MCE Non-Disclosure Agreement**		

21. SEVERABILITY:
Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

22. INDEPENDENT CONTRACTOR:
Contractor is an independent contractor to MCE hereunder. Nothing in this Agreement shall establish any relationship of partnership, joint venture, employment or franchise between MCE and any Contractor Party. Neither MCE nor any Contractor Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

23. TIME:
Time is of the essence in this Agreement and each and all of its provisions.

24. THIRD PARTY BENEFICIARIES:
The Parties agree that there are no third-party beneficiaries to this Agreement either express or implied.

25. FURTHER ACTIONS:
The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

26. PREPARATION OF AGREEMENT:
This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

27. <u>DIVERSITY SURVEY</u>:
Pursuant to Senate Bill 255 which amends Section 366.2 of the California Public Utilities Code, MCE is required to submit to the California Public Utilities Commission an annual report regarding its procurement from women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises ("WMDVLGBTBE"). Consistent with these requirements, Contractor agrees to provide information to MCE regarding Contractor's status as a WMDVLGBTBE and any engagement of WMDVLGBTBEs in its provision of Services under this Agreement. Concurrently with the execution of this Agreement, Contractor agrees to complete and deliver MCE's Supplier Diversity Survey, found at the following link:______________________________ (the "Diversity Survey"). Because MCE is required to submit annual reports and/or because the Diversity Survey may be updated or revised during the term of this Agreement, Contractor agrees to complete and deliver the Diversity Survey, an updated or revised version of the Diversity Survey or a similar survey at the reasonable request of MCE and to otherwise reasonably cooperate with MCE to provide the information described above. Contractor shall provide all such information in the timeframe reasonably requested by MCE.

28. <u>COUNTERPARTS</u>:
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY Marin Clean Energy:	CONTRACTOR:
By: ________________________________	By: ________________________________
Name: ______________________________	Name: ______________________________
Title: ______________________________	Title: ______________________________
Date: ______________________________	Date: ______________________________

MODIFICATIONS TO STANDARD SHORT FORM

☐ Standard Short Form Content Has Been Modified

List sections affected: <u>1.1 and 1.2 (added), 2 (modified), 5.4 (modified), 9 (modified), 10.2(b) and (c) (added); 10.6(c) (modified), 10.6(c) (modified)</u> ____________________________________

Approved by MCE Counsel: ____ Date: ______________

EXHIBIT A
SCOPE OF SERVICES

Contractor shall provide the following Services under the Agreement as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For Services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

In no event shall the total cost to MCE for the services provided herein exceed the **maximum sum of $,000** for the term of the Agreement.

EXHIBIT C
LABOR CODE AND PREVAILING WAGE REQUIREMENTS

1. Contractor acknowledges that the project as defined in this Contract between Contractor and the MCE, to which this Terms for Compliance with California Labor Law Requirements is attached and incorporated by reference, is a "public work" as defined in Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code ("Chapter 1"). Further, Contractor acknowledges that this Contract is subject to (a) Chapter 1, including without limitation Labor Code Section 1771 and (b) the rules and regulations established by the Director of Industrial Relations ("DIR") implementing such statutes. Contractor shall perform all work on the project as a public work. Contractor shall comply with and be bound by all the terms, rules and regulations described in 1(a) and 1(b) as though set forth in full herein.

2. California law requires the inclusion of specific Labor Code provisions in certain contracts. The inclusion of such specific provisions below, whether or not required by California law, does not alter the meaning or scope of Section 1 of this document.

3. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Contract are on file at MCE's San Rafael Office and will be made available to any interested party on request. Contractor acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Contractor shall post such rates at each job site covered by this Contract.

4. The project is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

5. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Contractor shall, as a penalty to the MCE, forfeit two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Contract by Contractor or by any subcontractor.

6. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the MCE of the location of the records.

7. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Contract, Contractor shall provide MCE with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Contract, Contractor and each of its subcontractors shall submit to the MCE a verified statement of the journeyman and apprentice hours performed under this Contract.

8. Contractor acknowledges that eight hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. Contractor shall, as a penalty to the MCE, forfeit twenty-five dollars ($25) for each worker employed in the performance of this Contract by Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by employees of Contractor in excess of eight hours per day, and 40 hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay.

9. Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:
"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

10. For every subcontractor who will perform work on the project, Contractor shall be responsible for such subcontractor's compliance with Chapter 1 and Labor Code Sections 1860 and 3700, and Contractor shall include in the written contract between it and each subcontractor a copy of those statutory provisions and a requirement that each subcontractor shall comply with those statutory provisions. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a periodic review of the certified payroll records of the subcontractor and upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any failure.

11. To the maximum extent permitted by law, Contractor shall indemnify, hold harmless and defend (at Contractor's expense with counsel reasonably acceptable to MCE) MCE, its officials, officers, employees, agents and independent contractors serving in the role of MCE officials, and volunteers from and against any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Contractor, its subcontractors, and

each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with this Contract, including without limitation the payment of all consequential damages, attorneys' fees, and other related costs and expenses. All duties of Contractor under this Section shall survive termination of this Contract.

EXHIBIT D
NON-DISCLOSURE AGREEMENT

Fully Executed Non-Disclosure Agreement Must Be Sent to compliance@mceCleanEnergy.org

This Non-Disclosure Agreement ("Agreement") is entered into by and between Marin Clean Energy ("MCE") and (“Contractor”) as of (“Effective Date”). As used herein MCE and Contractor may each be referred to individually as a "Party" and collectively as "Parties." The provisions of this Agreement and MCE Policy 001 (Customer Confidentiality) govern the disclosure of MCE's confidential customer information to Contractor ("Disclosure Provisions"). The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of MCE regarding customers of MCE ("MCE Customers") may be disclosed to Contractor from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purposes set forth on Schedule A. Such disclosure is subject to the following legal continuing representations and warranties by Contractor:

   (a) Contractor represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;

   (b) Contractor represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the Contractor; and

   (c) Contractor confirms its understanding that the information of MCE Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes set forth on Schedule A and that any other use of the information is prohibited.

   (d) Contractor represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for purposes not set forth on Schedule A.

2. The confidential and proprietary information disclosed to Contractor in connection herewith may include, without limitation, the following information about MCE Customers: (a) names; (b) addresses; (c) telephone numbers; (d) service agreement numbers; (e) meter and other identification numbers; (f) MCE-designated account numbers; (g) meter numbers; (h) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, HP load, and other data detailing electricity or gas needs and patterns of usage); (i) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (j) payment / deposit status; (k) number of units; and (l) other similar information specific to MCE Customers individually or in the aggregate (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Contractor or its representatives that are derived from or based on Confidential Information disclosed by MCE, regardless of the form of media in which it is prepared, recorded or retained.

3. Except for electric and gas usage information provided to Contractor pursuant to this Agreement, Confidential Information does not include information that Contractor proves (a) was properly in the possession of Contractor at the time of disclosure; (b) is or becomes publicly known through no fault of Contractor, its employees or representatives; or (c) was independently developed by Contractor, its employees or representatives without access to any Confidential Information.

4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Contractor, or used for any purpose other than the purposes set forth on Schedule A.

5. Contractor shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Contractor shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth on Schedule A. Specifically, Contractor shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Contractor who have a "need to know" such Confidential Information in the course of their duties with respect to the Contractor program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Contractor shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement.

6. Contractor shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by MCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Contractor or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Contractor shall immediately notify MCE in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Contractor or any of its employees or representatives. However, nothing in this Agreement shall obligate the MCE to monitor or enforce the Contractor's compliance with the terms of this Agreement.

7. Contractor shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to CPUC Decision No. 12-08-045.

8. Contractor acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to MCE and/or MCE Customers, the amount of which may be difficult to assess. Accordingly, Contractor hereby confirms that the MCE shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Contractor or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the MCE, in law or equity.

9. In addition to all other remedies, Contractor shall indemnify and hold harmless MCE, its officers, employees, or agents from and against all claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Contractor and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.

10. When Contractor fully performs the purposes set forth on Schedule A, or if at any time Contractor ceases performance or MCE requires Contractor cease performance of the purposes set forth on Schedule A, Contractor shall promptly return or destroy (with written notice to MCE itemizing the materials destroyed) all Confidential Information then in its possession at the request of MCE. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.

11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent may be withheld due to the confidential nature of the information, data and materials covered.

12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.

13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

CONTRACTOR	**MARIN CLEAN ENERGY**
Signature:	Signature:
Name:	Name:
Title:	Title:
Address:	
Date:	Date:

Fully Executed Non-Disclosure Agreement Must Be Sent to compliance@mceCleanEnergy.org

All Contractors Must Complete the Attached Schedule A

SCHEDULE A
CONTRACTOR PURPOSES

STATE OF CALIFORNIA
GRANT AGREEMENT
CEC-146 (Revised 3/2019)

Attachment F

CALIFORNIA ENERGY COMMISSION

RECIPIENT	AGREEMENT NUMBER
Marin Clean Energy	**EPC-24-040**
ADDRESS	AGREEMENT TERM
1125 Tamalpais Ave **San Rafael, CA 94901**	**04/01/2025-03/30/2029** The effective date of this Agreement is either the start date or the approval signature date by the California Energy Commission representative below, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

PROJECT DESCRIPTION

The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

Exhibit A – Scope of Work	Page(s): 24
Exhibit A-1 – Project Schedule	Page(s): 2
Exhibit B – Budget	Page(s): 9
Exhibit B – Budget (Sub)- LBNL	Page(s): 9
Exhibit C – General Terms and Conditions	Page(s): 50
Exhibit C-1 – Confidential Products and Intellectual Property	Page(s): 5
Exhibit C-2 – Special Terms and Conditions	Page(s): 1
Exhibit D – Information Practices Act	Page(s): 2
Exhibit E – Contacts	Page(s): 1

REIMBURSABLE AMOUNT	$ 5,000,000
MINIMUM MATCH SHARE REQUIRED	$ 5,000,000
TOTAL OF REIMBURSABLE AMOUNT AND MINIMUM MATCH	$ 10,000,000

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		**Marin Clean Energy**	
AUTHORIZED SIGNATURE: Tatyana Yakshina	DATE: 6/26/2025	AUTHORIZED SIGNATURE: Dawn Weisz	DATE: 6/24/2025
NAME: Tatyana Yakshina		NAME: Dawn Weisz	
TITLE: Contracts, Grants, and Loans Office Manager		TITLE: CEO	
CALIFORNIA ENERGY COMMISSION ADDRESS: 715 P Street, Sacramento, CA 95814			

Exhibit A
Scope of Work
Marin Clean Energy

I. TASK ACRONYM/TERM LISTS

A. Task List

Task #	CPR[1]	Task Name
1		General Project Tasks
2		VPP Toolkit Development
3		DERMS Buildout and Testing
4	X	Trade Ally Engagement and Onboarding
5		Customer Program Adaptations
6		Customer Outreach and Engagement
7		DER Deployments
8	X	VPP Operation and Optimization
9		Evaluation of Project Benefits
10		Measurement and Verification
11		Technology/Knowledge Transfer Activities

B. Acronym/Term List

Acronym/Term	Meaning
BESS	Battery Energy Storage System
CAISO	California Independent System Operator
CAM	Commission Agreement Manager
CAO	Commission Agreement Officer
CCA	Community Choice Aggregation
CEC	California Energy Commission
CLFP	Controlled and Licensed for Perpetuity
CPR	Critical Project Review
DAC	Disadvantaged Community
DER	Distributed Energy Resource
DERMS	Distributed Energy Management System
DRRS	Demand Response Registration System
eDERMS	Enterprise-level Distributed Energy Management System
GHG	Greenhouse Gas
HPHW	Heat Pump Hot Water Heater
HVAC	Heating Ventilation and Air Conditioning
LSE	Load Serving Entity
M&V	Measurement and Verification
PV	Solar Photovoltaic
RA	Resource Adequacy
RFP	Request for Proposals
SaaS	Software-as-a-service
TAC	Technical Advisory Committee
VTN	Virtual Top Node
VPP	Virtual Power Plant

[1] Please see subtask 1.3 in Part III of the Scope of Work (General Project Tasks) for a description of Critical Project Review (CPR) Meetings.

Acronym/Term	Meaning
VPP 2X	Virtual Power Plant Valuing People Power

II. PURPOSE OF AGREEMENT, PROBLEM/SOLUTION STATEMENT, AND GOALS AND OBJECTIVES

A. Purpose of Agreement

The purpose of this Agreement is to fund the transformation of the traditional concept of Virtual Power Plants (VPP) by creating an open, accessible, equitable, and sustainable market for flexible load and other Distributed Energy Resource (DER)-related products and services that address critical grid needs.

B. Problem/ Solution Statement

Problem
California Community Choice Aggregators (CCAs) working to advance DER and VPP initiatives have not had access to cost-effective DER management software options that are purpose-built for CCA applications. The DERMS offerings available to them are expensive software-as-a-service (SaaS) platforms that were developed for utility and distribution system operator applications that do not function well in unique and challenging CCA environments. While DERMS platforms have the potential to unlock significant value from distributed energy resources, several challenges hinder their widespread adoption and effectiveness, including interoperability issues, high costs, and limited value-sharing mechanisms.

Many of the commercially available Distributed Energy Management System (DERMS) packages are proprietary Original Equipment Manufacturer products (i.e., they were designed to work with a specific manufacturer's ecosystem of products) and therefore are not interoperable with other manufacturers' equipment. This constrains customer choices and pathways to benefiting from VPP programming, creates barriers for other beneficial technologies and providers, and hinders scaled deployment of beneficial DERs at a time when Californians need rapid deployment of a wider array of options.

It is important to note that commercially available SaaS DERMS can be cost-prohibitive for nonprofit public agencies like CCAs, as they require substantial annual expenditures regardless of whether any value was created with the platform. Furthermore, many of the emerging VPP offerings are not backed by a load serving entity (LSE), which limits value creation because the firms offering the service do not set rates or tariffs, buy electricity or capacity for the community, or offer valuable programs and services like rate relief during times of need. Without rate and tariff setting authority, private third-party VPP providers are not able to create equitable value-sharing arrangements that ensure clear and stable customer and stakeholder value creation.

Solution
The Recipient and members of the project team leveraged a recent CEC Advanced Energy Communities grant - EPC-19-005 - to develop a novel OpenADR-based, enterprise-level DERMS platform (eDERMS), which has an innovative Controlled and Licensed for Perpetuity (CLFP) user license agreement and was purpose-built for CCA applications. The CLFP creates a unique opportunity for cooperative development of the DERMS platform by other CCAs and LSEs that implement the platform later, by ensuring that each implementor benefits from the

enhancements paid for by others. This sets up the potential for low-cost expansion of the eDERMS over time.

The proposed VPP 2X project will leverage a one-time investment of CEC and Recipient funds to expand and enhance MCE's in-house eDERMS platform to include advanced features and functions, including automated and predictive controls designed to optimize value creation, expansion of heterogeneous DER integrations and contracted trade allies, data analytics, and CAISO market integrations to enable new revenue generation. This will provide the Recipient and the CCA industry in California with a customer-built, low-cost, streamlined, interoperable, secure, and advanced tool for implementing a comprehensive, community-focused VPP strategy.

The VPP 2X project will also demonstrate the potential for increased VPP value creation when implemented by a not-for-profit public load serving entity (LSE) focused on delivering measurable value and equitable stakeholder benefits through clean community energy programs. The Recipient will leverage its rate and tariff setting authority, CAISO agreements, public procurement procedures, and experience delivering cost-effective customer programs to provide enhanced, third-party measured and verified community benefits from advanced flexible load and VPP strategies.

C. Goals and Objectives of the Agreement

Agreement Goals

The goals of this Agreement are to:

- Demonstrate optimized DER value in automated VPP flexible load applications
- Develop predictive-control based, multi-objective optimization of heterogeneous resources and DERMS capabilities to best integrate DERs in automated VPP application targeting a ±20% deviation of forecasted versus actual MWh
- Provide equitable access to beneficial VPP programming for customers and trade allies
- Create an equity-focused tariff structure and pay-for-performance contracting structures to incentivize customers and trade ally participation
- Expand eligibility to increase access and prioritize disadvantaged, low-income, and underserved customer segments
- Demonstrate at least a 20 percent cost recovery by the end of Year 4
- Design and implement the VPP 2X project to achieve at least 3 MW of load shifting

Ratepayer Benefits:[2] This Agreement will result in the ratepayer benefits by reducing the need for power and resource adequacy procurement during peak hours, as well as contributing to the reduced need for costly distribution system upgrades. By leveraging an in-house eDERMS platform, the Recipient will enable dynamic flexible load use cases, such as battery storage and EV charging, to optimize grid operations and reduce peak demand. This approach will not only lower costs but also enhance grid reliability and resilience while compensating participants for their contributions. Additionally, the VPP 2X initiative will contribute to reduced greenhouse gas

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[2] California Public Resources Code, Section 25711.5(a) requires projects funded by the Electric Program Investment Charge (EPIC) to result in ratepayer benefits. The California Public Utilities Commission, which established the EPIC in 2011, defines ratepayer benefits as greater reliability, lower costs, and increased safety (See CPUC "Phase 2" Decision 12-05-037 at page 19, May 24, 2012, http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/167664.PDF).

(GHG) emissions and support local economic development by incentivizing DER deployments throughout the Recipient's four-county service territory, particularly in disadvantaged (DAC) and underserved communities.

Technological Advancement and Breakthroughs: direct VPP implementation that is integrated with CAISO markets through available market participation models, including Proxy Demand Resource (PDR), PDR Load Shift Resource (PDR-LSR), and/or Distributed Energy Resource Aggregations (DERA).[3] The Recipient's VPP 2X initiative results from a two-year comprehensive planning and development exercise that included substantial input from a group of key stakeholders. This effort resulted in a blueprint outlining the structure of the future DERMS needed to overcome industry barriers. This has effectively de-risked the pathway to demonstrating the open-source, eDERMS in a CCA setting.

Leveraging VPP FLEX funding to upgrade the in-house eDERMS to OpenADR 3.0 technology will improve the existing VPP's ability to integrate and aggregate new DERs, enhancing interoperability and mitigating risk of vendor lock-in. This will enable the VPP to increase the number of integrated DERs and scale up reliable VPP capacity rapidly and cost-effectively. The Recipient's advanced eDERMS will optimize the dispatch of a heterogeneous fleet of DERs in an automated fashion as informed by built-in forecasts and multi-objective predictive controls; the in-house eDERMS will become OpenADR 3.0 compliant and certified. The project will integrate an additional 15 DER technology types and providers while developing streamlined and standardized processes that pave the way for a potential of at least 82 more. This diversity of DERs will allow for real-time telemetry to be accessible to the CCA for the first time, allowing it to respond with more accurate forecasting capabilities for market integrated activities and enabling the Recipient to demonstrate powerful and innovative VPP use cases.

Agreement Objectives

The objectives of this Agreement are to:

- Objective 1 - Develop an updated eDERMS package that is OpenADR 3.0 certified
- Objective 2 - Implement a value sharing plan that includes a pay-for-performance component
- Objective 3 - Expand VPP participant eligibility to all Recipient's communities
- Objective 4 - Adapt Recipient's Programs to be VPP-Ready and expand contracted Trade Allies
- Objective 5 - Integrate the VPP with CAISO markets to demonstrate new CCA revenues
- Objective 6 - Achieve a load shift of 3 MW through strategic deployment and optimization of DER installations
- Objective 7 - Demonstrate at least 20% cost recovery of the proposed VPP within four years

III. TASK 1 GENERAL PROJECT TASKS

PRODUCTS

Subtask 1.1 Products

[3] California Public Resources Code, Section 25711.5(a) also requires EPIC-funded projects to lead to technological advancement and breakthroughs to overcome barriers that prevent the achievement of the state's statutory and energy goals.

The goal of this subtask is to establish the requirements for submitting project products (e.g., reports, summaries, plans, and presentation materials). Unless otherwise specified by the Commission Agreement Manager (CAM), the Recipient must deliver products as required below by the dates listed in the **Project Schedule (Part V).** All products submitted which will be viewed by the public, must comply with the accessibility requirements of Section 508 of the federal Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations**.** All technical tasks should include product(s). Products that require a draft version are indicated by marking **"(draft and final)"** after the product name in the "Products" section of the task/subtask. If "(draft and final)" does not appear after the product name, only a final version of the product is required. With respect to due dates within this Scope of Work, **"days"** means working days.

The Recipient shall:

For products that require a draft version, including the Final Report Outline and Final Report

- Submit all draft products to the CAM for review and comment in accordance with the Project Schedule (Part V). The CAM will provide written comments to the Recipient on the draft product within 15 days of receipt, unless otherwise specified in the task/subtask for which the product is required.
- Consider incorporating all CAM comments into the final product. If the Recipient disagrees with any comment, provide a written response explaining why the comment was not incorporated into the final product.
- Submit the revised product and responses to comments within 10 days of notice by the CAM, unless the CAM specifies a longer time period, or approves a request for additional time.

For products that require a final version only

- Submit the product to the CAM for acceptance. The CAM may request minor revisions or explanations prior to acceptance.

For all products

- Submit all data and documents required as products in accordance with the following:

Instructions for Submitting Electronic Files and Developing Software:

- **Electronic File Format**
    - Submit all data and documents required as products under this Agreement in an electronic file format that is fully editable and compatible with the California Energy Commission's (CEC) software and Microsoft (MS)-operating computing platforms, or with any other format approved by the CAM. Deliver an electronic copy of the full text of any Agreement data and documents in a format specified by the CAM, such as memory stick.

  The following describes the accepted formats for electronic data and documents provided to the CEC as products under this Agreement, and establishes the software versions that will be required to review and approve all software products:
    - Data sets will be in MS Access or MS Excel file format (version 2007 or later), or any other format approved by the CAM.

- Text documents will be in MS Word file format, version 2007 or later.
- Project management documents will be in Microsoft Project file format, version 2007 or later.

- **Software Application Development**
  Use the following standard Application Architecture components in compatible versions for any software application development required by this Agreement (e.g., databases, models, modeling tools), unless the CAM approves other software applications such as open source programs:
  - Microsoft ASP.NET framework (version 3.5 and up). Recommend 4.0.
  - Microsoft Internet Information Services (IIS), (version 6 and up) Recommend 7.5.
  - Visual Studio.NET (version 2008 and up). Recommend 2010.
  - C# Programming Language with Presentation (UI), Business Object and Data Layers.
  - SQL (Structured Query Language).
  - Microsoft SQL Server 2008, Stored Procedures. Recommend 2008 R2.
  - Microsoft SQL Reporting Services. Recommend 2008 R2.
  - XML (external interfaces).

  Any exceptions to the Electronic File Format requirements above must be approved in writing by the CAM. The CAM will consult with the CEC's Information Technology Services Branch to determine whether the exceptions are allowable.

MEETINGS

Subtask 1.2 Kick-off Meeting

The goal of this subtask is to establish the lines of communication and procedures for implementing this Agreement.

The Recipient shall:

- Attend a "Kick-off" meeting with the CAM, and other CEC staff relevant to the Agreement. The Recipient's Project Manager and any other individuals deemed necessary by the CAM or the Project Manager shall participate in this meeting. The administrative and technical aspects of the Agreement will be discussed at the meeting. Prior to the meeting, the CAM will provide an agenda to all potential meeting participants. The meeting may take place in person or by electronic conferencing (e.g., Teams, Zoom), with approval of the CAM.

  The Kick-off meeting will include discussion of the following:
  - The CAM's expectations for accomplishing tasks described in the Scope of Work;
  - An updated Project Schedule;
  - Terms and conditions of the Agreement;
  - Invoicing and auditing procedures;
  - Travel;
  - Equipment purchases;
  - Administrative and Technical products (subtask 1.1);
  - CPR meetings (subtask 1.3);

- Monthly Calls (subtask 1.5)
- Quarterly Progress reports (subtask 1.6)
- Final Report (subtask 1.7)
- Match funds (subtask 1.8);
- Permit documentation (subtask 1.9);
- Subawards (subtask 1.10);
- Technical Advisory Committee meetings (subtasks 1.11 and 1.12);
- Agreement changes;
- Performance Evaluations; and
- Any other relevant topics.

- Provide *Kick-off Meeting Presentation* to include but not limited to:
  - Project overview (i.e. project description, goals and objectives, technical tasks, expected benefits, etc.)
  - Project schedule that identifies milestones
  - List of potential risk factors and hurdles, and mitigation strategy

- Provide an *Updated Project Schedule, Match Funds Status Letter,* and *Permit Status Letter*, as needed to reflect any changes in the documents.

The CAM shall:

- Designate the date and location of the meeting.
- Send the Recipient a *Kick-off Meeting Agenda*.

Recipient Products:

- Kick-off Meeting Presentation
- Updated Project Schedule *(if applicable)*
- Match Funds Status Letter (subtask 1.7) *(if applicable)*
- Permit Status Letter (subtask 1.8) *(if applicable)*

CAM Product:

- Kick-off Meeting Agenda

Subtask 1.3 Critical Project Review (CPR) Meetings

The goal of this subtask is to determine if the project should continue to receive CEC funding, and if so whether any modifications must be made to the tasks, products, schedule, or budget. CPR meetings provide the opportunity for frank discussions between the CEC and the Recipient. As determined by the CAM, discussions may include project status, challenges, successes, advisory group findings and recommendations, final report preparation, and progress on technical transfer and production readiness activities (if applicable). Participants will include the CAM and the Recipient and may include the CAO and any other individuals selected by the CAM to provide support to the CEC.

CPR meetings generally take place at key, predetermined points in the Agreement, as determined by the CAM and as shown in the Task List on page 1 of this Exhibit. However, the CAM may schedule additional CPR meetings as necessary. The budget may be reallocated to cover the additional costs borne by the Recipient, but the overall Agreement amount will not increase. CPR meetings generally take place at the CEC, but they may take place at another location, or may be conducted via electronic conferencing (e.g., WebEx) as determined by the CAM.

The Recipient shall:
- Prepare and submit a *CPR Report* for each CPR meeting that: (1) discusses the progress of the Agreement toward achieving its goals and objectives; and (2) includes recommendations and conclusions regarding continued work on the project.
- Attend the CPR meeting.
- Present the CPR Report and any other required information at each CPR meeting.

The CAM shall:
- Determine the location, date, and time of each CPR meeting with the Recipient's input.
- Send the Recipient a *CPR Agenda* with a list of expected CPR participants in advance of the CPR meeting. If applicable, the agenda may include a discussion of match funding and permits.
- Conduct and make a record of each CPR meeting. Provide the Recipient with a schedule for providing a Progress Determination on continuation of the project.
- Determine whether to continue the project, and if so whether modifications are needed to the tasks, schedule, products, or budget for the remainder of the Agreement. A determination of unsatisfactory progress This may result in project delays, including a potential Stop Work Order, while the CEC determines whether the project should continue.
- Provide the Recipient with a *Progress Determination* on continuation of the project, in accordance with the schedule. The Progress Determination may include a requirement that the Recipient revise one or more products.

Recipient Products:
- CPR Report(s)

CAM Products:
- CPR Agenda(s)
- Progress Determination

Subtask 1.4 Final Meeting

The goal of this subtask is to complete the closeout of this Agreement.

The Recipient shall:
- Meet with CEC staff to present project findings, conclusions, and recommendations. The final meeting must be completed during the closeout of this Agreement. This meeting will be attended by the Recipient and CAM, at a minimum. The meeting may occur in person or by electronic conferencing (e.g., WebEx), with approval of the CAM.

  The technical and administrative aspects of Agreement closeout will be discussed at the meeting, which may be divided into two separate meetings at the CAM's discretion.
  - The technical portion of the meeting will involve the presentation of findings, conclusions, and recommended next steps (if any) for the Agreement. The CAM will determine the appropriate meeting participants.
  - The administrative portion of the meeting will involve a discussion with the CAM of the following Agreement closeout items:

   - Disposition of any procured equipment.
   - The CEC's request for specific "generated" data (not already provided in Agreement products).
   - Need to document the Recipient's disclosure of "subject inventions" developed under the Agreement.
   - "Surviving" Agreement provisions such as repayment provisions and confidential products.
   - Final invoicing and release of retention.
- Prepare a *Final Meeting Agreement Summary* that documents any agreement made between the Recipient and Commission staff during the meeting.
- Prepare a *Schedule for Completing Agreement Closeout Activities*.
- Provide copies of *All Final Products* organized by the tasks in the Agreement.

Products:
- Final Meeting Agreement Summary *(if applicable)*
- Schedule for Completing Agreement Closeout Activities
- All Final Products

MONTHLY CALLS, REPORTS AND INVOICES

Subtask 1.5 Monthly Calls

The goal of this task is to have calls at least monthly between the CAM and Recipient to verify that satisfactory and continued progress is made towards achieving the objectives of this Agreement on time and within budget.

The objectives of this task are to verbally summarize activities performed during the reporting period, to identify activities planned for the next reporting period, to identify issues that may affect performance and expenditures, to verify match funds are being proportionally spent concurrently or in advance of CEC funds or are being spent in accordance with an approved Match Funding Spending Plan, to form the basis for determining whether invoices are consistent with work performed, and to answer any other questions from the CAM. Monthly calls might not be held on those months when a quarterly progress report is submitted or the CAM determines that a monthly call is unnecessary.

The CAM shall:
- Schedule monthly calls.
- Provide questions to the Recipient prior to the monthly call.
- Provide call summary notes to Recipient of items discussed during call.

The Recipient shall:
- Review the questions provided by CAM prior to the monthly call.
- Provide verbal answers to the CAM during the call.

Product:
- Email to CAM concurring with call summary notes.

Subtask 1.6 Quarterly Progress Reports and Invoices

The goals of this subtask are to: (1) periodically verify that satisfactory and continued progress is made towards achieving the project objectives of this Agreement; and (2) ensure that invoices contain all required information and are submitted in the appropriate format.

The Recipient shall:

- Submit a *Quarterly Progress Report* to the CAM. Each progress report must:
  - Summarize progress made on all Agreement activities as specified in the scope of work for the reporting period, including accomplishments, problems, milestones, products, schedule, fiscal status, and an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. Progress reports are due to the CAM the 10th day of each January, April, July, and October. The Quarterly Progress Report template can be found on the ECAMS Resources webpage available at: https://www.energy.ca.gov/media/4691
- Submit a monthly or quarterly *Invoice* on the invoice template(s) provided by the CAM.

Recipient Products:

- Quarterly Progress Reports
- Invoices

CAM Product:

- Invoice template

Subtask 1.7 Final Report

The goal of this subtask is to prepare a comprehensive Final Report that describes the original purpose, approach, results, and conclusions of the work performed under this Agreement. When creating the Final Report Outline and the Final Report, the Recipient must use the CEC Style Manual provided by the CAM.

Subtask 1.7.1 Final Report Outline

The Recipient shall:

- Prepare a *Final Report Outline* in accordance with the *Energy Commission Style Manual* provided by the CAM.

Recipient Products:

- Final Report Outline (draft and final)

CAM Products:

- Energy Commission Style Manual
- Comments on Draft Final Report Outline
- Acceptance of Final Report Outline

Subtask 1.7.1 Final Report

The Recipient shall:

- Prepare a *Final Report* for this Agreement in accordance with the approved Final Report Outline, Energy Commission Style Manual, and Final Report Template provided by the CAM with the following considerations:

- Ensure that the report includes the following items, in the following order:
    - Cover page (**required**)
    - Credits page on the reverse side of cover with legal disclaimer (**required**)
    - Acknowledgements page (optional)
    - Preface (**required**)
    - Abstract, keywords, and citation page (**required**)
    - Table of Contents (**required**, followed by List of Figures and List of Tables, if needed)
    - Executive summary (**required**)
    - Body of the report (**required**)
    - References (if applicable)
    - Glossary/Acronyms (If more than 10 acronyms or abbreviations are used, it is required.)
    - Bibliography (if applicable)
    - Appendices (if applicable) (Create a separate volume if very large.)
    - Attachments (if applicable)
- Submit a draft of the Executive Summary to the TAC for review and comment.
- Develop and submit a *Summary of TAC Comments on Draft Final Report* received on the Executive Summary. For each comment received, the Recipient will identify in the summary the following:
    - Comments the Recipient proposes to incorporate.
    - Comments the Recipient does propose to incorporate and an explanation for why.
- Submit a draft of the report to the CAM for review and comment. The CAM will provide written comments to the Recipient on the draft product within 15 days of receipt.
- Incorporate all CAM comments into the *Final Report*. If the Recipient disagrees with any comment, provide a *Written Responses to Comments* explaining why the comments were not incorporated into the final product.

- Submit the revised *Final Report* electronically with any Written Responses to Comments within 10 days of receipt of CAM's Written Comments on the Draft Final Report, unless the CAM specifies a longer time period or approves a request for additional time.

Products:
- Summary of TAC Comments on Draft Final Report
- Draft Final Report
- Written Responses to Comments *(if applicable)*
- Final Report

CAM Product:
- Written Comments on the Draft Final Report

MATCH FUNDS, PERMITS, AND SUBAWARDS

Subtask 1.8 Match Funds

The goal of this subtask is to ensure that the Recipient obtains any match funds planned for this Agreement and applies them to the Agreement during the Agreement term.

While the costs to obtain and document match funds are not reimbursable under this Agreement, the Recipient may spend match funds for this task. Match funds must be identified in writing, and the Recipient must obtain any associated commitments before incurring any costs for which the Recipient will request reimbursement.

The Recipient shall:

- Prepare a *Match Funds Status Letter* that documents the match funds committed to this Agreement. If no match funds were part of the application that led to the CEC awarding this Agreement and none have been identified at the time this Agreement starts, then state this in the letter.

  If match funds were a part of the application that led to the CEC awarding this Agreement, then provide in the letter:
  - A list of the match funds that identifies:
    - The amount of cash match funds, their source(s) (including a contact name, address, and telephone number), and the task(s) to which the match funds will be applied.
    - The amount of each in-kind contribution, a description of the contribution type (e.g., property, services), the documented market or book value, the source (including a contact name, address, and telephone number), and the task(s) to which the match funds will be applied. If the in-kind contribution is equipment or other tangible or real property, the Recipient must identify its owner and provide a contact name, address, telephone number, and the address where the property is located.
    - If different from the solicitation application, provide a letter of commitment from an authorized representative of each source of match funding that the funds or contributions have been secured.
- At the Kick-off meeting, discuss match funds and the impact on the project if they are significantly reduced or not obtained as committed. If applicable, match funds will be included as a line item in the progress reports and will be a topic at CPR meetings.
- Provide a *Supplemental Match Funds Notification Letter* to the CAM of receipt of additional match funds.
- Provide a *Match Funds Reduction Notification Letter* to the CAM if existing match funds are reduced during the course of the Agreement. Reduction of match funds may trigger a CPR meeting.

Products:

- Match Funds Status Letter
- Supplemental Match Funds Notification Letter *(if applicable)*
- Match Funds Reduction Notification Letter *(if applicable)*

Subtask 1.9 Permits

The goal of this subtask is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track. Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement, with the exception of costs incurred by University of California Recipients. Permits must be identified and obtained before the Recipient may incur any costs related to the use of the permit(s) for which the Recipient will request reimbursement.

The Recipient shall:

- Prepare a *Permit Status Letter* that documents the permits required to conduct this Agreement. If no permits are required at the start of this Agreement, then state this in the letter. If permits will be required during the course of the Agreement, provide in the letter:

  - A list of the permits that identifies: (1) the type of permit; and (2) the name, address, and telephone number of the permitting jurisdictions or lead agencies.
  - The schedule the Recipient will follow in applying for and obtaining the permits.

  The list of permits and the schedule for obtaining them will be discussed at the Kick-off meeting (subtask 1.2), and a timetable for submitting the updated list, schedule, and copies of the permits will be developed. The impact on the project if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in progress reports and will be a topic at CPR meetings.
- If during the course of the Agreement additional permits become necessary, then provide the CAM with an *Updated List of Permits* (including the appropriate information on each permit) and an *Updated Schedule for Acquiring Permits*.
- Send the CAM a *Copy of Each Approved Permit*.
- If during the course of the Agreement permits are not obtained on time or are denied, notify the CAM within 5 days. Either of these events may trigger a CPR meeting.

Products:
- Permit Status Letter
- Updated List of Permits *(if applicable)*
- Updated Schedule for Acquiring Permits *(if applicable)*
- Copy of Each Approved Permit *(if applicable)*

Subtask 1.10 Obtain and Execute Subawards and Agreements with Site Hosts
The goals of this subtask are to: (1) ensure quality products and to execute subawards and site host agreements, as applicable, required to carry out the tasks under this Agreement; and (2) ensure that the subawards are consistent with the terms and conditions of this Agreement and the Recipient's own procurement and contracting policies and procedures.

The Recipient shall:
- Establish and implement a standardized agreement template or a process for negotiating and executing individual agreements with site hosts. The Recipient may utilize a streamlined approach for site host agreements where applicable, such as standardized agreements for common site types (e.g., residential, commercial) or utilizing existing agreements with property owners or managers.
- Execute and manage subawards and coordinate subrecipients activities in accordance with the requirements of this Agreement.
- Execute and manage site host agreements and ensure the right to use the project site throughout the term of the Agreement, as applicable. A site host agreement is not required if the Recipient is the site host. If it is determined a site selection is not exempt from CEQA then the site will be disqualified from participating in the project.
- Notify the CEC in writing immediately, but no later than five calendar days, if there is a reasonable likelihood the minimum number of project sites cannot be acquired or can no longer be used for the project.
- Incorporate this Agreement by reference into each subaward.
- Include any required Energy Commission flow-down provisions in each subaward, in addition to a statement that the terms of this Agreement will prevail if they conflict with the subaward terms.
- Submit a letter to the CAM describing the subawards and any site host agreement needed or stating that no subawards or site host agreements are required.

- If requested by the CAM, submit a draft of each *Subaward* and any site host agreement required to conduct the work under this Agreement for the CAM to review.
- If requested by the CAM, submit a final copy of each executed subaward and any site host agreement.
- Notify and receive written approval from the CAM prior to adding any new subrecipients or changing subrecipients (see the terms regarding of subRecipient additions in the terms and conditions).

Products:
- Letter describing the subawards needed, or stating that no subawards are required
- Draft subawards *(if requested)*
- Final subawards (if requested)
- Draft site host agreement (if requested)
- Final site host agreement (if requested)

TECHNICAL ADVISORY COMMITTEE

Subtask 1.11 Technical Advisory Committee (TAC)

The goal of this subtask is to create an advisory committee for this Agreement. The TAC should be composed of diverse professionals. The composition will vary depending on interest, availability, and need. TAC members will serve at the CAM's discretion. The purpose of the TAC is to:
- Provide guidance in project direction. Guidance may include scope and methodologies, timing, and coordination with other projects. The guidance may be based on:
  - Technical area expertise;
  - Knowledge of market applications; or
  - Linkages between the Agreement work and other past, present, or future projects (both public and private sectors) that TAC members are aware of in a particular area.
- Review products and provide recommendations for needed product adjustments, refinements, or enhancements.
- Evaluate the tangible benefits of the project to the state of California, and provide recommendations as needed to enhance the benefits.
- Provide recommendations regarding information dissemination, market pathways, or commercialization strategies relevant to the project products.
- Help set the project team's goals and contribute to the development and evaluation of its statement of proposed objectives as the project evolves.
- Provide a credible and objective sounding board on the wide range of technical and financial barriers and opportunities.
- Help identify key areas where the project has a competitive advantage, value proposition, or strength upon which to build.
- Advocate, to the extent the TAC members feel is appropriate, on behalf of the project in its effort to build partnerships, governmental support, and relationships with a national spectrum of influential leaders.
- Ask probing questions that insure a long-term perspective on decision-making and progress toward the project's strategic goals.

The TAC may be composed of qualified professionals spanning the following types of disciplines:
- Researchers knowledgeable about the project subject matter;

- Members of trades that will apply the results of the project (e.g., designers, engineers, architects, contractors, and trade representatives);
- Public interest market transformation implementers;
- Product developers relevant to the project;
- U.S. Department of Energy research managers, or experts from other federal or state agencies relevant to the project;
- Public interest environmental groups;
- Utility representatives;
- Air district staff; and
- Members of relevant technical society committees.

The Recipient shall:

- Prepare a *List of Potential TAC Members* that includes the names, companies, physical and electronic addresses, and phone numbers of potential members. The list will be discussed at the Kick-off meeting, and a schedule for recruiting members and holding the first TAC meeting will be developed.
- Recruit TAC members. Ensure that each individual understands member obligations and the TAC meeting schedule developed in subtask 1.12.
- Prepare a *List of TAC Members* once all TAC members have committed to serving on the TAC.
- Submit *Documentation of TAC Member Commitment* (such as Letters of Acceptance) from each TAC member.

Products:

- List of Potential TAC Members
- List of TAC Members
- Documentation of TAC Member Commitment

Subtask 1.12 TAC Meetings

The goal of this subtask is for the TAC to provide strategic guidance for the project by participating in regular meetings, which may be held via teleconference.

The Recipient shall:

- Discuss the TAC meeting schedule with the CAM at the Kick-off meeting. Determine the number and location of meetings (in-person and via teleconference) in consultation with the CAM.
- Prepare a *TAC Meeting Schedule* that will be presented to the TAC members during recruiting. Revise the schedule after the first TAC meeting to incorporate meeting comments.
- Prepare a *TAC Meeting Agenda* and *TAC Meeting Back-up Materials* for each TAC meeting.
- Organize and lead TAC meetings in accordance with the TAC Meeting Schedule. Changes to the schedule must be pre-approved in writing by the CAM.
- Prepare *TAC Meeting Summaries* that include any recommended resolutions of major TAC issues.

The TAC shall:

- Help set the project team's goals and contribute to the development and evaluation of its statement of proposed objectives as the project evolves.

- Provide a credible and objective sounding board on the wide range of technical and financial barriers and opportunities.
- Help identify key areas where the project has a competitive advantage, value proposition, or strength upon which to build.
- Advocate on behalf of the project in its effort to build partnerships, governmental support and relationships with a national spectrum of influential leaders.
- Ask probing questions that insure a long-term perspective on decision-making and progress toward the project's strategic goals.
- Review and provide comments to proposed project performance metrics.
- Review and provide comments to proposed project Draft Technology Transfer Plan.

Products:
- TAC Meeting Schedule (draft and final)
- TAC Meeting Agendas (draft and final)
- TAC Meeting Back-up Materials
- TAC Meeting Summaries

Subtask 1.13 Project Performance Metrics
The goal of this subtask is to finalize key performance targets for the project based on feedback from the TAC and report on final results in achieving those targets. The performance targets should be a combination of scientific, engineering, techno-economic, and/or programmatic metrics that provide the most significant indicator of the research or technology's potential success.

The Recipient shall:
- Complete and submit the project performance metrics section of the *Initial Project Benefits Questionnaire*, developed in the Evaluation of Project Benefits task, to the CAM.
- Present the draft project performance metrics at the first TAC meeting to solicit input and comments from the TAC members.
- Develop and submit a *TAC Performance Metrics Summary* that summarizes comments received from the TAC members on the proposed project performance metrics. The *TAC Performance Metrics Summary* will identify:
    - TAC comments the Recipient proposes to incorporate into the *Initial Project Benefits Questionnaire*, developed in the Evaluation of Project Benefits task.
    - TAC comments the Recipient does not propose to incorporate with and explanation why.
- Develop and submit a *Project Performance Metrics Results* document describing the extent to which the Recipient met each of the performance metrics in the *Final Project Benefits Questionnaire*, developed in the Evaluation of Project Benefits task.
- Discuss the *Project Performance Metrics Results* at the Final Meeting.

Products:
- TAC Performance Metrics Summary
- Project Performance Metrics Results

IV. **TECHNICAL TASKS**

*Products that require a draft version are indicated by marking **"(draft and final)"** after the product name in the "Products" section of the task/subtask. If "(draft and final)" does not appear after the product name, only a final version of the product is required. **Subtask 1.1 (Products)** describes the procedure for submitting products to the CAM.*

TASK 2: VPP Toolkit Development

The goals of this task are to identify needs, establish a prioritized VPP Development Action Plan, and produce a wide range of essential tools and resources needed to establish and operate a cost-effective VPP capable of producing stable, long-term value for all stakeholders, including a VPP Forecasting Engine, a Value Sharing Plan that provides new and equitable opportunities for customers and industry trade allies, an Economic Dispatch Plan to optimize the VPP's value creation, CAISO and Customer Settlement Procedures, and a VPP Reliability and Security Plan.

The Recipient shall:

- Conduct VPP Needs Assessment and approve *VPP and Customer Adaptation Needs Assessment Report*
- Prepare *VPP Development Action Plan*
- Complete Recipient Data Warehouse Expansion and provide details in a *Data Warehouse Expansion Memo*
- Develop and approve VPP Forecasting Engine and prepare *VPP Forecasting Methodology Report*
- Develop and approve *VPP Value Sharing Plan*
- Develop and approve *VPP Economic Dispatch Plan*
- Develop and approve Participating Customer Settlement Procedures and describe the procedures in a *Participating Customer Settlement Procedures Memo*
- Develop and approve CAISO Bidding and Settlement Procedures and describe the procedures in an *CAISO Bidding and Settlement Procedures Memo*
- Develop and approve *VPP Reliability and Security Plan*

Products:

- VPP and Customer Adaptation Needs Assessment Report
- VPP Development Action Plan (draft and final)
- Data Warehouse Expansion Memo
- VPP Forecasting Methodology Report
- VPP Value Sharing Plan (draft and final)
- VPP Economic Dispatch Plan (draft and final)
- Participating Customer Settlement Procedures Memo
- CAISO Bidding and Settlement Procedures Memo
- VPP Reliability and Security Plan (draft and final)

TASK 3: DERMS Buildout and Testing

The goals of this task are to build out the core capabilities of Recipient's OpenADR-based eDERMS to enable advanced active load shaping and market-integrated demand response applications, and thoroughly testing all eDERMS functions to achieve user acceptance and OpenADR 3.0 VTN certification. The project team will expand the DERMS to include new graphic user interface functions, customer-facing tools and apps to enable an immersive customer experience, automated and predictive dynamic VPP formation logic, and critical integrations with Recipient and CAISO systems and procedures.

The Recipient shall:

- Develop and approve Graphic User Interface (GUI)
- Develop and approve Customer-facing Tools and Apps
- Complete OpenADR 3.0 DERMS Upgrade
- Complete Data Lake and CRM Integrations
- Develop and approve DERMS Automation and Predictive Logic
- Complete CAISO Integrations and Procedures
- Complete integration with Recipient Scheduling and Operations
- Complete eDERMS Testing and obtain *OpenADR 3.0 VTN Certificate*
- Develop and approve *DERMS Testing and Certification Report* that details the development of the GUI, Customer-facings Tools and Apps, OpenADR 3.0 DERMS Upgrade, Data Lake and CRM integrations, DERMS Automation and Predictive Logic, CAISO Integrations and procedures, integration with Recipient Scheduling and Operations and eDERMS Testing.

Products:

- OpenADR 3.0 VTN Certificate
- DERMS Testing and Certification Report

TASK 4: Trade Ally Engagement and Onboarding

The goal of this task is to build a stable of qualified DER vendors, manufacturers, developers, aggregators, financiers and other entities capable of supporting the VPP 2X initiative and delivering high-impact DER products and services to Recipient's VPP participants. Standardized pay-for-performance contracting terms will be offered to streamline contracting and ensure a clear and consistent value proposition for interested trade allies. The Recipient proposes to administer two rounds of Requests for Proposals (RFPs) during the project timeline, to onboard two cohorts of trade allies to support program delivery. Priority will be given to respondents that service disadvantaged, low-income, and other underserved market segments and communities, as well as those who have high numbers of existing DERs already deployed within Recipient's service territory that can be easily enrolled in the VPP DERMS.

The Recipient shall:

- Develop and approve *Trade Ally Engagement Plan*
- Prepare Industry *Trade Ally Informational Webinar Recording*
- Complete *Trade Ally Request for Proposals Round 1*
- Complete *Trade Ally Request for Proposals Round 2*
- Complete Trade Ally Solicitations and Contracting
- Complete Trade Ally DERMS Integrations
- Prepare and submit a CPR Report #1.

Products:

- Trade Ally Engagement Plan (draft and final)
- Trade Ally Informational Webinar Recording
- Trade Ally Request for Proposals Round 1(draft and final)
- Trade Ally Request for Proposals Round 2(draft and final)
- CPR Report #1

TASK 5: Customer Program Adaptations
The goals of this task is to establish a Program Adaptation Plan that identifies a step-by-step process for adapting MCE's existing Customer Programs to enable participants to easily enroll in Recipient's DERMS. Current Recipient programs available to residential, municipal, commercial, and industrial customers within the service territory include incentives for whole home retrofits, battery energy storage systems, electric vehicles and related charging equipment, agricultural and industrial equipment, and more. Projects that are eligible for incentives must have received required permits and must be exempt from CEQA. Leveraging the VPP and Customer Adaptation Needs Assessment Report developed in Task 2, all of these programs will be adapted to include equipment that is compatible with Recipient's eDERMS platform, as well as marketing materials promoting the value and benefits of participating in the VPP program. Trade allies and program partners will receive the training and education necessary to effectively offer the VPP program and field customer questions.

The Recipient shall:
- Develop and approve *Program Adaptation Plan*
- Complete Program Adaptations including:
    - Screening and evaluation of incentive sites for permitting requirements and environmental review.
- Provide *Confirmation of Incentive Site Letter(s)* with information on how each location and all installations are exempt from CEQA for CAM review.
- Identify Equitable Project Financing Options

Products:
- Program Adaptation Plan (draft and final)
- Confirmation of Incentive Site Letter(s)

TASK 6: Customer Outreach and Enrollment
The goal of this task is to prepare a Community Engagement Plan and coordinate the implementation of that plan with the project team and contracted trade allies to market the program throughout the service territory. Priority will be given to disadvantaged and underserved communities. The Recipient will provide targeted leads and technical assistance to participating trade allies to support project assessments and engineering, proposal development, and customer interactions to facilitate effective outreach and enrollment of customers, and registration of the DERs and customers in Recipient's DERMs.

The Recipient shall:
- Develop and Approve *Community Engagement Plan*
- Implement Community Engagement Plan

Products:
- Community Engagement Plan (draft and final)
- Confirmation of Incentive Site

TASK 7: DER Deployment and Registration
The goal of this task is to deploy and register new DERs and the registration of existing DERs that have already been deployed with Recipient's DERMS platform, enabling a rapid and cost-effective scale-up of the VPP's capacity and flexible load management capabilities. DERs will

include PV, BESS, EVs and EVSE, load controllers, building automation systems, HPHW, Heat pump-HVAC, smart thermostats and climate control devices, Home Area Networks (HAN), Non-Intrusive Load Monitoring (NILM), and more. This diversity of eligible technologies will yield a diversified portfolio of DERs that enables a wide range of dynamic VPP use cases. The Recipient's proposed strategy will reduce the time and expense associated with that scale up by taking advantage of existing assets that do not require long sales cycles, permitting or interconnection processes, or supply chain delays. This approach will improve cost-effectiveness and ensure that the Recipient can achieve the proposed objectives for reliable, long-term flexible load capacity for the VPP.

Allowable DERs include:

- PV systems that are either constructed on the roof of an existing building or an existing parking lot and may include associated equipment with a footprint of 500 square feet. The site must not contain plants protected by the Native Plant Protection Act or the removal of a native tree over 25 years old. The associated equipment must not require a Section 401 or 404 Clean Water Act permit or a waste discharge under the Porter-Cologne Water Quality Control Act, an individual take permit for Endangered Species or a streambed alteration permit.
- PV system, battery storage, EVSE, load controllers, building automation systems, heat pumps, smart thermostats, climate control devices or related devices that consist of operation, repair, or minor alteration of existing structures, facilities, mechanical equipment involving negligible or no expansion of existing or former uses.
  - Additions to existing structures that will not result in an increase of more than 10,000 sq.ft. if the project location is not environmentally sensitive.
  - Installation of the DER must not have a significant effect on the environment due to unusual circumstances, result in damage to scenic resources within a state scenic highway, involve a listed hazardous waste site or cause a substantial adverse change in the significance of a historical resource.

The Recipient shall:

- Conduct DER Project Development and Tracking including screening for permitting requirements and confirmation that selected DER projects are exempt from CEQA
- Develop and approve *DER Project Development Tracker*
- Develop and approve *Demand Response Registration System (DRRS) Registration Log*
- Lead Customer Communication and Coordination
- Lead Trade Ally and Contractor Management and Coordination
- Coordinate DER Installation, Commissioning, and DERMS Registration
- Manage Participant Registration in the DRRS
- Develop and approve a *DER Deployment and Registration Memo* that details the Lead Customer Communication and Coordination, Lead Trade Ally and Contractor Management and Coordination, DER Installation, Commissioning, and DERMS Registration and Participant Registration in the DRRS

Products:

- DER Project Development Tracker
- DRRS Registration Log
- DER Deployment and Registration Memo

TASK 8: VPP Operation and Optimization
The goal of this task is to ensure security and reliability and optimal performance over the project timeline, where the project team will operate the VPP on a 24/7 basis 365 days per year. The team will manage customer interactions and coordinate contractor and trade ally activities using simple communications enabled by OpenADR. New use cases will be developed, modeled, tested, implemented, and refined to enhance system performance and overall VPP value creation. The automation and predictive dynamic VPP formation logic will be implemented to support both CAISO market-integrated demand response, and active load shaping use cases designed to reduce Recipient's costs of operation and market risk exposure.

The Recipient shall:
- Conduct Use Case Development and Refinement
- Manage Participating Customer Interactions
- Manage Trade Ally Communication and Coordination
- Implement Automated and Predictive VPP Use Cases
- Place Schedule in CAISO markets
- Deliver Customer VPP Bill Credits and Annual True-ups
- Manage VPP Performance Tracking and Reporting
- Manage DERMS Software Maintenance
- Develop and approve *DERMS Performance Reports (x3)*
- Develop and approve *VPP Operation and Optimization Memo* that details Use Case Development and Refinement, Participating Customer Interactions, Trade Ally Communication and Coordination and Implementation of the Automated and Predictive VPP Use Cases
- Prepare and submit a *CPR Report #2*.

Products:
- DERMS Performance Reports (x3)
- VPP Operation and Optimization Memo
- CPR Report #2

TASK 9: MEASUREMENT AND VERIFICATION
The goal of this task is to secure a qualified independent Measurement and Verification (M&V) provider through an open public solicitation. This vendor will be responsible for refining and implementing the proposed M&V Plan. Three comprehensive M&V Reports will be prepared to validate the DERMS and VPP Program performance and related customer bill true-up calculations.

The goals of this task are to:
- Establish a baseline for best-in-class or industry-standard equipment
- Measure and verify the performance of grant-funded equipment relative to the established baseline
- Quantify demonstration performance and associated benefits

The Recipient shall:
- Engage an independent third-party to describe, define, and validate performance of best-in-class and industry-standard equipment to serve as a baseline for measurement and verification.
    - Develop and approve *M&V Provider Contract*

  - Develop rigorous process performance estimations that reflect best-in-class performance at selected sites.
  - Prepare analysis of capital costs (CapEx), operating expenses (OpEx), Utilities usage, permitting risks, and life cycle analysis (LCA) for best-in-class baseline on equivalent basis.
- Prepare and provide a detailed *M&V Plan* to include:
  - A description of monitoring and data collection equipment.
  - A description of data to be measured, to what purpose, and in what terms.
  - Identification of required data acquisition criteria, such as steady state operation and sampling frequency, for all parameters.
  - A description of the analysis methods to be employed to allow for measurement of all performance criteria listed in the Agreement Objectives section of this Scope of Work.
  - Description of the third-party measurement and verification party and services to be employed.
  - Identification of additional information that will be necessary to complete the measurement and verification task (e.g., costs for implementing baseline design vs. proposed design).
  - Identification of system operating modes and/or procedures to enable comparison of the baseline design vs. proposed design.
- Submit the independent third-party's *M&V Parameters Report* to describe, define, and validate baseline for best-in-class and industry standard equipment.
- Prepare and provide three *M&V Findings Reports*.

Products:
- M&V Provider Contract
- M&V Plan (draft and final)
- M&V Parameters Report
- M&V Findings Reports (x3)

TASK 10: EVALUATION OF PROJECT BENEFITS

The goal of this task is to report the benefits resulting from this project. The project team will focus on establishing the expected net project benefits and monitoring progress towards meeting those objectives with annual Assessment Reports. The project team will analyze the cost-effectiveness of the project, including the required 4 year Cost Recovery Target evaluation, which will be included in the Reports.

The Recipient shall:
- Complete *the Initial Project Benefits Questionnaire*. The Initial Project Benefits Questionnaire shall be initially completed by the Recipient with 'Kick-off' selected for the 'Relevant data collection period' and submitted to the CAM for review and approval.
- Complete the *Annual Survey* by January 31st of each year. The Annual Survey includes but is not limited to the following information:
  - Technology commercialization progress
  - New media and publications
  - Company growth
  - Follow-on funding and awards received

- Complete the *Final Project Benefits Questionnaire*. The Final Project Benefits Questionnaire shall be completed by the Recipient with 'Final' selected for the 'Relevant data collection period' and submitted to the CAM for review and approval.
- Respond to CAM questions regarding the questionnaire drafts.
- Complete and update the project profile on the CEC's public online project and Recipient directory on the Energize Innovation website (www.energizeinnovation.fund), and provide *Documentation of Project Profile on EnergizeInnovation.fund*, including the profile link.
- If the Prime Recipient is an Innovation Partner on the project, complete and update the organizational profile on the CEC's public online project and Recipient directory on the Energize Innovation website (www.energizeinnovation.fund), and provide *Documentation of Organization Profile on EnergizeInnovation.fund*, including the profile link.

Products:

- Initial Project Benefits Questionnaire
- Annual Survey(s)
- Project Net Benefits and Cost Recovery Assessment Reports (x3)
- Final Project Benefits Questionnaire
- Documentation of Project Profile on EnergizeInnovation.fund
- Documentation of Organization Profile on EnergizeInnovation.fund

TASK 11: TECHNOLOGY/KNOWLEDGE TRANSFER ACTIVITIES

The goal of this task is to ensure the technological learning that resulted from the demonstration(s) is captured and disseminated to the range of professions that will be responsible for future deployments of this technology or similar technologies, as well as other key stakeholders in Recipient's VPP 2X initiative.

The Recipient Shall:

- Develop and submit a *Project Case Study Plan* that outlines how the Recipient will document the planning, construction, commissioning, and operation of the technology or system being demonstrated. The Project Case Study Plan should include:
  - An outline of the objectives, goals, and activities of the case study.
  - The organization that will be conducting the case study and the plan for conducting it.
  - A list of professions and practitioners involved in the technology's deployment.
  - Specific activities the Recipient will take to ensure the learning that results from the project is disseminated to those professions and practitioners.
  - Presentations/webinars/training events to disseminate the results of the case study.
- Present the draft *Project Case Study Plan* to the TAC for review and comment.
- Develop and submit a *Summary of TAC Comments* that summarizes comments received from the TAC members on the draft *Project Case Study Plan*. This document will identify:
  - TAC comments the Recipient proposes to incorporate into the final *Technology Transfer Plan*.

    - TAC comments the Recipient does not propose to incorporate with and explanation why.
- Submit the final *Project Case Study Plan* to the CAM for approval.
- Execute the final Project Case Study Plan and develop and submit a *Project Case Study.*
- When directed by the CAM, develop presentation materials for a CEC sponsored conference/workshop(s) on the project.
- When directed by the CAM, participate in the annual EPIC symposium(s) sponsored by the California CEC.
- Provide at least (6) six *High Quality Digital Photographs* (minimum resolution of 1300x500 pixels in landscape ratio) of pre and post technology installation at the project sites or related project photographs.

Products:
- Project Case Study Plan (draft and final)
- Summary of TAC Comments
- Project Case Study (draft and final)
- High Quality Digital Photographs

V. PROJECT SCHEDULE

Please see the attached Excel spreadsheet.

Marin Clean Energy				
Agreement Term: 04-1-2025 to 3-30-2029				
Within this Scope of Work, "days" means business days.				
Changes to due dates must be approved in writing by the CAM, and may require approval by the CEC's Executive Director or his/her designee.				
Task/ Subtask #	**Task/Subtask Name**	**Meeting Name**	**Product(s)**	**Due Date**
1	**General Project Tasks**			
1.1	Products			
1.2	Kick-off Meeting	Kick-off Meeting		4/15/2025
			Kick-off Meeting Presentation	5 days prior to Kick-off Meeting
			Updated Project Schedule *(if applicable)*	5 days after determination of the need to update the documents
			Match Funds Status Letter (subtask 1.7) *(if applicable)*	
			Permit Status Letter (subtask 1.8) *(if applicable)*	
			CAM Product	
			Kick-off Meeting Agenda	7 days prior to the kick-off meeting
1.3	CPR Meeting	CPR Meeting #1		6/1/2026
		CPR Meeting #2		6/1/2027
			CPR Report(s)	15 days prior to the CPR meeting
			CAM Products	
			CPR Agenda	5 days prior to the CPR meeting
			Progress Determination	As indicated in the Schedule for Providing a Progress Determination
1.4	Final Meeting	Final Meeting		2/28/2029
			Final Meeting Agreement Summary *(if applicable)*	7 days after the final meeting
			Schedule for Completing Agreement Closeout Activities	7 days after the final meeting
			All Final Products	7 days after the final meeting
1.5	Monthly Calls		Email to CAM concurring with call summary notes	5 days after the call
1.6	Quarterly Progress Reports and Invoices		Quarterly Progress Reports	10 days after the first of the months of January, April, July, and October.
			Invoices	10 days after the first of each month or quarter
			CAM Products	
			Invoice Template	7 days prior to the kick-off meeting
1.7	Final Report			
1.7.1	Final Report Outline		Draft Final Report Outline	6-2-2028
			Final Report Outline	As determined by the CAM
			CAM Products	
			Energy Commission Style Manual	At least 2 months prior to the final report outline due date
			Comments on Draft Final Report Outline	10 days after receipt of the Draft Final Report Outline
			Approval of Final Report Outline	10 days after receipt of the Final Report Outline
1.7.2	Final Report		Summary of TAC Comments on Draft Final Report	9-4-2028
			Draft Final Report	08-02-2028
			Written Responses to Comments *(if applicable)*	10-2-2028
			Final Report	11-2-2028
			CAM Products	
			Written Comments on Draft Final Report	15 days after receipt of the Draft Final Report
1.8	Match Funds		Match Funds Status Letter	2 days prior to the kick-off meeting
			Supplemental Match Funds Notification Letter *(if applicable)*	10 days after receipt of additional match funds
			Match Funds Reduction Notification Letter *(if applicable)*	10 days after any reduction of match funds
1.9	Permits		Permit Status Letter	2 days prior to the kick-off meeting
			Updated List of Permits *(if applicable)*	10 days after determination of the need for a new permit
			Updated Schedule for Acquiring Permits *(if applicable)*	10 days after determination of the need for a new permit
			Copy of Each Approved Permit *(if applicable)*	7 days after receipt of each permit
1.10	Subawards		Subawards *(if requested by the CAM)*	As determined by the CAM
1.11	Technical Advisory Committee (TAC)		List of Potential TAC Members	2 days prior to the kick-off meeting
			List of TAC Members	7 days after finalization of the TAC
			Documentation of TAC Member Commitment	7 days after receipt of the documentation
1.12	TAC Meetings	TAC Meeting #1		3/2/2026
		TAC Meeting #2		3/1/2027
			Draft TAC Meeting Schedule	20 days after the kickoff meeting
			Final TAC Meeting Schedule	10 days after the first TAC meeting
			Draft TAC Meeting Agendas	20 days prior to each TAC meeting
			TAC Meeting Back-up Materials	20 days prior to each TAC meeting
			Final TAC Meeting Agenda	7 days prior to each TAC meeting
			TAC Meeting Summaries	10 days after each TAC meeting
1.13	Project Performance Metrics		TAC Performance Metrics Summary	10 days after first TAC meeting
			Project Performance Metrics Results	Same date as the Draft Final Report due date

Technical Tasks				
2	VPP Toolkit Development		VPP and Customer Adaptation Needs Assessment Report	6/30/2025
			Draft VPP Development Action Plan	5/15/2025
			Final VPP Development Action Plan	6/17/2025
			Data Warehouse Expansion Memo	6/1/2026
			VPP Forecasting Methodology Report	1/16/2026
			Draft VPP Value Sharing Plan	3/16/2026
			Final VPP Value Sharing Plan	4/16/2026
			Draft VPP Economic Dispatch Plan	7/16/2026
			Final VPP Economic Dispatch Plan	8/17/2026
			Participating Customer Settlement Procedures Memo	11/22/2027
			CAISO Bidding and Settlement Procedures Memo	11/22/2027
			Draft VPP Reliability and Security Plan	10/15/2026
			Final VPP Reliability and Security Plan	11/16/2026
3	DERMS Buildout and Testing		OpenADR 3.0 VTN Certificate	4/15/2027
			DERMS Testing and Certification Report	2/15/2027
4	Trade Ally Engagement and Onboarding		Draft Trade Ally Engagment Plan	10/16/2025
			Final Trade Ally Engagment Plan	11/17/2025
			Trade Ally Informational Webinar Recording	6/29/2026
			Draft Trade Ally Request for Proposals Round 1	5/15/2026
			Final Trade Ally Request for Proposals Round 1	7/15/2026
			Draft Trade Ally Request for Proposals Round 2	5/17/2027
			Final Trade Ally Request for Proposals Round 2	7/15/2027
5	MCE Customer Program Adaptations		Draft Program Adaptation Plan	6/16/2025
			Final Program Adaptation Plan	7/17/2025
			Confirmation of Incentive Site Letters(s)	As sites are selected
6	Customer Outreach and Enrollment		Draft Community Engagement Plan	6/2/2025
			Final Community Engagement Plan	7/3/2025
7	DER Deployment and Registration		Project Development Tracker	1/15/2026
			DRRS Registration Log	9/4/2028
			DER Deployment and Registration Memo	9/4/2028
8	VPP Operation and Optimization		First DERMS Performance Report	1/15/2027
			Second DERMS Performance Report	1/14/2028
			Third DERMS Performance Report	9/4/2028
			VPP Operation and Optimization Memo	9/15/2028
9	Measurement and Verification (M&V)		M&V Provider Contract	1/15/2026
			Draft M&V Plan	4/16/2026
			Final M&V Plan	7/16/2026
			M&V Parameters Report	6/15/2026
			First M&V Findings Report	2/15/2027
			Second M&V Findings Report	2/17/2028
			Third M&V Findings Report	9/4/2028
10	Evaluation of Project Benefits		Initial Project Benefits Questionnaire	10/15/2025
			Annual Survey(s)	January 31st of each agreement year
			Final Project Benefits Questionnaire	Same date as the Draft Final Report due date
			Documentation of Project Profile on EnergizeInnovation.fund	30 days after the Kick-off Meeting
			Documentation of Organization Profile on EnergizeInnovation.fund	30 days after the Kick-off Meeting
			Project Net Benefits and Cost Recovery Assessment Report (Y2)	5/17/2027
			Project Net Benefits and Cost Recovery Assessment Report (Y3)	5/17/2028
			Project Net Benefits and Cost Recovery Assessment Report (Y4)	9/4/2028
11	Technology/Knowledge Transfer Activities		Draft Project Case Study Plan	30 days prior to TAC Meeting #1
			Final Project Case Study Plan	30 days after TAC Meeting #1
			Summary of TAC Comments	30 days after TAC Meeting #1
			Draft Project Case Study	Same date as the Draft Final Report due date
			Final Project Case Study	30 days after the Draft Project Case Study due date
			High Quality Digital Photographs	Same date as the Draft Final Report due date
			Participating Customer Orientation	2/27/2026
			MCE Service Provider Training	5/14/2027
			MCE Board and Staff Training	8/16/2027
			Trade Ally and Contractor Training	11/15/2027
			VPP Technology Webinar	2/18/2028
			Stakeholder Training and Education Report	5/15/2028
			Symposium Agenda	1/15/2029

EXHIBIT C

ELECTRIC PROGRAM INVESTMENT CHARGE (EPIC) STANDARD GRANT TERMS AND CONDITIONS

TABLE OF CONTENTS:

EXHIBIT C

TERMS AND CONDITIONS

1. INTRODUCTION

This grant agreement (Agreement) between the California Energy Commission (Energy Commission, Commission, or CEC) and the Recipient is funded by the Electric Program Investment Charge (EPIC), an electricity ratepayer surcharge authorized by the California Public Utilities Commission (CPUC).

This Agreement includes: (1) the Agreement signature page **(form CEC-146)**; (2) the scope of work **(Exhibit A)**; (3) the budget **(Exhibit B)**; (4) these terms and conditions **(Exhibit C)**; (5) any special terms and conditions that address the unique circumstances of the funded project **(Exhibit D)**; (6) a contacts list **(Exhibit E)**; (7) all attachments; and (8) all documents incorporated by reference.

All work and expenditure of funds (CEC-reimbursed and/or match share) must occur within the Agreement term specified on the CEC-146 form.

2. DOCUMENTS INCORPORATED BY REFERENCE

The documents below are incorporated by reference into this Agreement. These terms and conditions (this Exhibit C and if included, Exhibit D) will govern in the event of a conflict with the documents below, with the exception of the documents in subsections (e) and (f) below. Where this Agreement or California laws and regulations are silent or do not apply, the CEC will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Solicitation Documents (if award is made through a competitive solicitation)

a. The funding solicitation for the project supported by this Agreement
b. The Recipient's proposal submitted in response to the solicitation

Federal Cost Principles *(applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations)*

c. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations *(applicable to commercial organizations)*

d. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

e. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance

General Laws

f. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. STANDARD OF PERFORMANCE

In performing work under the Agreement, the Recipient, its Subrecipients, and any lower tiered level of Sub-Subrecipients, and Vendors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

4. DUE DILIGENCE

The Recipient must take timely actions that, taken collectively, move this project to completion. The Commission Agreement Manager (CAM) will periodically evaluate the project schedule for completion of Scope of Work tasks. If the CAM determines that: (1) the Recipient is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, the CAM may recommend that this Agreement be terminated, and the Commission may terminate this Agreement without prejudice to any of its other remedies.

5. PRODUCTS

a. **"Products"** are any tangible item specified for delivery to the CEC in the Scope of Work, such as reports and summaries.

If the CAM determines that a product is substandard given its description and intended use as described in this Agreement, the CAM, without prejudice to any of the CEC's other remedies, may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

b. Confidential Products

Please see Section 18 (Confidential Recipient Information) for instructions regarding confidential recipient information in products.

c. Rights in Products

The CEC owns all products identified in the Scope of Work, with the exception of products that fall within the definition of "intellectual property." As between the CEC and the Recipient, the Recipient owns all intellectual property developed under this Agreement (please see the "Intellectual Property" section).

The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce products that do not fall within the definition of "intellectual property."

d. Failure to Submit Products

A Recipient's failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in CEC actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

e. Final Report and Payment

The Recipient may only submit a request for the final payment (including any retention) after the final report is completed, submitted to the CAM, and Energy Research and Development Division management has verified satisfactory completion of work.

f. Legal Statements on Products

1) All documents that result from work funded by this Agreement and are released to the public must include the following statement to ensure no Commission endorsement of documents:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. Neither the Commission, the State of California, nor the Commission's employees, contractors, or subcontractors makes any warranty, express or implied, or assumes any legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This document has not been approved or disapproved by the Commission, nor has the Commission passed upon the accuracy of the information in this document.

2) The Recipient will apply copyright notices to all documents prepared for this Agreement that are released to the public (including reports, articles submitted for publication, and all reprints) using the following form or any other form that may be reasonably specified by the CEC.

“©[Year of first publication of product] [the Copyright Holder’s name]. All Rights Reserved.”

6. AMENDMENTS

a. Procedure for Requesting Changes

The Recipient must submit a written request to the CAM for any change to the Agreement. The request must include:

- A brief summary of the proposed change;
- A brief summary of the reason(s) for the change; and
- The revised section(s) of the Agreement, with changes made in underline/ strikethrough format.

b. Approval of Changes

Unless otherwise allowed in this Agreement, no amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the CEC’s unilateral termination rights in Section 16 of these terms. No oral understanding or agreement is binding on any of the parties. Changes to the Agreement must be approved at a CEC business meeting or by the Executive Director (or his/her designee).

Upon Recipient’s request, the CAM or Commission Agreement Officer will provide the Recipient with a document titled “Changes to Grants – Level of Approval and Notification Chart” commonly referred to as the “Changes Chart.” This document explains the level of CEC approval required for a proposed change.

c. Personnel Changes

Except when replacing “key personnel,” the Recipient, Subrecipients, and any lower-tiered level of Sub-Subrecipient, and Vendors can make changes to their respective personnel without written approval. Although changes to “key personnel” do require written approval, that approval can be requested and granted through an email communication or other form of written communication.

Recipients may be reimbursed for actual expenses incurred by new “key personnel” during the term of the Agreement, even if written approval comes after an individual begins work on the project. However, if the replacement is not approved, then the CEC will not reimburse for any expenses charged for the individual. Accordingly, Recipients are strongly encouraged to obtain advance written approval for “key personnel” or risk not being reimbursed for their work.

Recipient must keep the CAM informed of personnel changes through monthly calls and quarterly progress reports. In addition to any other rights and remedies available to the CEC, the CEC retains its authority to issue a Stop Work Order if it becomes clear that the personnel, key or otherwise, of the Recipient, a Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor are unable to fulfill their responsibilities under the Agreement. In addition to all other rights and remedies, the CEC shall not pay (or may require Recipient to repay if the CEC has already paid) for personnel who are unnecessary to complete the scope of work or otherwise perform under the Agreement.

d. Budget Reallocations

No CEC approval is needed for a Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient to move funds **within** each of the following Budget Categories listed in Exhibit B: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors, and Indirect Costs. However, please note per parts e. and h., directly below in this Section 6, any new Materials and Miscellaneous, Equipment, Subrecipient, Sub-Subrecipient or any lower-tiered level of Sub-Subrecipient or Vendor not listed in the Exhibit B does need approval prior to reimbursement. If the Recipient wants to move funds between Budget Categories or submits an invoice that if paid would exceed a Budget Category, the Recipient has at least the following choices:

1) Request an amendment from the CEC. The CEC shall not pay the invoice if and until an amendment is executed. In its sole discretion, the CEC might pay the portion of the invoice that does not involve the amount that goes beyond the Budget Category.

2) Retract the invoice and resubmit a corrected one that keeps within Budget Categories. The Recipient can treat the amount paid beyond the Budget Category as match funds if the expenditure meets all of the applicable Agreement requirements for match funds.

Neither this nor any other flexibility in these terms for approval without executing an amendment allows the Recipient, Subrecipient, Sub-Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor to exceed the overall Agreement amount.

e. New Items Under Materials and Miscellaneous, and Equipment

Without having to execute an amendment to this Agreement, the CAM must approve in writing of any new materials and miscellaneous expenses of $5,000 or more or new equipment the Recipient, Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor plans to purchase and be reimbursed under this Agreement that is not already listed in Exhibit B, Budget. To accomplish this, the Recipient can submit either prior to invoicing or with its invoice a completed form titled “NEW EQUIPMENT/M&M FORM” which includes a description of the item and a brief explanation of the need for the item. The CAM will approve items that he or she determines to be necessary to the Agreement and do not exceed budgeted amounts for each Budget Category unless Recipient follows the process in this Section 6, part d. directly above.

Any restrictions in the solicitation or elsewhere in the Agreement still apply to the specific items under Materials and Miscellaneous, and Equipment that can be purchased using CEC Funds or Match Share Funds. The restrictions still apply even though a CAM does not have to approve new materials and miscellaneous expenses under $5,000.

f. Assignment of New Personnel to a New or Existing Job Classification

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can assign new personnel to a new or existing job classification without CEC approval. However, the Recipient shall keep the CAM informed of all personnel changes and provide any information requested by the CAM during monthly calls and/or quarterly progress reports.

g. Promotion of Existing Personnel to a New or Existing Job Classification

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can promote existing personnel to a new or existing job classification without CEC approval. However, the Recipient shall keep the CAM informed of all personnel changes and provide any information requested by the CAM during monthly calls and/or quarterly progress reports. However, as stated in section 8.c. below, the CEC will not pay more than the total amount in each Budget Category, including Direct Labor, without an amendment.

h. Replacing Subrecipients or Vendors

Under these Terms, all changes of Subrecipients and Vendors require advance written approval by at least the CAM. A higher level of approval may be required based on CEC policy. Required approvals are included in the “Changes to Grants – Level of Approval and Notification Chart” commonly referred to as the “Changes Chart.”

Recipients may be reimbursed for actual expenses incurred by a new Vendor during the term of this Agreement, even if CEC written approval comes after the entity has completed work on the project. However, if the new Vendor is not approved by the CEC, the CEC will not reimburse for any expenses charged for the entity. Accordingly, Recipients are strongly encouraged to obtain **advance** written approval for new Vendors or risk not being reimbursed for their work.

However, any work completed by an entity that may replace an existing Subrecipient WILL NOT BE REIMBURSED for any work completed prior to advance written approval. If a Subrecipient expends funds prior to approval, they can only be claimed as Match Funds.

7. CONTRACTING AND PROCUREMENT PROCEDURES

This section provides general requirements for Subawards entered into between the Recipient and Subrecipients and Vendors for the performance of this Agreement.

a. Recipient's Obligations to Subrecipients and Vendors

1) The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any Subawards it enters into for the performance of this Agreement.

2) Except for the "CEC as Third-Party Beneficiary" term (see section 22.m), nothing contained in this Agreement or otherwise creates any contractual relation between the CEC and any Subrecipients and Vendors, and no Subaward may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the CEC for the acts and omissions of its Subrecipients and Vendors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.

   The Recipient's obligation to pay its Subrecipients and Vendors is an independent obligation from the CEC's obligation to make payments to the Recipient. As a result, the CEC has no obligation to pay or enforce the payment of any funds to any Subrecipient or Vendor.

3) The Recipient is responsible for establishing and maintaining Subawards with and reimbursing each Subrecipient and Vendor for work performed in accordance with the terms of this Agreement.

4) A Subrecipient is defined as a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the Agreement's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services.

   Characteristics that support the classification of the entity as a Subrecipient include when the entity:

   - Has its performance measured in relation to whether objectives of a CEC program were met;
   - Has responsibility for programmatic decision-making;

- Is responsible for adherence to applicable CEC program requirements specified in the CEC award agreement;
- In accordance with its agreement, uses the CEC funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Recipient or Subrecipient; or,
- Provides match share funding contributions to this Agreement.

A Sub-Subrecipient has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient. There can also be further levels below of Sub-Subrecipients.

5) A Vendor is defined as a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the Agreement's activities. The Vendor's role is ministerial and does not involve discretion over Agreement activities. A Vendor is an entity selected through a competitive process or is otherwise providing a product or service at a fair and reasonable price. Characteristics indicative of a procurement relationship between the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient and a Vendor are when the Vendor:

- Provides the goods and services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Normally operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the CEC program; and
- May not be subject to compliance with all of the requirements of the CEC program as a result of the agreement, though similar requirements may apply for other reasons.

b. Subrecipient Flow-Down Terms

Subrecipients funded in whole or in part by this Agreement must include language conforming to the terms below, unless the Subawards are entered into by the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. UC may use the terms and conditions negotiated by the CEC with UC for its Subawards. DOE national laboratories may use the terms and conditions negotiated with DOE (please contact the Commission Grants Officer for these terms).

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, “Products”). This term does not have to be included if the Subrecipient will not generate any Products.
- Profit (Section 7.g.)
- Travel and Per Diem (Section 9). This term does not have to be included if the Subrecipient will not be reimbursed for travel with CEC funds.
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14). This term does not have to be included if the Subrecipient will not be reimbursed for equipment with CEC funds. Termination, Executive Order N-6-22 – Russia Sanctions (Section 16.d)
- Indemnification (Section 17)
- Confidential Recipient Information (Section 18). This term does not have to be included if the Subrecipient will not have access to or generate Confidential Recipient Information as defined in Section 18.
- Pre-Existing and Independently Funded Intellectual Property (Section 19)
- Intellectual Property (Section 20)
- Royalty Payments to the Commission (Section 21)
- Access to Sites and Records (included in Section 22, “General Provisions”)
- CEC as Third-Party Beneficiary (included in Section 22, “General Provisions”)
- Nondiscrimination (included in Section 23, “Certifications and Compliance”)
- California Taxpayer Access to Publicly Funded Research Act (Section 24)
- Receipt of Confidential Information and Personal Information (Section 26)

- Survival of the following sections:
    - Equipment (Section 14)
    - Recordkeeping, Cost Accounting, and Auditing (Section 11)
    - Pre-Existing and Independently Funded Intellectual Property
    - (Section 19)
    - Intellectual Property (Section 20)
    - Royalty Payments to the Commission (Section 21)
    - Access to Sites and Records (included in Section 22, “General Provisions”)
    - CEC as Third Party Beneficiary (included in Section 22, “General Provisions”)
    - California Taxpayer Access to Publicly Funded Research Act (Section 24)
    - Receipt of Confidential Information and Personal Information (Section 26)

Subrecipients funded in whole or in part by this Agreement must also include the following:

- A clear and accurate description of the material, products, or services to be procured.
- A detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors breach contract terms, in addition to sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- A statement that further assignments will not be made to any third or
- subsequent tier subcontractor without additional advance written consent of the Commission.

c. Vendor Flow-Down Terms

The flow-down requirements either come from the CEC or the law. Recipient does not have to include any of the CEC-created Subrecipient flow-down terms in its Subawards with Vendors unless it is necessary for the Recipient to meet its obligations to the CEC under this Agreement. But the Recipient is still required to make sure Vendors comply with all applicable laws. For example, the Recipient still must ensure any Vendor complies with applicable Public Work Requirements, including the payment of prevailing wage, and also with the Nondiscrimination clause. These are requirements under the law.

The Recipient does not have to include in its Subawards with Vendors, CEC-created terms, such as Equipment, Travel and Per Diem, Retention of Records, and Audits, if the Recipient does not need them to fulfill its obligations to the CEC. An example of when the Recipient might need to include a CEC-created term in a Vendor Subaward is if intellectual property and royalty payments are involved. The Recipient must ensure the CEC has the intellectual property rights required under this Agreement and receives royalty payments due. If, for example, a Vendor creates intellectual property that the Recipient provides to the CEC as part of this Agreement, the Recipient shall ensure its Vendor Subaward secures the appropriate rights. Another example is the receipt of confidential information of personal information. If a vendor will have access to confidential information of personal information provided by the Energy Commission or a third-party for the performance of this Agreement, the Recipient must ensure its agreement with the vendor includes the Energy Commission's special terms and conditions for the receipt of confidential information and personal information before the vendor has access to any such information.

d. Audits

All Subawards entered into for the performance of this Agreement are subject to examination and audit by the CEC and/or Bureau of State Audits for a period of three (3) years after payment of the Recipient's final invoice under this Agreement. The CEC may audit Subawards that are relevant to the Recipient's royalty payment obligations (see Section 21) for a period of ten (10) years after this Agreement's end date.

e. Copies of Subawards

The Recipient must provide a copy of its Subawards upon request by the CEC.

f. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the CAM of any known or reasonably foreseeable conflicts between this Agreement and any of its Subawards (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the CAM of the conflict within fifteen (15) days of discovery. The CEC may, without prejudice to its other remedies, terminate this Agreement if any conflict impairs or diminishes its value.

g. Profit

1) Recipient shall ensure that only Subrecipients, Sub-Subrecipients, and Vendors meeting the definition of an "Unrelated Company" include in their budgets, invoice for, and receive a profit.

2) For purposes of this Agreement, an Unrelated Company is defined as a for-profit business, appropriately licensed and in good standing, that does NOT meet any of the following criteria:

a) Directly or indirectly, partially or fully owns or controls Recipient. This includes, but is not limited to, owning 5% or more of Recipient's stock.

b) Is directly or indirectly, partially or fully owned or controlled by Recipient. This includes, but is not limited to, having 5% or more of stock owned by Recipient.

c) Has one or more common employees, including, but not limited to, owners, officers, directors, or managers, with Recipient.

d) Shares a Parent Company with Recipient. For purposes of this Agreement, Parent Company is defined as an entity that directly or indirectly, partially or fully owns or controls both the Recipient and the Subrecipient or Sub-Subrecipient or shares the same employees with them. This includes, but is not limited to, owning 5% or more of stock in both the Recipient and Subrecipient or Sub-Subrecipient.

e) Does not, for any other reason, have an arm's-length relationship (e.g., a relationship involving independent, competing interests) with the Recipient. This could be due to any reason, including but not limited to, both entities being part of the same business group or could stem from family or personal ties between officials of the two entities.

3) Recipient shall further ensure the profit to each Unrelated Company that is a Subrecipient or a Sub-Subrecipient does not exceed 10% of only the CEC funds the Unrelated Company will receive. None of the following count towards the 10% profit maximum:

a) The Profit Amount Itself. For example, assume Recipient and its Subrecipient SubX agree to a total, all inclusive, budget amount of $200,000 in CEC funds. SubX cannot claim $20,000 of this as profit. If $180,000 is the base for expenses on which profit is calculated, 10% is only $18,000 and not $20,000.

b) Non-CEC Funds in any Form. Only CEC funds a recipient will receive can count towards profit. For example, assume Recipient's Subrecipient SubX has a budget showing it receiving $100,000 in CEC funds (not including the profit amount) and $50,000 in federal funds with the federal funds counting as match under the CEC's grant. The maximum SubX can be paid with CEC funds for profit is 10% of $100,000 CEC funds, or $10,000 (assuming the $100,000 CEC base does not include any of the other expenses that cannot be included in calculating profit). The $50,000 in federal funds does not count towards the profit calculation because it is not CEC funds.

c) Equipment. Continuing the example from b), assume SubX's $100,000 CEC budget shows $10,000 earmarked for equipment. The maximum SubX can be paid with CEC funds for profit is 10% of $90,000, or $9,000 (assuming the $90,000 base does not include any of the other expenses that cannot be included in calculating profit).

d) Amounts Paid to Sub-Subrecipients and Vendors. Continuing the example from b) and c), assume SubX's $100,000 CEC budget also shows $20,000 earmarked to pay Sub-SubY. SubX cannot include in its profit calculation the $20,000 to Sub-SubY. The maximum SubX can be paid with CEC funds for profit is 10% of $70,000 ($100,000 in CEC funds minus $10,000 in equipment from c) above and minus $20,000 to Sub-SubY) or $7,000.

Vendor Unrelated Companies do not have a 10% profit maximum and also do not have to adhere to the same restrictions in a) through d) directly above. However, as stated in the requirements for Vendors in Section 7.a.5) in this Exhibit C, Recipient must be able to demonstrate that the Vendor was selected through a competitive process or is otherwise providing a product or service at a fair and reasonable price.

4) Profit can only be paid by the CEC as the amounts on which it is based are invoiced and paid. Profit will NOT be advanced. Continuing the example from 2.d) above, assume SubX submits an invoice for $5,000 (of its $70,000) in costs on which profit is based, and the Recipient includes SubX's invoice as part of its invoice to the CEC. The Recipient can include in the invoice, and the CEC will pay, assuming other Agreement requirements are met, $500 in profit on this particular invoice. Please realize that Retention (see Section 8.n. in these Terms) may reduce the CEC's overall payment on the invoice.

5) Budget changes may affect an Unrelated Company's profit. For example, funds moved from a Subrecipient's direct labor, a category counting towards the profit calculation, to a Sub-Subrecipient, a category that does not count towards the profit calculation, would reduce the allowable profit.

h. Penalties for Noncompliance

Without limiting the CEC's other remedies, failure to comply with the above requirements may result in the termination of this Agreement and repayment of any profit amounts in violation of these terms.

8. PAYMENT OF FUNDS

a. Definitions

For purposes of this Section 8, the following terms have the following meaning:

- "Advance Payment" means the CEC pays Recipient prior to the Recipient Incurring or Paying the expense.
- "Incurred Cost" means an expense for which the Recipient has become liable (legally obligated) to pay. Here are examples of incurred costs:
    - The Recipient's staff has completed work during the month but has not been paid by the Recipient. These labor and associated costs (e.g., fringe benefits) are considered Incurred Costs.
    - The Recipient has purchased a piece of equipment **and** received an invoice, bill, or receipt. The Recipient has not yet paid the invoice. The invoice shows the amount to be paid and confirmation of the sale. This is an Incurred Cost.

Incurred Costs for equipment DO NOT include purchase orders unless accompanied by an invoice, bill, or receipt that shows the payment amount due to the seller for the equipment.

- “Paid Cost” means an expense for which the Recipient has already made payment.

b. Advance Payments

Recipients can receive Advance Payments only for Subrecipients or any lower-tiered level of Sub-Subrecipient with the U.S. Department of Energy laboratories. Otherwise, Advance Payments are NOT allowed under this Agreement. The CEC in its sole discretion, and not the Recipient, decides if the CEC will make an Advance Payment.

c. Reimbursable Cost Requirements

In addition to any other requirements in this Agreement, the CEC is only obligated to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement’s Budget; and (4) actual and allowable expenses under this Agreement.

The only exception to the CEC paying actual expenses is rounding to the nearest cent. The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient shall round invoiced amounts to the nearest cent ($0.01) using standard rounding, which is rounding down from $0.000 through $0.004, and rounding up for $0.005 through $0.009. Rounding cannot be used to exceed the amount in any Budget Category or exceed the total Agreement amount.

In Exhibit B, the Budget, the rates for Direct Labor and Fringe Benefits are treated as estimates and not capped rates. The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at higher rates as long as it is only invoicing for actual expenditures it has made. However, the CEC will not pay more than the total amount in each Budget Category without an amendment, or for more than the total Agreement amount.

Please note that rates listed in Exhibit B, the Budget, are NOT “negotiated rates” that can be charged – documentation must be made available upon request to show that the rates charged reflect actual costs incurred.

This Exhibit C’s terms allow the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient to receive reimbursement for actual Indirect Costs. A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient may choose among three options described below. However, the option selected cannot increase the Indirect Cost amount included in the application upon which the application was scored. Once the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient has received payment for Indirect Costs for one of the options, it cannot switch. It is locked into that option.

Option 1: De Minimis

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can elect to invoice and receive a de minimis amount at the set rate of 15% of the Modified Total Direct Costs (MTDC) for Indirect Costs. This cannot be combined with any other Indirect Rate option.

MTDC is defined for purposes of this Agreement as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $50,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of ach subaward in excess of $50,000. This is the same definition used in federal grants. Keeping this the same as the federal definition should make it easy for entities that have both federal and CEC grants and elect this option.

Entities choosing this de minimis option for Indirect Costs will not have to provide backup documentation for the de minimis amount and will not be audited on it.

Option 2: Defense Contract Audit Agency (DCAA) or other Federally Approved Indirect Rate

A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient that has a federally approved indirect rate from DCAA or another Federal agency may use the approved indirect rate for this Agreement. A copy of the Federal agency's letter must be provided, and the letter, or the letter together with other supporting documentation, must allow the CEC to verify that the rates charged to the CEC are the federally-approved rates.

This rate will typically shift annually, and this shift is generally acceptable. This is the only Indirect Cost option that is not strictly subject to the maximum rate cap that typically applies to Indirect Costs. If the federal rate decreases from year to year, that will be a cost savings under this budget category. If the federal rate increases from year to year, this will require a budget reallocation. If the CEC, in its sole discretion, determines that a budget reallocation to accommodate an increased Indirect Rate would risk the ultimate success of this Agreement, or is otherwise not in its best interest, the CEC reserves, in addition to all of its other rights and remedies, the right to either propose a smaller increase that would not risk the ultimate success of the project, or refuse to increase the Indirect Rate. For any increase the CEC will not reimburse from CEC Funds, the entity can choose to charge the increase as Match Funds.

If this Option 2 is chosen, the entity will not be audited on this budget category.

Option 3: Indirect Costs based on Cost Allocation Plan

A Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient may choose to budget for Indirect Costs based on the entity's cost allocation plan. The amount of Indirect Costs included in Exhibit B cannot be increased through a budget reallocation. If this option is selected, Indirect Costs are subject to audit, and the entity is required to provide backup documentation upon request proving the actual amount of their Indirect Costs.

d. Recipient's 14-Day Payment Requirement for Incurred Costs

The Recipient, Subrecipients, and all lower-tiered Subrecipients shall pay ALL Incurred Costs within 14 calendar days of receiving payment under this Agreement for the Incurred Costs. For example, if the Recipient invoices and then receives payment from the CEC on September 15 for an Incurred Cost of $10,000, the Recipient shall pay the entire $10,000 by September 29. This requirement is needed to prevent entities from creating long lead times for Incurred Costs (e.g., invoicing and receiving payment from the CEC but not paying for the Incurred Costs for weeks or months).

The Recipient shall only invoice the CEC, Subrecipients shall only invoice the Recipient (and so on for any lower-tiered level of Sub-Subrecipients), for Incurred Costs it will pay within 14 calendar days of receiving payment of CEC funds. For example, assume the Recipient has an Incurred Cost for a piece of equipment that costs $300,000 and will pay in three installments of $100,000 each over three months. The Recipient shall only invoice the Commission for $100,000 each month. The Recipient shall not invoice for the entire $300,000 and retain the balance over the three months.

For any Incurred Costs for which the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient has received CEC funds and does not pay within 14 calendar days, the entity shall on the very next business day after the 14 calendar days submit repayment of the unpaid amount back to the CEC. Repaid funds will be placed back into the Agreement and will be available to reimburse allowable costs in accordance with this Agreement. When making a repayment under this provision, the Recipient shall specify "Repayment of Unspent Funds under Agreement [Insert this Agreement #]." Recipient shall remit the repayment to:

California Energy Commission
Accounting Office
715 P Street, MS-2
Sacramento, CA 95814

This repayment requirement of the Recipient is in addition to any other rights the CEC can enforce relative to this Agreement. Recipient agrees and acknowledges that time is of the essence in paying Incurred Costs and submitting repayments and the CEC can treat the Recipient's breach of either requirement as a material breach. Recipient can contact the CAM for any questions about the logistics of making repayments.

e. Payment Requests

The Recipient may request payment from the CEC at any time during the term of this Agreement but no more frequently than monthly. The final payment request, including retention, MUST be received by the CEC no later than the Agreement end date.

Recipient agrees and acknowledges that time is of the essence in submitting the final payment request. The CEC has a limited period of time, set by law, in which it can reimburse funds under this Agreement. Without prejudice to the CEC's other rights, the Recipient risks not receiving any funds, and relieves the CEC of any duty and liability whatsoever to pay, for any payment requests received after the end of the Agreement.

No reimbursement for food or beverages shall be made other than allowable per diem charges.

All Recipient expenditures, reimbursable and match, must occur within the approved term of this Agreement.

f. Invoice Approval and Disputes:

Each request for payment is subject to the CAM's approval. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for work performed, for which project expenditures meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

The invoice will be disputed if the invoice is inaccurate or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified in writing.

g. Recipient's headquarters:

For purposes of payment, the Recipient's headquarters is the location of the Recipient's office where the majority of its employees assigned responsibilities for this Agreement are permanently assigned.

h. Multiple Non-Energy Commission Funding Sources:

No payment will be made for costs identified in Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

"Government Entity" means: (1) a state governmental agency; (2) a state college or university; (3) a local government entity or agency, including those created as a Joint Powers Authority; (4) an auxiliary organization of the California State University or a California community college; (5) the federal government; (6) a foundation organized to support the Board of Governors of the California Community Colleges; and (7) an auxiliary organization of the Student Aid Commission established under California Education Code Section 69522.

i. Reduced funding:

If the CEC does not receive sufficient funds under the Budget Act or from the investor-owned utility administrators of the EPIC program to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

1) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).

2) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.

j. Allowability of Costs

1) Allowable Costs

The costs for which the Recipient will be reimbursed under this Agreement include all actual costs, direct and indirect, incurred in the performance of the work identified in the Scope of Work. Costs must be incurred within the Agreement term. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, including necessity of the item for the work; (ii) applicable federal cost principles or acquisition regulations incorporated by reference in Section 2 of this Agreement; and (iii) the terms and conditions and any other requirements of this Agreement.

2) Unallowable Costs

Recipient shall not invoice or obtain from the CEC any profit for itself under this Agreement. This Agreement is a grant for the Recipient’s project. This is not a services contract to the state. The Recipient is already receiving the benefit of the grant funds. The CEC shall not pay profit to the Recipient on top of the benefit it is receiving from the grant funds in this Agreement. Some Subrecipients and Sub-Subrecipients may be able to receive up to 10% profit (please refer to section 7.g. in these terms).

Below are examples of other unallowable costs. Details concerning the allowability of costs are available from the CEC’s Accounting Office.

a) Contingency costs;

b) Imputed costs (e.g., cost of money);
c) Fines and penalties;
d) Losses;
e) Excess profit taxes; and
f) Unapproved, increased rates and fees for this Agreement.

3) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

k. Payment Request Format

The Recipient, and any Subrecipients or lower-tiered level of Sub-Subrecipient with a total budget of $100,000 or more, shall use the Invoice Template and any further modifications to it, provided by the CAM. The CAM can change the Invoice Template without amending this Agreement.

Please submit invoices electronically per the instructions included in the document entitled “Procedures for Submitting and Reviewing Grant Invoices Electronically” available at https://www.energy.ca.gov/media/4469.

Recipient shall provide documentation showing the Recipient’s payment of Incurred Costs as soon as possible and not later than three working days from a request from CEC personnel.

l. Certification

The Recipient, and any Subrecipients or lower-tiered level of Sub-Subrecipient with a total budget of $100,000 or more shall include and sign the certification provided by the CAM in the Invoice Template. The CAM can change this certification without amending this Agreement.

m. Retention

The CEC shall retain 10 percent of any payment request or 10 percent of the total CEC award at the end of the Agreement. The CEC has the sole discretion to decide which of these methods of retention will be used in this Agreement. The Recipient must submit a completed payment request requesting release of the retention within the required timeframe (see part e. “Payment Requests” above in this term). The Commission Agreement Manager will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget) or elsewhere in this Agreement.

When the CEC withholds 10% retention from each invoice, the Recipient can choose to flow down the retention requirement to its Subrecipients subject to the following restrictions and any other requirements in this Agreement:

- The Recipient shall not flow down retention requirements to U.S. Department of Energy national laboratory Subrecipients.
- The retention flowed down to Subrecipients can only be up to a total of 10% of the amount of CEC funds the Subrecipient is to receive. The Recipient is responsible for carrying the retention for its funded portion of the entire Agreement and cannot pass its share of retention to Subrecipients or Vendors.
- Here are three examples:

i. A Subrecipient submits an invoice for $100,000 to the Recipient, and the Recipient in turn submits it to the CEC. The CEC will only pay $90,000 of the invoice and the Recipient can elect to pay only $90,000 to the Subrecipient.

ii. The Subrecipient is the U.S. Department of Energy national laboratory and it submits an advance request for $100,000 to the Recipient, including any other documents required in the CEC's U.S. Department of Energy Terms and Conditions. The Recipient in turn submits the advance requests to the CEC for payment. The CEC will pay the full amount of the advance requests to the Recipient and the Recipient must pay the full amount to the U.S. Department of Energy.

iii. The Recipient's submits an invoice for its own staff in the amount of $20,000. The CEC will only pay $18,000 to the Recipient, and the Recipient cannot withhold the $2,000 difference from Subrecipients or Vendor reimbursements.

These requirements apply to all levels of Subrecipients (e.g., any lower-tiered level of Sub-Subrecipients).

9. TRAVEL AND PER DIEM

a. Travel not listed in Exhibit B, the Budget, can be added without an amendment via CAM approval. CAM approval can come in one of two forms: written authorization from the CAM prior to the trip being taken, or through the invoice review. Outside of a budget reallocation, additional travel requests are submitted using the CEC's Travel Form. Any travel taken that is not listed in Exhibit B, the Budget, or not pre-approved by the CAM in writing, is at the financial risk of the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient taking the trip. Please note that the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient cannot invoice and be paid for more than the total amount in the Travel Budget Category without an amendment, or for more than the total Agreement amount.

b. No reimbursement for food or beverages will be made other than for allowable per diem charges.

c. The Recipient will be reimbursed for authorized travel and per diem up to, but not to exceed, the rates listed on the ECAMS Resources webpage. Because the rates on the ECAMS Resources webpage can change over time, Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient will be allowed to be reimbursed for the rates in the Grant Manual when the trip expenses become an Incurred Cost. The CEC shall notify the Recipient in writing by way of the Active Agreements listserve if the travel rates in the Grant Manual change. Please sign up for the Active Agreements listserve to stay informed of all updates.

d. Lodging

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at standard room rates. The CEC will not reimburse for luxury accommodations.

e. Airfare

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice at coach rates on commercial flights. The CEC will not pay for upgrades on flights.

f. Rental Car

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice for vehicles appropriate for the purpose of the travel. The CEC will not reimburse expenses for luxury vehicles.

g. Bus/Train

The Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient can invoice for standard coach rates. The CEC will not reimburse for upgrades.

h. Per Diem

Per diem is allowable for actual costs incurred up to the total daily maximum for the following combined expenses:

- Meals
- Incidentals (i.e., tips for hotel staff and taxi/ride share drivers)
- Parking
- Tolls
- Taxi/ride share

The CEC will not reimburse any expenses under this Agreement for alcoholic beverages. In addition, the daily per diem is for the individual expenses of those traveling and working on the Agreement only. It cannot be used to pay expenses of others (e.g., it cannot be used to buy a meal for someone else).

10. PREVAILING WAGE

a. Requirement

Projects funded by the Energy Commission often involve construction, alteration, demolition, installation, repair, or maintenance work over $1,000. Such projects might be considered "public works" under the California Labor Code (See California Labor Code Section 1720 et seq. and Title 8 California Code of Regulations, Section 16000 et seq.). Public works projects require the payment of prevailing wages. Prevailing wage rates can be significantly higher than non-prevailing wage rates.

b. Determination of Project's Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the Recipient is unsure whether the project funded by the Agreement is a "public work" as defined in the California Labor Code, it may wish to seek a timely determination from DIR or an appropriate court. As such processes can be time consuming, it may not be possible to obtain a timely determination before the date for performance of the Agreement.
By accepting this grant, the Recipient is fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wage. As a material term of this grant, the Recipient must either:

1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or

2) Assume that the project is a public work and ensure that:

- Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
- The project budget for labor reflects these prevailing wage requirements; and
- The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when such payment is required.

c. Subrecipient and Vendor Flow-down Requirements

The Recipient will ensure that its Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors also comply with the public works/prevailing wage requirements above. As applicable, the Recipient will ensure that all agreements with its Subrecipients and Vendors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects, and also as applicable that Subrecipients and Vendors also contain these terms. The Recipient is responsible for any failure of its Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Recipient or its Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to comply with the above requirements will constitute breach of this Agreement which excuses the CEC's performance of this Agreement at the CEC's option, and will be at the Recipient's sole risk. In such a case, the CEC will refuse payment to the Recipient of any amount under this award and the CEC will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the CEC and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Recipient and/or any of its subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

For public works projects, the Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

g. Questions

If the Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship, or other significant requirements of California prevailing wage law, the Recipient should consult DIR and/or a qualified labor attorney before entering into this Agreement.

h. Certification

The Recipient will certify to the CEC on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws; or (b) the project is not a public work requiring the payment of prevailing wages. In the latter case, the Recipient will provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the CEC the above-described certificate signed by the Recipient and all Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and CEC will be relieved of any obligation to pay any funds.

11. RECORDKEEPING, COST ACCOUNTING, AND AUDITING

a. Cost Accounting

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the project and any match-funded portion of the project. The CEC or its agent will have the right to examine the Recipient's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Recipient's reports.

b. Accounting Procedures

The Recipient's costs will be determined on the basis of its accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient uses generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement will be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Recipient's accounting system will distinguish between direct and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

c. Audit Rights

The Recipient will maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in the performance of this Agreement. The CEC, another state agency, and/or a public accounting firm designated by the CEC may audit the Recipient's accounting records at all reasonable times, with prior notice by the CEC.

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the CEC of the Recipient's final invoice. However, performance of any such interim audits by the CEC does not preclude further audit. The CEC may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 21) for a period of ten (10) years after payment of the Recipient's final invoice.

The Recipient will allow the auditor(s) to access such records during normal business hours, and will allow interviews of any employees who might reasonably have information related to such records. The Recipient will include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.

d. Refund to the Energy Commission

If the CEC determines that any invoiced and paid amounts exceed the actual allowable incurred costs, the Recipient will repay the amounts to the CEC within thirty (30) days of request or as otherwise agreed by the CEC and the Recipient. If the CEC does not receive such repayments, it will be entitled to take actions such as withholding further payments to the Recipient and seeking repayment from the Recipient.

e. Audit Cost

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The CEC will bear the cost of conducting the audit unless the audit reveals an error detrimental to the CEC that exceeds more than ten percent (10%) or $5,000 (whichever is greater) of: (1) the amount audited; or (2) if a royalty audit, the total royalties due in the period audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the CEC for reasonable costs and expenses incurred by the CEC in conducting the audit.

f. Match or Cost Share

If the budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of CEC funds. The funds will be released only if the required match percentages are expended concurrently or in advance of the CEC funds. The Commission Agreement Manager, in writing and with supervisor approval, can authorize a Recipient to spend CEC funds in advance of Match Funds pursuant to a Match Fund Spending Plan. The Plan must estimate how Match funds and CEC funds will be spent over each quarter and briefly explain why it is not practical to spend Match Funds concurrent with CEC funds. While this term allows flexibility, the Recipient agrees to spend the agreed match as soon as practical during the Agreement in order to resume proportionality between CEC funds and Match funds spent. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind, non-cash services), and report on match share expenditures on its request for payment.

12. WORKERS' COMPENSATION INSURANCE

a. The Recipient warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement and agrees to furnish to the CAM satisfactory evidence of this insurance upon the CAM's request.

b. If the Recipient is self-insured for worker's compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the CAM satisfactory evidence of the insurance upon the CAM's request.

13. PERMITS AND CLEARANCES

The Recipient is responsible for ensuring that all necessary permits and environmental documents are prepared and that clearances are obtained from the appropriate agencies.

14. EQUIPMENT

As between the Recipient and CEC, title to equipment acquired by the Recipient with grant funds will vest in the Recipient. The Recipient may use the equipment in the project or program for which it was acquired as long as needed, regardless of whether the project or program continues to be supported by grant funds. However, the Recipient may not sell, lease, encumber the property (i.e., place a legal burden on the property such as a lien), or even transfer possession of it during the Agreement term without the CAM's prior written approval.

The Recipient may refer to the applicable federal regulations incorporated by reference in this Agreement for guidance regarding additional equipment requirements.

15. STOP WORK

CEC staff may, at any time by written notice to the Recipient, require the Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, noncompliance with the standard of performance, out of scope work, project delays, and misrepresentations.

a. Compliance. Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to stop the incurrence of costs allocable to the CEC.

b. Canceling a Stop Work Order. The Recipient may resume the work only upon receipt of written instructions from CEC staff.

16. TERMINATION

a. Purpose

Because the CEC is a state entity and provides funding on behalf of all California ratepayers, it must be able to terminate the Agreement upon the default of the Recipient and to proceed with the work required under the Agreement in any manner it deems proper. The Recipient agrees that upon any of the events triggering the termination of the Agreement by the CEC, the CEC has the right to terminate the Agreement, and it would constitute bad faith of the Recipient to interfere with the immediate termination of the Agreement by the CEC.

b. With Cause

The CEC may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Recipient will relinquish possession of equipment purchased for this Agreement with CEC funds to the CEC, or the Recipient may purchase the equipment as provided by the terms of this Agreement or otherwise by the CEC, with approval of the CEC.
The term “for cause” includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of Subrecipients or Vendors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient’s inability to pay its debts as they become due and/or the Recipient’s default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or CEC policy such that the work or product being funded would not be supported by the Commission.

c. Without Cause

The CEC may terminate this Agreement without cause upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

d. Executive Order N-6-22 – Russia Sanctions

On On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Recipient is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

17. INDEMNIFICATION

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the CEC) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement.

18. CONFIDENTIAL RECIPIENT INFORMATION

a. Identification of Confidential Recipient Information

1) For the purposes of this Section, “Confidential Recipient Information” refers to information belonging to the Recipient that the Recipient has satisfactorily identified as confidential and the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section.

2) Prior to the effective date of this Agreement, the Recipient will identify all products (or information contained within products) it considers Confidential Recipient Information, and provide the legal basis for confidentiality, in Attachment 1 to this Exhibit. If the CEC agrees the information is confidential, it will not disclose it except as provided in subsection (b).

3) During the Agreement, if the Recipient obtains or develops additional products (or information contained within products) not originally identified as Confidential Recipient Information in Attachment 1 to this Exhibit, the Recipient will follow the procedures for a request for designation of confidential information as specified in Title 20 California Code of Regulations (CCR) Section 2505.

The CEC’s Executive Director will make the confidentiality determination. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment 1 to this Exhibit. The CEC will not disclose information subject to an application for confidential designation except as provided in subsection (b).

4) When submitting products containing Confidential Recipient Information, the Recipient will mark each page of any document containing Confidential Recipient Information as “confidential” and present it in a sealed package to the Contracts, Grants, and Loans Office.

The CAM may require the Recipient to submit a non-confidential version of the product, if it is feasible to separate the Confidential Recipient Information from the non-confidential information. The Recipient is not required to submit such products in a sealed package.

b. Disclosure of Confidential Recipient Information

The CEC will only disclose Confidential Recipient Information under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508. All Confidential Recipient Information that is legally disclosed by the Recipient or any other entity will become a public record and will no longer be subject to the CEC's confidentiality designation.

c. Waiver of Consequential Damages

In no event will the CEC, the California Public Utilities Commission, or the state of California be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict tort, or any other legal theory for the disclosure of the Confidential Recipient Information, even if the CEC has been advised of the possibility of such damages.

Damages that the CEC, the California Public Utilities Commission, and the state of California will not be responsible for include but are not limited to: lost profit; lost savings or revenue; lost goodwill; lost use of the product or any associated equipment; cost of capital; cost of any substitute equipment, facilities, or services; downtime; the claims of third parties including customers; and injury to property.

d. Limitations on the Disclosure of Products

During the Agreement, the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors must receive written approval from the CAM prior to disclosing the contents of any draft product to a third party. However, if the CEC makes a public statement about the content of any product provided by the Recipient and the Recipient believes the statement is incorrect, the Recipient may state publicly what it believes is correct.

19. PRE-EXISTING AND INDEPENDENTLY FUNDED INTELLECTUAL PROPERTY

a. Ownership

The CEC makes no ownership, license, or royalty claims to pre-existing intellectual property, independently funded intellectual property, or project-relevant pre-existing or independently funded intellectual property. **"Ownership"** means exclusive possession and control of all rights to property, including the right to use and transfer property. Intellectual property licenses and royalties are discussed in Sections 20 and 21.

1) **“Pre-existing intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC or match funds, such as patent and copyright.

2) **“Independently funded intellectual property”** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party during or after the Agreement term without CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC or match funds, such as patent and copyright.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The CEC owns such products regardless of their funding source.

3) **“Project-relevant pre-existing intellectual property” and “project-relevant independently funded intellectual property” mean** pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

b. Project-Relevant Pre-Existing and Independently Funded Intellectual Property

1) Identification of Property

a) The Recipient will identify all project-relevant pre-existing intellectual property in Attachment 1 to this Exhibit prior to the effective date of the Agreement, or within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement. Attachment 1 may be amended (see the “Amendments” section).

b) The Recipient will identify all project-relevant independently funded intellectual property and the source of funding for the property in Attachment 1 to this Exhibit within sixty (60) days of becoming aware that the property has been or will be used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

c) Failure to identify project-relevant pre-existing or independently funded intellectual property in Attachment 1 to this Exhibit may result in the property's designation as "intellectual property" that is subject to licenses and royalties, as described in Sections 20 and 21.

2) Access to Property

The extent of CEC and California Public Utilities Commission access to project-relevant pre-existing and independently funded intellectual property is limited to that reasonably necessary to: (a) demonstrate the validity of any premise, postulate, or conclusion referred to or expressed in any product; or (b) establish a baseline for repayment purposes.

Upon the CAM's request, the Recipient will provide the CAM and any reviewers designated by the CEC or the California Public Utilities Commission with access to review the Recipient's project-relevant pre-existing and independently funded intellectual property. If the property has been designated as confidential as specified in Section 18, the CEC will only disclose it under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

3) Preservation of Property

The Recipient will preserve any project-relevant pre-existing or independently funded intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Recipient agrees to a longer retention period.

The CEC and the California Public Utilities Commission will have reasonable access to the project-relevant pre-existing or independently funded property throughout the retention period.

20. INTELLECTUAL PROPERTY

a. Ownership

1) The Recipient owns all intellectual property, subject to the licenses described in subsection b.

"Intellectual property" means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

"Works of authorship" does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

2) The CEC owns all products identified in the Scope of Work, with the exception of products that fall within the definition of "intellectual property."

"Product" means any tangible item specified for delivery to the CEC in the Scope of Work.

3) Nothing in this Agreement gives the Recipient any rights to "Confidential Information" and "Personal Information" as defined in Section 26, other than using Confidential Information and Personal Information for the limited purpose of performing Recipient's work under this Agreement in accordance with Section 26.

1. Intellectual Property Licenses

1) Both the CEC and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes. The licenses are transferable only to load-serving entities for the purpose described below.

2) Under limited circumstances, both the CEC and the California Public Utilities Commission may grant load-serving entities a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property to enhance the entities' service to EPIC ratepayers. **The intellectual property that may be licensed to load-serving entities is limited to analytical tools and models that can be used to inform distribution planning and decision-making that benefits electric ratepayers.**

"Load-serving entity" means a company or other organization that provides electricity to EPIC ratepayers.

The licenses are transferable to third parties only for the purpose of facilitating the load-serving entity's enhancement of service to EPIC ratepayers. Load-serving entities must obtain prior written approval from the CEC or California Public Utilities Commission (whichever agency granted the load-serving entity the license) in order to transfer the license to a third party.

3) The Recipient has a non-exclusive, non-transferable, irrevocable, worldwide, perpetual license to use, publish, translate, modify, and reproduce written products created for Agreement reporting and management purposes, such as reports and summaries.

4) If any intellectual property that is subject to the licenses above has been designated as confidential as specified in Section 18, all license holders will only disclose the intellectual property under the circumstances specified in Title 20 CCR Sections 2506, 2507, and 2508.

All license holders will ensure that their officers, employees, and subcontractors who have access to the intellectual property are informed of and abide by the disclosure limitations in Section 18.

2. Energy Commission's Rights to Inventions

"Invention" means intellectual property that is patentable.

1) March-In Rights

At the CEC's request, the Recipient will forfeit and assign to the CEC all rights to any invention (with the exception of U.S. Department of Energy reserved rights) if the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention. The CEC will have the unfettered right to use and/or dispose of the rights in whatever manner it deems most suitable to help transfer the invention into the marketplace, including but not limited to seeking patent protection or licensing the invention.

2) Notice of Patent

If any patent is issued for an invention, the Recipient will send the CAM written notice of the issuance within three (3) months of the issuance date. The notice must include the patent title, issuance number, and a general description of the invention.

3) Legal Notice

The Recipient and all persons and/or entities obtaining an ownership interest in patentable intellectual property must include the following statement within the specification of any United States patent application, and any subsequently issued patent for the invention:

"This invention was made with State of California support under California Energy Commission grant number EPC-18-022. The Energy Commission has certain rights to this invention."

b. Access to and Preservation of Intellectual Property

1) Access to Intellectual Property

Upon the CAM's request, the Recipient will provide the CAM and any individuals designated by the CEC or the California Public Utilities Commission with access to the Recipient's intellectual property in order to exercise the license and march-in rights described above, and to determine any royalty payments due under the Agreement.

2) Preservation of Intellectual Property

The Recipient will preserve intellectual property at its own expense for at least ten (10) years from the Agreement's end date, unless the Recipient agrees to a longer retention period.

c. Intellectual Property Indemnity

The Recipient may not, in supplying work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party, and will take reasonable actions to avoid infringement.
The Recipient will defend and indemnify the CEC and the California Public Utilities Commission from and against any claim, lawsuit, or other proceeding, loss, cost, liability, or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a product infringes any patent, copyright, trade secret, or other intellectual property right of any third party; or (ii) any third party claim arising out of the negligent or other tortious acts or omissions by the Recipient or its employees, subcontractors, or agents in connection with or related to the products or the Recipient's performance under this Agreement.

21. ROYALTY PAYMENTS TO THE COMMISSION

"Sale," "sales," and ***"sold"*** mean the sale, license, lease, or other transfer of intellectual property. ***Sales Price"*** means the price at which intellectual property is sold, excluding sales tax.

a. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will pay the Energy Commission a royalty of one and one-half percent (1.5%) of the sales price of all sales for which the entity receives a payment, beginning on the Agreement's effective date and extending for ten (10) years from the Agreement's end date.

b. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will make payments in annual installments due on the first day of March in the calendar year immediately following the year during which the Recipient received any payment for sales.

c. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors is not required to make a royalty payment for any calendar year in which payments for sales are less than $1000. Total royalty payments will be limited to three (3) times the **<u>total</u>** amount of funds paid by the CEC under the Agreement (and not the amount of CEC funds received by the entity). For example, if the CEC has paid $1 million total under the Agreement, but a Subrecipient has only received $200,000 of the CEC funds and owes royalties, the royalty payments are capped at $3 million, and not $600,000.

d. If intellectual property was developed in part with match funds during the Agreement term, the royalty payment owed by the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will be reduced in accordance with the percentage of intellectual property development activities that were funded with match funds that the entity itself provided. For example, if 10% of the development activities were funded by the Recipient with match funds during the Agreement and the Recipient's payments for sales totaled $100,000 in one year, the Recipient would owe the Energy Commission $1,350 for the year (1.5% of $100,000 = $1,500; 10% of $1,500 = $150; $1,500 - $150 = $1,350).

If the CEC is providing funds to the Recipient under this Agreement as a project match partner and CEC funds are used in part to develop intellectual property, the royalty payments will be reduced in accordance with the percentage of intellectual property development activities that were funded with non-CEC funds during the Agreement term. For example, if 80% of the development activities were funded with Recipient and/or third-party funds during the Agreement and payments for sales totaled $100,000 in one year, the Recipient would owe the CEC $300 for the year (1.5% of $100,000 = $1,500; 80% of $1,500 = $1,200; $1,500 - $1200 = $300).

e. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors may make an early buyout payment to the Energy Commission without a pre-payment penalty, as an alternative to making annual royalty payments for ten (10) years following the Agreement's end date. The payment must be in a lump sum amount equal to one and a half (1.5) times the amount of total funds paid by the CEC under the entire Agreement and made within five (5) years of the Agreement's end date. The payment amount due under the early buyout option will not be reduced by the percentage of match funds as described above. It is also not reduced because a Subrecipient, any lower-tiered level of Sub-Subrecipient, or Vendor that owes royalties received less than the total CEC funds paid out under the agreement. For example, if a Subrecipient only received 25% of the total CEC funds paid out (because the rest went to the Recipient or other Subrecipients, this early buyout 1.5 times is based on the total CEC funds paid under the Agreement and not the lower, 25% received by the Subrecipient.

f. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors may not make any sale, transfer, license, or any other conveyance or even allowed use, of intellectual property except than fair market value. Such activity constitutes breach of this Agreement, and will obligate the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to repay within sixty (60) days the early buyout amount due. In the event of breach, the CEC may exercise all rights and remedies available to it under law and at equity.

g. Royalty payments not made within fifteen (15) days of the due date will constitute breach of this Agreement. The payments will become debt obligations of the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors to the CEC, due upon demand and bearing interest at the maximum interest rate allowed by law.

h. The Recipient will maintain separate accounts within its financial and other records for the purpose of tracking components of sales and royalties due to the CEC under this Agreement.

i. Payments to the CEC are subject to audit as provided for under the Recordkeeping, Cost Accounting, and Auditing section.

j. The Recipient shall include these royalty provisions in its agreements with all Subrecipients and Vendors and ensure they in turn include them in their agreements with all lower-tiered level of Sub-Subrecipients and Vendors, who develop or assist with the development of intellectual property.

22. GENERAL PROVISIONS

a. Governing Law

This Agreement is governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors, and their respective employees will act in an independent capacity and not as officers, employees, or agents of the CEC or the State of California.

c. Assignment

This Agreement is not assignable or transferable by the Recipient either in whole or in part without the consent of the CEC in the form of an amendment.

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

f. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

g. Assurances

The CEC reserves the right to seek further written assurances from the Recipient and its team that the work under this Agreement will be performed in accordance with the terms of the Agreement.

h. Change in Business

1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:

a) A change of address.
b) A change in business name or ownership.

c) The existence of any litigation or other legal proceeding affecting the project or Agreement.

d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.

e) Receipt of notice of any claim or potential claim against the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the CEC's rights.

2) The Recipient must provide the CAM with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the CEC does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the CEC is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.

i. Access to Sites and Records

CEC California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.

j. Prior Dealings, Custom, or Trade Usage

These terms and conditions may not be modified or supplemented by prior dealings, custom, or trade usage.

k. Survival of Terms

Certain provisions will survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:

- Legal Statements on Products (included in Section 5, "Products")
- Payment of Funds (Section 8)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Termination (Section 16)
- Indemnification (Section 17)
- Pre-Existing and Independently Funded Intellectual Property (Section 19)
- Intellectual Property (Section 20)
- Royalty Payments to the Commission (Section 21)
- California Taxpayer Access to Publicly Funded Research Act (Section 24)

- Receipt of Confidential Information and Personal Information (Section 26)
- Change in Business (see this section)
- Access to Sites and Records (see this section)
- Venue (see this section)
- CEC as Third-Party Beneficiary (see this section)

l. Venue

Any court action to enforce any part of this Agreement shall be venued in Sacramento County.

m. CEC as Third-Party Beneficiary

The Recipient shall ensure that in all of its agreements with Subrecipients and in all Subrecipient agreements with Sub-Subrecipients (and so forth through every lower-tiered level of Sub-Subrecipients) that the CEC is specifically named as a third-party beneficiary to the agreement. In addition, the term shall state the entity agrees that if the CEC brings a court action, the entity agrees to venue in Sacramento County.

23. CERTIFICATIONS AND COMPLIANCE

a. Federal, State, and Local Laws

The Recipient is responsible for obtaining all required permits and shall comply with all applicable federal, state, and local laws, codes, rules, and regulations for all work performed under the Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
The Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement

by reference and made a part of it as if set forth in full. The Recipient Subrecipients, any lower-tiered level of Sub-Subrecipients, and Vendors shall give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient will include the nondiscrimination and compliance provisions of this section in all agreements with Subrecipients, that perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).

2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:

- The dangers of drug abuse in the workplace;
- The person’s or organization’s policy of maintaining a drug-free workplace;
- Any available counseling, rehabilitation, and employee assistance programs; and
- Penalties that may be imposed upon employees for drug abuse violations.

3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:

- Will receive a copy of the company's drug-free policy statement; and
- Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the CEC determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. National Labor Relations Board Certification (Not applicable to public entities)

The Recipient, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Recipient within the immediately preceding two-year period because of the Recipient's failure to comply with an order of a federal court that orders the Recipient to comply with an order of the National Labor Relations Board.

e. Child Support Compliance Act (Applicable to California Employers)

For any agreement in excess of $100,000, the Recipient acknowledges that:

1) It recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

f. Air or Water Pollution Violation

Under state laws, the Recipient shall not be:

1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;

2) Subject to a cease-and-desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or

3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

g. Americans With Disabilities Act

By signing this Agreement, the Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

24. CALIFORNIA TAXPAYER ACCESS TO PUBLICLY FUNDED RESEARCH ACT

a. As a condition to receiving funding under this Agreement, the Recipient agrees to fully comply with the California Taxpayer Access to Publicly Funded Research Act (California Government Code sections 13989 et seq., the “Act”) and provisions of this section, which apply to publications describing knowledge, an invention, or technology funded within the scope of this Agreement.

b. For purposes of complying with the Act and this section of the Agreement, the following definitions shall apply.

1) “Peer-Reviewed Manuscript” means a manuscript after it has been peer reviewed and in the form in which it has been accepted for publication in a scientific journal.

2) “Research Grant” in the Act and “this Agreement” in this section mean this Agreement.

3) “State Agency” in the Act means the Energy Commission.

c. The Recipient shall provide for free public access to any Peer-Reviewed Manuscript developed within the scope of this Agreement.

d. The Recipient shall ensure that any publishing or copyright agreements concerning Peer-Reviewed Manuscripts:

1) Fully comply with California Government Code section 13989.6;

2) Do not conflict with the Energy Commission’s rights under this Agreement;

3) Secure for the Energy Commission the rights provided under this Agreement, including the rights to Intellectual Property as specified in Section 20; and

4) Recognize the free public access to the Peer-Reviewed Manuscript.

e. The Recipient shall report to the CEC the final disposition of any Peer-Reviewed Manuscript, including but not limited to if it was published; when it was published; where it was published; and, when the 12-month time period expires, where the Peer-Reviewed Manuscript will be available for open access.

f. Not later than 12 months after the official date of publication, or sooner if specified in the Schedule of Products, the Recipient shall make available to the CEC an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement.

g. The Recipient shall make publicly accessible an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement, not later than 12 months after the official date of publication, on a repository approved in writing by the CEC, including but not limited to the University of California's eScholarship Repository at the California Digital Library; the California State University's ScholarWorks at the Systemwide Digital Library; or PubMed Central. The Recipient shall notify the CEC when the Peer-Reviewed Manuscript is available on an CEC-approved repository.

h. If the Recipient is unable to ensure that its Peer-Reviewed Manuscript is accessible on an CEC-approved, publicly accessible repository, the Recipient may comply by providing the manuscript to the CEC not later than 12 months after the official date of publication.

i. For any publications other than a Peer-Reviewed Manuscript, (herein referred to as "Other Publications") including scientific meeting abstracts, developed within the scope of this Agreement, the Recipient shall:

   1) Provide an electronic version of the Other Publications to the CEC not later than 12 months after the official date of publication.
   2) Ensure that any publishing or copyright agreements concerning Other Publications:

      a. Do not conflict with the CEC's rights under this Agreement.

      b. Secure for the CEC the rights provided under this Agreement, including the rights to Intellectual Property as specified in Section 20.

j. The Act states that "Grantees are authorized to use grant money for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution." Recipient agrees that for purposes of this Agreement, the Recipient is only authorized to use funds under this Agreement, including Matching funds, for these purposes **if the expenses are included in the Agreement's Budget and meet the other Agreement requirements for payment, including that the CEC will only reimburse the Recipient for expenditures incurred during the Agreement term. If these expenses are not included in the Budget, both parties must agree and amend the Budget to include such**

expenditures before Recipient is authorized to use Agreement funds, either reimbursable expenses or match, for these purposes.

k. Should a conflict exist between the terms in this Section 24 and other terms of this Agreement, the terms in this section prevail.

25. COMMISSION REMEDIES FOR RECIPIENT'S NON-COMPLIANCE

Without limiting any of its other remedies, the CEC may, for Recipient's noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past reimbursements, or suspend or terminate this Agreement. The tasks in the Scope of Work are non-severable, and completion of all of them is material to this Agreement. Thus, the Commission, without limiting its other remedies, is entitled to repayment of all funds paid to Recipient if the Recipient does not timely complete all tasks in the Scope of Work.

If over the course of performing under this Agreement, the CEC and the Recipient agree that a change is warranted to the Scope of Work, the parties can amend this Agreement.

26. RECEIPT OF CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

a. For the purposes of this Section, "confidential information" refers to information the CEC has designated as confidential pursuant to Title 20 CCR Section 2505 et seq., information the CEC has otherwise deemed or stated to be confidential, and other information exempt from public disclosure under the provisions of the California Public Records Act or other applicable state or federal laws.

b. For the purposes of this Section, "personal information" refers to information that meets the definition of "personal information" in California Civil Code section 1798.3(a) or one of the data elements set forth in California Civil Code section 1798.29(g)(1) or (g)(2). **Personal information is a type of confidential information and is therefore subject to all requirements for confidential information provided in this Agreement and applicable law. However, there are additional requirements specific to personal information.**

c. For the purposes of this Section, "special terms for confidential information" refers to the CEC's special terms and conditions for the receipt of confidential information and personal information. The CEC's special terms for confidential information include, but are not limited to, having in place an Information Security Program Plan and obtaining nondisclosure agreements from all individuals who will be provided access to confidential information or personal information.

d. If the Recipient will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, the Recipient must first agree to and comply with the CEC's special terms for confidential information.

e. If any other individual or entity participating in any way with this Agreement, including but not limited to subcontractors, subawardees, vendors, and other project partners, will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, that individual or entity must first agree to and comply with the CEC's special terms for confidential information. The Recipient must flow-down the CEC's special terms for confidential information into each subcontract, subaward, vendor agreement, or other project partner agreement that will be provided access to confidential information or personal information before the individual or entity has access to any such information. Recipient must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, subawardees, vendors, project partners, and other individual or entity participating in any way with this Agreement that will be provided access to Confidential Information or Personal Information before the individual or entity has access to any such information.

f. If this Agreement does not include the CEC's special terms for confidential information and CEC determines the Recipient or any other individual or entity participating in any way with this Agreement will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, the CEC reserves the option to amend this Agreement to add its special terms for confidential information.

g. Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, and the CEC's special terms for confidential information, Recipient or any other individual or entity participating in any way with this Agreement may not disclose any information provided to it by the CEC or a third party for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential designation.

27. DEFINITIONS

- ***Agreement*** means this grant agreement executed between the CEC and the Recipient.

- ***Agreement Term*** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).

- ***Budget Categories*** means the following categories in Exhibit B, Budget: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors, and Indirect Costs and Profit. Budget Category means one of these Budget Categories.

- ***CAM*** means Commission Agreement Manager.

- ***CEC*** means California Energy Commission.

- ***Data*** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.

- ***Effective Date*** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the CEC at a business meeting or by the Executive Director or his/her designee.

- ***EPIC*** means the Electric Program Investment Charge, an electricity ratepayer-funded surcharge authorized by the California Public Utilities Commission in December 2011.

- ***Equipment*** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least $5,000. "Equipment" includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with CEC funds. The CEC may determine the normal useful life of the equipment.

- ***Incurred Costs*** means an expense for which the Recipient has become liable (legally obligated) to pay.

- ***Independently Funded Intellectual Property*** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice by the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party during or after the Agreement term without CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC or match funds, such as patent and copyright.

  "Works of authorship" does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices. The CEC owns such products regardless of their funding source.

- ***Intellectual Property*** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

"Works of authorship" does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

- ***Invention*** means intellectual property that is patentable.

- ***Load-serving entity*** means a company or other organization that provides electricity to EPIC ratepayers.

- ***Match Funds*** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party for a project funded by the CEC. If this Agreement resulted from a solicitation, refer to the solicitation's discussion of match funding for guidelines specific to the project.

- ***Materials*** means the substances used to construct, or as part of, a finished object, commodity, device, article, or product and that does not meet the definition of Equipment.

- ***MTDC (Modified Total Direct Costs)*** means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of which subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of $25,000.

- ***Ownership*** means exclusive possession of all rights to property, including the right to use and transfer property.

- ***Paid Costs*** means an expense for which the Recipient has already made payment.

- ***Pre-existing intellectual property*** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that the Recipient, Subrecipients, any lower-tiered level of Sub-Subrecipients, Vendors, or a third party owned or possessed prior to the effective date of this Agreement and that have not been developed, altered, or reduced to practice with CEC or match funds; and (b) associated proprietary rights to these items that are obtained without CEC or match funds, such as patent and copyright.

- ***Product*** means any tangible item specified for delivery to the CEC in the Scope of Work.

- ***Project*** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the CEC. The project may coincide with or extend beyond the Agreement term.

- ***Project-relevant pre-existing intellectual property and project-relevant independently funded intellectual property*** means pre-existing and independently funded intellectual property used to support a premise, postulate, or conclusion referred to or expressed in any product under this Agreement.

- ***Recipient*** means the entity that executed this Agreement with the CEC.

- ***Sale, Sales,*** and ***Sold*** mean the sale, license, lease, or other transfer of intellectual property.

- ***Sales Price*** means the price at which intellectual property is sold, excluding normal returns and allowances such as sales tax.

- ***State*** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

- ***Subaward*** for the Recipient means all agreements it has with Subrecipients and Vendors. For a Subrecipient, a Subaward means all agreements it has with Sub-Subrecipients and Vendors. For any lower-tiered level of Sub-Subrecipient, a Subaward means all agreements it has with its own Sub-Subrecipients and Vendors.

- ***Subrecipient (formerly Subcontractor)*** means a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of this Agreement's activities. A Subrecipients role involves discretion over grant activities and is not merely just selling goods or services.

- ***Sub-Subrecipient*** has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient or any lower tier level of a Sub-Subrecipient.

- ***Unrelated Company*** has the meaning set forth in section 7.g. of this Exhibit C.

- ***Vendor*** means a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the grant's activities. The Vendor's role is ministerial and does not involve discretion over this Agreement's activities.

EXHIBIT D
INFORMATION PRACTICES ACT
SPECIAL TERMS AND CONDITIONS

1. Priority of these Special Terms

In the event of a conflict between these Special Terms and other terms in this Agreement, these Special Terms shall govern.

2. Recipient and All Subcontractors shall comply with the Information Practices Act

The Information Practices Act ("IPA") is codified at California Civil Code sections 1798 et seq. Personal Information is defined in the IPA at Civil Code section 1798.3(a). Marin Clean Energy ("Recipient"), shall comply and ensure that all of its subcontractors and project partners shall comply with the IPA relative to the activities under this Agreement. This includes but is not limited to complying with Section 1798.16 (Personal Information; maintaining sources of information) and Section 1798.17 (Notice; periodic provision; contents). For example:

A. <u>Sources of information</u>. Recipient, and Recipient's subcontractors and project partners, shall maintain a record of the source of an individual's Personal Information in accordance with § 1798.16. Per IPA § 1798.16, this requirement does not apply if the data subject is the source of the Personal Information.

B. <u>Use of information</u>. Pursuant to IPA § 1798.14, the Recipient, and Recipient's subcontractors and project partners shall only use Personal Information for the purposes of this Agreement. Recipient, and Recipient's subcontractors and project partners shall not disclose any Personal Information to any person or entity other than the Energy Commission and Energy Commission employees.

C. <u>Security</u>. Pursuant to IPA § 1798.21, Recipient, and Recipient's subcontractors and project partners, shall employ appropriate and reasonable safeguards to ensure the security and confidentiality of Personal Information and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.

D. <u>Notice</u>. On or with any form used to collect Personal Information from individuals, the Recipient, and Recipient's subcontractors and project partners, shall provide the notice required in § 1798.17. At the time of executing this agreement, § 1798.17 requires the following:

(a) The name of the agency and the division within the agency that is requesting the information.

(b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.

(c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.

(d) With respect to each item of information, whether submission of such information is mandatory or voluntary.

(e) The consequences, if any, of not providing all or any part of the requested information.

(f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency.

3. Recipient has no Ownership or other Rights to the Personal Information

The Recipient has, and the Recipient shall ensure that its subcontractors and project partners have, no ownership, license, or other rights in Personal Information or in any form in which it is used (e.g., Products). In this regard, the Personal Information shall NOT be treated like Data, Products, Intellectual Property, or other provisions in the Agreement that may indicate that Recipient has ownership, license, or other rights.

4. Rights to Anonymized Information Derived from Personal Information

To the extent that the Recipient uses Personal Information to derive anonymized information that no longer meets the definition of Personal Information, the rights to derived anonymized information follow the rights in Exhibit C. For example, if the Recipient uses Personal Information to derive anonymized figures that are included in a Product, and the Product contains no Personal Information, the rights to the Product flow from Exhibit C, Section 5, like they do for all other Products.

5. Retention and Destruction of Personal Information

Upon the request of the Energy Commission, or upon termination of this Agreement, whichever is earlier, the Recipient and all subcontractors and project partners shall promptly deliver to the Energy Commission or destroy all Personal Information, regardless of form (e.g., written or electronic) and all copies, abstracts, media, and backups thereof, however stored in Recipient's and all of its subcontractors' and project partners' possession. No Personal Information shall remain with Recipient, its subcontractors, or its project partners upon request of the Energy Commission or after the termination of this Agreement, whichever occurs first.

6. Survival

The terms of this Exhibit shall remain in full force and effect in perpetuity.

7. Flow-down

The Recipient shall flow-down the terms in this Exhibit to its subcontractors and project partners.

EXHIBIT D
Agreement Contacts

Commission Agreement Manager: *(Progress Reports and Non-Confidential Products may be emailed to the CAM or uploaded into ECAMS with Invoice.)* Brad Williams California Energy Commission 715 P Street, MS-51 Sacramento, CA 95814 Phone: (916) 314-5865 e-mail: Brad.Williams@energy.ca.gov	**Recipient Project Manager:** Marin Clean Energy Sam Irvine 1125 Tamalpais Ave, San Rafael CA 94901 Phone: (925) 378-6756 E-mail: sirvine@mcecleanenergy.org
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