

**SOFTWARE-AS-A-SERVICE AGREEMENT
BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND**

Click to enter participant's name **FOR**

Click to enter pilot project name

THIS AGREEMENT is entered into this Click here to enter DAY day of ENTER MONTH, ENTER YEAR, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and Click here to enter Participant's name, a Click here to enter entity type (California corporation, partnership, etc.). whose address is Click here to enter address (hereinafter referred to as "Participant") (collectively referred to as the "Parties").

RECITALS:

A. Authority is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) with the power to conduct its business and enter into agreements.

B. Authority has launched an innovation pilot partnership program called Innovation Onramp in order to facilitate and support innovative research and the evaluation, testing, and implementation of innovative, emerging technologies and ideas, with the goal of accelerating decarbonization.

C. Participant has submitted a pilot project proposal to the Innovation Onramp program, pursuant to which Participant proposes to provide hosted "software as a service" services to briefly describe proposal, ie., "Participant proposes to utilize anonymized, aggregated SVCE data to evaluate the effects of XYZ" (the "Project").

D. Participant acknowledges that the successful performance of the services and the security and availability of SVCE's data are critical to the operation of SVCE's business.

E. Participant possesses the skill, experience, ability, background, training and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

F. Authority and Participant desire to enter into an agreement to carry out the Project upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Term. The term of this Agreement shall commence on Click here to enter beginning of term, and shall terminate on Click here to enter end of term ("Term"), unless terminated earlier as set forth herein.
2. The Services. This Agreement sets forth the terms and conditions under which Participant agrees to license to SVCE certain hosted software and provide all other services necessary

for productive use of such software including [customization / integration, user identification and password change management, data import / export, monitoring, technical support, maintenance, training, backup and recovery, and change management] (collectively, the “Services”) as further set forth in Exhibit “A” attached hereto. The Services shall be performed pursuant to the schedule of performance set forth in Exhibit “B” attached hereto.

- 2.1 Authorized Users. Unless otherwise limited herein, Participant grants SVCE a renewable, irrevocable, nonexclusive, royalty-free, and worldwide right and license for any SVCE employee, contractor, or agent, or any other individual or entity authorized by SVCE, (each, an “Authorized User”) to access and use the Services. Other than any limitations otherwise described herein, Authorized Users will have no other limitations on their access to or use of the Services.
- 2.2 Acknowledgement of License Grant. For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that this Agreement constitutes a grant of license to use intellectual property in software form, to SVCE by Participant.
- 2.3 Changes in Number of Authorized Users. SVCE is entitled to increase or decrease the initial number of Authorized Users (“Minimum Commitment”), on an as-requested basis; provided, however, that SVCE shall maintain the Minimum Commitment unless the parties otherwise agree to adjust the Minimum Commitment. Should SVCE elect to change the number of Authorized Users, Participant shall reduce or increase Authorized Users specified in Exhibit A and adjust the prospective Services Fees accordingly no later than five (5) business days from SVCE’s written request.
- 2.4 Control and Location of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Participant, giving due consideration to the requests of SVCE. Cloud based storage shall not be utilized without the SVCE’s prior, written consent. Any and all permitted cloud storage shall be in compliance with ISO/IEC 27001 - 27017, as applicable, or successor standards thereto. Except as otherwise expressly set forth in Exhibit A, the Services (including all data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein, and all such locations shall be disclosed to SVCE annually and within thirty (30) days of the effective date of this Agreement.
 - 2.4.1 Subcontractors. Participant shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without SVCE’s prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Participant’s use of subcontractors shall not relieve Participant of any of its duties or obligations under this Agreement.

- 2.5 Storage. The Services shall include the applicable allocation of base data storage as described in Exhibit A, if any. Participant shall immediately notify SVCE when SVCE has reached eighty percent (80%) of SVCE's then-current data storage maximum. Within five (5) calendar days of SVCE's request, Participant shall make additional data storage available to SVCE at the rates described in Exhibit C.
- 2.6 Development and Test Environments. In addition to production use of the Services, SVCE is entitled to one development and one test environment for use by Authorized Users at no additional charge. Such non-production environments shall have the same data storage and processing capacities as the production environment. Participant shall cooperate with SVCE's requests in managing the non-production environments such as refreshing SVCE Data upon request.
- 2.7 Documentation. The documentation for the Services ("Documentation") will accurately and completely describe the functions and features of the Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Services. SVCE shall have the right to make any number of additional copies of the Documentation at no additional charge.
- 2.8 Changes in Functionality. During the Term of this Agreement, Participant shall not reduce or eliminate functionality in the Services. Where Participant has reduced or eliminated functionality in the Services, SVCE, at SVCE's sole election and in SVCE's sole determination, shall: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (b) determine the value of the reduced or eliminated functionality and Participant will immediately adjust the Services Fees accordingly on a prospective basis. Where Participant has introduced like functionality in other services, SVCE shall have an additional license and subscription right to use and access the new services, at no additional charge, with the same rights, obligations, and limitations as for the Services. Where Participant increases functionality in the Services, such functionality shall be provided to SVCE without any increase in the Services Fees.
- 2.9 No Effect of Click-Through Terms and Conditions. Where an Authorized User is required to "click through" or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services or this Agreement.
- 2.10 Modification of the Services. SVCE's Director of Information Technology shall be authorized to waive, in writing, any of the Participant's obligations with respect to the Services, where deemed to be in SVCE's best interests, provided that no such modification shall result in any increase in the amount of the Services Fees.
- 2.11 Compliance with All Laws. Participant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which

may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Participant shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act. SVCE, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Participant to comply with this paragraph.

3. Service Levels.

3.1 Service Levels. For the Term of this Agreement, Participant shall provide the Services, force majeure events excepted, during the applicable service periods and in accordance with the applicable Service Level Standards, each as described in Exhibit A hereto.

3.2 Service Level Reporting. On a monthly basis, in arrears and no later than the fifteenth (15th) calendar day of the subsequent month following the reporting month, Participant shall provide reports to SVCE describing the performance of the Services and of Participant as compared to the Service Level Standards; provided, however, that a SVCE Satisfaction Service Level Survey shall be conducted by Participant each year on the anniversary of the Effective Date and the results shall be reported to SVCE by Participant no later than the fifteenth (15th) calendar day of the subsequent month following such anniversary date. The reports shall be in a form agreed-to by SVCE, and, in no case, shall contain less than the following information: (a) actual performance compared to the Service Level Standard; (b) the cause or basis for not meeting the Service Level Standard; (c) the specific remedial actions Participant has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved; and, (d) any Performance Credit due to SVCE. Participant and SVCE will meet as often as shall be reasonably requested by SVCE, but no less than monthly, to review the performance of Participant as it relates to the Service Levels. Where Participant fails to provide a report for a Service Level in the applicable timeframe, the Service Level shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Participant shall, without charge, make SVCE's historical Service Level reports available to SVCE upon request.

3.3 Failure to Meet Service Level Standards. In the event Participant does not meet a Service Level Standard, Participant shall: (a) owe to SVCE any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet Service Level Standard is subsequently met. Notwithstanding the foregoing, Participant will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall SVCE be required to notify Participant that a Performance Credit is due as a condition of payment of the same.

3.3.1 Termination for Material and Repeated Failures. SVCE shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement, and be entitled

to a return of any prepaid fees where Participant fails to meet any Service Level Standard: (a) to such an extent that the SVCE's ability, as solely determined by SVCE, to use the Services is materially disrupted, force majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

3.4 Audit of Service Levels. No more than quarterly, SVCE or SVCE's agent shall have the right to audit Participant's books, records, and measurement and auditing tools to verify Service Level Standard achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to SVCE but not paid, Participant shall immediately owe to SVCE the applicable Performance Credit.

4. Support; Maintenance; Additional Services.

4.1 Technical Support. Participant shall provide the Technical Support as described in Exhibit A. The Services Fees shall be inclusive of the fees for the Technical Support.

4.2 Maintenance. Participant shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation; (c) the Service Level Standards can be achieved; and, (d) the Services work with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, and Google Chrome Internet browsers. The Services Fees shall be inclusive of the fees for maintenance.

4.2.1 Required Notice of Maintenance. Unless as otherwise agreed to by SVCE on a case-by-case basis, Participant shall provide no less than thirty (30) calendar day's prior written notice to SVCE of all non-emergency maintenance to be performed on the Services, such written notice including a detailed description of all maintenance to be performed. For emergency maintenance, Participant shall provide as much prior notice as commercially practicable to SVCE and shall provide a detailed description of all maintenance performed no greater than one (1) calendar day following the implementation of the emergency maintenance.

4.2.2 Acceptance of Non-Emergency Maintenance. Unless as otherwise agreed to by SVCE on a case-by-case basis, for non-emergency maintenance, SVCE shall have a ten (10) business day period to test any maintenance changes prior to Participant introducing such maintenance changes into production (the "Maintenance Acceptance Period"). In the

event that SVCE rejects, for good cause, any maintenance changes during the Maintenance Acceptance Period, Participant shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if SVCE has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by SVCE and Participant shall be entitled to introduce the maintenance changes into production.

- 4.3 Customization / Integration Services. Participant shall provide the Customization / Integration Services, if any, described in Exhibit A. The Services Fees shall be inclusive of the fees for the Customization / Integration Services.
- 4.4 Training Services. Participant shall provide the Training Services, if any, described in Exhibit A. The Services Fees shall be inclusive of the fees for the Training Services.
5. Audit Rights of Participant. Participant shall have no right to conduct an on-premises audit of SVCE's compliance with the use of the Services. No more than once annually, Participant shall have the right to request from SVCE its certification of compliance with the permitted number of Authorized Users. Where the actual number of users exceeds the permitted number of Authorized Users, SVCE, at SVCE's sole election shall, within thirty (30) business days: (a) reduce the actual number of users so as to be in compliance with the permitted number of Authorized Users in which case no additional Services Fees shall be due to Participant; or, (b) acquire the appropriate number of Authorized Users' licenses at the rate specified in Exhibit A so as to be in compliance with the permitted number of Authorized Users.
6. Change Control Procedure. SVCE may, upon written notice, request changes to the scope of the Services under Exhibit A. If SVCE requests an increase in the scope, SVCE shall notify Participant, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Participant shall notify SVCE whether or not the change has an associated cost impact. If SVCE approves, SVCE shall issue a change order, which will be executed by the Participant. SVCE shall have the right to decrease the scope, and the associated fees will be reduced accordingly.
7. Termination.
 - 7.1 Termination for Convenience. Without limiting the right of a party to terminate this Agreement as provided for in this Agreement, SVCE may terminate this Agreement for convenience upon not less than thirty (30) days prior written notice to the Participant.
 - 7.2 Termination for Cause. Without limiting the right of a party to immediately terminate this Agreement for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after

written notice of the breach, the non-breaching party may terminate this Agreement for cause as of a date specified in such notice.

- 7.3 Payments upon Termination. Upon the termination of this Agreement, SVCE shall pay to Participant all undisputed amounts due and payable hereunder, if any, and Participant shall pay to SVCE all amounts due and payable hereunder, such as Performance Credits and prepaid fees, if any.
- 7.4 Return of SVCE Data. Upon the termination of this Agreement, Participant shall, within one (1) business day following the termination of this Agreement, provide SVCE, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Participant), with a final extract of the SVCE Data in the format specified by SVCE. Further, Participant shall certify to SVCE the destruction of any SVCE Data within the possession or control of Participant, in accordance with Section 12.5, but such destruction shall occur only after the SVCE Data has been returned to SVCE. This Section shall survive the termination of this Agreement.
- 7.5 Transition Services. Participant will provide to SVCE assistance reasonably requested by SVCE to effect the orderly transition of the Services, in whole or in part, to SVCE (“Transition Services”) following the termination of this Agreement, in whole or in part. The Transition Services may include: (a) developing a plan for the orderly transition of the terminated Services from Participant to SVCE; (b) using commercially reasonable efforts to assist SVCE in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Participant in connection with the Services; (c) using commercially reasonable efforts to make available to SVCE, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Participant in connection with the Services; and, (d) such other activities upon which the parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.
8. Fees; Billing. SVCE shall be responsible for and shall pay to Participant the fees as further described in Exhibit “C”, attached hereto, subject to the terms and conditions contained in this Agreement. Any sum due Participant for the Services for which payment is not otherwise specified shall be due and payable thirty (30) business days after receipt by SVCE of an invoice from Participant.
- 8.1 Billing Procedures. Participant shall bill to SVCE the sums due pursuant to Exhibit C by Participant’s invoice, which shall contain: (a) SVCE’s purchase order number, if any, and Participant’s invoice number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d); taxes, if any; (e); any Performance Credits or other credits; and, (f) total amount due.
- 8.2 Taxes. Participant represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Participant agrees that SVCE is not

responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Participant. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Participant.

- 8.3 Credits. Any amounts due to SVCE, such as a Performance Credit, from Participant may be applied by SVCE, at the sole election of SVCE, against any current or future fees due to Participant. Any such amounts that are not so applied by SVCE shall be paid to SVCE by Participant within thirty (30) calendar days following SVCE's request. This Section shall survive the termination of this Agreement.
- 8.4 Non-binding Terms. Any terms and conditions included in a Participant invoice shall be deemed to be solely for the convenience of the Participant, and no such term or condition shall be binding upon the SVCE.
- 8.5 Auditable Records. Participant shall maintain accurate records of all fees billable to, and payments made by, SVCE in a format that will permit audit by SVCE for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of Participant shall survive the termination of this Agreement. For the term of this Agreement, upon SVCE's written request, Participant shall provide SVCE with a copy of its annual American Institute of Certified Public Accountants Service Organization Control (SOC) 1 type 2 report and SOC 2 type 2 report (for all Trust Services Principles).
- 8.6 Billing Reviews by Third-Parties. For purposes of determining the competitiveness and appropriateness of fees charged to SVCE by Participant, SVCE is entitled to disclose to a third-party this Agreement, and any other data pertaining to fees paid or payable by SVCE to Participant.
- 8.7 No Suspension of Services. Participant shall not suspend any part of the Services where: (a) SVCE is reasonably disputing any amount due to Participant; or, (b) any unpaid but undisputed amount due to Participant is less than ninety (90) business days in arrears.

9. Representations and Warranties.

- 9.1 Mutual. SVCE and Participant represent and warrant that:
- 9.1.1 it is a public entity or business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
- 9.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
- 9.1.3 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with

its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;

9.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,

9.1.5 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

9.2 By Participant. Participant represents and warrants that:

9.2.1 it is in the business of providing the Services;

9.2.2 the Services are fit for the ordinary purposes for which they will be used;

9.2.3 it is possessed of superior knowledge with respect to the Services;

9.2.4 it acknowledges that SVCE is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to SVCE;

9.2.5 it knows the particular purpose for which the Services are required by SVCE;

9.2.6 it is the lawful licensee or owner of the Services (excluding any SVCE Data therein) and has all the necessary rights in the Services to grant the use of the Services to SVCE;

9.2.7 the Services and any other work performed by Participant hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement;

9.2.8 it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of this Agreement;

- 9.2.9 it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards;
- 9.2.10 it will use its best efforts to ensure that no computer viruses, worms, malware, or similar items (collectively, a “Virus”) are introduced into SVCE’s computing and network environment by the Services, and that, where it transfers a Virus to SVCE through the Services, it shall reimburse SVCE the actual cost incurred by SVCE to remove or recover from the Virus, including the costs of persons employed by SVCE to perform such services;
- 9.2.11 the Services are free of any mechanism which may disable the Services and Participant warrants that no loss of SVCE Data will result from such items if present in the Services;
- 9.2.12 in the case of SVCE’s reasonable dispute of any Participant invoice, it shall not withhold the performance of Services, including, without limitation, access and use of the Services, Technical Support, Maintenance, and extract of SVCE Data; and,
- 9.2.13 the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in Exhibit A and the Documentation.

10. SVCE Data.

- 10.1 Ownership. SVCE’s data (“SVCE Data,” which shall also be known and treated by Participant as Confidential Information) shall include: (a) SVCE’s data collected, accessed, used, processed, stored, or generated as the result of the SVCE’s use of the Services; and, (b) personally identifiable information (“PII”) collected, used, processed, stored, or generated as the result of the use of the Services, including, without limitation, any information that identifies an individual, such as an individual’s social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother’s maiden name, email address, credit card information, or an individual’s name in combination with any other of the elements listed herein. Except where subject to a third party’s intellectual property rights, all SVCE Data is and shall remain the sole and exclusive property of SVCE and all right, title, and interest in the same belongs to SVCE. This Section shall survive the termination of this Agreement.
- 10.2 Participant Use of SVCE Data. Participant is provided a limited license to access SVCE Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display SVCE Data only to the extent necessary in the providing of the Services. Participant shall: (a) keep and maintain SVCE Data in strict confidence, using such degree of care as is

appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose SVCE Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, and applicable law; (c) allow access to SVCE Data only to those employees of Participant who are directly involved with and responsible for providing the Services; and, (d) not use, sell, rent, transfer, distribute, or otherwise disclose or make available SVCE Data for Participant's own purposes or for the benefit of anyone other than SVCE without SVCE's prior written consent. This Section shall survive the termination of this Agreement.

- 10.3 Access to, and Extraction of SVCE Data. SVCE shall have full and complete access to, and ability to download, its SVCE Data 24 hours per day, 7 days per week, except during authorized periods of maintenance by Participant. Further, Participant shall, within one (1) business day of SVCE's request, provide SVCE, without charge and without any conditions or contingencies whatsoever (including, but not limited to, the payment of any fees due to Participant), an extract of the SVCE Data in the format specified by SVCE. In the event SVCE gives Participant written notice of a "litigation hold", then as to all data identified in such notice, Participant shall, at no additional cost to SVCE, isolate and preserve all such data pending receipt of further direction from the SVCE.
- 10.4 Backup and Recovery of SVCE Data. As a part of the Services, Participant is responsible for maintaining a backup of SVCE Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Unless otherwise described in Exhibit A, Participant shall maintain a contemporaneous backup of SVCE Data that can be recovered within two (2) hours at any point in time. Additionally, Participant shall store a backup of SVCE Data in an off-site (but within the continental United States) "hardened" facility no less than daily, maintaining the security of SVCE Data, the security requirements of which are further described herein. Any backups of SVCE Data shall not be considered in calculating storage used by SVCE.
- 10.5 Loss or Unauthorized Access to Data. In the event of any act, error or omission, negligence, misconduct, or breach that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of SVCE Data or the physical, technical, administrative, or organizational safeguards put in place by Participant that relate to the protection of the security, confidentiality, or integrity of SVCE Data, Participant shall, as applicable: (a) notify SVCE as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with SVCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by SVCE; (c) in the case of PII, at SVCE's sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally

required notification period, within five (5) calendar days of the occurrence; or, (ii) reimburse SVCE for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting SVCE's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless SVCE for any and all Claims (as defined herein), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from SVCE in connection with the occurrence; (g) be responsible for recreating lost SVCE Data in the manner and on the schedule set by SVCE without charge to SVCE; and, (h) provide to SVCE a detailed plan within ten (10) calendar days of the occurrence describing the measures Participant will undertake to prevent a future occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Participant's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Participant has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Participant. This Section shall survive the termination of this Agreement.

11. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

11.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. Except for electric and gas usage information provided to Participant pursuant to this Agreement, the term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving

party). For purposes of this Agreement, in all cases and for all matters, SVCE Data shall be deemed to be Confidential Information.

- 11.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement, or as required by law. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.
- 11.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person. It is understood that SVCE is subject to the California Public Records Act (Gov. Code § 6250 *et seq.*). If a request under the California Public Records Act is made to view Participant's Confidential Information, SVCE shall notify Participant of the request and the date that such records will be released to the requester unless Participant obtains a court order enjoining that disclosure. If Participant fails to obtain a court order enjoining that disclosure, SVCE will release the requested information on the date specified.
- 11.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of SVCE, at the sole election of SVCE, the immediate termination, without liability to SVCE, of this Agreement.
- 11.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which is in such party's possession, custody, or control; provided, however, that Participant shall return SVCE Data to SVCE following the timeframe and procedure described further in this Agreement. Should Participant or SVCE determine that the return of any SVCE Data or non-SVCE Data Confidential Information is not feasible, Participant shall destroy the data comprising such Confidential Information in compliance with the most current

version of NIST standard SP800-88, or other standard acceptable to the SVCE, and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.

12. Data Privacy and Information Security.

12.1 Undertaking by Participant. Without limiting Participant's obligation of confidentiality as further described herein, Participant shall be responsible for establishing, maintaining, and providing a written description to SVCE of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the SVCE Data; (b) protect against any anticipated threats or hazards to the security or integrity of the SVCE Data; (c) protect against unauthorized disclosure, access to, or use of the SVCE Data; (d) ensure the proper disposal of SVCE Data; and, (e) ensure that all employees, agents, and subcontractors of Participant, if any, comply with all of the foregoing. In no case shall the safeguards of Participant's data privacy and information security program used to protect SVCE Data be less stringent than the safeguards used by Participant for its own data.

If the Services include handling credit card information, then the Participant shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Participant agrees and warrants that it is responsible for the security of "cardholder data" that Participant possesses, stores, processes or transmits on behalf of the SVCE, and for any impact on the security of SVCE's cardholder data environment adversely affected by any failure of Company to maintain compliance with provisions of the PCI-DSS applicable to the Services.

12.2 Audit by Participant. No less than annually, Participant shall conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to SVCE.

12.3 Right of Audit by SVCE. Without limiting any other audit rights of SVCE, SVCE shall have the right to review Participant's data privacy and information security program prior to the commencement of Services and from time to time during the term of this Agreement. During the providing of the Services, on an ongoing basis from time to time and without notice, SVCE, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Participant's data privacy and information security program. In lieu of an on-site audit, upon request by SVCE, Participant agrees to complete, within forty-five (45) days of receipt, an audit questionnaire provided by SVCE regarding Participant's data privacy and information security program.

12.4 Audit Findings. Participant shall implement any required safeguards as identified by SVCE or by any audit of Participant's data privacy and information security program.

- 12.5 Pattern of Violations. It shall be considered a material breach of this Agreement if Participant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Participant understands that if SVCE finds that Participant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement SVCE shall promptly cease all disclosures of Confidential Information to Participant. Participant further understands that if SVCE receives a customer complaint about Participant's misuse of data or other violation of the Disclosure Provisions, SVCE shall promptly cease disclosing that customer's information to Participant and shall notify the California Public Utilities Commission ("CPUC") of the complaint.
- 12.6 CPUC Compliance. Participant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.
- 12.7 Injunction, Specific Performance or Such Other Relief. Participant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to SVCE and/or SVCE Customers, the amount of which may be difficult to assess. Accordingly, Participant hereby confirms that the SVCE shall be entitled to apply to a court of competent jurisdiction or the CPUC 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 Participant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the SVCE, in law or equity.
- 12.8 SVCE's Right to Termination for Deficiencies. SVCE reserves the right, at its sole election, to immediately terminate this Agreement without limitation and without liability if SVCE reasonably determines that Participant fails or has failed to meet its obligations under this Section.
13. Proprietary Rights.
- 13.1 Pre-existing Materials. SVCE acknowledges that, in the course of performing the Services, Participant may use software and related processes, instructions, methods, and techniques that have been previously developed by Participant (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of Participant.
- 13.2 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.

13.3 The provisions of this Section shall survive the termination of this Agreement.

14. Indemnification; Limitation of Liability; Insurance.

14.1 General Indemnification. Participant agrees to indemnify, defend, and hold harmless SVCE and its elected officials, officers, directors, agents, attorneys and employees (each, an “Indemnitee”) from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a “Claim,” and collectively, the “Claims“), including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Participant, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of Participant; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (d) any destruction, or unauthorized access, use, or theft of SVCE Data (collectively, “cyber theft”) or, (e) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the sole negligence or willful misconduct of an Indemnitee.

14.2 Proprietary Rights Indemnification. Participant agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims, including reasonable attorneys’ fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services allegedly or actually infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Participant is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that SVCE is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then Participant shall, at its expense: (a) obtain for SVCE the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by SVCE; or, (c) in the event that Participant is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Participant shall reimburse to SVCE any prepaid fees.

14.3 Indemnification Procedures. Promptly after receipt by SVCE of a threat, notice, or filing of any Claim against an Indemnitee, SVCE shall give notice thereof to Participant, provided that failure to give or delay in giving such notice shall not relieve Participant of any liability it may have to the Indemnitee except to the extent

that Participant demonstrates that the defense of the Claim is prejudiced thereby. Participant shall have sole control of the defense and of all negotiations for settlement of a Claim and SVCE shall not independently defend or respond to a Claim; provided, however, that: (a) SVCE may defend or respond to a Claim, at Participant's expense, if SVCE's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee; and, (b) SVCE shall have the right, at its own expense, to monitor Participant's defense of a Claim. At Participant's request, SVCE shall reasonably cooperate with Participant in defending against or settling a Claim; provided, however, that Participant shall reimburse SVCE for all reasonable out-of-pocket costs incurred by SVCE (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.

- 14.4 Third-Party Beneficiaries. Nothing, express or implied, in this Agreement is intended to benefit, or to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor Indemnitees.
- 14.5 Insurance. Unless otherwise approved in writing by SVCE's risk manager, Participant shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly admitted and qualified in California covering the operations of Participant, pursuant to this Agreement: commercial general liability (\$1,000,000 per occurrence, \$2,000,000 aggregate); excess liability (\$2,000,000 per occurrence, \$2,000,000 aggregate); workers' compensation (statutory limits) and employers' liability (\$500,000 per accident); cyber liability (\$5,000,000 per occurrence) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of SVCE Data; (ii) data breach including theft, destruction, and/or unauthorized use of SVCE Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of SVCE Data; and professional liability (\$1,000,000 per occurrence, \$1,000,000 aggregate). Any of the foregoing policy limits shall be subject to modification by the SVCE's risk manager upon thirty (30) days prior, written notice to Participant, and at any time prior to commencement of the Services.

The Indemnitees shall be named as additional insureds in the commercial general, cyber, and excess liability policies which shall contain standard cross liability clauses. Participant shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Participant waives all rights of subrogation with respect to said policies. Such policies shall require that SVCE be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. SVCE shall have the right to request an adjustment of the limits of liability for commercial general, cyber, and excess liability, and/or professional liability insurance as Participant's exposure to SVCE increases. Participant shall provide

SVCE with certificates of insurance and original endorsements, evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide SVCE with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.

15. General.

- 15.1 Relationship between SVCE and Participant. Participant represents and warrants that it is an independent contractor with no authority to contract for SVCE or in any way to bind or to commit SVCE to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of SVCE. Under no circumstances shall Participant, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of SVCE. In recognition of Participant's status as an independent contractor, SVCE shall carry no Workers' Compensation insurance or any health or accident insurance to cover Participant or Participant's agents or staff, if any. SVCE shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Participant nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of SVCE.
- 15.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America. Participant hereby consents and submits to the jurisdiction and forum of the state and federal courts in the County of Santa Clara, State of California, in all questions and controversies arising out of this Agreement.
- 15.3 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.
- 15.4 Compliance with Laws; SVCE Policies and Procedures. Participant agrees to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. Participant shall comply with SVCE policies and procedures where the same are posted, conveyed, or otherwise made available to Participant.
- 15.5 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each

party may properly accomplish its obligations and responsibilities hereunder. Participant will cooperate with any SVCE supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to SVCE, including, without limitation, the Successor Participant. Participant agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.

- 15.6 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Participant fails to use its best efforts to minimize such delays, the delays shall be included in the determination of Service Level achievement. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Participant from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of SVCE Data. In no event shall any of the following constitute a force majeure event: (a) failure, inadequate performance, or unavailability of Participant's subcontractors, if any; or, (b) configuration changes, other changes, Viruses, or other errors or omissions introduced, or permitted to be introduced, by Participant that result in an outage or inability for SVCE to access or use the Services. Within thirty (30) calendar days following the Effective Date and on an annual basis thereafter until the termination of this Agreement, Participant shall provide its then-current business continuity plan ("Business Continuity Plan") to SVCE upon SVCE's request. The Business Continuity Plan shall include: (a) Services and SVCE Data backup and recovery procedures, including procedures and resources for disaster recovery; (b) fail-over procedures; and, (c) how Participant will interact with its business continuity suppliers, if any. Participant shall test its Business Continuity Plan on an annual basis until the termination of this Agreement and shall provide the test results to SVCE upon SVCE's request.
- 15.7 Advertising and Publicity. Participant shall not refer to SVCE directly or indirectly in any advertisement, news release, or publication, or use any SVCE logo, seal or mark, without prior written approval from SVCE.
- 15.8 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

- 15.9 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.
- 15.10 Assignment of Agreement. This Agreement and the obligations of Participant hereunder are personal to Participant. Neither Participant nor any successor, receiver, or assignee of Participant shall directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of Participant's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of SVCE. In the case of an assignment by Participant, Participant represents and warrants that it has all requisite rights and power to transfer any agreements or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services. SVCE, at SVCE's sole election, may assign any and all of its rights and obligations under this Agreement to any company that succeeds to substantially all of SVCE's business.
- 15.11 Time is of the Essence. Time is of the essence in every provision of this Agreement in which time for performance is a factor.
- 15.12 Counterparts; Facsimile/PDF/Electronic Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.
- 15.13 Entire Agreement. This Agreement and any and all attached exhibits, each of which is incorporated by reference herein, constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between SVCE and Participant as to the subject matter hereof. No representation or promise not expressly set forth herein shall be binding. The provisions of this Agreement shall govern over any inconsistent or conflicting provisions contained in any exhibit hereto. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- 15.14 Cumulative Remedies. All rights and remedies of SVCE herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Participant for the enforcement of this Agreement, and temporary and permanent injunctive relief.

- 15.15 No Recourse against Constituent Members of Authority. SVCE is organized as a Joint Powers SVCE in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. SVCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Participant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of SVCE's constituent members in connection with this Agreement.
- 15.16 Non-Discrimination. In the performance of this Agreement, Participant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.
- 15.17 Conflict of Interest. Participant warrants that it, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Participant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Participant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Participant may perform similar services for other clients, but Participant and its officers, employees, associates and subcontractors shall not, without the SVCE Representative's prior written approval, perform work for another person or entity for whom Participant is not currently performing work that would require Participant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Participant shall incorporate a clause substantially similar to this section into any subcontract that Participant executes in connection with the performance of this Agreement. Participant understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Participant to make certain governmental decisions or serve in a staff SVCE, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.
- 15.18 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 15.19 Final Payment Acceptance Constitutes Release. The acceptance by Participant of the final payment made under this Agreement shall operate as and be a release of SVCE from all claims and liabilities for compensation to Participant for anything

done, furnished or relating to Participant's work or services. Acceptance of payment shall be any negotiation of SVCE's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by SVCE shall not constitute, nor be deemed, a release of the responsibility and liability of Participant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by SVCE for any defect or error in the work prepared by Participant, its employees, subcontractors and agents.

- 15.20 SVCE's Rights to Employ Other Consultants. SVCE reserves the right to employ other consultants in connection with the subject matter of the Services.
- 15.21 Inserted Provisions. Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.
- 15.22 Captions and Terms. The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.
- 15.23 Exhibits. The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Participant's proposal, the provisions of this Agreement shall control.
- 15.24 Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

Executed on the dates set forth below by the undersigned authorized representative of SVCE and Participant to be effective as of the Effective Date.

SILICON VALLEY CLEAN ENERGY (SVCE)

By:

Name:

Title:

Date:

Address for Notice:

[PARTICIPANT NAME] (PARTICIPANT)

By:

Name:

Title:

Date:

Address for Notice:

EXHIBIT A

STATEMENT OF SERVICES, SUPPORT, AND SERVICE LEVEL AGREEMENT

Services Description. [Enter a detailed description of the Services that will be provided, including all Project Deliverables. As appropriate, documents describing the Services can be “attached hereto and incorporated herein.”]

Start Date and End Date. [Indicate the Start Date and End Date of the Services. If the Services are not required until after Customization / Integration Services, Training Services, etc. are completed, be sure to indicate that the Start Date for the Services may be later than the Start Date for, for example, the Customization / Integration Services.]

Authorized Users. [Indicate the initial number of Authorized Users and any additional “tiers” of Authorized Users.]

Storage Threshold(s). [Describe the initial data storage provided by the Participant and any additional “tiers” of storage.]

Technical Support Description. [Modify this section as necessary.] Participant will provide to SVCE telephone and email support (“Technical Support”) twenty-four (24) hours per day, seven (7) days per week, three-hundred-sixty-five (365) days per year. Technical Support will include any research and resolution activity performed by Participant.

- a) Request for Technical Support. Authorized Users will make Technical Support requests by calling or emailing Participant’s Technical Support staff or by submitting a request via Participant’s customer service web portal. The Technical Support staff shall assign to the request the Problem Severity Level (as defined herein) indicated by the requestor.
- b) Problem Severity Levels 1 and 2 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Participant shall confirm to the requestor receipt of the request by Participant. If a Problem Severity Level 1 or 2 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, Participant will: (a) immediately escalate the request to Participant’s management; (b) take and continue to take the actions which will most expeditiously resolve the request; (c) provide a hourly report to the requestor of the steps taken and to be taken to resolve the request, the progress to correct, and the estimated time of correction until the request is resolved; and, (d) every [Time Duration], provide increasing levels of technical expertise and Participant management involvement in finding a solution to the request until it has been resolved.
- c) Problem Severity Levels 3 and 4 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Participant shall confirm to the requestor receipt of the request by Participant. If a Problem Severity Level 3 or 4 request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for

Technical Support, at the sole election of requestor: (a) Participant will work continuously to resolve the request; or, (b) requestor and Participant will mutually agree upon a schedule within which to resolve the request.

Technical Support Problem Severity Levels

a) Problem Severity Level 1.

1) Description. This Problem Severity Level is associated with: (a) Services, as a whole, are non-functional or are not accessible; (b) unauthorized exposure of all or part of SVCE Data; or, (c) loss or corruption of all or part of SVCE Data.

2) Request Response Time. 30 minutes.

3) Request Resolution Time. 2 hours.

b) Problem Severity Level 2.

1) Description. This Problem Severity Level is associated with significant and / or ongoing interruption of an Authorized User's use of a critical function (as determined by the Authorized User) of the Services and for which no acceptable (as determined by the Authorized User) work-around is available.

2) Request Response Time. 1 hour.

3) Request Resolution Time. 4 hours.

c) Problem Severity Level 3.

1) Description. This Problem Severity Level is associated with: (a) minor and / or limited interruption of an Authorized User's use of a non-critical function (as determined by the Authorized User) of the Services; or, (b) problems which are not included in Problem Severity Levels 1 or 2.

2) Request Response Time. 8 hours.

3) Request Resolution Time. 24 hours.

d) Problem Severity Level 4.

1) Description. This Problem Severity Level is associated with: (a) general questions pertaining to the Services; or, (b) problems which are not included in Problem Severity Levels 1, 2, or 3.

2) Request Response Time. 8 hours.

3) Request Resolution Time. 48 hours.

Customization / Integration Services. [Describe all Customization / Integration Services, if any, to be provided by the Participant to enable production use of the Services.]

Training Services. [Describe all Training Services, if any, to be provided by the Participant. Include any type of training or method of delivery, including documentation or other materials, web- or computer-based, instructor-led, train-the-trainer, etc.]

Service Levels.

a) Availability Service Level.

1) Definitions.

- (a) “Actual Uptime” shall mean the total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.
- (b) “Maintenance Window” shall mean the total minutes in the reporting month represented by the following day(s) and time(s) during which Participant shall maintain the Services: [Day(s) and Time(s)].
- (c) “Scheduled Downtime” shall mean the total minutes in the reporting month represented by the Maintenance Window.
- (d) “Scheduled Uptime” shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

2) Service Level Standard. Services will be available to Authorized Users for normal use 100% of the Scheduled Uptime.

3) Calculation. $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$ (as calculated by rounding to the second decimal point)

4) Performance Credit.

- (a) Where Percentage Uptime is greater than 99.98%, no Performance Credit will be due to SVCE.
- (b) Where Percentage Uptime is equal to or less than 99.98%, SVCE shall be due a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.

5) Example Calculation.

- (a) Assuming reporting month is February 2012 (41,760 minutes).
- (b) Assuming a Maintenance Window of Sundays from Midnight to 4:00 a.m. Eastern Standard Time (equals Scheduled Downtime of 960 minutes).

- (c) Scheduled Uptime equals 40,800 minutes (total minutes of 41,760 in February 2012 less 960 minutes of Scheduled Downtime).
 - (d) Assuming Actual Uptime of 40,000 minutes. A Percentage Uptime is calculated as follows: $(40,000 / 40,800) * 100 = 98.04\%$.
 - (e) The threshold of 99.99% less the Percentage Uptime of 98.04% = 1.95%.
 - (f) The difference is greater than a 1% reduction but is less than a 2% reduction; therefore, SVCE is due 10% of the Services Fees as a Performance Credit.
- b) Services Response Time Service Level.
- 1) Definition(s).
 - (a) “Response Time” shall mean the interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.
 - (b) “Total Transactions” shall mean the total of Transactions occurring in the reporting month.
 - (c) “Transaction” or “Transactions” shall mean Services web page loads, Services web page displays, and Authorized User Services requests.
 - 2) Service Level Standard. Transactions will have a Response Time of 1 second or less 100% of the time each reporting month during the periods for which the Services are available.
 - 3) Calculation. $((\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions}) * 100 = \text{Percentage Response Time}$ (as calculated by rounding to the second decimal point).
 - 4) Performance Credit.
 - (a) Where Percentage Response Time is greater than 95.00%, no Performance Credit will be due to SVCE.
 - (b) Where Percentage Response Time is equal to or less than 95.00%, SVCE shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.
 - 5) Example Calculation.

- (a) Total Transactions during the reporting month equal 42,078.
 - (b) Total Transactions failing the Standard of 100% equal 2,163.
 - (c) Percentage Response Time is calculated as follows: $((42,078 - 2,163) / 42,078) * 100 = 94.86\%$
 - (d) The threshold of 95.01% less the Percentage Response Time of 94.86% = .15%. The difference is less than a 1% reduction; therefore, SVCE is not due a Performance Credit.
- c) Technical Support Problem Response Service Level.
- 1) Definition. “Total Problems” shall mean the total of problems occurring in the reporting month.
 - 2) Service Level Standard. Problems shall be confirmed as received by Participant 100% of the time each reporting month, in accordance with the Request Response Time associated with the Problem Severity Level.
 - 3) Calculation. $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Response}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each Problem Severity Level.
 - 4) Performance Credit.
 - (a) Problem Severity Level 1 – 2.
 - (1) Where Percentage Problem Response is greater than 99.00%, no Performance Credit will be due to SVCE.
 - (2) Where Percentage Problem Response is equal to or less than 99.00%, SVCE shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.
 - (b) Problem Severity Level 3 – 4.
 - (1) Where Percentage Problem Response is greater than 90.00%, no Performance Credit will be due to SVCE.
 - (2) Where Percentage Problem Response is equal to or less than 90.00%, SVCE shall be due a Performance Credit in the amount of .5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.
 - 5) Example Calculation (Using Problem Severity Level 1 – 2).
 - (a) Total Problems during the reporting month equal 68.

(b) Total Problems failing the Standard of 100% equal 3.

(c) Percentage Problem Response is calculated as follows: $((68 - 3) / 68) * 100 = 95.59\%$

(d) The threshold of 99.01% less the Percentage Problem Response of 95.59% = 3.42%. The difference is greater than a 3% reduction but is less than a 4% reduction; therefore, SVCE is due 3% of the Services Fees as a Performance Credit.

d) Technical Support Problem Resolution Service Level.

1) Definition. “Total Problems” shall mean the total of problems occurring in the reporting month.

2) Service Level Standard. Problems shall be resolved by Participant 100% of the time each reporting month, in accordance with the Request Resolution Time associated with the Problem Severity Level.

3) Calculation. $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Resolution}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each Problem Severity Level.

4) Performance Credit.

(a) Problem Severity Level 1 – 2.

(1) Where Percentage Problem Resolution is greater than 99.00%, no Performance Credit will be due to SVCE.

(2) Where Percentage Problem Resolution is equal to or less than 99.00%, SVCE shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Resolution.

(b) Problem Severity Level 3 – 4.

(1) Where Percentage Problem Resolution is greater than 90.00%, no Performance Credit will be due to SVCE.

(2) Where Percentage Problem Resolution is equal to or less than 90.00%, SVCE shall be due a Performance Credit in the amount of 1% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Resolution.

5) Example Calculation (Using Problem Severity Level 3 – 4).

(a) Total Problems during the reporting month equal 17.

(b) Total Problems failing the Standard of 100% equal 2.

- (c) Percentage Problem Resolution is calculated as follows: $((17 - 2) / 17) * 100 = 88.24\%$
- (d) The threshold of 90.01% less the Percentage Problem Resolution of 88.24% = 1.77%. The difference is greater than a 1% reduction but is less than a 2% reduction; therefore, SVCE is due 1% of the Services Fees as a Performance Credit.

EXHIBIT B

SCHEDULE OF PERFORMANCE

Participant shall perform the Services so as to complete each Project Deliverable according to the schedule set forth below. The time to complete each Deliverable may be increased or decreased by mutual written agreement of the project representatives for both Participant and Authority, so long as all work is completed within the Term of the Agreement.

Project Deliverables	Completion Date
Deliverable 1: name/describe deliverable	insert date
Deliverable 2: name/describe deliverable	insert date
Deliverable 3: name/describe deliverable	insert date

EXHIBIT C

COMPENSATION

The compensation to be paid to Participant under this Agreement for all Services described in Exhibit “A” shall not exceed a total of [Click here to enter dollar amount in words](#) dollars ([\\$Click here to enter dollar amount in numerals.00](#)). Any work performed for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority. No reimbursable expenses are contemplated as a part of this Agreement.

Services Fees: [Describe the rates for the initial number of Authorized Users, as well as the rates to purchase any additional “tiers” or numbers of Authorized Users. Be clear as to the type of pricing model; for example, scalable pricing, module pricing, per seat pricing, usage-based pricing. This Agreement assumes a scalable and elastic per-user pricing model.]

Storage Fees: [Describe Storage Fees, if any, for the initial data storage provided by the Participant as well as for any additional “tiers” of storage.]

Other Project Deliverables:

Participant shall complete the additional Deliverables as outlined and budgeted below. Authority’s project representative may approve in writing the transfer of budget amounts between any of the Deliverables below, provided that the total does not exceed the not-to-exceed amount above.

<u>Deliverables</u>	<u>Completion Amount</u>
Deliverable 1: name/describe deliverable	\$ enter amount
Deliverable 2: name/describe deliverable	\$ enter amount
Deliverable 3: name/describe deliverable	\$ enter amount

Invoicing

1. Participant shall submit invoices to the Authority on a [[monthly/quarterly](#)] basis for the Services Fees and Storage Fees, if any, described above.
2. Participant shall submit invoices to the Authority for the Deliverables upon completion of each Deliverable.

Advances

Upon written request by Participant, the Authority may, in its sole discretion, distribute to Participant an advance or advances meeting the following requirements:

1. Participant demonstrates that such advance(s) is required up front in order to undertake a Deliverable.
2. Participant submits invoices and receipts supporting the expenditures of an advance within 60 days of the payment by Authority. If complete invoices and receipts are not provided within 60 days, no further advances will be given.
3. At no time shall the total of all advances exceed 25% of the total amount of compensation.
4. No advance shall be provided for the final 10% of the total amount of compensation.