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Los Angeles
Department of
Water & Power

RESOLUTION NO. 024 045

BOARD LETTER APPROVAL

☒ POWER SYSTEM

☐ WATER SYSTEM

☐

☐ COO

☐ CFO

☐ LEGAL

Release Date

October 10, 2023

Simon Zewdu

SIMON ZEWDU

Interim Senior Assistant General Manager
Power System

A. Ben

ARAM BENYAMIN

Chief Operating Officer

A. Ben

Aram Benyamini (Sep 12, 2023 14:32 PDT)

MARTIN L. ADAMS

General Manager and Chief Engineer

DATE: September 11, 2023

SUBJECT: Agreement No. 47795 with EnergyHub, Inc. for Power Savers Program Platform and Data Services

SUMMARY

The proposed single-source Agreement No. 47795 (Agreement) with EnergyHub, Inc. (EnergyHub) is to provide platform, data, and processing services for the Power Savers Program (PSP) for a term of one year with a one-year optional renewal period, and an amount not to exceed \$19,100,000 (budgeted). The Agreement is a result of Request for Single-Source Proposal (RSSP) No. 90730.

The PSP provides residential customers with the opportunity to reduce their energy usage during peak demand periods through a bring-your-own-thermostat (BYOT) Demand Response (DR) approach. The previous agreement, through the Southern California Public Power Authority (SCPPA), with EnergyHub for PSP expired on December 8, 2022. The Agreement allows LADWP to work with EnergyHub to offer PSP to unenrolled residential customers and maintains the existing customer portfolio of approximately 37,260 participating customers during peak demand periods while a replacement Request for Proposal (RFP) is issued.

City Council approval is not required.

RECOMMENDATION

It is recommended that the Board of Water and Power Commissioners (Board) adopt the attached Resolution authorizing the award of the Agreement to EnergyHub.

ALTERNATIVES CONSIDERED

Alternative approaches were considered. The initial approach was for LADWP's staff to take over the program operation and enrollment portal. An in-house operation requires LADWP to have a Demand Response Management System (DRMS) in service to manage the enrolled thermostats. LADWP currently does not have a solution that can integrate directly with smart thermostats; however, LADWP intends to acquire the DRMS through the upcoming DR RFP. In addition, LADWP will need to develop multiple agreements with thermostat manufacturers to have access and control of the devices along with their data. On August 2, 2023, LADWP staff submitted the formal documentation to begin the expanded DR RFP development to Supply Chain Services (SCS). Staff will work with SCS to ensure this RFP is issued in-house in a timely manner that includes review, meeting with potential vendors, and selecting one or more vendors to expand the DR portfolio. Afterward, LADWP will negotiate the respective contract(s) and deliver them to the Board for final approval.

Moreover, LADWP considered halting PSP offerings until a contract from the upcoming DR RFP is in place in 2024. With this approach, LADWP cannot utilize the resources from this program in the summer of 2023 when they are most needed. Furthermore, maintaining program continuity will avoid the need to re-enroll 37,260 customers. Additionally, not approving this Agreement might negatively impact customer satisfaction because the enrolled customers will be on hiatus for one year before PSP is in operation again.

FINANCIAL INFORMATION

The Agreement will be for a term of one year with a one-year optional renewal period for an amount not to exceed \$19,100,000 (budgeted). The Agreement amount consists of fees for the platform, data, and processing services including reimbursement of incentives issued by EnergyHub to customers as follows:

	Not-to-Exceed Amount		
	Services	Incentives	Total
Original Contractual Period	\$ 2,500,000	\$ 6,300,000	\$ 8,800,000
First Optional Period	\$ 2,900,000	\$ 7,400,000	\$10,300,000
Agreement Total	\$ 5,400,000	\$13,700,000	\$19,100,000

Under the PSP, LADWP will provide a \$65 maximum enrollment incentive to newly enrolled customers. In addition, all participating customers will receive seasonal incentives based on their participation level. Eligibility for the seasonal incentives is

defined as the percentage of total number of minutes a device is participating in DR mode (excluding pre-cool) across the season as follows:

- Less than 25 percent: No incentive will be earned,
- Between 25 percent and 74 percent: \$60 will be earned, and
- At or above 75 percent: \$120 will be earned.

BACKGROUND

DR is an important energy management tool for LADWP and facilitates the reduction or increase in customers' energy use over a given time period, usually during a system peak period, in response to financial incentives or other triggering mechanisms. The key objective of DR for LADWP is to support the integration of renewable resources by reducing the system peak during the afternoon and evening. After the sun sets, LADWP will ramp up fossil-fueled generation units to maintain reliability in the system. During these periods in the summer, the Energy Control Center (ECC) will dispatch DR resources, as needed, to balance the load and generation, and forgo the use of fossil-fueled generation resources.

In 2019, LADWP began work with EnergyHub for the requested services through a SCPPA agreement. LADWP offered PSP to residential customers with eligible thermostats, through the BYOT approach. Since then, participation in the program has grown steadily. At the end of the 2022 DR season, the program consisted of 37,260 customers with 43,806 thermostats. During this season, LADWP conducted ten DR events and curtailed an average of 26 megawatts (MW) of demand. The participating customers saved 781 megawatt-hours during the 2022 DR season.

LADWP successfully utilized DR resources during the heatwave in September 2022, including events that coincide with Emergency Energy Proclamations issued by State of California Governor Gavin Newsom. ECC dispatched four DR events for PSP during this multi-day heat storm and successfully achieved a maximum of 34 MW of load curtailment in one of the events, which was a record achievement by the LADWP PSP. The program has been highly successful in positively engaging with our customers resulting in a vital resource necessary for our renewable transformation.

Awarding a new contract to EnergyHub for PSP services is the only way to feasibly implement PSP during the period while LADWP completes its DR RFP. Reasons for this, as identified above, include (1) the fact that EnergyHub already has 37,260 LADWP customers enrolled in its system; (2) it would take more than the time between now and when contracts resulting from the DR RFP are in place to solicit or select and negotiate a new contract with a new vendor, implement a new system, and enroll customers in a new system; and (3) LADWP would have to financially start over with a new vendor for the interim period (which it may do anyway as a result of the DR RFP) and abandon the previous investment in the EnergyHub system, which does not reflect the best value for ratepayers for a short-term solution. Additionally, a short-term solution is compatible with LADWP's energy reduction goals. For these reasons, competitive

bidding for this contract is undesirable and impractical and a single source purchase is justified pursuant to Section 371(e)(10) of the City Charter and Section 10.15(a)(10) of the Los Angeles Administrative Code.

ENVIRONMENTAL DETERMINATION

Determine item is exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(3). In accordance with this section, an activity is not subject to CEQA if it does not meet the definition of a project. Section 15378(b)(4) states that government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment do not meet that definition. Therefore, entering into an agreement to furnish and deliver the Power Savers Program Platform and Data Services is not subject to CEQA.

CITY ATTORNEY

The Office of the City Attorney reviewed and approved the Agreement and Resolution as to form and legality.

ATTACHMENTS

- Procurement Summary
- Resolution
- Agreement

PROCUREMENT SUMMARY

1.	Recommended Vendor: EnergyHub, Inc. (EnergyHub)
2.	Procurement Type: Single Source
3.	Procurement Details: A. Contract Status: New B. Proposal Advertisement Date: N/A C. Pre-Proposal Conference Date: N/A D. Proposal Due Date: 05/19/2023 E. Number of Downloads of Solicitation: 1 F. Number of Proposals Received: 1 G. Protest Received: No
4.	Buyer Assigned: Joelle Morisseau-Phillips
5.	Contract Administrator: Zaw Htin
6.	LADWP System/Division: Power System/Power System Planning Division
7.	Contact Person for Item: Zaw Htin

A. Evaluation Rating Summary of Proposals

Not applicable to the Agreement.

B. Evaluation of Proposal

LADWP issued Request for Single-Source Proposal (RSSP) No. 90730 for Power Savers Platform and Data Services to EnergyHub. Prices were determined to be fair and reasonable based on a comparison to the cost estimate and the previous Southern California Public Power Authority agreement.

C. Procurement History

Service/Item History – Number of Times Item or Service has been Procured					
Contract/ PO No.	Contractor	Term of Contract	Start Date	Ending Date	Contract Amount
N/A					

Vendor Experience-Number of Contracts Vendor had with LADWP during the past 5 years					
Contract/ PO No.	Contractor	Term of Contract	Start Date	Ending Date	Contract Amount
N/A					

D. Local Business Preference Program (LBPP)

Not applicable to the Agreement.

E. Additional Outreach Efforts Taken

Not applicable to the Agreement.

F. Small Business Enterprises (SBE)/Disabled Veterans Business Enterprises (DVBE)/Minority Business Enterprises (MBE)/Women Business Enterprises (WBE)/Other Business Enterprises (OBE) Participation

Not applicable as this is a single-source agreement. However, EnergyHub was encouraged to utilize SBE, DVBE, MBE, WBE, and other firms where feasible.

WHEREAS, the Los Angeles Department of Water and Power (LADWP) proposes to enter into single source Agreement No. 47795 (Agreement) with EnergyHub, Inc. (EnergyHub) for services related to continuation of the Power Savers Program (PSP) for residential customers including the application process, data management system, and vendor exclusive advice for Demand Response for a term of one year and a one-year optional renewal period; and

WHEREAS, EnergyHub has reviewed the services to be provided and incorporated in this Agreement and represents that it has the qualities, expertise, skills, and abilities to perform such work; and

WHEREAS, the Board of Water and Power Commissioners' (Board) approval will be required to exercise the one-year renewal option.

NOW, THEREFORE, BE IT RESOLVED that LADWP proposes to enter into Agreement No. 47795 with EnergyHub for an amount not to exceed \$19,100,000.

BE IT FURTHER RESOLVED that pursuant to City Charter Section 1022, the Board finds that it is more feasible to have the work performed by an independent contractor.

BE IT FURTHER RESOLVED that pursuant to City Charter Section 371(e)(10) and Administrative Code Section 10.15(a)(10), the Board finds that pursuing a competitive process for this short-term Agreement is impractical or undesirable in that it would prevent LADWP from being able to respond to a Demand Response event while a competitive solicitation is completed.

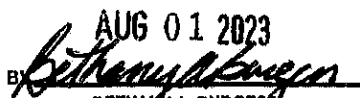
BE IT FURTHER RESOLVED that the Agreement, approved as to form and legality by the City Attorney, and filed with the Secretary of the Board, is hereby approved, subject to future Board approval for the exercise of the one-year renewal option.

BE IT FURTHER RESOLVED that the Chief Accounting Employee of LADWP, upon proper certification, is authorized and directed to draw demands on the Power Revenue Fund, in accordance with the terms of the Agreement and this Resolution.

BE IT FURTHER RESOLVED that the President or Vice President, or the General Manager, or such person as the General Manager shall designate in writing, and the Secretary, Assistant Secretary, or the Acting Secretary of the Board are hereby authorized and directed to execute said Agreement for and on behalf of LADWP.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of the Resolution adopted by the Board of Water and Power Commissioners of the City of Los Angeles at its meeting held September 26, 2023

APPROVED AS TO FORM AND LEGALITY
HYDEE FELDSTEIN SOTO, CITY ATTORNEY

AUG 01 2023
BY 
BETHANY A. BURGESS
DEPUTY CITY ATTORNEY



Secretary



PROFESSIONAL SERVICES AGREEMENT NO. 47795

Company Name: EnergyHub, Inc.

Subject: Power Savers Program and Data Services

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AGREEMENT NUMBER 47795

**BETWEEN
THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER
AND
EnergyHub, Inc.**

THIS AGREEMENT is made and entered into by and between the City of Los Angeles acting by and through its Department of Water and Power, a municipal corporation, (hereinafter "LADWP") and EnergyHub, Inc., a Delaware corporation (hereinafter the "Consultant" or "Contractor"). Individually, LADWP and Consultant are referred to under this Agreement as a "Party" and collectively as the "Parties."

In consideration of the mutual covenants of the parties as set forth below, the parties hereby agree as follows:

ARTICLE I: PARTIES AND NOTICE

1.1 Parties to the Agreement

The Parties to this Agreement are:

Los Angeles Department of Water and Power (LADWP)
111 North Hope Street
Los Angeles, California 90012

and

EnergyHub, Inc.
41 Flatbush Avenue
Suite 400A
Brooklyn, New York 11217

1.2 Service of Notices

All notices, demands and communications regarding the interpretation of the terms of this Agreement or changes thereto shall be made in writing and may be effected by personal delivery or by certified mail, overnight carrier, or confirmed facsimile and shall be deemed communicated as of the date of delivery or the date of mailing, whichever is applicable, or in the case of a facsimile or email, upon receipt if transmitted during the receiving Party's normal business hours, otherwise on the first business day following receipt.

If the name or address of the person(s) designated to receive notices, demands or communications, is changed, or additional persons are added to receive

notices, demands or communications, written notice shall be given to the other Party, in accord with this article, of said change.

The authorized representatives to receive said notices shall be:

Authorized representatives of LADWP:

Arash Saidi
Power Engineering Manager
Los Angeles Department of Water and Power
Power System Planning Division
111 N. Hope Street
Room 940
Los Angeles, California 90012
Phone Number: (213) 367-4886
Email Address: arash.saidi@ladwp.com

and

Zaw Htin
Electrical Engineer
Los Angeles Department of Water and Power
Power System Planning Division
111 N. Hope Street
Room 824
Phone Number: (213) 367-2995
Email Address: zaw.htin@ladwp.com

Authorized representatives of the Consultant:

Name: Nick Bengtson
Title: Sales Executive
Division: Sales
Primary Location Address:
Phone Number:
Email Address: bengtson@energyhub.net

And

Name: Elizabeth Stevens
Title: Corporate Counsel
Division: Legal
Primary Location Address: 41 Flatbush Avenue,
Suite 400A, Brooklyn, NY 11217
Phone Number: (718) 522-7051
Email Address: stevens@energyhub.net

ARTICLE II: TERM OF THE AGREEMENT

2.1 Term of the Agreement

The term of this Agreement shall commence upon execution of this Agreement by all Parties hereto and shall terminate one (1) year thereafter, subject to the termination provisions herein. Performance shall not begin until the Consultant has obtained LADWP approval of insurance required herein.

2.1.1 Extension Options

At LADWP's sole option, the term of this Agreement may be extended for up to an additional one (1) year, exercisable in one (1) year increments, or any portion thereof.

ARTICLE III: Time is of the essence

LADWP and the Consultant understand and agree that "Time is of the Essence" in performance of this Agreement, subject to the rights and obligations under Section 8.2 (including, without limitation, all applicable notice and cure periods).

ARTICLE IV: COMPENSATION AND PAYMENT

4.1 Compensation

4.1.1 Not-to-Exceed Amount

The total compensation that may be paid to the Consultant by LADWP for complete and satisfactory performance of services under this Agreement shall not exceed Nineteen Million One Hundred Thousand Dollars. (\$19,100,000.00)

4.1.2 Authorized Expenditures

Of the total amount of compensation included in Article 4.1.1 above, LADWP shall pay the Consultant for services performed, tasks implemented, and deliverables provided as specified in Article 4.2, Allowable Fees and Costs of this Agreement. LADWP shall not be liable for payment of monies unless there is a document outlining performed services, completed tasks, and provided deliverables that are approved by LADWP's authorized representative(s) identified in Article 1.2 of this Agreement.

4.1.3 Taxes

Any and all taxes imposed on Consultant's income, imposed or assessed by reason of this agreement or its performance shall be paid by Consultant. All fees owed by LADWP are exclusive of, and LADWP shall be responsible for all applicable sales, use, and similar taxes levied on items sold pursuant to this Agreement. In all cases the amount of applicable sales tax or use tax, if any, shall be separately stated on the invoice.

4.2 Allowable Fees and Costs

LADWP shall pay for services at the rates established in **Exhibit C, Fee Schedule** and in accordance with the tasks, milestones, or phases of the project as established in **Exhibit H, Statement of Work** of this Agreement and based upon the Consultant and Subconsultant rates established in **Exhibit C, Fee Schedule**, which is attached hereto and made a part hereof. Such rates are inclusive of salary, employee benefits, overhead, profit, general office expenses, administrative services, invoice preparation and processing, routine telecommunications, internet, personal computer, facsimile, routine postage, individual shipping charges of less than ten dollars (\$10.00), incidental copying, one hard copy of deliverables, and one electronic copy of deliverables costs.

4.2.1 Payment of Subconsultant Costs

LADWP shall pay for Subconsultant expenses at the actual amount to be paid by the Consultant to the Subconsultant, consistent with the Subconsultant labor rates and fees established in **Exhibit C, Fee Schedule**.

The Consultant may invoice for direct services in the management, oversight, and administration of Subconsultants, including the Consultant's reviewing and processing of Subconsultant invoices. No markup of any kind by the Consultant or Subconsultant for Subconsultant services of any tier shall be allowed.

4.2.2 Reimbursement of Travel Expenses

Travel expenses necessary to perform required work for LADWP must be pre-approved by LADWP. LADWP approved travel expenses shall be paid at the actual cost of such expenses, consistent with **Exhibit D, Allowable Travel Expenses**, which is attached hereto and made a part hereof. No markup of any kind by the Consultant or Subconsultant of any tier for travel expenses shall be allowed.

4.2.3 Other Reimbursable Expenses

Other reimbursable expenses include purchase of special equipment, necessary field supplies and facilities, testing and laboratory services, individual shipping charges in excess of ten dollars (\$10.00), materials, and supplies used in the work performed for LADWP pursuant to **Exhibit H, Statement of Work**, of this Agreement. Reimbursable expenses shall be paid by LADWP at the actual cost of such expenses, or the expense rates established in **Exhibit C, Fee Schedule**. No markup of any kind by the Consultant, Subconsultant of any tier, or supplier for other reimbursable expenses shall be allowed.

Any items purchased at the request of LADWP to accomplish the work shall become the property of LADWP upon purchase and shall be delivered to LADWP at the conclusion of the work. Any other items purchased by the Consultant for performance of services shall be the property of the Consultant, shall not be charged to LADWP, and shall not be reimbursed by LADWP.

4.2.4 Conditions for Payment for Overtime

Any work required by an individual in excess of eight (8) hours a day, or on a weekend, holiday, or any other instance in which payment of an overtime or labor rate premium could be applicable shall be based on the labor rates established in **Exhibit C, Fee Schedule**. In special circumstances, an overtime or labor rate premium may be allowed at the sole option of LADWP, with prior written approval by an LADWP authorized representative designated in Article 1.2 of this Agreement. The overtime billing rate shall be calculated based upon the employee's salary rather than the entire fully loaded billing rate.

4.3 Method of Payment

Payment for Consultant services shall be made in accordance with the rates established in **Exhibit C, Fee Schedule** and pursuant to the tasks or phases of the project as established in **Exhibit H, Statement of Work**. The Consultant shall submit invoices to LADWP in accordance with the rates established in **Exhibit C, Fee Schedule** and pursuant to the tasks, milestones, or phases of the project as established in **Exhibit H, Statement of Work**, with the billings against performed services tracked separately.

4.3.1 Required Invoice Information

A hard copy of the invoice shall be submitted to:

Attn: Zaw Htin
Contract Administrator
Department of Water and Power

City of Los Angeles
PO Box 51111, Room 424
Los Angeles, CA 90051-5700

An electronic copy of the invoice must be concurrently submitted and emailed to Zaw.Htin@ladwp.com, and invoices shall be submitted to:

Accounts Payable Business Unit
Los Angeles Department of Water and Power
PO Box 51211, Room 824
Los Angeles, CA 90051-5511

The following information shall be included in each invoice submitted by the Consultant to LADWP:

1. Consultant name, address, and vendor code number as registered on LADWP vendor database
2. City of Los Angeles Business Tax Registration Number
3. Internal Revenue Service ID Number
4. Date of invoice
5. Invoice number
6. Contract number
7. Summary of performed services, including amount of current invoice, total invoiced to date, and if applicable, total service amount, percent of total service completed, and percent of cost of invoiced to date, including the end date of the service
8. Description of services and deliverables provided related to performed services and associated costs
9. Supporting documentation for all allowable fees charged by EnergyHub as defined in the Statement of Work,
10. Following certification statement signed by the Consultant:
"To my actual knowledge without inquiry, I hereby certify, under penalty of perjury, that the services rendered and billings reflected in this invoice are in conformance with the requirements under the Living Wage Ordinance, Los Angeles Administrative Code Section 10.37 et. Seq."
11. Taxes
12. Total amount of invoice
13. Approval signature blocks for LADWP project manager and LADWP authorized representative(s) identified in Article 1.1, Parties to the Agreement and Service of Notices, of this Agreement
14. An accompanying LADWP Subcontractor Utilization Form, or its successor reporting format, identifying the amounts paid to each authorized Subconsultant for both the current invoice and total invoiced to date. The Consultant shall explain any deviations from the anticipated Subconsultant percentages identified in **Exhibit E**,

List of Subconsultants, attached hereto and made a part hereof, and recommendations for recovering any shortfalls in Subconsultant utilization

15. The following specific language in the invoices/bills is acceptable in the event the work in connection with such invoice required access to critical facilities as designated by LADWP: "Consultant certifies that all work performed for which this invoice/bill is submitted which required access to critical facilities as designated by LADWP was *performed by persons for whom background checks have been conducted*, and for whom no disqualifying information (including felonies, offenses or moral turpitude, and other disqualifying criteria, if any, as specified in the Agreement between the Consultant and LADWP) has been found."

Consultant's failure to submit accurate and all required information shall result in LADWP's rejection of the invoice and non-payment.

4.3.2 Time and Material Invoices

For services specifying a time and materials method of payment, the Consultant shall invoice LADWP on a monthly basis for costs and expenses. The Consultant shall provide documents supporting costs and expenses, including original receipts or invoices for expenses in excess of \$25.00, summary of total hours worked by specified individual Consultant employees and the applicable hourly rate, and time sheets or payroll records as appropriate to support individual employee hours worked, with each monthly invoice. Payment shall be made within forty-five (45) calendar days of receipt of the Consultant's invoice prepared in accordance with the requirements of Article 4.3.1 of this Agreement.

4.3.3 Fixed Price Invoices

Subject to the Article 4.3.4, for services specifying a fixed price method of payment, payment shall be made within forty-five (45) calendar days after receipt of the Consultant's invoice prepared in accordance with the requirements of Article 4.3.1.

4.3.4 Notice of Items Not Approved for Payment

LADWP's project manager will review the Consultant invoice within fifteen (15) working days and notify the Consultant in writing of any missing or required additional documents, questioned costs, inaccuracies, or concerns.

In the event that any deliverables, labor, or reimbursable expenses invoiced by the Consultant are not approved for payment, LADWP shall provide the Consultant with detailed comments addressing the shortfalls or costs of concern and shall meet with the Consultant to discuss such issues. Any disputes between LADWP and the Consultant regarding invoices costs and expenses shall be resolved in accordance with Article X, Disputes, of this Agreement. LADWP shall pay undisputed invoice amounts.

4.3.5 Notification of Status of Expenditures

The Consultant shall notify LADWP in writing when costs reach 50 and 75 percent of the total amount of requested service. Such notice shall include an assessment of whether or not the requested service can be completed within the authorized expenditure amount, and if not the Consultant shall propose suggested modifications to the requested service for consideration by LADWP. Failure of the Consultant to provide such written notification may result in late payment of invoices by LADWP.

The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule. At the time of the Notice, the Consultant shall notify the Authorized Representative in writing of the estimated amount of additional funds, if any, required to continue timely performance under the Agreement, and when the funds will be required.

If, after notification, additional funds are not approved by the end of the Agreement period or another agreed-upon date, upon the Consultant's written request the LADWP Authorized Representative may in its sole discretion terminate the Agreement.

4.3.6 Timely Invoicing

All charges related to the performance of the Consultant's work or services for any services, including Subconsultant and other reimbursable expenses, shall be invoiced by the Consultant to LADWP within six (6) months of the cost or expenses being incurred by the Consultant or Subconsultant, or such other time period as agreed between the Parties (acting reasonably).

4.3.7 Maximum Authorized Amount

Notwithstanding any other provision of this Agreement, any changes or additions hereto that would increase LADWP's total obligation above the maximum authorized amount set forth in Article 4.1.1 of this Agreement shall be subject to prior approval by the Board of Water and Power Commissioners. LADWP shall not be obligated to pay for work performed

by the Consultant for any such changes made in violation of this Agreement.

ARTICLE V: PROVISION OF SERVICES

5.1 Services to be Provided by the Consultant

During the term of this Agreement, the Consultant shall provide program management services ("Services") for LADWP's demand response programs (each a "Program") that shall include the recruitment and enrollment of LADWP's customers as well as setup, marketing, reporting, incentive processing and customer service and related tasks and deliverables identified in the **Statement of Work (Exhibit H)** included herein, authorized by LADWP in this Agreement, and as set forth and agreed to in writing by the Parties.

For the avoidance of doubt, the Mercury Platform, as defined in Section 5.4, along with any derivatives and improvements thereto, will not be considered "Services" for purposes of this Agreement. This Agreement also sets forth the terms that apply to LADWP's use of the Mercury Platform.

5.1.1 Description of Consultant Services

Consultant shall provide the Services described in **Exhibit H**.

Notwithstanding any other provision of this Agreement, the Consultant shall perform such other work and deliver such other items as are necessary to ensure that the Services and Deliverables (as defined in Section 6.1.2) provided under this Agreement meet the requirements set forth in this Agreement, including all Exhibits and attachments.

5.1.2 LADWP Approval of Work

All Deliverables are subject to LADWP approval, which approval shall not be unreasonably withheld. Failure to receive approval may result in withholding compensation for such Deliverables pursuant to Article IV, Compensation and Payment, of this Agreement.

Subject to the terms of this Agreement, LADWP reserves the right to contract separately with other consultants to review the Consultant's deliverables and other work products produced in accordance with the terms of this Agreement. If LADWP contracts separately with other consultants to assist LADWP in reviewing the Consultant's deliverables and other work products, the Consultant agrees to cooperate and coordinate with such other consultants in the approval process; provided, however, LADWP shall ensure that any such consultant is subject to confidentiality and

security terms no less protective than those set forth in this Agreement. LADWP shall be responsible for ensuring any consultant adheres to the applicable terms of this Agreement and liable for all acts or omissions of any such consultant.

5.1.3 Industry Standard of Care

The Consultant shall perform the work described herein in accordance with industry standards of care and shall reflect competent professional knowledge and judgment.

5.2 Consultant Personnel

5.2.1. Key Consultant Personnel

Key Personnel to be assigned to this Agreement are identified in the **List of Key Consultant Personnel** set forth in **Exhibit F** ("Key Personnel"). Key Personnel shall be available to perform under the terms and conditions of this Agreement immediately upon commencement of the term of this Agreement.

The Consultant shall not reassign any Key Personnel without LADWP's prior written consent. LADWP shall review and approve or disapprove any personnel who are designated as key personnel in **Exhibit F** for any reason at its sole discretion. LADWP shall act reasonably in exercising its discretion to approve or disapprove any key personnel.

5.2.2 Unavailability of Key Personnel

In the event individual Key Personnel listed in **Exhibit F** are terminated either with or without cause, or if individual Key Personnel are otherwise unavailable to perform services for the Consultant (in Consultant's sole discretion), the Consultant shall provide to LADWP written notification of the unavailability. The written notification shall designate replacement personnel prior to the effective date of individual Key Personnel termination or unavailability date, to the maximum extent feasible, but no later than five (5) business days after the effective date of the individual Key Personnel termination or unavailability. The Consultant shall propose replacement personnel who have a level of experience and expertise substantially equivalent to the unavailable individual Key Personnel.

The Consultant recognizes and agrees that early notification of the unavailability of Key Personnel, to the extent feasible, and proposed replacement personnel may be important for avoiding delays in completing the Services and Deliverables established in this Agreement.

5.2.3 Removal of Consultant Personnel

LADWP shall have the right, in its absolute discretion, to require the removal of Consultant's Key Personnel at any level assigned to the performance of the Services, if LADWP considers such removal necessary in the best interests of the Program and requests such removal in writing. Such Key Personnel shall be promptly removed from the Project by the Consultant at no cost or expense to LADWP. Further, an employee who is removed from the Project for any reason shall not be re-employed on the Project.

5.3 Consultant Use of Subconsultants

Subconsultants, including but not limited to individuals, sole proprietors, firms, and corporations, expressly designated to perform a material portion of the Services under this Agreement are identified in **Exhibit E, List of Subconsultants**. **Exhibit E, List of Subconsultants**, also contains a description of the service, task responsibilities, and anticipated participation (percentage of overall cost of Services) of each Subconsultant identified in **Exhibit E**.

Notwithstanding the fact that the Consultant is utilizing Subconsultants, the Consultant shall remain responsible for performing all aspects of this Agreement and for ensuring that all Services are performed in accordance with the terms and conditions of this Agreement.

LADWP has no obligation to any Subconsultant and nothing herein is intended to create any privity between LADWP and the Consultant's Subconsultant.

5.3.1 LADWP Pre-Approval of Subconsultants

LADWP shall pre-approve, in writing, any reduction, addition or substitution to the Subconsultants, if any listed in **Exhibit E, List of Subconsultants**. This applies to individuals, contract employees, sole proprietors, firms, and corporations.

5.3.2 Reserved

5.3.3 Agreement Provisions Applicable to Subconsultants

Consultant shall require any subcontract with a Subconsultant pursuant to Section 5.3 and entered into pursuant to this Agreement to be subject to terms substantially similar to the provisions of Article VI, Ownership, and Article VII, Confidentiality and Restrictions on Disclosure of this Agreement.

The Consultant is solely responsible for ensuring that all subcontracts comply with the provisions and the terms of this Agreement, as applicable.

5.3.4 Certification of Consultant Subconsultant Contracts

Upon request, the Consultant shall provide LADWP with a certification that the Consultant Subconsultant contracts for Subconsultants identified in Exhibit E comply with the requirements of Section 5.3 of this Agreement.

ARTICLE VI: OWNERSHIP

6.1 Ownership Rights

Consultant owns, and shall own, all right, title and interest (including all copyrights, patents, trademarks, trade names, trade secrets and other proprietary rights) in and to the Mercury Platform and any and all derivative works and improvements thereto. Apart from the limited license expressly granted in this Agreement, LADWP will not acquire any right, license, or interest in or to the Mercury Platform or any associated software or any derivative works or the intellectual property or trade secrets arising out of or related to any of the preceding.

6.1. "Marks" means trademarks, service marks, logos, trade names and other indicia of origin.

6.1.1 Use of Deliverables and Mercury Platform

Subject to the terms of this Agreement, LADWP has the right to use or not use the Deliverables and to use, reproduce, re-use, alter, modify, edit, or change the Deliverables as it sees fit and for any purpose. If LADWP determines that a Deliverable, or any part thereof, requires correction prior to LADWP approval, LADWP has the absolute right to use the Deliverable until such time as the Consultant can remedy the identified deficiency.

6.1.1.1 Use of the Mercury Platform

- a) Subject to the terms and conditions set out in the relevant Statement of Work, Consultant grants to LADWP a non-sublicensable, non-transferable, non-exclusive license to access and use the Consultant's proprietary web-based software platform for monitoring and managing demand response programs, which Consultant offers on a software-as-a-service basis (the "Mercury Platform") in accordance with any applicable documentation and terms of use provided to LADWP by Consultant and incorporated into this Agreement as Exhibit L ("Documentation") solely for

LADWP's internal business purposes (which shall include providing demand response services) during the term of this Agreement. Furthermore, in connection with the Services, Consultant grants to LADWP a non-sublicensable, non-transferable, non-exclusive, revocable license to access and use the Program-related marketing materials, project plans, documentation on automated verification, and Program documentation (collectively, "Program Materials") solely for LADWP's Program-related activities during the term of this Agreement.

- b) LADWP will not attempt to, nor will it allow any Authorized Utility User (as defined in Section 5.4.3 below) to (i) interfere in any manner with the operation of the Mercury Platform or the hardware or network used to provide the Mercury Platform; (ii) copy, modify, alter, or make derivative works based on any part of the Mercury Platform or any associated software or Documentation; (iii) reverse engineer, decompile, disassemble, or otherwise attempt to derive source code from any component of or devices connected to the Mercury Platform or any associated software or web services; (iv) sublicense, assign, sell, or lease to, or otherwise allow, any person other than an Authorized Utility User or its designated employees to access the Mercury Platform; (v) use the Mercury Platform for purposes of providing third-party hosting or third-party application integration, service bureau, subscription or application service provider-type services; or (vi) remove or alter any proprietary or other notice, legend or symbol on or embedded in the Mercury Platform or any associated software or Documentation. LADWP agrees not to perform benchmarking of the Mercury Platform or release the results of any benchmark testing of the Mercury Platform without Consultant's prior written approval.
- c) LADWP will designate certain of its employees as authorized to use the Mercury Platform (each an "Authorized Utility User"). Such Authorized Utility User's account is not permitted to be shared among other users. Each Authorized Utility User will be assigned a unique user identification name and password for access to and use of the Mercury Platform ("Credentials"). LADWP is responsible for all activities that occur by Authorized Utility Users or under such Authorized Utility User accounts. LADWP shall ensure that its Authorized Utility Users are responsible for maintaining the security and confidentiality of their Credentials, and to prevent unauthorized access to or use of the Mercury Platform. LADWP shall notify Consultant promptly upon becoming aware of any unauthorized use of Credentials.

- d) Before Consultant discloses or transmits any personal information about a connected device provider's end users or other confidential information about a connected device provider (collectively, "Protected Information") to LADWP, Consultant may require LADWP to allow Consultant (either directly or through a third party subcontractor) to conduct a security audit to determine whether LADWP's reasonable and appropriate steps to protect the security, privacy and confidentiality of the Protected Information ("Safeguards") and data use policies comply with applicable law and this Agreement, including, without limitation, compliance with Criteria Common to Security Principles (SSAE16): Group 1: CC 1.1 - 1.4; Group 2: 2.1 - 2.6; Group 3: 3.1 - 3.2; Group 4: 4.1; Group 5: 5.1 - 5.8; Group 6: 6.1, 6.2; and Group 7: 7.1 - 7.4. LADWP may use SOC 2 Type 2 reports or an alternative acceptable to Consultant in lieu of an independent audit by Consultant or its subcontractor. LADWP agrees that Consultant may share the findings of such security audits or reports with its connected device providers (and their respective auditors) who require evaluation of utility security procedures. If Consultant or an applicable connected device provider detects a material flaw in LADWP's Safeguards, Consultant may suspend or terminate its Program(s) with LADWP upon immediate written notice. Furthermore, upon request by Consultant, LADWP will comply with the policies of a connected device provider relating to Protected Information that are provided to LADWP.
- e) If a Customer is eligible to participate in the Program and agrees in writing to participate (including via electronic signature), such Customer will be deemed to have enrolled in the Program for the purposes of this Agreement effective on the date such Customer agrees to participate. LADWP acknowledges that the Mercury Platform will generate usage, savings, load and other data in connection with LADWP's or an Authorized Utility User's use of the Mercury Platform and Program participation related information ("Platform-Generated Data"). The Parties shall mutually agree on the form of Program enrollment agreement that Customers will be required to accept in order to enroll in a Program that uses the Mercury Platform to ensure that Consultant: (i) is entitled to access, retrieve, store, copy, create derivative works of, and otherwise use Platform-Generated Data in connection with developing, analyzing, testing, maintaining, improving, modifying, distributing, providing, making available and/or otherwise commercializing Consultant's products and services, provided that Consultant shall remove or redact any personally identifiable information prior to any public distribution or display; and (ii) is entitled to take actions to adjust a Customer's thermostat in

connection with the Program. As between the Parties, Consultant shall own the Platform-Generated Data.

- f) Consultant grants to LADWP a non-sublicensable, non-transferable, non-exclusive, revocable license to access and use the Platform-Generated Data solely for LADWP's Program-related activities during the term of this Agreement. LADWP shall not be permitted to use the Platform-Generated Data for any other purpose (including using the Platform-Generated Data for any internal analytics not directly related to a Program).
- g) Notwithstanding the foregoing, LADWP shall be permitted to retain reports generated by the Mercury Platform and other records related to the Program that contain Platform-Generated Data following the expiration or earlier termination of this Agreement as necessary to comply with LADWP's administrative or statutory reporting obligations or applicable laws; provided, however, that such Platform-Generated Data has been anonymized such that all Personal Information provided solely by Consultant's device partners has been removed or redacted. As used herein, "Personal Information" means (i) any information about an identified or identifiable individual; or (ii) information that is not specifically about an identifiable individual but, when combined with other information, may identify an individual.
- h) LADWP represents and warrants that LADWP has not and will not share LADWP customer data with Consultant, either directly or through the Mercury Platform, including but not limited to information about an individual customer such as a customer's address, employment, contact information, usage history, or financial information. LADWP shall not use the Mercury Platform in a manner that violates any federal, state, or local law or regulation relating to individual privacy or the distribution of email and other marketing communications, including, without limitation, the CAN-SPAM Act and the Telephone Consumer Protection Act of 1991 ("TCPA"). For as long as a Customer is enrolled in a Program, LADWP will pay the incentives promised to such Customer directly to Customer and will comply with any and all agreements between such Customer and LADWP.

6.1.1.2 Disclaimer.

- a) EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN THIS AGREEMENT AND ANY STATEMENT OF WORK, THE MERCURY PLATFORM AND SERVICES ARE PROVIDED ON AN "AS IS" AND "WHERE AVAILABLE" BASIS, AND ALL OTHER EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF PROPRIETARY RIGHTS, AND WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OR TRADE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. LADWP'S USE OF THE MERCURY PLATFORM IS AT ITS AND THEIR SOLE RISK. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CONSULTANT DOES NOT WARRANT THAT THE MERCURY PLATFORM WILL BE UNINTERRUPTED, SECURE, RELIABLE OR ERROR-FREE.

- b) LADWP UNDERSTANDS AND AGREES THAT CONSULTANT DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY FOR (INCLUDING, WITHOUT LIMITATION, ANY LIABILITY UNDER A STATEMENT OF WORK): (1) THE ACCURACY, COMPLETENESS, LEGALITY OR RELIABILITY OF ANY PROGRAM MATERIALS, DOCUMENTATION, CONTENT OR INFORMATION OR MATERIAL PROVIDED BY OR ACCESSIBLE THROUGH THE MERCURY PLATFORM; (2) FAILURE TO STORE, MISDELIVERY, OR UNTIMELY DELIVERY OF ANY INFORMATION OR MATERIAL; (3) USE OR MISUSE OF THE MERCURY PLATFORM OR AN INABILITY TO USE THE MERCURY PLATFORM, THIRD PARTY SOFTWARE, SERVICES OR HARDWARE (INCLUDING, WITHOUT LIMITATION, THERMOSTATS OR OTHER CONNECTED DEVICES); (4) LADWP-SUPPLIED AND THIRD-PARTY SUPPLIED HARDWARE (INCLUDING, WITHOUT LIMITATION, THERMOSTATS OR OTHER CONNECTED DEVICES), SOFTWARE OR SERVICES; (5) INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR DESTRUCTION OF PROPERTY ARISING FROM LADWP-SUPPLIED OR THIRD-PARTY SUPPLIED HARDWARE, SOFTWARE OR SERVICES, REGARDLESS OF WHETHER SUCH HARDWARE, SOFTWARE OR SERVICES HAVE RECEIVED MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS THROUGH OR IN CONNECTION WITH THE MERCURY PLATFORM, AND (6) A CUSTOMER'S FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS. CONSULTANT MAKES NO WARRANTY REGARDING THE RELIABILITY OR ACCESSIBILITY OF ANY STORAGE FACILITIES OFFERED BY CONSULTANT, ITS SERVICE PROVIDERS OR CONSULTANT'S

AFFILIATES OR THE MERCURY PLATFORM. CONSULTANT DOES NOT WARRANT OR MAKE ANY REPRESENTATION REGARDING THE PERFORMANCE OF THIRD-PARTY SERVICES, SOFTWARE OR HARDWARE (INCLUDING, WITHOUT LIMITATION, THERMOSTATS OR OTHER CONNECTED DEVICES), THE USE OF, OR THE RESULTS OF THE USE OF, ITS RECRUITING OR SERVICES PROVIDED BY CONSULTANT. FURTHERMORE, SUBJECT TO THE REPRESENTATIONS WITH RESPECT TO THE MERCURY PLATFORM SET FORTH IN THE SOW. CONSULTANT DOES NOT WARRANT THAT THE MERCURY PLATFORM WILL MEET THE REQUIREMENTS OF LADWP OR THE CUSTOMERS. CONSULTANT DOES NOT WARRANT THAT MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS THROUGH OR IN CONNECTION WITH THE MERCURY PLATFORM WILL BE SECURELY, ACCURATELY, RELIABLY OR SUCCESSFULLY TRANSMITTED OR RECEIVED BY A CUSTOMER'S THERMOSTATS OR DEVICES. LADWP ACKNOWLEDGES AND AGREES THAT (I) CUSTOMERS MAY IGNORE OR OVERRIDE ANY SUCH MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS AND (II) CONSULTANT DOES NOT WARRANT THAT SUCH MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS OR USE OF THE MERCURY PLATFORM WILL RESULT IN A CHANGE OR REDUCTION IN POWER USAGE BY ANY CUSTOMER OR PREVENT ANY LOSS OF POWER OR REDUCTION IN AVAILABLE POWER OR PREVENT ANY POWER SURGES OR POWER SPIKES. LADWP WARRANTS THAT IT HAS NOT RELIED ON ANY INFORMATION OR REPRESENTATION PROVIDED BY OR ON BEHALF OF CONSULTANT OR ITS AFFILIATES WHICH IS NOT EXPRESSLY INCLUDED IN THIS AGREEMENT.

6.1.1.3 Ownership of Deliverables.

- a) Exclusive of LADWP's Marks, which will remain owned by LADWP, LADWP is not acquiring a copyright, patent, trade secret or other intellectual property or proprietary right in the Mercury Platform, or in any data, modifications, customizations, enhancements, changes or work product related thereto.
- b) "Deliverable" means any work product or other item (whether tangible or intangible) created by EnergyHub or provided by EnergyHub to LADWP pursuant to this SOW, excluding any materials and intellectual property that are owned, acquired or developed by Energy Hub prior to the SOW Effective Date or independent of this SOW, or that are set forth to be owned by

EnergyHub pursuant to the Agreement. LADWP owns and will own all right, title and interest to the Deliverables, and EnergyHub will execute and deliver to LADWP any documents reasonably necessary to vest in Energy Hub all right, title and interest therein. For clarity, the "Deliverables" will not include the Mercury Platform, its related documentation or any derivatives or improvements thereof. EnergyHub shall retain all rights in its intellectual property.

6.1.2 Execution of Ownership Documents

The Consultant shall sign, upon request, any documents needed to confirm that the Deliverables are "Works-Made-for-Hire" and to effectuate the assignment of its rights to LADWP.

6.2 Reserved.

6.3 Survival of Provisions.

The provisions of this Article VI hereof shall survive termination and expiration of this Agreement.

ARTICLE VII: CONFIDENTIALITY AND RESTRICTIONS ON DISCLOSURE

7.1 Confidentiality

7.1.1 Information Provided by Others

To the extent reasonably available to LADWP, and not otherwise subject to any confidentiality requirement, LADWP shall provide to the Consultant in a timely manner any information reasonably needed to perform the Services and provide access to the Mercury Platform hereunder. Consultant may rely on the accuracy of information provided by LADWP and its representatives. Any Customer Data furnished to Consultant by LADWP shall be deemed Confidential Information subject to this Section 7. "Customer Responses" shall be any and all information or opinion collected or gathered from an individual customer of LADWP, either verbally, in writing, or electronically.

7.1.2 Confidential Information

"Confidential Information" means Customer Data provided by LADWP to Consultant or any of Consultant's subcontractors, Customer Responses collected by Consultant or any of Consultant's subcontractors from Customers, scientific or business information, trade secrets or know-how, including software and documentation therefor, marketing, sales,

operating, performance, cost, business and technical information, in any form, tangible or intangible, which may be disclosed or otherwise made available by either Party hereto to the other Party hereto pursuant to this Contract. Disclosures of Confidential Information between Consultant and LADWP shall also be protected hereunder Consultant's Confidential Information includes, without limitation, the Mercury Platform, Documentation, Program Materials, the Platform-Generated Data and enrollment and/or marketing processes used by Consultant to recruit and enroll Customers in the Program.

Except as otherwise expressly permitted herein, each Party, on behalf of itself and its employees and agents, agrees to maintain all Confidential Information of the other Party in strict confidence and exercise all reasonable steps to safeguard the confidentiality of the Confidential Information received from the other Party and will neither disclose nor use such Confidential Information other than as expressly permitted by this Contract. The recipient Party agrees to protect the Confidential Information in a reasonable and appropriate manner, and to use and reproduce the Confidential Information only as necessary to realize the benefits of or perform its obligations under this Agreement and for no other purpose.

Notwithstanding the foregoing, Confidential Information does not include information which (i) at the time of disclosure is within the public domain through no breach of this Agreement by either Party; (ii) has been known or independently developed by and is currently in the possession of recipient prior to disclosure or receipt thereof; (iii) was or is acquired by recipient from a third party (other than a Customer contacted by Consultant in the course of performance of this Agreement) or (v) disclosed pursuant to a legal requirement or order. The recipient Party may disclose the Confidential Information on a need-to-know basis to its contractors, agents and affiliates who agree to confidentiality and non-use terms that are substantially similar to these terms. The Parties acknowledge and agree that any proprietary software provided by Consultant in connection with this Agreement shall be considered the Confidential Information of Consultant.

In the case of a request received by LADWP under the California Public Records Act ("CPRA," Cal. Gov't Code § 7920.000 et seq.) or a third party seeks to compel disclosure of Confidential Information from a receiving Party by judicial, governmental or administrative process, requirement or order, the receiving Party shall promptly notify the disclosing Party of such occurrence and furnish to the disclosing Party a copy of the request, demand, summons, subpoena or other process served upon the receiving Party to compel such disclosure, and shall permit the disclosing Party to assume, at its expense, but with the

receiving Party's reasonable cooperation, defense of such disclosure demand. In the event that the disclosing Party fails or refuses to contest such a third-party disclosure request or demand, or a final judicial order is issued compelling disclosure of Confidential Information by the receiving Party, the receiving Party shall be entitled to disclose such information in compliance with the terms of such administrative or judicial process or order, but such information shall otherwise remain Confidential Information subject to the confidentiality obligations set forth herein.

All documents, records, and information provided by LADWP to the Consultant during performance of this Agreement shall remain the property of LADWP. All documents, records and information provided by LADWP to the Consultant during performance of this Agreement, are deemed confidential. The Consultant agrees not to provide these documents and records, nor disclose their content or any information contained in them, either orally or in writing, to any other person or entity without LADWP's prior written approval. The Consultant agrees that all documents, records, or other information used or reviewed in connection with the Consultant's Services for LADWP shall be used only for the purposes set forth in this Agreement including, without limitation, carrying out LADWP business and cannot be used for any other purpose. The Consultant shall be responsible for protecting the confidentiality and maintaining the security of LADWP documents, records, and information in its possession.

The provisions of this Article VII, Confidentiality and Restrictions on Disclosure shall survive termination and expiration of this Agreement.

7.2 Reserved

ARTICLE VIII: TERMINATION AND SUSPENSION

8.1 Termination for Convenience

8.1.1 Notice of Termination

LADWP may terminate this Agreement, for its convenience upon giving at least 120 calendar days written notice to the Consultant prior to the effective date of such termination, which date shall be specified in such notice.

8.1.2 Receipt of Notice of Termination

After receipt of a notice of termination and except as otherwise directed by LADWP, the Consultant shall:

- A. Stop work under the Agreement on the termination effective date and to the extent specified in the notice of termination.
- B. Place no further orders with Subconsultants for any work except as may be necessary for completion of such portions of the services or work expressly excluded from the Notice of Termination or to be completed prior to the effective date of termination.
- C. Communicate any Notice of Termination to the affected Subconsultants at any tier.
- D. Terminate all orders and contracts with Subconsultants that relate to the performance of the services or work scheduled for after the effective date of termination.
- E. Settle outstanding liabilities and claims arising out of such termination of orders and contracts with Subconsultants, with the acceptance of LADWP if required (which acceptance will be for the final purposes of this Article).
- F. Deliver to LADWP, within ten (10) calendar days after termination and upon LADWP's payment of all applicable fees accrued through the date of termination, any and all data, reports, other documents, and deliverables, or portions thereof, if any, prepared for LADWP pursuant to this Agreement, but not already delivered to LADWP.
- G. Upon LADWP's payment of all applicable fees referenced in section 8.1.2(F) above, transfer title to LADWP (to the extent that title has not already been transferred) in the manner and at the times and to the extent directed by LADWP, the work in process, completed work, and other material produced as part of or required in respect to performance of this Agreement that the Parties have agreed will be owned by LADWP.
- H. Comply with any other reasonable requirements of LADWP as may be specified in the Notice of Termination.

8.1.3 Amount Due

The amount due to the Consultant by reason of termination for LADWP's convenience shall be determined as follows:

- A. The Consultant shall be paid on the basis of fees incurred as set forth in **Exhibit H, Statement of Work** and **Exhibit C, Fee Schedule**.

The Consultant shall also be compensated by LADWP for the Deliverables completed and for work in process. All fees paid to Consultant prior to the effective date of termination are fully earned and non-refundable.

8.2 Termination for Cause

Either Party may terminate this Agreement for cause in the event the other Party breaches any term of this Agreement by giving the breaching Party a written notice of breach. The breaching Party shall have ten (10) calendar days from the date of the non-breaching Party's notice of breach to cure, or diligently commence to cure such breach. The non-breaching Party's notice of breach shall include a time and location for the individuals identified in Article 1.2 of this Agreement to meet and discuss the notice of the breach. Such meeting shall be scheduled within ten (10) calendar days of the date of the notice of breach. If the breaching Party is unable or unwilling to cure, or diligently commence to cure, such breach, or meet within the ten (10) day timeframe, non-breaching Party may terminate this Agreement anytime thereafter upon providing the breaching Party written notice.

- (a) In addition to the rights set forth herein, Consultant or LADWP may terminate this Agreement upon the happening of any of the following or any other similar event: (w) insolvency of the other Party; (x) filing of any petition by or against the other Party under any bankruptcy, reorganization or receivership law; (y) execution of an assignment for the benefit of creditors; or (z) appointment of any trustee or receiver of the other Party's business or assets or any part thereof, unless such petition, assignment or appointment is withdrawn or nullified within fifteen (15) days of such event.
- (b) In the event that any regulatory body having jurisdiction over LADWP (which, for clarity, includes a city council exercising regulatory authority) issues a final order or directive to LADWP to terminate this Agreement or Program under the Agreement, or fails to fund or rescinds funding for the Program, LADWP may terminate this Agreement without further liability or penalty by providing written notice to Consultant. In the event that any regulatory body having jurisdiction over LADWP issues a final order or directive to LADWP to modify a Program implemented under this Agreement, the Parties shall, through their duly authorized representatives, convene to discuss and assess in good faith appropriate modifications to or restructuring of this Agreement to comply with the final order or directive of the regulatory body; provided, however, that if such good faith efforts the Agreement cannot be so modified or restructured within thirty (30) days, either Party shall have the right to terminate this Agreement.

- (c) In the event that Consultant's agreement with a connected device partner terminates or expires during the term of this Agreement, Consultant shall inform LADWP within five (5) business days following the date on which Consultant becomes aware that thermostat models will become unavailable for participation in the Program due to such termination. Unless such termination is caused by the acts or omissions of LADWP including, without limitation, working with other service providers as contemplated in the Statement of Work, Consultant shall refund any prepaid device fees and connected device partner fees attributable to such connected device partner, if applicable, depending on the availability of the terminated thermostat during the applicable demand response season when the thermostat was terminated. Specifically, if a terminated thermostat was available for an entire demand response season, then no refund will be payable by Consultant. If a terminated thermostat was not available for any portion of the season, Consultant will provide a refund of one hundred percent (100%) of the applicable prepaid device fees and connected device partner fees attributable to such connected device partner.
- (d) Upon termination, LADWP shall immediately cease using the Mercury Platform, the Program Materials and Documentation, destroy all copies of any of Consultant's Confidential Information, software, Program Materials and/or Documentation in LADWP's possession or control, and provide certification of such destruction promptly upon Consultant's request.
- (e) Termination shall not relieve LADWP of its obligation to pay any fees to Consultant that have been previously incurred. If this Agreement is terminated for cause, the Consultant shall comply with Article 8.1.1, above. LADWP shall pay for LADWP accepted Deliverables.

8.3 Suspension of Work

Upon written notice LADWP may direct the Consultant to suspend performance of all or any portion of the services for a period of up to ninety (90) days, LADWP may direct the Consultant to suspend, and to subsequently resume performance of all or any of the Services. In the event that LADWP suspends work, the Service under this Agreement and budget shall be adjusted; provided, however, suspension shall not relieve LADWP of its obligation to pay any fees to Consultant that have been previously incurred or are incurred during the period of such suspension.

8.4 Termination Transition

In the event of termination of this Agreement due to the expiration of the term of this Agreement or termination by LADWP under Section 8 of the Agreement) Consultant

agrees to work with LADWP in good faith to facilitate an orderly transition to one or more replacement consultants and/or LADWP, based on direction received from LADWP (the "Termination Transition Services"). The Termination Transition Services shall be as further described in the Statement of Work attached to this Agreement. The Consultant for this Agreement shall accept no additional tasks with respect to the scope of work after the effective date of the termination. Notwithstanding the foregoing, LADWP acknowledges and agrees that the Mercury Platform, Program Materials, Platform-Generated Data and any Documentation provided by Consultant under this Agreement are Consultant's Confidential Information. LADWP shall not disclose any of Consultant's Confidential Information to a replacement consultant. Notwithstanding anything else in this paragraph to the contrary, LADWP shall be permitted to disclose Platform-Generated Data consisting of the reports and related information described in Section 2.2.4.2 of the Statement of Work in Exhibit H to the replacement consultant as strictly necessary to complete the transition to such replacement consultant in connection with the Termination Transition Services provided by Consultant.

ARTICLE IX: AMENDMENTS AND ADMINISTRATIVE CHANGES TO THE AGREEMENT

9.1 Amendments

9.1.1 Request for Amendment

During the term of this Agreement, LADWP shall have the right to request an Amendment to change the terms of this Agreement, including changes in the Services to be performed by the Consultant, extension of the term, and any increase or decrease in the amount of compensation authorized in Article 4.1 of this Agreement, subject to Consultant's prior written approval (in Consultant's sole discretion). LADWP shall make a formal written request with respect to the Amendment.

9.1.2 Development of Amendments

Within ten (10) business days following the Consultant's receipt of LADWP's written request for an Amendment, the Consultant, at its own expense, shall prepare and deliver to LADWP a detailed written statement regarding the implementation and impact of the Amendment, including a proposal of the estimated cost impact.

Upon LADWP's review of the Consultant's written response to the request for an Amendment, LADWP and Consultant shall cooperatively work to develop an Amendment to the Agreement. To that end, informal exchanges between the Consultant and LADWP are encouraged.

9.1.3 Approval and Authorization of Amendments

Once both Parties agree to the language of the Amendment, the Amendment shall be signed by the person(s) authorized to bind the Consultant thereto. LADWP shall deliver a copy of the fully executed Amendment to the Consultant. After complete and authorized signatures by both Parties, the Amendment shall be effective and binding on both Parties and shall take precedence over any conflicting provisions in the Agreement.

Amendments that result in an Agreement term of greater than five (5) years in the aggregate may require City Council approval pursuant to Section 373 of the Charter of the City of Los Angeles (hereinafter "City Charter").

9.2 Administrative Changes

9.2.1 Request for Administrative Changes

During the term of this Agreement, LADWP or the Consultant may request changes to the work within the Agreement that are administrative in nature, including but not limited to changes to the authorized representatives, Key Consultant or Subconsultant personnel, reporting documentation (excluding changes in reporting documentation provided by the Mercury Platform, which may require greater resources), and/or the implementation of pre-approved cost of living adjustments in fee schedules. LADWP or the Consultant shall make a formal written request with respect to each administrative change it desires to make.

9.2.2 Development of Administrative Changes

When a change is requested by either Party, the receiving Party will review the implementation and impact of the administrative change. Within ten (10) business days following the receipt of the written administrative change request, LADWP or the Consultant, at its own expense, shall prepare and deliver to the originating Party a detailed written statement regarding the implementation and impact (including cost, if any) of the administrative change.

Upon review of the written response to the administrative change request, LADWP and Consultant shall cooperatively work to develop an Administrative Change to the Agreement. To that end, informal exchanges between the Consultant and LADWP are encouraged.

9.2.3 Approval and Authorization of Administrative Changes

Upon mutual approval of the Administrative Change to the Agreement prepared pursuant to Article 9.2.2, LADWP's authorized representatives as identified in Article 1.2, of this Agreement, or their designee established in writing, shall deliver to the Consultant an Administrative Change authorization to the Agreement (hereinafter " Notice of Administrative Change") for execution.

9.3 Order of Precedence

In the event of any conflict between the terms of this Agreement and the terms of any exhibit, the terms of the exhibit shall control. In the event of any conflict between the following documents, all of which are hereby incorporated by reference into this Agreement, the order of precedence shall be as follows:

- Latest Amendment
- Agreement
- Latest Administrative Change (as set forth in Section 9.2 above)
- Other reference documents
- Proposal response dated *May 19, 2023*
- Request for Proposal No. 90730 dated *May 19, 2023* and any amendments thereto.

Except as otherwise specified, in the event of any conflict between the Special Provisions and the General Conditions contained herein, the Special Provisions will control.

Each party shall notify the other promptly upon the determination of any such conflict or inconsistency.

Should anything necessary for a clear understanding of the Services be omitted from the Agreement Documents, or should the requirements appear to be in conflict, the Consultant shall promptly notify LADWP before furnishing the Services affected thereby.

ARTICLE X: DISPUTES

10.1 Disputes

10.1.1 Dispute Resolution

The parties shall use their best efforts to resolve disputes under this Agreement. If a settlement cannot be reached, or in the event of default that could result in termination of this Agreement, LADWP and the Consultant shall schedule a meeting of the individuals identified in Article 1.2 in a good faith attempt to resolve the issues in dispute. Such a Dispute

Resolution meeting shall be scheduled and held within ten (10) business days of written request by either party. The meeting shall allow for a detailed presentation of each Party's views on the issues and potential solutions to the dispute or default. If possible, the meeting should result in an agreed upon course of action to resolve the dispute or default.

10.1.2 Continued Work

The Consultant and LADWP shall continue to perform work under the Agreement during any dispute.

10.1.3 Claim Procedures

The provisions of Sections 5.169 and 5.170 (Div. 5, Ch. 10, Art. 1) of the Los Angeles Administrative Code and Section 350 of the City Charter shall govern the procedure and rights of the Parties with regard to claims arising from this Agreement. Nothing herein shall be construed as a waiver of the claim requirements set forth in Government Code 900 *et. Seq.*

ARTICLE XI: LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR ANY BUSINESS INTERRUPTION, LOST PROFITS, LOST DATA, COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ("SPECIAL DAMAGES"), WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING FROM, RELATING TO OR CONNECTED WITH: (I) THIS AGREEMENT; (II) THE MERCURY PLATFORM; (III) THE SERVICES, PROGRAM MATERIALS AND/OR DOCUMENTATION; OR (IV) THE RECEIPT OR TRANSMISSION OF (OR FAILURE TO RECEIVE OR TRANSMIT OR TO ACCURATELY RECEIVE OR TRANSMIT) ANY MESSAGES, DATA TRANSMISSIONS OR COMMUNICATIONS THROUGH OR IN CONNECTION WITH THE MERCURY PLATFORM, AND NEITHER PARTY WILL HAVE ANY DUTY, OBLIGATION OR LIABILITY FOR ANY OF ITEMS (I) THROUGH (IV) SET FORTH IN THIS PARAGRAPH, ALL OF WHICH EACH PARTY EXPRESSLY WAIVES. FURTHERMORE, IN NO EVENT WILL CONSULTANT OR ITS AFFILIATES BE LIABLE TO LADWP FOR ANY SPECIAL DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, ARISING FROM, RELATING TO OR CONNECTED WITH: (A) LADWP'S ABILITY OR INABILITY TO PROVIDE POWER TO CUSTOMERS; OR (B) THE AVAILABILITY OR UNAVAILABILITY OF POWER TO CUSTOMERS, INCLUDING BUT NOT LIMITED TO

BLACKOUTS OR BROWNOUTS, OR ANY POWER SURGES OR POWER SPIKES, AND CONSULTANT WILL NOT HAVE ANY DUTY, OBLIGATION OR LIABILITY FOR EITHER OF ITEMS (A) AND (B) SET FORTH IN THIS PARAGRAPH, ALL OF WHICH LADWP EXPRESSLY WAIVE. THESE EXCLUSIONS OF LIABILITY SHALL APPLY WHETHER DAMAGES ARISE FROM USE OR MISUSE OF AND RELIANCE ON THE MERCURY PLATFORM, FROM INABILITY TO USE THE MERCURY PLATFORM, OR FROM THE INTERRUPTION, SUSPENSION, OR TERMINATION OF THE MERCURY PLATFORM. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

CONSULTANT'S MAXIMUM CUMULATIVE LIABILITY TO LADWP, WHETHER ARISING IN CONTRACT (INCLUDING BREACH OF CONTRACT OR BREACH OF WARRANTY), IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER THEORY OF RELIEF (INCLUDING ANY CLAIMS FOR INDEMNIFICATION ARISING UNDER THIS AGREEMENT), WILL BE LIMITED TO THE GREATER OF (A) THE FEES THAT LADWP HAS PAID TO CONSULTANT DURING THE TWENTY-FOUR MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (B) TWO MILLION DOLLARS (\$2,000,000). NOTWITHSTANDING THE FOREGOING LIMITATION IN THIS PARAGRAPH, FOR DAMAGES ARISING FROM CONSULTANT'S INDEMNIFICATION OBLIGATIONS FOR INTELLECTUAL PROPERTY INFRINGEMENT PURSUANT TO SECTION GC-13.B IN EXHIBIT A ATTACHED HERETO, THE CONSULTANT'S CUMULATIVE LIABILITY WILL BE LIMITED TO FIVE MILLION DOLLARS (\$5,000,000).

ARTICLE XII: ENTIRE AGREEMENT

12.1 Number of Pages and Attachments

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. The parties further agree that facsimile signatures or signatures scanned into .pdf (or signatures in another electronic format designated by LADWP) and sent by e-mail shall be deemed original signatures.

This Agreement includes twenty-eight (28) pages and twelve (12) Exhibits, which constitute the complete understanding among the Parties.

12.2 Represented by Counsel

Each Party acknowledges that it was represented by counsel in the negotiation and execution of this Agreement.

[Signature page follows.]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

DEPARTMENT OF WATER AND POWER
OF THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS

ENERGYHUB, INC.
(Must be signed by two executives
or officers of firm)

By: *Simon Zewdu*
MARTIN L. ADAMS
General Manager and Chief Engineer

Date: Oct 23, 2023

And: *Chante L. Mitchell*
CHANTE L. MITCHELL
Board Secretary

By: *Seth Frader-Thompson*
DocuSigned by:
63143246BB2042E...
SETH FRADER-THOMPSON
President

Date: 8/29/2023

By: *[Signature]*
DocuSigned by:
2A68E9AA54D24EB...
MATTHEW JOHNSON
Corporate Secretary

Date: 8/29/2023

Vendor Code: 070178003

City Business Tax Registration Certificate Number: 0003375469-0001-5

EXHIBIT A

General Conditions (Services)

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GC-1 Construction of Provisions and Titles Herein

All titles or subtitles appearing herein have been inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Agreement shall be construed according to its fair meaning and not strictly against LADWP or the Consultant. The word "Consultant" herein and in any amendment hereto means the Party or Parties identified in this Agreement wherein this Exhibit is incorporated by reference; the singular shall include the plural; if there shall be more than one Consultant herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several; use of feminine, masculine, or neutral gender shall be deemed to include the genders not used.

GC-2 Applicable Law, Interpretation, Enforcement and Severability

Each Party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the City of Los Angeles, including but not limited to laws regarding health and safety, labor employment, wage and hours, workers compensation, and licensing laws which affect employees. Consultant shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Agreement.

This Agreement was made and entered into in the City of Los Angeles and shall be governed by, interpreted and enforced in accordance with the laws of the State of California and the City of Los Angeles, without regard to conflicts of laws principles. All litigation arising out of, or relating to, this Agreement shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

If any part, term or provision of this Agreement shall be held invalid, void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining parts, terms or provisions shall not be affected or impaired thereby.

The provisions of this article shall survive the expiration or termination of this Agreement.

GC-3 Time of Effectiveness

Unless otherwise provided, this Agreement shall take effect when all of the following events have occurred:

- A. This Agreement has been signed on behalf of the Consultant by the person(s) authorized to bind the Consultant hereto.

EXHIBIT A

General Conditions

- B. This Agreement has been approved by the City Council or by the Board, inclusive of City Council review period, officer, or employee authorized to give such approval.
- C. The Office of the City Attorney has indicated in writing its approval of this Agreement as to form and legality.
- D. This Agreement has been signed on behalf of LADWP by the person designated by the Board, officer or employee authorized to enter into this Agreement.

GC-4 Integrated Agreement

This Agreement sets forth all of the rights and duties of the Parties with respect to the subject matter hereof, and replaces any and all previous agreements and understandings, whether written or verbal, relating hereto. This Agreement may be amended only as provided for in Article IX, Amendments and Administrative Changes to the Agreement of this Agreement.

GC-5 Force Majeure

If either Party is unable to perform its obligations because of strikes, lockouts, labor disputes, embargos, acts of God, governmental regulations, judicial orders, enemy or hostile governmental action beyond the reasonable control of the Consultant or its Authorized Subconsultants ("Force Majeure"), and such event continues, or is expected to continue, for more than thirty (30) days, either Party may suspend unperformed services upon notice to the other party in writing, and such party's performance shall be suspended for the period equal to the period of time of such cause for suspension of performance. Both parties shall use reasonable efforts to mitigate the effect of a force majeure event. This section does not excuse either party's obligation to pay for services provided.

GC-6 Waiver

A waiver of a default of any part, term, or provision of this Agreement shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A Party's performance after the other Party's default shall not be construed as a waiver of that default.

GC-7 Independent Consultant

The Consultant is acting hereunder as an independent Consultant and not as an agent or employee of LADWP or the City of Los Angeles, and all of the terms and conditions of this Agreement shall be interpreted in light of that relationship. The Consultant, including Consultant's Subconsultants, suppliers, employees, and agents, shall not represent or otherwise hold out itself or any of its directors, officers, partners,

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employees, or agents to be an agent or employee of LADWP for any purpose whatsoever. The Consultant shall not be entitled to any LADWP or City of Los Angeles benefits, including but not limited to, vacation, sick leave, Workers' Compensation, or pension.

GC-8 Prohibition Against Assignment or Delegation

The Consultant may not, unless it has first obtained the written permission of LADWP:

- A. Assign or otherwise alienate any of its rights hereunder, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties hereunder.

Such permission may be withheld at LADWP's sole discretion for any reason or no reason at all since the award of this Agreement was based upon the personal services to be provided by the Consultant.

GC-9 Licenses and Certifications

The Consultant and its officers, agents, and employees shall obtain and maintain all licenses, permits, certifications and other documents necessary for the Consultant's performance hereunder and shall pay any fees required therefore. Such licenses, permits, certifications shall be specific to the State of California or regional regulatory agencies, as applicable to Consultant's services, work, task, and deliverables pursuant to this Agreement. Consultant agrees to immediately notify LADWP of any suspension, termination, lapse, non-renewal, or restriction of such licenses, permits, certifications, or other documents.

GC-10 Non-Discrimination/Equal Employment Practices/Affirmative Action

A. Non-Discrimination and Equal Employment Practices

The Agreement shall comply with the provisions of Los Angeles Administrative Code Section 10.8.2, Non-Discrimination Clause and Section 10.8.3, Equal Employment Practices. By affixing its signatures on the Agreement that is subject to the Equal Employment Practices Provisions, the Consultant shall agree to adhere to the provisions in the Equal Employment Practices Provisions for the duration of the Agreement.

Furthermore, the Consultant shall include similar provisions in all subcontracts awarded for work to be performed under the Agreement with LADWP and shall impose the same obligations. The contract with the Subconsultant that contains similar language shall be made available to LADWP upon request.

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B. Affirmative Action Program

The Agreement shall comply with the provisions of Los Angeles Administrative Code 10.8.4, Affirmative Action Program. By affixing its signature on the Agreement that is subject to the Affirmative Action Program provisions, the Consultant shall agree to adhere to the provisions in the Affirmative Action Program for the duration of the Agreement.

Furthermore, the Consultant shall include similar provisions in all subcontracts awarded for work to be performed under the Agreement with LADWP and shall impose the same obligations. The contract with the Subconsultant that contains similar language shall be made available to LADWP upon request.

GC-11 Claims for Labor and Materials

The Consultant shall promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Agreement so as to prevent any lien or other claim under any provision of law from arising against LADWP or City of Los Angeles or any of their respective property (including reports, documents, and other tangible matter produced by the Consultant hereunder), against the Consultant's rights to payments hereunder, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

GC-12 Los Angeles City Business Tax Registration Certificate Required

The Consultant represents that it has obtained and presently holds a Business Tax Registration Certificate(s) required by the City of Los Angeles Business Tax Ordinance (Article 1, Chapter II, Article 21.00 and following, of the Los Angeles Municipal Code). For the term covered by this Agreement, the Consultant shall maintain, or obtain as necessary, all such Certificates required under said ordinance and shall not allow any such Certificate to be revoked or suspended.

GC-13 Indemnification Provisions

A. General Indemnification

The Consultant undertakes and agrees to indemnify and hold harmless the City of Los Angeles, the Department of Water and Power, the Board of Water and Power Commissioners of the City of Los Angeles, and all of their officers and employees, and, at the option of LADWP, defend LADWP and any and all of its Board, officers, agents, representatives, employees, assigns and successors in interest from and against any and all third party suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any

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person, including Consultant's employees and agents, or damage or destruction to any property of either party hereto, or third persons in any manner caused by the negligent acts, errors, or omissions incident to the performance of this contract on the part of the Consultant, or the Consultant's officers, agents, employees, or Subconsultants of any tier, except for the active negligence or willful misconduct of LADWP, its Board, officers, agents, or employees.

B. Intellectual Property Indemnity

Consultant will indemnify, defend at its expense and hold harmless LADWP against any loss, cost, expense, liability, and damages paid by LADWP as a result of any third party judgment or settlement as a consequence of any infringement claim, demand, proceeding, suit or action (hereinafter "Action") against LADWP, its officers, directors, agents, employees, or affiliates in the event that the use of the Mercury Platform by LADWP infringes or violates any U.S. patent U.S. copyright or trademark rights (collectively, "Intellectual Property Rights" hereinafter).

Consultant, however, shall have no liability to LADWP, its officers, directors, agents, employees, or affiliates herein with respect to any claim of infringement to the extent that any claim results from (i) any alteration or modification of the Mercury Platform not provided or authorized by Consultant; (ii) use of the Mercury Platform in a way not intended by Consultant, if such infringement or violation would not have occurred but for such alteration, modification or unintended or unauthorized use of the Mercury Platform; (iii) a claim which is based upon or results from the combination or utilization of the Mercury Platform with machines, devices, other products or services not reasonably anticipated hereunder; or (iv) such claim arises from hardware (including, without limitation, thermostats), software or services provided by a party other than Consultant..

In Consultant's defense of LADWP, negotiation, compromise, and settlement of any such infringement action, LADWP shall retain discretion in and control of the litigation, negotiation, compromise, settlement, and appeals therefrom, as required by the City Charter, particularly Article II, Sections 271, 272 and 273 thereof.

In addition, if any part of the Mercury Platform (a) becomes, or in Consultant's opinion be likely to become, the subject of an action, (b) is adjudicated as infringing any Intellectual Property Right, or (c) has its use enjoined or license terminated, Consultant shall, with LADWP's consent, do one of the following promptly at its expense: (i) procure for LADWP the right to continue using said infringing part of the product; (ii) replace the infringing product with a functionally equivalent product to avoid such

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claim; (iii) modify the product to avoid such claim.

Exercise of any of the above-mentioned options shall not cause undue business interruption to LADWP or diminish the intended benefits and use of the Mercury Platform by LADWP under the specifications herein. If Consultant determines, in its reasonable discretion, that none of the options (i), (ii), or (iii) are commercially practicable, Consultant shall instead terminate the license to the Mercury Platform and refund any prepaid fees paid by LADWP for the Mercury Platform.

Rights and remedies available to LADWP hereinabove shall survive the expiration or other termination of this Agreement. THIS PROVISION GC-13.B. STATES CONSULTANT'S ENTIRE LIABILITY AND LADWP'S EXCLUSIVE REMEDY FOR ANY CLAIMED, POTENTIAL OR ACTUAL INFRINGEMENT OR VIOLATION.

This Condition shall survive the expiration or other termination of this Agreement.

GC-14 Insurance

A. General Statement

A certificate of insurance as acceptable evidence of required insurance pursuant to Exhibit G attached hereto, from insurers reasonably acceptable to LADWP, is required to be submitted by the Consultant and must be maintained current by the Consultant throughout the term of this Agreement. Said evidence of insurance must be on file with the Risk Management Section in order to receive payment under any agreement for services rendered, and in order to commence work under this Agreement.

B. Applicable Terms and Conditions

1. Additional Insured Status Required

Contractor/Vendor shall procure at its own expense, and keep in effect at all times during the term of this Agreement, the types and amounts of insurance specified on the attached Contract Insurance Requirements page. The insurance shall also by specific endorsement(s) attached to such policies, include, the City of Los Angeles, its Department of Water and Power, its Board of Commissioners (hereinafter referred to as "Board"), and all of its officers, employees and agents, their successors and assigns, as Additional Insureds against the area of risk described herein as

EXHIBIT A General Conditions

respects Contractor's negligent acts, errors, or omissions in its performance of the agreement, hereunder or other related functions performed by or on behalf of Contractor. Such insurance shall not limit or qualify the liabilities and obligations of the Contractor assumed under the contract.

2. Separation of Insured's Interest and Cross Liability Required

Each specified insurance policy, as applicable, shall contain a Separation of Interest and Cross Liability clause and shall apply separately to each insured against whom a claim is made or suit is brought and a Contractual Liability Endorsement which shall also apply to liability assumed by the insured under this Agreement with the Department.

3. Primary and Non-Contributory Insurance Required

All such insurance shall be Primary and Noncontributing with any other insurance held by LADWP where liability arises out of, or results from, the acts, errors, or omissions of Consultant, its agents, employees, officers, assigns, or any person or entity acting for or on behalf of Consultant. Any insurance carried by LADWP which may be applicable shall be deemed to be excess insurance and the Consultant's insurance is primary for all purposes despite any conflicting provision in the Consultant's policies to the contrary.

4. Proof of Insurance for Renewal or Extension Required

Contractor shall provide evidence of the required insurance at least ten (10) days after the expiration date of any of the policies required on the attached Contract Requirement page showing that the insurance coverage has been renewed or extended and shall be filed with the Department.

5. Submission of Acceptable Proof of Insurance and Notice of Cancellation

Contractor shall provide proof to the Department's Risk Manager of all specified insurance and related requirements using either an Acord certificate of insurance along with any required specific endorsements, or using the Department's own endorsement form(s) or using other written evidence of insurance acceptable to the Risk Manager, but always in a form acceptable to the Risk Manager. The documents evidencing all specified coverages shall be filed with the Department prior to Contractor beginning operations hereunder. Said proof shall contain at a minimum, the applicable

EXHIBIT A General Conditions

policy number, the inclusive dates of policy coverages, the date the specified endorsement for the Department of Water and Power was attached to a specific policy, and the insurance carrier's name. It shall provide that such insurance shall not be subject to cancellation, material reduction in a required coverage or non-renewal (other than for non-payment) except after written notice by first class mail or electronic mail to the LADWP Risk Management Section (30) calendar days prior to the effective date thereof. The notification shall be sent by first class or electronic mail to:

The Risk Management Section,
Los Angeles Department of Water and Power,
Post Office Box 51111, JFB Room 465,
Los Angeles, California 90051-0100.
Riskmanagement.Risky@ladwp.com

6. Claims-Made Insurance Conditions

Should any portion of the required insurance be on a "Claims Made" policy, the Contractor, following completion of work and at the policy expiration date, shall provide evidence that the "Claims Made" policy has been renewed or replaced with a retroactive effective date to the policy in place at the inception of the contract and with the same limits, terms and conditions of the expiring policy.

7. Failure to Maintain and Provide as Cause for Termination

After prior notices have been provided, any failure by the contractor to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which the Department may immediately terminate or suspend the agreement.

8. Sub-Contractor Compliance

The Contractor shall be responsible for all sub-contractors. The vendor shall require all subcontractors performing any work to maintain insurance limits in accordance with Vendor's standard agreements with such subcontractors.

9. Specific Insurance Requirements

Contractor/consultant shall provide evidence of insurance as required in **Exhibit G, Contract Insurance Requirements-LADWP.**

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GC-15 Child Support Policy

The Consultant and any Subconsultant(s) must fully comply with all applicable State and Federal employment reporting requirements for the Consultant's and any Subconsultant(s)' employees. The Consultant and any Subconsultant(s) must fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. The Consultant and any Subconsultant(s) must certify that the principal owner(s) thereof (any person who owns an interest of 10 percent or more), if any, are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. The Consultant and any Subconsultant(s) must certify that such compliance will be maintained throughout the term of this Agreement.

Failure of the Consultant and/or any Subconsultant(s) to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owner(s) to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute a default under this Agreement. Failure of the Consultant and/or any Subconsultant(s) or principal owner(s) thereof to cure the default within ninety (90) calendar days of notice of such default by LADWP shall subject this Agreement to termination.

The Consultant will contractually require all Subconsultants performing services under this Agreement to comply with the provisions of this section.

GC-16 Service Contract Worker Retention Ordinance and Living Wage Policy

Unless otherwise exempt in accordance with the provisions of this Ordinance, this contract is subject to the applicable provisions of the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 et seq., and the Living Wage Ordinance (LWO), Section 10.37 et seq. of the Los Angeles Administrative Code. The ordinance requires that unless a specific exemption applies as determined by the awarding authority and confirmed by the designated administrative agency, all employers (as defined) under contracts primarily for the furnishing of services to or for the City and that involve an expenditure or receipt in excess of \$25,000 and a contract term of at least 3 months; lessees; licensees; or certain recipients of City financial assistance, generally shall provide the following:

- A. Retention by a successor Consultant for a 90-day transition period, the employees who meet all of the following criteria: (i) have been employed for the preceding 12 months or more by the terminated Consultant or Subconsultant, (ii) earning no more than twice the hourly wage without health benefits available under the LWO Section 10.37 et seq. of the Los Angeles Administrative Code, (iii) are not a managerial, supervisory, or

EXHIBIT A

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confidential employee, and (iv) held a position in which their primary job is in the City of Los Angeles working on or under this Agreement;

- B. Payment of a minimum initial wage rate to employees as defined in the LWO, as may be adjusted each July 1, and provisions of benefits as defined in the LWO.
- C. Consultant further pledges that the Consultant shall comply with federal law proscribing retaliation for union organizing and shall not retaliate for activities related to the LWO. Consultant shall require each of its Subconsultants within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. Consultant shall deliver the executed pledges from each such Subconsultant to the City within 90 days of the execution of the Subconsultant. Consultant's delivery of executed pledges from each such Subconsultant shall fully discharge Consultant's obligation with respect to such pledges and fully discharge the obligation of the Consultant and Subconsultants to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.
- D. The Consultant, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with the LWO, for opposing any practice proscribed by the LWO, for participating in proceedings related to the LWO, for seeking to enforce the employee's rights under the LWO by any lawful means, or otherwise asserting rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. The Consultant shall post the LWO Notice to Employees and the Notice of Prohibition Against Retaliation, in a conspicuous place.
- E. Any Subcontract entered into by the Consultant relating to this Agreement, to the extent allowed hereunder, shall be subject to these provisions and shall incorporate the provisions of the LWO and the SCWRO to the extent such entity is considered a Subconsultant within the meaning of the LWO.
- F. Consultant shall comply with all legally binding rules, regulations and policies promulgated by the designated administrative agency with jurisdiction over Consultant's performance of the Services under this Agreement.

Under the provisions of Section 10.36.3(c) and Section 10.37.6(c) of the Los Angeles Administrative Code, the City shall have the authority, under appropriate circumstances, to terminate this contract and otherwise pursue legal remedies that may be available if

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the City determines that the subject Consultant has violated provisions of the LWO and the SCWRO or both.

Where under the LWO Section 10.37.6(e), the designated administrative agency has determined (a) that the Consultant is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, following all applicable notice and cure periods, the awarding authority in such circumstances may impound monies otherwise due the Consultant in accordance with the following procedures. Impoundment shall mean that from monies due the Consultant the awarding authority may deduct the amount determined to be due and owing by the Consultant to its employees. Such monies shall be placed in the holding account referred to in LWO Section 10.37.6(d)(3) and disposed of under procedures there described through final and binding arbitration. Whether the Consultant is to continue work following an impoundment shall remain in the unfettered discretion of the awarding authority. The Consultant may not elect to discontinue work either because there has been an impoundment or because of the ultimate disposition of the impoundment by the arbitrator.

Earned Income Tax Credit

This contract is subject to the provisions of Section 10.37.4(b) of the Los Angeles Administrative Code, requiring employers to inform employees of their possible right to the federal Earned Income Tax Credit (EITC). Employers must further make available to employees the forms required to secure advance EITC payments from employers.

GC-17 Americans with Disabilities Act

The Consultant hereby certifies that it will comply with the Americans with Disabilities Act 42, U.S.C. Section 12101 et seq., and its implementing regulations. The Consultant will provide reasonable accommodations to allow its employees who are qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. The Consultant will not discriminate against persons with disabilities or against persons due to their relationship or association with a person with a disability. Any subcontract entered into by the Consultant, relating to this Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

GC-18 Retention of Records, Audit, and Reports

Consultant shall maintain records pertaining to the performance of Services pursuant to this Agreement, in their original form, including but not limited to, reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all fees claimed to have been incurred and services performed pursuant to this Agreement ("financial

EXHIBIT A General Conditions

records”).

All financial records shall be retained, and shall be subject to examination and audit by LADWP personnel or by LADWP's agents (herein after “Authorized Auditors”), for a period of not less than one (1) year following final payment made by LADWP hereunder or the expiration date of this Agreement, whichever is later.

Upon thirty days' written notice to Consultant, LADWP shall have the right to audit the financial records of Consultant, upon reasonable written notice to Consultant, no more than one time per year, at LADWP's cost. The Authorized Auditors perform all audits in a manner that shall not unreasonably interfere with Consultant's normal business operations. LADWP shall have the right to contract a third-party audit firm to conduct such an audit, provided that such third-party audit firm agrees to Consultant's standard nondisclosure terms and to utilize standard audit software and methodologies. Any information provided by Consultant and its Subconsultants on machine readable media (e.g. Access, Excel or ACL) shall be provided in a format accessible and readable by the Authorized Auditors. Consultant and Subconsultant shall not, however, be required to furnish the Authorized Auditors with commonly available software.

Examinations and audits will be performed using generally accepted auditing practices and principles and applicable City, State and Federal government audit standards. For Consultants that utilize or are subject to FAR, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits will utilize such information.

To the extent that the Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective, and consistent with standard auditing procedures the Consultant will be provided thirty (30) calendar days to review the Authorized Auditor's examination results or audit and respond to LADWP prior to the examination's or audit's finalization.

If the Authorized Auditor's examination or audit indicates an error in billing resulting in either an underpayment or overpayment under a previous payment application, the identified discrepancy shall be reviewed. The Parties will discuss the best manner in which to correct the error within fifteen (15) calendar days of Authorized Auditor's notice to the Parties of the billing error. The Party in error will pay the other Party the amount of the discrepancy within thirty (30) calendar days thereafter.

The Consultant shall use commercially reasonable efforts to contractually require all Subconsultants performing services under this Agreement to comply with the provisions of this section by inserting this provision GC-18 in each Subconsultant contract and by contractually requiring each Subconsultant to insert this provision GC-18 in any of its Subconsultant contracts related to services under this Agreement. In addition, Consultant and Subconsultants shall use commercially reasonable efforts to also include the following language in each Subconsultant contract:

“LADWP is a third-party beneficiary of the foregoing audit provision. The benefits

EXHIBIT A General Conditions

of the audit provision shall inure solely for the benefit of LADWP. The designation of LADWP as a third-party beneficiary of the audit provision shall not confer any rights or privileges on the Consultant, Subconsultant or any other person/entity."

The provisions of this section shall survive expiration or termination of this Agreement.

GC-19 LADWP's Recycling Policy

The Consultant shall submit all written physical documents, if applicable, on paper with a minimum of thirty (30) percent post-consumer recycled content. Existing company/corporate letterhead/stationery that accompanies these documents is exempt from this requirement. Documents of two or more pages in length shall be duplex-copied (double-sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to LADWP.

GC-20 Taxpayer Identification Number (TIN)

The Consultant represents that it has obtained and presently has a Tax Identification Number (TIN). For the term covered by this Agreement, the Consultant shall maintain, or obtain as necessary, a TIN. No payment will be made under this Agreement without a valid TIN number.

GC-21 Beneficiaries

This Agreement is intended only for the benefit of the Parties hereto and does not, nor shall be interpreted, to create any rights in any nonsignatory to this Agreement.

GC-22 Consultant's Successors and Assigns

All indemnifications and warranties provided by the Consultant pursuant to this Agreement will be assumed by and binding upon the Consultant's successors and assigns. The provisions of this paragraph shall survive expiration or termination of this Agreement.

GC-23 Attorney's Fees and Costs

Both Parties hereto agree that in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorneys' fees and costs. The provisions of this paragraph shall survive expiration or termination of this Agreement.

GC-24 Equal Benefits Ordinance

Unless otherwise exempted in accordance with the provisions of this Ordinance, this Contract is subject to the applicable provisions of the Equal Benefits Ordinance (EBO) Section 10.8.2.1 of the Los Angeles Administrative Code, as amended from time to time.

EXHIBIT A General Conditions

- A. During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the EBO. The Contractor agrees to post the following statement in conspicuous places at its place of business available to employees and applicants for employment:
- “During the performance of a Contract with the City of Los Angeles, the CONTRACTOR will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles’ Equal Benefits Ordinance may be obtained from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance at (213) 847-1922.”
- B. The failure of the Contractor to comply with the EBO may be deemed to be a material breach of the Contract by the Awarding Authority.
- C. If the Contractor fails to comply with the EBO, the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.
- D. Failure to comply with the EBO may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the Bureau of Contract Administration determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the EBO, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

GC-25 Contractor Responsibility Program

Unless otherwise exempt in accordance with the provisions of the Ordinance, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 et seq., of the Los Angeles Administrative Code, which requires Contractor to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect Contractor's fitness and ability to continue performing the contract. In accordance with the provisions of this Ordinance, by signing this Contract, Contractor pledges, under

EXHIBIT A General Conditions

penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. Violations of the Contractor Responsibility Ordinance shall constitute a material breach of this Agreement and entitle the LADWP to terminate this Agreement and otherwise pursue legal remedies that may be available.

The Contractor further agrees to:

- A. Notify the awarding authority within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the Contractor is not in compliance with all applicable federal, state and local laws in performance of this contract;
- B. Notify the awarding authority within thirty calendar days of all findings by a government agency or court of competent jurisdiction that the Contractor has violated the provisions of Section 10.40.3(a) of the Ordinance;
- C. Ensure that its subcontractor(s), as defined in the Ordinance, submit a Pledge of Compliance to awarding authorities; and
- D. Ensure that its subcontractor(s), as defined in the Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify Awarding Authorities within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Ordinance in performance of the subcontract.

GC-26 Bidder Campaign Contribution and Fundraising Restrictions

In accordance with the City of Los Angeles Charter Section 470(c)(12) and related ordinances, bidders may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the time they submit a bid to LADWP until either the contract is awarded or, for successful bidders, 12 months after the contract is executed. The bidder's principals and subcontractors performing \$100,000 or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

The Consultant shall comply with the City Ethics Commission's "CEC Form 55" (3 pages) affidavit. The affidavit requires bidders to identify their principals, their subcontractors performing \$100,000 or more in work on the contract, and the principals of those subcontractors. Consultants shall also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. Consultants who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and

EXHIBIT A

General Conditions

requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org.

GC-27 Municipal Lobbying Ordinance

The City of Los Angeles Municipal Code Section 48.01 et seq. requires certain individuals and entities to register with the City Ethics Commission and requires public disclosure of certain lobbying activities, including money received and spent. Therefore all bidders for all construction contracts, public leases, or licenses of any value and duration and bidders for goods or service contracts with a value of more than \$25,000 and a term of at least 3 months, shall comply with the City Ethics Commission's "CEC Form 50" (1 page) affidavit. A copy of the City of Los Angeles Municipal Lobbying Ordinance is available for download on the following City Ethics Commission's webpage:
<https://ethics.lacity.org/wp-content/uploads/Laws-Lobbying-MLO.pdf>.

Additional information regarding the Municipal Lobbying Ordinance may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org.

GC-28 Iran Contracting Act of 2010

In accordance with California Public Contract Code Sections 2200-2208, all Consultants entering into, or renewing contracts with LADWP for goods and services estimated at one million dollars (\$1,000,000) or more shall complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

GC-29 Contractor Performance Evaluation

Under Division 10, Chapter 1, Article 13, Section 10.39 of the Los Angeles Administrative Code, LADWP has established a post-award contractor evaluation program that requires performance monitoring and reporting. The LADWP's Contractor Performance Evaluation Program (CPEP) document can be found on the following webpage:
<https://www.ladwp.com/ladwp/faces/ladwp/partners/p-vendorsandbidders>

LADWP will evaluate and record the Contractor's overall performance to determine whether the Contractor is fulfilling its obligations on the current contract and to assess the Contractor's suitability to perform work for LADWP in the future. Contractors are required to meet critical contract provisions including, but not limited to, timely shipment and delivery of goods, completeness of delivered goods, quality of delivered goods, accuracy of billing, and conformance to the terms and conditions of the contract. If such conditions are breached, consistent with the terms of the contract, the Director of Supply Chain Services may terminate the contract for poor performance and may also debar the Contractor from doing business with LADWP for a period up to five years in accordance with the LADWP's Contractor Performance Evaluation Program.

GC-30 Errors and Omissions

EXHIBIT A General Conditions

Notwithstanding any other provisions of this Agreement, approval by LADWP of any Services or Deliverable, or any requested design changes by LADWP (if applicable), or any part thereof, shall not relieve the Consultant of the responsibility to meet all of the requirements as set forth in this Agreement. The Consultant shall have no claim for additional costs due to correction of its errors or omissions in said previously approved Deliverables or any other action that may be necessary to comply with this Agreement, including all Exhibits.

GC-31 Safety

The Consultant shall arrange facility visits with LADWP who shall advise the Consultant of appropriate safety and security rules. The Consultant shall adhere to the restrictions and instructions of LADWP personnel when visiting any facility.

The Consultant shall do everything reasonable to protect the life, safety, and health of persons at the work site. The Consultant shall furnish and use safety devices and safeguards and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render safe and healthful employment. The Consultant shall be responsible for ensuring that each of the Consultant's Subconsultants meets the standards of this Article.

GC-32 Non-Interference

LADWP acknowledges and agrees that the Consultant's performance of the Services under this Agreement in accordance with the terms of the Agreement shall not interfere unnecessarily with the operation of LADWP or any other City department, and the Consultant shall not intentionally interfere with the operation of LADWP or any other City department.

END OF GENERAL CONDITIONS

EXHIBIT B

Special Provisions

EXHIBIT B
Special Provisions

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EXHIBIT B

Special Provisions

SP-1 **Definitions** *(technical, specific to the procurement, if any)*

SP-2 **Reserved**

SP-3 **Reserved**

SP-4 **Warranty and Responsibility of Consultant**

Consultant warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within the Consultants profession, doing the same or similar work under the same or similar circumstances.

SP-5 **Reserved**

It is the policy of LADWP to provide SBEs, DVBEs, Emerging Business Enterprises (EBEs), Women-Owned Business Enterprises (WBEs), Minority-Owned Business Enterprises (MBEs), Disadvantaged Business Enterprises (DBEs), Lesbian, Gay, Bisexual, or Transgender Business Enterprise (LGBTBEs), and Other Business Enterprises (OBEs) an equal opportunity to participate in the performance of all LADWP contracts. LADWP's overall annual SBE and DVBE participation goals are set at 25 percent and 3 percent, respectively. The bidder shall use commercially reasonable efforts to assist LADWP in implementing this policy by taking all reasonable steps to ensure that all available business enterprises, including SBEs, DVBEs, EBEs, WBEs, MBEs, DBEs, and LGBTBEs have an equal opportunity to compete for and participate in the LADWP contracts.

SP-6 **Reserved**

SP-7 **Reserved**

SP-8 **Reserved**

SP-9 **Reserved**

SP-10 **Reserved**

SP-11 **Reserved**

SP-12 **Reserved**

SP-13 **Conflicts of Interest**

Consultant will not accept any other contract during the term of the Agreement from any other party if such other contract represents, or would lead to a conflict of interest under

EXHIBIT B Special Provisions

City of Los Angeles or California law between LADWP, Consultant, or the other party.

Any subcontract entered into pursuant to the terms of this Agreement shall be subject to, and shall incorporate, the provisions of this Article.

SP-14 Reserved

SP-15 Reserved

SP-16 Confidentiality

Document Access/Control

- A. The Consultant shall make LADWP's Confidential Information available to its employees, agents and /or Subconsultants only on a need-to-know basis.
- B. The Consultant shall store and process LADWP's Confidential Information in an electronic format in such a way designed to prevent unauthorized persons from being able to retrieve the information by computer, remote terminal or other means.
- C. The Consultant shall not remove documents, records, or information used or reviewed in connection with the Consultant's work for LADWP from LADWP facilities without prior approval from LADWP. The Consultant shall not use, other than in direct performance of work required pursuant to the Agreement, or make notes of any home address or home telephone numbers contained in personnel or customer files, Confidential Information, documents, or records provided by LADWP that are reviewed during work on this Agreement.
- D. With prior written approval from LADWP, the Consultant may make physical copies of documents, written materials, notes, documents, confidential information, or other information made available to Consultant from LADWP facilities, as necessary to perform its duties under this Agreement.
- E. The Consultant shall document and promptly report to LADWP any unauthorized use or disclosure of LADWP's Confidential Information as defined in Article 7.1.
- F. The Consultant represents that all its employees, agents, and Subconsultants who shall, or may, review, be provided, or have access to LADWP's Confidential Information during the performance of this

EXHIBIT B

Special Provisions

Agreement, are subject to confidentiality terms substantially similar to those set out in the provisions of this Article VII, Confidentiality and Restrictions on Disclosure prior to performing work under this Agreement.

- G. The provisions of this Article VII, Confidentiality and Restrictions on Disclosure shall survive termination and expiration of this Agreement.

SP-17 Security Policy and Requirements

The Consultant is required to adhere to all physical and cyber-related security policies, standards, requirements and procedures provided by LADWP to Consultant as of the effective date of this Agreement. (collectively, "Security Requirements"), applicable to the Consultant's Services and the Mercury Platform. All Consultant personnel, equipment, products, services, and Subconsultants involved with Services must adhere to all applicable Security Requirements throughout the duration of the Agreement or any extensions or amendments thereof. Security Requirements may be imposed by Federal, State or Local laws or regulations, including, without limitation, requirements that may be imposed by the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC), the Western Electricity Coordinating Council (WECC) the Department of Energy (DOE), the Environmental Protection Agency (EPA), and the Department of Homeland Security (DHS), as applicable to the Consultant's Services under this Agreement.

As security regulations and practices change over time, amendments and extensions to existing agreements may include additional Security Requirements not present in earlier agreements.

SP-18 Reserved

SP-19 Safety Compliance Certificate

The Consultant(s) shall comply with the following safety compliance requirements:

- A. Consultant shall execute and comply with the form titled, "Safety Compliance Certificate" in Exhibit K of this Agreement;
- B. Consultant shall comply with all applicable COVID-19 employer requirements provided by:
 - 1. U.S. Centers for Disease Control and Prevention (CDC)
- C. Consultant shall furnish its employees and require all subcontractors to furnish their employees all necessary safety equipment, including, but not limited to, personal protective equipment, safety devices, and safeguards.

EXHIBIT B Special Provisions

SP-20 Data Security

The Contractor shall implement appropriate measures designed to ensure the confidentiality and security of Protected Information (private and confidential), protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action that could result in substantial harm to the LADWP or an individual identified with the data or information in the Contractor's custody.

SP-21 Reserved

SP-22 Reserved

END OF SPECIAL PROVISIONS

EXHIBIT C

Fee Schedule

Item	EnergyHub Fees	Fee Descriptions	Year 1	Year 2
1	Platform Fees	Includes setup, Program management, vendor management, Mercury Platform and Mercury Platform fee, reporting, electronic marketing Includes BYOT Device Fee for 3,500 devices ("Included Devices"). Invoiced upon the Agreement Effective Date and annually thereafter.	\$150,000 (2023: \$100,000; Jan – Jul 2024: \$50,000)	\$150,000
2	Device Fees	Applicable to all devices enrolled beyond Included Devices in Item 1 Includes device license for Mercury Platform, partner payments, integration fees, and electronic marketing Invoiced quarterly for net-new thermostats enrolled at any time in the previous quarter and for thermostats with an enrollment anniversary at any time in the previous quarter Device fee is limited one device per LADWP account, independent of changed enrollments. EnergyHub shall not charge device fees for duplicate device(s) and enrollment(s).	\$38/device	\$38/device
3	Incentive Processing Fees	Fee per rebate (incentive) processed Invoiced monthly based on the number of enrollment and seasonal incentives processed in the previous month	\$2/rebate (incentive) processed	\$2/rebate (incentive) processed

EXHIBIT C Fee Schedule

Item	EnergyHub Fees	Fee Descriptions	Year 1	Year 2
	Other Fees:			
4	**Enrollment Incentive for Newly Enrolled Customers	Incentive to customers for enrolling their thermostats in Power Savers Program EnergyHub will process the incentive on behalf of LADWP when customers enroll their thermostats in the program and LADWP will reimburse the amount to EnergyHub Incentive is limited to one qualifying thermostat per customer	\$65/thermostat (device)	\$65/thermostat (device)
5	**Seasonal Incentive: Less than 25%; No incentive will be earned	Annual incentive to customers for remaining in the program and participating in energy saving demand response (DR) events EnergyHub will process the incentive at the end of DR season (June 1 through October 31) on behalf of LADWP and LADWP will reimburse the amount to EnergyHub Incentive is limited to one qualifying thermostat per customer	\$0/thermostat (device)	\$0/thermostat (device)
6	***Seasonal Incentive: Between 25% and 74%; \$60 will be earned	Annual incentive to customers for remaining in the program and participating in energy saving DR events EnergyHub will process the incentive at the end of DR season (June 1 through October 31) on behalf of LADWP and LADWP will reimburse the amount to EnergyHub Incentive is limited to one qualifying thermostat per customer	\$60/thermostat (device)	\$60/thermostat (device)
7	*** Seasonal Incentive: At or above 75%; \$120 will be earned.	Annual incentive to customers for remaining in the program and participating in energy saving DR events EnergyHub will process the incentive at the end of DR season (June 1 through October 31) on behalf of LADWP and LADWP will reimburse the amount to EnergyHub Incentive is limited to one qualifying thermostat per customer	\$120/thermostat (device)	\$120/thermostat (device)

EXHIBIT D

Allowable Travel Expense

Expenses for transportation, lodging, subsistence and related items incurred by consultants employed by the Los Angeles Department of Water and Power will be subject to the "50-mile" rule. Under this rule, travel reimbursements will be made only if the destination is farther than 50 miles from the Consultant personnel's field or office location to the LADWP work site. Any such travel shall be pre-approved by LADWP and shall be in accordance with the guidelines of this Exhibit D.

All expenditures over \$25 require documentation in the form of an original detailed receipt with the exception of per diem meals. However, receipts for expenditures under \$25 may be requested by the City Controller. No additional mark-up on consultant or subconsultant expenses will be allowed.

LADWP will reimburse the Consultant for expenses that include, but not limited to:

1.0 Airfare:

Airfare is limited to coach class only. An itinerary is not acceptable in and of itself. Original receipts for airfare must be submitted. Purchase of a refundable ticket, which is usually more expensive than a non-refundable ticket, must be approved by the LADWP Contract Administrator identified in the Agreement.

2.0 Car Rental:

Car rental is limited to mid-size or smaller car. The expense of navigation and insurance will not be reimbursed. Original receipts for car rental and fuel costs must be submitted. Travelers shall fill the gas tank before returning car to avoid fuel surcharges that are not reimbursable.

3.0 Per Diem Allowances – Meals:

3.1 A meal allowance rate is established for domestic travel and will include incidental expenses.

3.2 The meal allowance rate for domestic travel is \$74 per day for a full day of travel, which excludes taxes and reasonable and customary gratuities not to exceed 15 per cent. On the first and last day of travel flight itinerary will be required if the full meal rate is requested.

3.3 Meal and incidental allowance will be prorated at 75% (\$55.50) of the daily allowance as follows on the first and last day of travel depending on departure/arrival time:

3.3.1 The partial meal rate will be paid on the first day of travel for departure times after 2 p.m.

EXHIBIT D

Allowable Travel Expense

3.3.2 The partial meal rate will be paid on the last day of travel for arrival times prior to 2 p.m.

3.3.3 When some meals are provided as part of the conference/event.

(NOTE: No meal allowance will be provided when all meals are provided throughout the day by the host or as part of an event/conference.)

3.4 Meal Receipts

Meal receipts are no longer required when claiming the meal allowance. If receipts are provided, the actual amount if less than allowance will be reimbursed.

EXCEPTIONS:

- 1) Receipts are required for grant funded travel where the grantor requires complete documentation of travel expenses; and
- 2) Receipts are required of single meals that cost more than \$25.

4.0 Per Diem Allowance – Hotel/Lodging:

- 4.1 Since the expense limit varies by county, the expense limit shall be pre-approved by the LADWP Contract Administrator identified in the Agreement for travel by the Consultant to an approved worksite outside of Los Angeles County.
- 4.2 Zero balance receipt is required. The receipt must include the pre-printed hotel name and address. Lodging expenses up to a maximum limit of \$182.00 per day (Los Angeles County). This should exclude taxes and tips. Tips and gratuities shall not exceed 15%, where reasonable and customary.
- 4.3 Meals and lodging are reimbursable only on working days as reported on timesheets, and payments are subject to the approval of the LADWP Contract Administrator identified in the Agreement.

5.0 Mileage:

Mileage for non-rental car travel will be paid at the standard mileage rate established by the Internal Revenue Service in effect at the time of travel. A Map Quest or similar routing tool is required to document miles driven. The mileage will be calculated using the shortest route. As of January 1, 2023, the reimbursement rate is sixty-five and one-half cents (\$0.655) per mile.

END OF ALLOWABLE TRAVEL EXPENSES

EXHIBIT E
List of Subconsultants

The following Subconsultants are authorized to work on the Project:

Name	Special Expertise of Firm	Anticipated Service/Task Responsibilities	Location	Firm Type (SBE/DVBE)	Anticipated Compensation *
<i>EnergyHub will not use Subconsultants pursuant to this contract.</i>					

* Subconsultant participation is estimated and may be modified to reflect actual services requested.

EXHIBIT F
List of Key Consultant Personnel

The following people are designated as Consultant's Key Personnel:

Name	Project Position	Labor Category	Location	Special Expertise	No. of Years Employed by Consultant/ Experience
Katelyn Dozier	Senior Manager – Client Success			Manages DR programs for EnergyHub in North Carolina, Indiana, Maryland, and Virginia. Before joining EnergyHub, Prior experience includes, part of the program management team for an advanced metering software implementation.	
Nick Bengtson	Sales Executive			Leads EnergyHub's utility engagement and sales efforts in New England, California, and the Midwest, drawing on fifteen years of experience in the utility DSM and load flexibility space. Prior experience includes working for a number of program implementers focused on demand response product development and program delivery, spanning residential, multifamily, and commercial & industrial sectors.	
Floris Billiet	Director – Client Success			Manages the client success team at EnergyHub. Over 15 years of experience in customer success, B2B2C partnerships, and process optimization working for a diverse range of software companies in the travel and data analytics industry.	

EXHIBIT G

Contract Insurance Requirements

CONTRACT INSURANCE REQUIREMENTS -- DEPARTMENT OF WATER AND POWER For Contractors, Service Providers, Vendors, and Tenants

Agreement/Activity/Operation: PPS - Power Savers Program Platform & Data Services
 Reference/Agreement: REQ #138845 - CERTIFICATE ACCEPTABLE (w/scheduled endorsements)
 Term of Agreement: _____
 Contract Administrator: Zaw Htin / Linda Novoa
 Buyer and Phone Number: TBD

- Contract-required types and amounts of insurance as indicated below by checkmark are the minimum which must be maintained. All limits are Combined Single Limit (Bodily Injury/Property Damage) unless otherwise indicated.
- Firm 30 day Notice of Cancellation required.
- All required scheduled endorsements must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

<u>PER OCCURRENCE LIMITS</u>		
<input checked="" type="checkbox"/> WORKERS' COMPENSATION(Stat. Limits)/Employer's Liability: (\$1,000,000.00)		
<input checked="" type="checkbox"/> CA / All States Endorsement	<input type="checkbox"/> US L&H (Longshore and Harbor Workers)	
<input type="checkbox"/> Jones Act (Maritime Employment)	<input type="checkbox"/> Outer Continental Shelf	
<input checked="" type="checkbox"/> Waiver of Subrogation	<input type="checkbox"/> Black Lung (Coal Mine Health and Safety)	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> AUTOMOBILE LIABILITY: ()		
<input type="checkbox"/> Owned Autos	<input type="checkbox"/> Any Auto	
<input type="checkbox"/> Hired Autos	<input type="checkbox"/> Non-Owned Auto	
<input type="checkbox"/> Contractual Liability	<input type="checkbox"/> Additional Insured	
<input type="checkbox"/> MCS-90 (US DOT)	<input type="checkbox"/> Trucker's Form	
<input type="checkbox"/> Waiver of Subrogation	<input type="checkbox"/> Other: _____	
<input checked="" type="checkbox"/> GENERAL LIABILITY: () Limit Specific to Project () Per Project Aggregate (\$1,000,000.00)		
<input checked="" type="checkbox"/> Property Damage	<input checked="" type="checkbox"/> Contractual Liability	<input checked="" type="checkbox"/> Personal Injury
<input checked="" type="checkbox"/> Premises and Operations	<input checked="" type="checkbox"/> Products/Completed Ops.	<input type="checkbox"/> Independent Contractors
<input type="checkbox"/> Fire Legal Liability	<input type="checkbox"/> Garagekeepers Legal Liab.	<input type="checkbox"/> Child Abuse/Molestation
<input type="checkbox"/> Corporal Punishment	<input type="checkbox"/> Collapse/Underground	<input type="checkbox"/> Explosion Hazard
<input type="checkbox"/> Watercraft Liability	<input type="checkbox"/> Pollution	<input checked="" type="checkbox"/> Additional Insured Status
<input type="checkbox"/> Waiver of Subrogation	<input type="checkbox"/> Airport Premises	<input type="checkbox"/> Hangarkeepers Legal Liab.
<input type="checkbox"/> Marine Contractors Liability	<input type="checkbox"/> Other: _____	<input checked="" type="checkbox"/> Other: <u>Errors & Omissions</u>
<input checked="" type="checkbox"/> PROFESSIONAL LIABILITY: (\$1,000,000.00)		
<input type="checkbox"/> Contractual Liability	<input type="checkbox"/> Waiver of Subrogation	<input type="checkbox"/> 3 Year Discovery Tail
<input type="checkbox"/> Additional Insured	<input type="checkbox"/> Vicarious Liability Endt.	<input checked="" type="checkbox"/> Other: <u>Data Privacy/IP Infrngmnt</u>
<input type="checkbox"/> AIRCRAFT LIABILITY: ()		
<input type="checkbox"/> Passenger Per Seat Liability	<input type="checkbox"/> Contractual Liability	<input type="checkbox"/> Hull Waiver of Subrogation
<input type="checkbox"/> Pollution	<input type="checkbox"/> Additional Insured	<input type="checkbox"/> Other: _____
<input type="checkbox"/> PROPERTY DAMAGE: () Loss Payable Status (AOIMA) ()		
<input type="checkbox"/> Replacement Value	<input type="checkbox"/> Actual Cash Value	<input type="checkbox"/> Agreed Amount
<input type="checkbox"/> All Risk Form	<input type="checkbox"/> Named Perils Form	<input type="checkbox"/> Earthquake: _____
<input type="checkbox"/> Builder's Risk:\$_____	<input type="checkbox"/> Boiler and Machinery	<input type="checkbox"/> Flood: _____
<input type="checkbox"/> Transportation Floater:\$_____	<input type="checkbox"/> Contractors Equipment\$_____	<input type="checkbox"/> Loss of Rental Income: _____
<input type="checkbox"/> Scheduled Locations/Propt.	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> WATERCRAFT: ()		
<input type="checkbox"/> Protection and Indemnity	<input type="checkbox"/> Pollution	<input type="checkbox"/> Additional Insured
<input type="checkbox"/> Waiver of Subrogation	<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
<input type="checkbox"/> POLLUTION: ()		
<input type="checkbox"/> Incipient/Long Term	<input type="checkbox"/> Sudden and Accidental	<input type="checkbox"/> Additional Insured
<input type="checkbox"/> Waiver of Subrogation	<input type="checkbox"/> Contractor's Pollution	<input type="checkbox"/> Other: _____
<input type="checkbox"/> CRIME: () Joint Loss Payable Status () Additional Insured ()		
<input type="checkbox"/> Fidelity Bond	<input type="checkbox"/> Financial Institution Bond	<input type="checkbox"/> Loss of Monies/Securities
<input type="checkbox"/> Employee Dishonesty	<input type="checkbox"/> In Transit Coverage	<input type="checkbox"/> Wire Transfer Fraud
<input type="checkbox"/> Computer Fraud	<input type="checkbox"/> Commercial Crime	<input type="checkbox"/> Forgery/Alteration of Docs.
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> ASBESTOS LIABILITY: () Additional Insured ()		

Insurance Req (01/17/2023 - LC)

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Statement of Work

Power Savers Program Platform and Data Services

Los Angeles Department of Water and Power (LADWP) Statement of Work (SOW)

1 Project Background and Description

LADWP will continue the Power Savers Program (the "Program") where customers purchase and install thermostats from select Thermostat Partners on their own and enroll those thermostats into the Program (or enroll thermostats that were purchased and installed purchased previously). As used in this SOW, a "Thermostat Partner" is a third-party thermostat manufacturer or connected-home security provider that makes connected thermostats available to consumers through retail, trade, or other channels where these thermostats are compatible with the EnergyHub platform. LADWP will utilize EnergyHub's Mercury Platform and Bring Your Own Thermostat (BYOT) Program Services to deploy the Program, including contracting and integration with Thermostat Partners, Program marketing, customer enrollment, and management of Demand Response (DR) events. EnergyHub will support LADWP in enrolling residential and small business customers to achieve peak load reduction of 35 MW from central HVAC systems by the end of the 2023 DR season.

2 EnergyHub Responsibilities

2.1 Program Launch

2.1.1 Program setup

2.1.1.1 EnergyHub shall perform the following setup activities during the Program launch phase:

- Implement the proposed changes to program design and terms and conditions
- Develop a work plan and schedule for all phases of the Program to achieve up to 7,500 new devices (approximately a 35MW portfolio) of dispatchable residential DR resources by the end of the DR season.
- Collaborate with LADWP internal stakeholders to identify success criteria for the program including data sources, data collection, and evaluation processes
- Assist in reviewing, developing, and improving LADWP's procedures, standards, rules, and policies related to the Program in collaboration with LADWP stakeholders
- Develop the DR event procedures, processes, policies, tracking, and functions in collaboration with LADWP internal stakeholders, including without limitation: DR event notification, DR participation, incentive amount tracking for seasonal and enrollment incentives, incentive distribution for seasonal and enrollment incentives, and customer program satisfaction tracking
- Develop Program documentation including templates for reports, meeting

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- minutes, and presentations in collaboration with LADWP stakeholders
- Work with LADWP to finalize and implement changes to the customer terms and conditions (T&C) for each Thermostat Partner in the Program. LADWP approval on customer T&Cs is required prior to launch of Thermostat Partner recruitment
- Identify any operational risks affecting the Program by developing a risk assessment with proposed mitigation strategies

2.1.2 Existing Thermostat Partners

- ##### 2.1.2.1
- EnergyHub represents that it has entered into partnerships with the Thermostat Partners for the thermostat models identified in the table below, which have been integrated with the Mercury Platform.

LADWP customers enrolled in the Program will be able to participate in DR events scheduled by LADWP if they install any of these thermostat models at their premises.

Pending partner acceptance of program design changes, the following Thermostat Partners and device models shall be eligible to participate in LADWP's Program subject to the terms of the Agreement. New models may be added to this list as they are released by Thermostat Partners:

Thermostat Partner	Thermostat Models
Nest	Nest Learning Thermostat, Nest Thermostat E
Ecobee	ecobee3, ecobee3 Lite, ecobee4, ecobee Smart Si, ecobee Smart
Honeywell	T5+ Smart Thermostat, T6 Pro Smart Thermostat, Round Smart Thermostat, Wi-Fi Smart Thermostat, Wi-Fi Smart Thermostat with Voice Control, Wi-Fi 7-Day Programmable Thermostat, Wi-Fi 7-Day Programmable Touchscreen Thermostat, Wi-Fi 9000, Wi-Fi 9000 with Voice Control, Wi-Fi Focus Pro, Wi-Fi Vision Pro
Lux Products	Lux GEO, Lux GEOX, Lux Kono
Emerson	Sensi™ Wi-Fi Programmable Thermostat, Sensi Touch Wi-Fi Thermostat
Radio Thermostat	Filtrete 3M-50, CT30, CT50, CT80
Alarm.com	Radio Thermostat CT30, CT80, CT100; Trane ComfortLink Control; RCS Z-Wave Communicating Thermostat; GoControl Z-wave Thermostat; Alarm.com Smart Thermostat
Vivint	Radio Thermostat CT100 with Vivint Go!Control Panel
Amazon	Amazon Smart Thermostat

2.1.3 Thermostat Partner onboarding

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2.1.3.1 EnergyHub shall perform the following Thermostat Partner onboarding activities during the Program launch phase:

- EnergyHub will work with LADWP to identify and qualify thermostat manufacturers and service providers who are interested in becoming Thermostat Partners in the Program. Additional fees may be required to add new manufacturers. Addition of new partners will only be pursued if mutually agreed to between EnergyHub and LADWP, and documented via a change order
- EnergyHub will promote the Program to Thermostat Partners that sell and/or install load control- capable devices in LADWP's service territory.

2.1.4 Program marketing

2.1.4.1 EnergyHub shall promote the Program to LADWP customers with a qualified thermostat (directly or through Thermostat Partners) using customer communications approved by LADWP. EnergyHub shall perform the following marketing activities during the Program launch phase:

- EnergyHub shall assist and advise LADWP in their marketing efforts to recruit customers into the BYOT Program. EnergyHub shall facilitate Thermostat Partners' marketing efforts, where the Thermostat Partners market the Program to LADWP's customers with qualified thermostats through email and in-app communications approved by LADWP.
- EnergyHub shall provide LADWP with a step-by-step guide of customer enablement procedures and documentation describing the enrollment process for customers with existing qualified smart thermostats and customers who buy a new qualified thermostat (the "Customer Journey" document). This document will be for use by LADWP, is not Customer-facing, and will not include LADWP branding or Program messaging.
- EnergyHub shall provide LADWP with a portfolio of all marketing collateral templates and with core messaging. LADWP will be given the opportunity to request modifications to the core

messaging before it is finalized. Marketing collateral templates will allow for copy edits to sections identified as customizable – page designs and layouts are final.

- EnergyHub shall provide LADWP with a communication report as part of the marketing collateral package containing a summary of Thermostat Partner marketing materials, outreach channels, and timing of customer communications
- EnergyHub and Thermostat Partner marketing approved by LADWP will promote both enrollment and seasonal incentives for eligible Thermostat Partner devices
- EnergyHub shall provide an LADWP-branded Program microsite to drive enrollment.
 - The Program microsite will direct prospective applicants to the

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LADWP Efficient Product Marketplace (EPM) to purchase a device or Thermostat Partner enrollment page to apply to the Program

- The Program microsite includes an FAQ page and detailed technology and eligibility requirements, including qualifying thermostat models (as listed in Section 2.1.2.1 above) that potential participants must have in order to enroll in the Program
- Changes to the microsite design can only be made to customizable sections
- EnergyHub shall provide the following enrollment process for LADWP's customers to join the Program.
 1. EnergyHub's Thermostat Partners support Power Savers Program enrollment through their respective web or mobile applications. Customers receive email and/or in-app marketing from their Thermostat Partner and get directed to the Thermostat Partner enrollment experience to apply to the Program. For this path, LADWP customers are not required to log into the LADWP website to enroll in the BYOT Program.
 2. EnergyHub shall provide LADWP's Program microsite which can be embedded via web-view within the LADWP My Account environment (this feature is called the "Enrollment Center"). Customers would be required to be logged into the My Account portal in order to access the Enrollment Center, which would educate prospective customers about the BYOT Program and provide links to purchase a thermostat on the EPM or link to the Thermostat Partner enrollment website to apply to the Program.
- Marketing materials shall be integrated with LADWP's brand where applicable. Not all materials will include LADWP branding or the name of the Program. Assets without LADWP branding will feature the LADWP utility name and/or Program name.
- EnergyHub shall assist LADWP in the development and execution of a joint customer engagement plan including, without limitation, factsheets, pamphlets, and Program educational materials for prospective and enrolled customers.

2.1.5 LADWP training

2.1.5.1 EnergyHub shall perform the following training activities during the Program launch phase:

- EnergyHub's Client Success team will provide an in-person, classroom-style training session to LADWP employees relevant to the services described in this SOW prior to Program launch.
- Training sessions will focus on operation of the Mercury Platform and Program services including:
 - Utility settings and user administration

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- Enrollment management
- Scheduling DR events
- Post-event analysis and M&V reporting
- General reporting
- Customer support training for LADWP customer service personnel
- EnergyHub will provide the Mercury Platform User's Guide as a supplemental resource during training so that LADWP staff can become proficient in using the Mercury Platform functionality. EnergyHub will provide Program technical support (see Section 2.2.1.1) as well as additional web-based training and associated documentation as needed throughout the Project Term.
- LADWP may request a maximum of one additional in-person session and three additional web-based training sessions.

2.2 Program Operations

2.2.1 Program management

2.2.1.1 EnergyHub shall perform the following Program management activities during ongoing operations of the BYOT Program:

- EnergyHub shall provide documentation on operation of the Program, including invoicing, escalation procedures, project meeting agendas, meeting minutes, as well as an action item and issue tracker
- EnergyHub shall provide technical support to LADWP staff on use of the Mercury Platform, including enrollment processing support, DR dispatch support, and reporting support
- EnergyHub shall facilitate work progress meetings every two weeks and prepare meeting minutes
- EnergyHub shall provide reporting support to assist LADWP in compiling data needed for internal reports or presentations to internal stakeholders. EnergyHub will work with LADWP to validate the data required for internal reporting. The following Program-related reports are available for download on-demand from the Mercury Platform:
 - DR Event Performance Report
 - Participation Totals Report
 - Participation Intervals Report
 - Load Intervals Report
 - Enrollment Report
 - Device List
- Outside of the Mercury Platform, EnergyHub will provide the following:
 - End-of-season Program evaluation deck (additional detail below)
 - Customer survey results summary (referenced in the bullet below)
 - Enrollment Incentive File (EIF)
 - Seasonal Incentive File (SIF)
 - Customer participation (in minutes) per event following each event

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- Connectivity status report highlighting offline devices for 3 consecutive months
 - EnergyHub shall facilitate an end-of-season review meeting following each DR season
 - As part of the end-of-season review, EnergyHub shall provide a post-season evaluation deck summarizing event performance, event participation, customer support metrics, lessons learned, and recommendations for subsequent Program seasons (e.g., changes to Program design, terms and conditions, eligibility requirements)
 - As part of the end-of-season review, EnergyHub shall provide an evaluation of Program progress against the approved success criteria defined at the outset of the Program
 - EnergyHub shall provide a summary report of customer feedback on the Program. Based on the timing of customer surveys, customer feedback data will be provided after the end-of- season review.
 - If requested by LADWP, EnergyHub shall facilitate after or during each DR season the removal of customers deemed to be ineligible by LADWP. Energy Hub shall be responsible for obtaining customer opt-out data from thermostat partners.
- 2.2.1.2 EnergyHub will perform periodic review of the devices within LADWP's program for eligibility to continue program participation.
- For devices participating in LADWP's DR program, EnergyHub will conduct periodic connectivity testing to determine which devices have had no connectivity for at least the last 90 days and once LADWP has approved the results of this testing, remove some devices without connectivity. Which devices LADWP chooses to remove will depend on how long the device has been offline, and the chances of that device coming back online.

2.2.2 Mercury Platform

- 2.2.2.1 EnergyHub will deliver the Mercury Platform and provide LADWP's internal stakeholders with access to the Mercury Platform to manage, operate, dispatch the residential DR resources and provide post event participation and performance reports.

Enrollment

- 2.2.2.2 EnergyHub provides customer-facing enrollment infrastructure and a utility-facing Program enrollment module which will allow LADWP to review and process Program applications. EnergyHub or the Mercury Platform shall include the following enrollment features:
- Customer-facing enrollment infrastructure allows customers to provide application information required by LADWP for verification of Program

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- eligibility. Customer application information will be collected through the Thermostat Partner web or mobile application enrollment experience
- Customer-facing enrollment infrastructure requires that customers accept the Program terms and conditions (“T&Cs”) in order to apply to the Program. Customer T&Cs set forth the Program requirements including eligibility rules and incentive levels
 - The Mercury Platform utility-facing enrollment module includes enrollment processing tools which LADWP will use to verify the eligibility of customers applying to the Program through a manual or batch process
 - The Mercury Platform utility-facing enrollment module includes reporting tools for tracking the status of enrollments (e.g., Accepted, Rejected, Unenrolled)
 - The Mercury Platform utility-facing enrollment module includes the ability to download a report of new and existing participants containing customer address, Thermostat Partner, and enrollment date
 - The Mercury Platform utility-facing enrollment module allows for customer unenrollment, for instance, when customers exceed the allowed number of opt-outs
 - EnergyHub shall work with LADWP to ensure that LADWP receives the application data needed for verifying customer eligibility with limited exchange of Personally Identifiable Information (PII) between LADWP and EnergyHub

DR event management

2.2.2.3 The Mercury Platform includes a demand response module that can dispatch DR signals to connected thermostats. The Mercury Platform communicates with Thermostat Partners via web services APIs, the Thermostat Partner communicates with households over cellular or broadband, and the local network communicates with the device itself via WiFi, Zigbee, or Z-Wave within the home. The demand response module shall include the following features:

- Ability to estimate the amount of available DR capacity in the Program in near real time. This feature will be released once sufficient LADWP territory-specific device data has been collected and after LADWP has run several DR events
- Ability to estimate kWh performance without using data from billing meters
- Ability to segment enrolled thermostats by any “Group” desired by LADWP (e.g., zip code, service district, substation, feeder, circuit).
- Ability to schedule DR events on enrolled thermostats within the LADWP service territory
- Ability to schedule DR events based on Groups and show available DR capacity of each strategy which may be set up by Group
- Ability to schedule DR events using intelligent dispatch functionality (Firm

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- Load DispatchSM) which allows LADWP to optimize load control against a target load curve, including firm load reduction against a DR baseline
- Ability to perform measurement and verification (M&V) of system load impact without data from the AMI system following each DR event. The Event page for a given DR event calculates metrics such as total energy saved, average load shed, and average load shed per device
 - Ability to identify and track enrolled customer participation in DR events. The Event page calculates participation summary metrics for each event (e.g., Full Participation, Offline, Opted Out) and includes the ability to download Load intervals, Participation Intervals, and Participation Totals reports upon completion of an event
 - EnergyHub shall make the OpenADR 2.0 Virtual End Node (VEN) and Virtual Top Node (VTN) capabilities of the Mercury Platform available to LADWP for the receipt and/or dispatch of DR signals if desired by LADWP. EnergyHub and LADWP will mutually agree upon the scope of the VTN pilot based on the OpenADR endpoints LADWP wants to include and the VTN functionality available in the Mercury Platform.
 - EnergyHub shall work with LADWP's Energy Control Center (ECC) team to integrate the Mercury Platform with ECC's Automated Distributed Management System (ADMS) such that the ADMS can send OpenADR signals or connect through API to Mercury to automatically dispatch DR signals to eligible devices.
 - The Mercury Platform shall be compatible with the majority of the currently available DR-enabled thermostats that comply with Appendix JA5: Technical Specifications for Occupant Controlled Smart Thermostats by California Energy Commission. EnergyHub will work with LADWP to identify and qualify thermostat manufacturers and service providers who are interested in becoming Thermostat Partners in the Program. Addition of new partners will only be pursued if mutually agreed to between EnergyHub and LADWP and documented via a change order. Additional fees may be required to add new manufacturers.

Data monitoring and reporting

- 2.2.2.4 The Mercury Platform shall include a dashboard and general reporting tools for the presentment of data collected from enrolled thermostats to LADWP. Data presented in general reports or event M&V, and on the dashboard, shall rely on device data fed to EnergyHub through its integrations with Thermostat Partners. Examples of this data include device connectivity, HVAC runtime, HVAC mode, temperature setpoint, and indoor/outdoor temperature. Select vendors might provide a subset of this data, and some features may not be universally supported across all Thermostat Partners.
- 2.2.2.5 The Mercury Platform tracks personnel activities such as the user who processes an enrollment (i.e., Accept, Reject) and the user who schedules a DR event. LADWP can access this data on demand from the Mercury

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Platform.

- 2.2.2.6 EnergyHub shall have the ability to provide DR event participation data to LADWP for presentment in the LADWP My Account customer portal environment. EnergyHub shall offer a CSV report, automated CSV file exchange, or a web services API that includes the following data which LADWP can in turn present to customers, should this be required:
- Event date
 - Event start time
 - Event end time
 - Event participation status (e.g., Participated, Offline, Opted out)
- 2.2.2.7 The Mercury Platform shall also provide general reporting tools. The Thermostat Intervals report and the Thermostat Snapshot report shall be made available for download on demand from the Mercury Platform Reports tab. These reports include granular interval data for enrolled devices (Thermostat Intervals) or a summary of the status of each enrolled thermostat (Thermostat Snapshot).

2.2.3 Cybersecurity

- 2.2.3.1 EnergyHub shall safeguard all LADWP information, including PII, it has in its possession, whether such data is provided by LADWP or is collected on behalf of LADWP. EnergyHub shall have in place a mature cybersecurity program that follows and/or complies with industry standards such as the NIST Cybersecurity Framework, ISO 27000 series, and/or PCI-DSS. Where applicable, EnergyHub shall review and ensure that it will satisfy the requirements set forth in the LADWP's IT Cybersecurity Requirements document.

2.2.4 Vendor management

- 2.2.4.1 EnergyHub shall perform the following vendor management activities during ongoing operations of the BYOT Program:
- EnergyHub shall contract directly with and manage relationships with all Thermostat Partners.
 - EnergyHub shall manage required payments to Thermostat Partners upon payment from LADWP as defined in Section 10 – Pricing and Payment Schedule.
 - Should LADWP select a new vendor to provide a platform for BYOT DR program administration, EnergyHub shall work with device partners to provide necessary data for the transition of devices from the EnergyHub program to the new vendor program.

2.2.4.2 Termination Transition Services:

- In the event of any termination of the Agreement and subject to the

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payment of any remaining open invoices from EnergyHub, EnergyHub shall work in good faith with LADWP and the applicable device partners to facilitate an orderly transition of the Power Savers Program from EnergyHub to LADWP, one or more replacement consultants, or any combination thereof over the course of a six (6) week transition period or such other period needed to fully transition to the replacement consultant provided, however, that such transition period shall in no event extend beyond the effective date of termination of the Agreement.

- Termination Transition services will include the following:
 - Assistance to facilitate LADWP's download of all on-demand reports available as of the termination effective date from the Mercury Platform, including the Enrollment Report, and EnergyHub shall provide a copy of the most recent End-of-Season Program evaluation deck, Customer survey results, EIF, SIF, Customer participation per event, and connectivity status report, for LADWP to retain and use only as permitted in Section 6.1.1.1(g) of the Agreement.
 - Transfer aggregated event data, including total curtailment (kW), total energy saved (kWh), number of opted-out devices, percentage of full participation, percentage of partial participation, percentage of opt-outs, etc., to LADWP and any replacement consultant, as directed by LADWP in Comma Separated Values (CSV) format.
 - Coordination with LADWP, one or more replacement consultants, or any combination thereof to ensure the quality and accuracy of the transferred data, based on the data available from applicable device partners at the time of transition.
 - Revamping the microsite or enrollment portal to direct LADWP customers, who are looking to enroll their devices into the Power Savers Program, to a correct website, whether ladwp.com/powersaversprogram or another microsite.
 - In the event that EnergyHub is not one of the selected vendors for the future Power Savers Program contract, EnergyHub's microsite shall be online for a minimum of three (3) months after the effective date of termination of the agreement, directing LADWP customers to a correct website for the enrollment.
 - Coordination with LADWP, one or more replacement consultants, or any combination thereof to develop a procedure for processing customers' inquiries sent to EnergyHub's mailbox.

2.2.5 Incentive processing Seasonal Incentive Payment

2.2.5.1 EnergyHub shall perform the following seasonal incentive processing activities during ongoing operations of the BYOT Program:

- EnergyHub shall provide a seasonal payment report (the "Seasonal Incentive File" or "SIF") to LADWP at the end of the Program season

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identifying each participating customer in the Program who is eligible to receive a seasonal incentive. Seasonal incentive eligibility is defined in the Program Design table in Section 9.

- Within four weeks of the receipt of the SIF from EnergyHub, LADWP shall review and approve the SIF. EnergyHub shall initiate processing of the applicable participation incentives within two weeks of such approval from LADWP.
- EnergyHub shall process and issue seasonal incentives to participating customers as approved by LADWP using Amazon or Visa electronic gift cards. Electronic gift cards shall be delivered with LADWP branding.
- EnergyHub will invoice LADWP for processing fees and incentive amounts once EnergyHub initiates processing of the applicable seasonal incentive payments. Such amounts will be due and payable by LADWP within thirty (30) days of the date of invoice.

Enrollment Incentive Payment

2.2.5.2 Enrolment incentive will be separate from the any rebate offered through LADWP's Efficient Product Marketplace. EnergyHub shall perform the following enrollment incentive processing activities during ongoing operations of the BYOT Program:

- EnergyHub shall provide LADWP with enrollment incentive files ("EIF") identifying each participating customer in the Program who is eligible to receive an enrollment incentive. EnergyHub will provide EIFs to LADWP on a periodic basis during the Program season, such time period not to exceed three weeks between the provision of each EIF. Such EIF shall include a list of Participants who have enrolled since the previous EIF and such Participants' eligible incentive amounts.
- Within two weeks of the receipt of the EIF from EnergyHub, LADWP shall review and approve each EIF. EnergyHub shall initiate processing of the applicable enrollment incentives within two weeks of the receipt of such approval from LADWP.
- EnergyHub shall process and issue sign-up bonus to eligible customers as approved by LADWP using Amazon or Visa electronic gift cards. Electronic gift cards shall be delivered with LADWP branding.
- EnergyHub will invoice LADWP for processing fees and incentive amounts once EnergyHub initiates processing of the applicable enrollment incentives payments. Such amounts will be due and payable by LADWP within thirty (30) days of the date of invoice.

2.2.6 Customer support

2.2.6.1 EnergyHub shall assist LADWP in developing and implementing a process for LADWP to offer live and email-based customer support for the Program.

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- 2.2.6.2 EnergyHub shall provide email-based support to the LADWP customer service team to assist LADWP personnel in triaging Program inquiries and technical questions from Program participants. Support activities will be subject to the "LADWP customer service support" SLA as described in Appendix B.

Audit Rights

- 2.2.7.1 LADWP will have the right to audit the reports of all relevant books and records of EnergyHub pertaining to this SOW. Notwithstanding the foregoing, LADWP shall (i) perform all audits under this SOW in a manner that does not unreasonably interfere with or interrupt the business of EnergyHub; (ii) require that LADWP's auditors enter into a confidentiality agreement that prevents the disclosure to any third party of the information provided by EnergyHub in connection with the audit; provided, that the results of the audit shall not be considered to be confidential and may be disclosed to LADWP and the professional advisors and regulators of LADWP; and (iii) only be permitted to audit EnergyHub once each year upon no less than ten (10) business days' prior written notice.

2.3 LADWP Responsibilities

- 2.3.1.1 LADWP will assign a project coordinator to lead Program management and assist in coordination between EnergyHub and LADWP.
- 2.3.1.2 LADWP will work with EnergyHub to define the necessary customer data and data exchange process to create a seamless enrollment experience. LADWP will assist EnergyHub in creating an enrollment experience that does not require customer account number as part of customer validation.
- 2.3.1.3 LADWP will support EnergyHub's marketing activities by completing the following:
- LADWP will provide timely feedback to EnergyHub on any launch and/or marketing materials that require approval (e.g. core messaging).
 - LADWP will lead the development and execution of a joint customer engagement plan including factsheets, pamphlets, thermostat setup instructions, and other Program educational materials for prospective and enrolled customers.
 - LADWP will market the Program via customer-facing website including the LADWP homepage, a designated page specific to the BYOT Program
 - LADWP will provide its logo and usage guidelines for EnergyHub's use in developing co- branded materials.
 - LADWP will provide any Program details relevant to marketing collateral development at EnergyHub's request.
- 2.3.1.4 LADWP will provide EnergyHub with necessary information regarding the load

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control Program (i.e., number and frequency of events, size of customer rebate) to facilitate Thermostat Partner onboarding and customer enrollment.

- 2.3.1.5 LADWP will verify customer eligibility based on information supplied by customer via the enrollment module and/or LADWP source information (e.g., CIS information).
- 2.3.1.6 LADWP will review and approve seasonal and enrollment incentive payments (EIF and SIF reports) to be issued by EnergyHub according to the timing specified in Section 2.2.5 above.
- 2.3.1.7 LADWP will be responsible for end customer support for the BYOT Program, with support from EnergyHub as described in Section 2.2.6.
- 2.3.1.8 LADWP will be responsible for the accuracy of the contents of each approved enrollment incentive (EIF) and seasonal incentive (SIF). LADWP shall be liable in accordance with Section 8 of the Agreement for any third-party claims arising due to any inaccuracies in the EIF or SIFs approved by LADWP.
- 2.3.1.9 LADWP will be responsible for the IT effort to integrate the EnergyHub Program microsite URL with the LADWP My Account portal. EnergyHub will provide the microsite URL which LADWP will embed in the My Account via iframe/web-view.
- 2.3.1.10 LADWP will be responsible for the receipt of event participation data from EnergyHub and surfacing this data within the My Account environment for the appropriate customers. Event data (Participation Totals report) will include the customer account number associated with each targeted device which LADWP can use to match event participation data to My Account customer records.
- 2.3.1.11 Should LADWP intend to develop and publish a report(s) on any aspect of the Power Savers Program, LADWP will share the results and report draft with EnergyHub at least 2 weeks in advance of publishing, to verify accuracy and appropriate usage of customer data. Any Power Savers Program-centric report or publication shall state aggregate performance rather than results specific to an individual Thermostat Partner.
- 2.3.1.12 Should LADWP decide to remove customers after quarterly device review, LADWP will be responsible to use EnergyHub supplied data to identify customers and coordinate with EnergyHub to remove customers.
- 2.3.1.13 LADWP will notify the underperforming customers.

3 Service Level Agreement

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See Appendix B - Service Level Agreement.

4 Project Timeline

Program activities and deliverables are specified below with timing tied to the date of the Program kickoff meeting (to be mutually agreed to by the Parties). On-time completion requires that all interim steps happen as scheduled.

Milestones	Description
Kickoff Meeting + 10 days	LADWP delivers all Program design information, messaging, and branding assets
Kickoff Meeting + 20 days	EnergyHub delivers core messaging package for approval
Kickoff Meeting + 30 days	<ul style="list-style-type: none"> ▪ LADWP provides feedback and approval on core messaging
Kickoff Meeting + 50 days	EnergyHub delivers Program collateral materials based on approved core messaging
Kickoff Meeting + 65 days	<ul style="list-style-type: none"> ▪ Final approval from LADWP and all data submitted to EnergyHub ▪ EnergyHub provides Program microsite URL to LADWP IT team for integration with the MyAccount environment ▪ EnergyHub finalizes Participation Totals report format and provides finalized format to LADWP IT team; start of integration testing
Kickoff Meeting + 90 days	<ul style="list-style-type: none"> ▪ LADWP completes Program microsite integration ▪ LADWP ready to receive Participation Totals CSV report ▪ Program launch

5 Project Term

5.1.1.1 This SOW shall begin on the SOW date set forth above and unless terminated in accordance with the terms set forth herein or in the Agreement shall remain in force for a period of one year. Thereafter, this SOW shall renew for one (1) year term upon written agreement between the parties.

6 Assumptions and Dependencies

6.1.1.1 Notwithstanding anything to the contrary herein, EnergyHub's obligations hereunder are subject to the following assumptions and dependencies:

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- The performance of this SOW involves activities to be performed by both Parties and therefore any delay in LADWP's delivery of its input, approvals, data, materials, information and/or deliverables, including without limitation those set forth herein under the Responsibilities section, may delay, prevent or inhibit EnergyHub's ability to complete one or more of its obligations under this SOW.
- To the extent there is any difficulty in launching the Program or delays caused by or attributable to a Thermostat Partner, EnergyHub's ability to complete one or more of its obligations under this SOW and the Program will be delayed, inhibited or prevented.
- Thermostat Partners will not make changes that result in interoperability issues with the Mercury Platform.

Each Party shall inform the other Party if a Party determines that any of the foregoing assumptions or dependencies becomes inaccurate. The Parties agree to work together in good faith to develop appropriate responses to address any risks or issues that may materialize should any of these assumptions or dependencies become inaccurate, including if necessary amending EnergyHub's or LADWP's obligations under this SOW accordingly to address the inaccuracy or failure of an above-stated assumption. LADWP reserves the option to amend this SOW to address changes in program design and/or requirements. LADWP and EnergyHub will mutually agree to a change order to capture any future amendments to scope.

7 Ownership of Deliverables

- 7.1.1.1 Exclusive of LADWP's Marks, which will remain owned by LADWP, LADWP is not acquiring a copyright, patent, trade secret or other intellectual property or proprietary right in the Mercury Platform or Deliverable, or in any data, modifications, customizations, enhancements, changes or work product related thereto.
- 7.1.1.2 "Deliverable" means any work product or other item (whether tangible or intangible) created by EnergyHub or provided by EnergyHub to LADWP pursuant to this SOW, excluding any materials and intellectual property that are owned, acquired or developed by EnergyHub prior to the SOW Effective Date or independent of this SOW, or that are set forth to be owned by EnergyHub pursuant to the Agreement. LADWP owns and will own all right, title and interest to the Deliverables, and EnergyHub will execute and deliver to LADWP any documents reasonably necessary to vest in EnergyHub all right, title and interest therein. For clarity, the "Deliverables" will not include the Mercury Platform, its related documentation or any derivatives or improvements thereof. EnergyHub shall retain all rights in its intellectual property.

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7.1.1.3 “Marks” means trademarks, service marks, logos, trade names and other indicia of origin.

8 Program Design

Program Parameter	LADWP Defined Program Parameter Details
Length of Season	4 months
Season Dates	2023: Tentatively Sep 1 (pending LADWP Board of Commissioners and City Council approval) through December 31) through December 31 2024: Jun - Sep
Event Hours per Season	80 hours maximum
Event parameters	Event window: 1-10 pm on non-holiday weekdays and weekends Event duration: 4 hours per day maximum Participation: Opt-outs permitted
Customer eligibility criteria	Working central A/C Residential or small commercial electric customer with active LADWP electric service
Program name	Power Savers Program
Customer incentive (enrollment and seasonal)	<p>\$65 enrollment incentive (per device) Up to \$120 per season incentive (per device) depending on performance</p> <p>Eligibility for the seasonal incentive is defined as the percentage of total number of minutes a device is participating in DR mode (excluding pre-cool) across the season as follows:</p> <ul style="list-style-type: none"> • Less than 25%: no incentive is earned • 25% - 74%: \$60 incentive earned • 75% - 100%: \$120 incentive earned <ul style="list-style-type: none"> • Limited to one qualifying thermostat per LADWP account • Device swap outs do not qualify for additional incentive • Duplicate applications with same address and contact information do not qualify for additional incentives • Unenrollment and re-enrollment do not qualify for additional incentives • Previously enrolled device UUID does not qualify for additional incentives

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Control strategy	60-minute pre-cool Temperature set-back Option to use Firm Load DispatchSM (FLD)
Branding guidelines and logos	LADWP to provide
Conditions to remove devices/customers from program	<ul style="list-style-type: none"> • Offline devices • No devices in ref ID

Appendix A – Customer Data File Specification

Summary

EnergyHub will configure automated enrollment verification (AEV) to facilitate efficient customer enrollment the Program. To use this feature, the LADWP must periodically export their customer data to EnergyHub.

EnergyHub will use this data to recommend acceptance or rejection of Program applicants. This Appendix describes the requirements for this customer data export.

Data Exchange

EnergyHub requires that customer data be transmitted securely via Secure File Transfer Protocol (SFTP). EnergyHub will provide LADWP with access to its SFTP server (BrickFTP) for this file transfer. To ensure a great customer experience, EnergyHub asks that the file is updated and re-posted to BrickFTP every two weeks.

Updated files should contain the full data set, not only changed data. This allows customer enrollments to be processed promptly based on the most recent LADWP data.

Data Format

EnergyHub requires that customer data files be shared in a comma-separated values text file (CSV) format. The customer data files should include data for all accounts with active electric service, including customers who are not eligible to participate in the Program (e.g., non-qualifying service type or tariff). The customer data file should also include data for accounts closed in the prior 365 days. These accounts should be marked as ineligible with the reason listed as "Account closed". By identifying both eligible and ineligible accounts in the customer data file, EnergyHub can provide better feedback to ineligible customers who apply.

EnergyHub requires the following fields be included in the customer data file for each service account. For a single customer with multiple service accounts, each service account should have its own row in the data file. All fields should be enclosed in double quotes ("").

Field Name	Description
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DATE	The date this file was generated, in format YYYY/MM/DD.
ID	<p>A unique ID identifying the service account within this file. This ID should not be the same as the customer's service account number. EnergyHub recommends a simple integer based on the row numbering, i.e. 100001 for the first row, 100002 for the second row, etc.</p> <p>The purpose of this ID is to make it easy to communicate about an entry in this data file without sharing customer Personally Identifiable Information (PII).</p>
EMAIL	Email address associated with this service account, if available. If not available leave blank.
FIRST_NAME	Customer first name associated with this service account. If a customer has multiple names besides their last name all but the last name should be included in this field. For instance, if the full name on file is "John Wesley Harding", FIRST_NAME should be "John Wesley".
LAST_NAME	Customer last name associated with this service account.
SERVICE_ADDRESS	Street address associated with this service account.
SERVICE_CITY	Municipality associated with this service account.
SERVICE_STATE	State associated with this service account.
SERVICE_POSTAL_CODE	ZIP code or postal code associated with this service account.
MAILING_ADDRESS	Street address for this customer's mailing address, if different from service address. Blank if mailing address is same as service address.
MAILING_CITY	Municipality for this customer's mailing address, if different from service address. Blank if mailing address is same as service address.
MAILING_STATE	State or province for this customer's mailing address, if different from service address. Blank if mailing address is same as service address.
MAILING_POSTAL_CODE	ZIP code or postal code for this customer's mailing address, if different from service address. Blank if mailing address is same as service address.
SERVICE_ACCOUNT_NUMBER	Service account number for this service address.
SERVICE_CLASS	A label identifying the class of service - "Residential", "Small Commercial", "Large Commercial", "Industrial", etc. - for this account.

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DR_ELIGIBLE	A flag ("Y" or "N") identifying whether this service account is eligible to enroll in the DR program as a residential customer.
DR_INELIGIBLE_REASON	If the service account is not eligible (i.e. DR_ELIGIBLE above is "N"), the reason the customer is ineligible, e.g. "On a conflicting program", "Not a residential customer", "Account closed", etc.
SUBSTATION	Substation identification number e.g., "S12345". This is optional, only applicable if LADWP plans to use grid topology to aggregate devices
CIRCUIT	Circuit identification number e.g., "C67890". This is optional, only applicable if LADWP plans to use grid topology to aggregate devices

Appendix B – Service Level Agreement

Technical SLA

The Technical SLA covers technical functionality that EnergyHub provides to LADWP.
The Technical SLA includes the following commitments:

SLA	Description
Platform Uptime Commitment	<p>EnergyHub will provide 99.9% platform uptime (the "Uptime Percentage") for a given Program Season (the "Platform Uptime Commitment"). EnergyHub will evaluate the Platform Uptime Commitment using external monitoring tools taking into account the Program season length as defined in Section 9 above.</p> <p>Exclusions The Platform Uptime Commitment does not include unavailability due to Scheduled Maintenance.</p>
Command Dispatch Commitment	<p>EnergyHub will send dispatch signals for at least 95% (the "Command Dispatch Percentage") of planned Device-Event Minutes for the total DR Event duration over the Program Season (the "Command Dispatch Commitment"). The Command Dispatch Percentage is calculated by dividing total Dispatched Device Event Minutes by the total Device-Event Minutes over the course of a Program Season and multiplying by 100. EnergyHub will evaluate the Command Dispatch Commitment by reviewing the DR Event Participation Data.</p> <p>Exclusions</p> <ul style="list-style-type: none"> • The Command Dispatch Service Commitment does not apply to any Offline Devices or Ineligible Devices • The Command Dispatch Service Commitment does not apply to Nest thermostats

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Operational SLA

The Operational SLA covers Program management and operational support that EnergyHub provides to LADWP. The Operational SLA is divided into the following sections:

SLA	Description
LADWP customer service support	The EnergyHub Customer Support team shall acknowledge all email-based Program inquiries from LADWP and initiate resolution of the inquiry, if applicable, within one (1) business day from the receipt of the inquiry as described in Section 2.2.6 above
General LADWP support	The EnergyHub Client Success Program manager for LADWP shall acknowledge all general Program inquiries from LADWP within one (1) business day from the receipt of the inquiry
Emergency and issue notification	The EnergyHub Client Success team member for the Program shall notify LADWP within 24 hours of discovery of a DR emergency or Mercury Platform availability issue that impacts LADWP's use of the Mercury Platform or incident that impacts LADWP customer sensitive information
Security incident reporting	The EnergyHub Client Success team member for the Program shall notify LADWP within 24 hours of discovery of a security incident that impacts LADWP's use of the Mercury Platform or incident that impacts LADWP customer sensitive information

Issue Resolution Framework

The Issue Resolution Framework covers the support that EnergyHub will provide to LADWP in order to remedy any Mercury Platform issues identified by LADWP or EnergyHub during the Program Season. The categorization of issues as Major or Minor will be mutually agreed upon by the Parties. The Issue Resolution Framework is divided into the following sections:

Severity	Description
Major issue commitment	<ul style="list-style-type: none"> LADWP unable to access Mercury Platform during the Program Season LADWP unable to schedule or dispatch a DR event during the Program season LADWP or EnergyHub discovers a potential Mercury Platform security issue or incident impacting LADWP customer sensitive information <p>EnergyHub shall begin an initial investigation within one (1) business day of discovery of the issue or notification from LADWP.</p> <p>If remediation is required for the issue, EnergyHub will develop and socialize a</p>

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	plan for remediating the issue within two (2) business days of completing the initial investigation and after receiving input from Thermostat Partners, if applicable
Minor issue commitment	<ul style="list-style-type: none"> • LADWP cannot access Mercury Platform outside of Program Season • Mercury Platform DR Event Participation Data or Runtime Data Quality issue • Mercury Platform enrollment management issue • Mercury Platform feature issue (report processing, administrative tasks) <p>EnergyHub begin an initial investigation within two (2) business days of discovery of the issue or notification from LADWP.</p> <p>If remediation is required for the issue, EnergyHub will develop and socialize a plan for remediating the issue within five (5) business days of completing the initial investigation and/or after receiving input from Thermostat Partners, if applicable</p>

LADWP shall report issues via EnergyHub's dedicated Program manager by phone or email if discovered during Program business hours (8am to 6pm local time), and via EnergyHub's designated Client Success email address if discovered outside Program business hours.

Definitions

- "Program" has the definition as described in the Agreement
- "Program Season" is the duration of the Program DR season (e.g. May 1 – September 30) as defined in Section 9 above (Program Design table)
- "Uptime Percentage" is calculated by dividing the number of minutes in which the Mercury Platform is available during the Program Season by the total number of minutes in the Program Season (and multiplying by 100)
- "Scheduled Maintenance" is defined as any planned Mercury Platform changes, server upgrades, repairs, or enhancements that require Mercury Platform downtime. During the Program Season, EnergyHub will provide advance notice of Scheduled Maintenance to LADWP if such downtime could impact the Platform Uptime Commitment. Scheduled Maintenance will not take place at a time when LADWP can call a DR Event, as specified in Section 9 of this SOW

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(Program Design table). EnergyHub will notify LADWP in the case of changes to its announced maintenance schedule, if applicable

- A “DR Event” is a finite period of time during the Program Season in which LADWP uses the Mercury Platform to send a dispatch signal to devices enrolled in the Program. A DR Event might include a pre- cooling period
- The “DR Event Start Time” is the time (e.g., 4:00pm PT) at which a DR Event is scheduled by LADWP
- An “Enrolled Device” is a device that has applied and been accepted by LADWP to participate in the Program
- A “Dispatch Command” is an API-based command sent to an Enrolled Device which instructs an Enrolled Device to change its normal operation at the time of dispatch or at some predefined time in the future
- A “Device-Event Minute” is a minute during a DR Event in which an Enrolled Device can participate in a

DR Event. For example, if a 4-hour DR Event is planned (e.g. 2:00 PM – 6:00 PM) that customer’s device accrues 240 Device-Event Minutes

- A “Dispatched Device-Event Minute” is a minute during a DR Event in which an Enrolled Device is successfully dispatched. If a customer Opts Out of a DR Event, no additional Dispatched Device-Event Minutes will accrue during that specific DR Event. For example, if a 4-hour DR Event is planned (e.g. 2:00 PM – 6:00 PM), a participating device is successfully dispatched by EnergyHub at 2:05 PM, and the customer Opts Out at 5:00 PM, that customer’s device accrues 175 Dispatched Device-Event Minutes
- “Device State” is a second-resolution timestamped record of a device’s ambient temperature, temperature setpoint, HVAC mode, and/or operating mode (relay)
- “Device State Change” is a second-resolution timestamped record of a change in Device State (e.g. a change in temperature setpoint, or HVAC mode from “heat” mode to “cool” mode, etc.)
- “Device Control” is the process by which EnergyHub sends commands to Thermostat Partner devices participating in a DR Event in order to change their normal operations (e.g. a thermostat temperature setpoint is increased during a DR Event)
- A “Targeted Device” is a device included in the population of devices called into a DR Event and expected to receive the Device Control strategy as defined by the operator
- “DR Event Participation Data” is a second-resolution timestamped record of an online device’s receipt and execution of a DR Event command, including all device State Changes and device Opt Outs
- A customer can stop participating in a DR Event at any time (“Opt Out”)
- “Runtime Data” is a record of each device’s Device State over the course of the Program Season
- An “Offline Device” is a device that has lost connectivity with the Mercury Platform and one that cannot be dispatched in the Program until it regains connectivity

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- An “Ineligible Device” is an online device that is not eligible to participate in a DR Event. An “Ineligible Device” may be in an ineligible operating mode (e.g. heating mode during a summer demand response event). An “Ineligible Device” may also be considered ineligible to participation in a DR Event because its operations before a DR Event conflict with the rules of a DR Program (e.g. temperature already above the maximum temperature allowed in the DR Event)

EXHIBIT I
Background Check Certification

Reserved

EXHIBIT J

Confidentiality Agreement for LADWP Proprietary Information

A. Confidentiality

All documents, records, and information provided by LADWP to the Contractor, or accessed or reviewed by the Contractor, during performance of this Agreement shall remain the property of LADWP. All documents, records and information provided by LADWP to the Contractor, or accessed or reviewed by the Contractor during performance of this Agreement, are deemed confidential. The Contractor agrees not to provide these documents and records, nor disclose their content or any information contained in them, either orally or in writing, to any other person or entity. The Contractor agrees that all documents, records, or other information used or reviewed in connection with the Contractor's work for LADWP shall be used only for the purpose of carrying out LADWP business and cannot be used for any other purpose. The Contractor shall be responsible for protecting the confidentiality and maintaining the security of LADWP documents, records, and information in its possession.

B. Document Access/Control

1. The Contractor shall make the confidential information provided by LADWP to the Contractor, or accessed or reviewed by the Contractor during performance of this Agreement, available to its employees, agents and /or subcontractors, only on a need-to-know basis. Further, the Contractor shall provide written instructions to all of its employees, agents and subcontractors, with access to the confidential information about the penalties for its unauthorized use or disclosure.
2. The Contractor shall store and process confidential information in an electronic format in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal or other means.
3. The Contractor shall not remove documents, records, or information used or reviewed in connection with the Contractor's work for LADWP from LADWP facilities without prior approval from LADWP. The Contractor shall not use, other than in direct performance of work required pursuant to the Agreement, or make notes of any home address or home telephone numbers contained in personnel or customer files, confidential information, documents, or records provided by LADWP that are reviewed during work on this Agreement.
4. The Contractor shall not make or retain copies of any such documents, written and electronic materials, notes, documents, confidential information, records, or other information. Provided however, with prior written approval from LADWP, the Contractor may make copies of such documents, written materials, notes, documents, confidential information, or other information, as necessary to perform its duties under this Agreement.
5. The Contractor shall document and immediately report to LADWP any unauthorized use or disclosure of confidential information of which the Contractor becomes aware.

EXHIBIT J

Confidentiality Agreement for LADWP Proprietary Information

6. The Contractor shall require that all its employees, agents, and subcontractors who shall, or may, review, be provided, or have access to LADWP data, information, personnel or customer files, confidential information, documents, or records during the performance of this Agreement, execute a confidentiality agreement that incorporates the provisions of this Confidentiality Agreement, prior to performing work under this Agreement.

C. Return of All Documents to LADWP

The Contractor shall, at the conclusion of this Agreement or at the request of LADWP, promptly return any and all written materials, notes, documents, records, confidential information, or other information obtained by the Contractor during the course of work under this Agreement to LADWP, and all paper and electronic copies thereof. Provided however, the Contractor may retain duplicates and originals, as appropriate, of Contractor's administrative communications, records, files, and working papers relating to the services provided by the Contractor pursuant to this Agreement.

D. Work Product and Deliverable Confidentiality

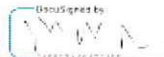
Any reports, findings, deliverables, analyses, studies, notes, information or data generated as a result of this Agreement are to be considered confidential. The Contractor shall not make such information available to any individual, agency, or organization except as provided for in this Agreement or as required by law. Notwithstanding the foregoing, the Contractor may reference its work under this Agreement in general terms in presentations and proposals, provided that in doing so, the Contractor does not disclose any non-public information. The Contractor may not release any information, whether or not such information is public information, to the media without prior written approval from LADWP.

E. Subcontractors Subject to the Confidentiality Agreement

Any subcontract entered into pursuant to the terms of this Agreement shall be subject to, and shall incorporate, the provisions of this Confidentiality Agreement.

Bidder has caused their duly authorized representative to execute this Agreement as follows:

Date: 4/27/2023

Signature: 

Firm: EnergyHub, Inc.

Title: VP, Business Development

EXHIBIT K Safety Compliance Certificate

SAFETY COMPLIANCE CERTIFICATE

I, Matt Johnson the undersigned,
(Print Company Representative Name)

VP, Business Development of
(Print Company Representative Title)

EnergyHub, Inc. hereby certify the
(Print Company Name)

Information contained herein and that undersigned is duly authorized to certify that:

- A. Contractor has an Injury and Illness Prevention Program which meets the requirements of all applicable laws and regulations, including, but not limited to, industry standards and the California Occupational Safety and Health Administration, Title 8 of the California Code of Regulations, General Industry and Construction Safety Orders. (This section does not apply if Contractor does not perform any work under this agreement within the State of California.)

California Code of Regulations General Industry Safety Orders
<http://www.dir.ca.gov/Title8/3203.html>

California Code of Regulations Construction Safety Orders
<http://dir.ca.gov/Title8/1509.html>

If Contractor performs any work under this agreement outside the State of California, Contractor shall comply with applicable local, State, and Federal laws and regulations, including, but not limited to, industry standards and the Occupational Safety and Health Administration, General Duty Clause.

<https://www.osha.gov/laws-regs/oshact/section5-duties>

- B. Contractor agrees that it is fully responsible for the acts and omissions of its subcontractors and all persons either directly or indirectly employed by Contractor.
- C. The above-named person has the authority and responsibility for implementing and administering Contractor's Injury and Illness Prevention Program.

IN WITNESS WHEREOF, the undersigned has executed this Safety Compliance Certificate under the penalty of perjury of the laws of the State of New York on:

Signature: 

Print Name: Matt Johnson

Date: 4/27/2023

(For Non-Safety Tier 1 Work)

Revised: 1/2/18

EXHIBIT L

Terms of Use

Welcome to the EnergyHub System.

IMPORTANT: PLEASE READ THESE TERMS CAREFULLY BEFORE USING OUR SYSTEM.

These Terms of Use (the "Terms") form a legally binding contract between you (which we refer to in these Terms, together with other users, as "you," "your," "User," or "Users") and EnergyHub, Inc. (which we refer to in these Terms, together with our subsidiaries and affiliates, as "EnergyHub," or "we," "us," or "our"). EnergyHub, its distributors or strategic partners make the System (defined below) available to you subject to these Terms. These Terms govern your use of the System. To the extent the System is provided to you by or on behalf of one of our distributors or strategic partners, they are third party beneficiaries to these Terms.

BY CLICKING "I ACCEPT" BELOW, OR BY ACCESSING AND USING THE SYSTEM OR SERVICES IN ANY WAY, YOU AGREE TO BE BOUND BY THESE TERMS, INCLUDING THE WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY, AND TERMINATION PROVISIONS BELOW. IF YOU DO NOT AGREE TO THE TERMS, DO NOT USE THE SYSTEM OR THE SERVICES AND EXIT NOW.

1. AGREEMENT TO TERMS

These Terms of Use (the "Terms") form a legally binding contract between you (which we refer to in these Terms, together with other users, as "you," "your," "User," or "Users") and EnergyHub, Inc. (which we refer to in these Terms, together with our subsidiaries and affiliates, as "EnergyHub," or "we," "us," or "our"). EnergyHub, its suppliers, licensors, utility customers, thermostat, connected device or other strategic partners make the System (defined below) available to you subject to these Terms. These Terms govern your use of the System. To the extent the System is provided to you by or on behalf of one of our suppliers, licensors, utility customers, thermostat, connected device or other strategic partners, they are third party beneficiaries to these Terms. BY ACCESSING AND USING THE SYSTEM OR SERVICES IN ANY WAY, YOU AGREE TO BE BOUND BY THESE TERMS, INCLUDING THE WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY, AND TERMINATION PROVISIONS BELOW. IF YOU DO NOT AGREE TO THE TERMS, DO NOT USE THE SYSTEM OR THE SERVICES AND EXIT NOW.

EXHIBIT L

Terms of Use

2. THE ENERGYHUB SYSTEM

We provide utilities with award-winning, consumer-facing, demand energy-management response products and related services. These products and services empower people to be energy efficient and change the way people think about their energy usage. These Terms provide the terms applicable to your use of our web-based services (the “**Services**”), whether you are accessing the Services via our website at <http://www.energyhub.com> (the “**Website**”); or the web portal for our distributors or strategic partners (the “**Portals**”), including <https://my.luxproducts.com> and <https://my.radiothermostat.com>; the Portal or any other content provided through the System (the “**Content**”); devices connected to the Services, including, without limitation, connected devices, electric vehicle chargers, solar inverters, batteries and connected thermostats (the “**Devices**”); mobile applications operated by EnergyHub for itself or on behalf of utilities or thermostat providers (the “**Mobile Apps**”) and the Mercury platform, which interconnect the Portals, the Mobile Apps, and the Devices; or through any other medium or device now known or hereafter developed. In these Terms, for convenience we refer to the combination of products and services we provide, including the Services, the Website, the Portals, the Content, the Devices, the Mobile Apps, and the Mercury Platform as, collectively, the “**System**.”

You understand and agree that the System may include certain communications from EnergyHub and our suppliers, licensors, utility customers, thermostat, connected device or other strategic partners, such as service announcements and administrative messages, and that you will not be able to opt out of receiving these communications.

Unless explicitly stated otherwise, any new features or content that augment or enhance the current System, including the release of new EnergyHub products, services, and websites, shall be subject to these Terms.

You do not have to register to use the Website or the Devices, but you must register to use the broader functionality of the System, including the web- and mobile-enabled functionality. To register, you must provide EnergyHub with the information specified in the registration form (“**Registration Data**”). By registering, and in consideration for your use of the System, you represent and warrant to the best of your knowledge and without investigation or inquiry that: (i) the Registration Data that you provide about yourself is true, accurate, current, and complete; (ii) you are at least 18 years of age; and (iii) you will maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or if EnergyHub has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the System.

Your use of the System must comply with all applicable laws, regulations and ordinances, including any laws regarding the export of data or software. By using the System, you

EXHIBIT L

Terms of Use

represent and warrant that you have the right to provide the information you provide to us, including the consent of third parties when required.

If you have any questions as to how these Terms apply to you, please email us at terms_of_service@energyhub.com.

3. OUR PROPRIETARY RIGHTS

EnergyHub owns and retains, solely and exclusively, all rights, title, and interest in the System and all software (including source code and object code), Content, and documentation that is available through the System or that is used to provide the System (collectively, the "EnergyHub Materials"). The System and the EnergyHub Materials are protected by applicable intellectual property and other laws, including patent, trademark, and copyright laws. The System, the EnergyHub Materials, and all intellectual property in the System and the EnergyHub Materials belong to and are the property of EnergyHub (or its licensors). Without limiting the preceding sentence, EnergyHub (or its licensors) owns and retains all copyrights in the Content, individual web pages, components of web pages, and collective works available through the System. Additionally, EnergyHub holds one or more issued or applied-for U.S. or foreign patents covering the System and its components and, without limiting any rights granted hereunder, owns and retains all rights in any component, material, or aspect of the System, including any improvements thereto, which are now or may hereafter be the subject of any issued or applied-for patent, whether in the U.S. or other jurisdiction.

Neither the System nor the EnergyHub Materials, nor any part of them, may be copied, reproduced, modified, published, uploaded, posted, transmitted, performed, or distributed in any way, and you agree not to modify, rent, lease, loan, sell, distribute, transmit, broadcast, or create derivative works based on the EnergyHub Materials or the System, in whole or in part, by any means, except as expressly authorized in writing by EnergyHub. The System and EnergyHub Materials are licensed, not sold, and you do not receive any right, title, or interest in them.

The System, the EnergyHub logo, the EnergyHub Mobile App icons, other EnergyHub trademarks and service marks, and other EnergyHub logos and product and service names are our trademarks (the "**EnergyHub Marks**"). The appearance, layout, color scheme, and design of the Portals, the Mobile Apps, the Corporate Site, and the interface of the Home Base and other Devices are protected trade dress. All trademarks, service marks, trade dress, product names, company names or logos, whether registered or not, on the System or in the Content are the property of their respective owners. In addition to complying with all applicable laws, you agree that you will not use any such trademarks, service marks, trade dress, or other indicia from the System or Content without the prior written authorization of EnergyHub or the owner of such intellectual property.

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Terms of Use

4. LIMITED USE LICENSE TO THE SYSTEM

EnergyHub grants you a personal, non-transferable and non-exclusive right and license to use the System and to view and download the Content solely for your internal/personal use or your employer's use in the event that you are an employee or other authorized user of a utility or Device provider, and subject to the condition that you do not (and do not allow any third party to) copy, modify, create a derivative work from, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in or access to the System or Content. You agree not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the System in a manner that sends more request messages to the EnergyHub servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. You agree not to modify the System, or any part thereof, in any manner or form, nor to use modified versions of the System, Device, Content, or software, including (without limitation) for the purpose of obtaining unauthorized access to the System. You agree not to access the System by any means other than through the Portals, the Mobile Apps, Devices or another interface that is provided by EnergyHub (or its suppliers, licensors, utility customers, thermostat, connected device or other strategic partners) expressly for the purpose of accessing the System.

The System may not be used for any illegal purpose. You may not access our networks, computers, or the System in any manner that could damage, disable, overburden, or impair them, or interfere with any other person's use and enjoyment of the System. You may not attempt to gain unauthorized access to any Content or Services, other accounts, computer systems, or networks connected with the System.

No commercial use or redistribution of any Content is permitted. Any hyperlink or other re-display of the information on another web site must display the Content full-screen and not within a "frame" on the linked or other site.

5. LINKS TO OTHER MATERIALS

The Content and Services may link you to other web sites or information, software, data, or other material on or off the Internet, including linked click-through or other advertising, or through featured or sponsored sites. We have not necessarily reviewed the material that may be reached by such links and we are not responsible for such content. Your linking to any other pages on other sites is at your own risk. The information, software, data, or other content (including opinions, claims, comments) contained in linked references are those of the companies responsible for such sites and should not be

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attributed to us. We have not attempted to verify the truth or accuracy of any such opinion, claim or comment, nor do we endorse or support them. We do not warrant, nor are we in any way responsible for, information, software, data, privacy policies, or other content that is outside of our control.

EnergyHub has the right, in its sole discretion, to disable or remove any link or to terminate any linking program at any time. However, the selection or omission of links is not intended to endorse any particular companies or products. We do not recommend or endorse any specific Content, Services, products, procedures, opinions, or other information that may be mentioned on or connected by hyperlink to the System. If you decide to access any of the third-party sites linked through the System, you do so entirely at your own risk.

Similarly, Content and Services may have been provided to us by third parties and are not vetted or certified by us or the System. While we believe you will find the Content and Services useful, we cannot guarantee that the Content and Services will help you achieve the results you desire.

6. USE OF YOUR INFORMATION; COMMUNICATIONS WITH YOU

We use information that you provide only as permitted by our [Privacy Policy](#), your sharing authorizations, and/or applicable law.

By accessing and using the Services, you acknowledge receipt of our [Privacy Policy](#).

You understand and agree that your registration for the System constitutes a purchase, inquiry or application under federal and state Do-Not-Call laws, and thus creates a business relationship between you and us. Furthermore, in accordance with the Canadian Anti-Spam Legislation and similar laws, by agreeing to these Terms, you are providing your explicit consent to receive commercial emails from EnergyHub and our strategic partners. From time to time, we may contact you by e-mail, SMS message, the Portals or Mobile Apps, telephone or other methods to provide information about the System or to let you know about upcoming System features or promotions that might interest you. By virtue of our business relationship, neither the federal nor any state Do-Not-Call Registry precludes these communications. To the extent the contact information you provide to us includes one or more wireless devices, your provision of such information represents your permission to contact you by means of that device, and your acknowledgement and agreement that your wireless provider may charge you in connection with receipt of incoming SMS messages and calls or data usage related to use of the System. Our means of contact may include the use of automated messaging equipment.

You may opt-out of the communications described in this paragraph during any time when we are actively communicating with you by changing your account settings by following

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the link or instructions for opting out contained within each such communication; however, if you opt out, certain features of the System enabled by such means of communication may not be available to you.

7. SYSTEM FEATURE ACKNOWLEDGEMENTS

Devices may automatically download and install software, firmware and other updates. By registering, you agree to receive such updates.

8. REQUIRED CONNECTIVITY

Some portions of the System require a data connection between certain devices or systems on your property and our servers. You must provide this connection at your sole expense and responsibility. EnergyHub is not responsible for the availability of this connection or liable for any consequences that may result from the unavailability or quality of such connection and reserves the right to change the access configuration of its System at any time and without prior notice to you.

9. RESTRICTIONS ON USE

You represent, warrant, and agree that you shall not use the System to:

1. upload, post, email, transmit or otherwise make available any information or materials that are unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable, or that may invade another's right of privacy or publicity;
2. harm minors in any way;
3. impersonate any person or entity, including, but not limited to, an EnergyHub employee or representative, or falsely state or otherwise misrepresent your affiliation with a person or entity;
4. forge headers or otherwise manipulate identifiers in order to disguise the origin of any information or materials transmitted through the System;
5. upload, post, email, transmit or otherwise make available any information or materials that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
6. upload, post, email, transmit or otherwise make available any information or materials that infringe any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
7. upload, post, email, transmit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
8. upload, post, email, transmit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt,

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- destroy or limit the functionality of any computer software or hardware or telecommunications equipment or otherwise damage the property of another;
9. interfere with or disrupt the System, Services, or servers or networks connected to the System, or disobey any requirements, procedures, policies or regulations of networks connected to the System, including using any device, software or routine to bypass robot exclusion headers;
 10. probe, scan, test the vulnerability of or breach the authentication measures of the System;
 11. intentionally or unintentionally violate any applicable local, state, national or international law or any regulations having the force of law;
 12. provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act;
 13. "stalk" or otherwise harass another;
 14. delete any author attributions, legal notices, or proprietary designations or labels in any information or materials submitted or uploaded to the System;
 15. use the System's communication or other features in a manner that adversely affects the availability of its resources and functions to other Users;
 16. delete or revise any Content or other information or data from the System made by another person or entity;
 17. register or attempt to register, any party from use or access to the System or Services if you are not expressly authorized by such party to do so;
 18. use any robot, spider, scraper, or other automated or manual means to access the System, or copy any Content or other information or data from the System; and/or
 19. collect or store personal data about other Users in connection with the prohibited conduct and activities set forth in paragraphs above.

Any violation of these restrictions or any attempt to obtain unauthorized access or to exceed authorized access to the System shall be considered a trespass and computer fraud and abuse, punishable under state and federal laws.

EnergyHub will cooperate with local, state, federal, international and/or worldwide government authorities to protect the System and Services, visitors, customers, members, EnergyHub, its parents, subsidiaries, affiliates and their respective members, directors, officers, employees, stockholders and agents and operational providers, to prevent unauthorized use of the System.

10. SECURITY

The System is designed to require Users to provide a username and password to access and use the System. Upon registering, you will receive a username and password. Certain other Content, features, or functionalities within the System may require additional access

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codes. Your username, password, and any other access codes assigned to you are, collectively, your "Credentials."

You are solely responsible for (i) maintaining the strict confidentiality of your Credentials, (ii) not allowing another person to use your Credentials to access the System, and (iii) any and all damages or losses that may be incurred or suffered as a result of any activities that occur under your Credentials. You agree to immediately notify EnergyHub of any unauthorized use of your Credentials or any other breach of security, and to ensure that you sign out from your account at the end of each session. Neither EnergyHub nor its utility customers, Device providers or other strategic partners are and none of them shall be liable for any harm arising from or relating to the theft of your Credentials, your disclosure of your Credentials, or the use of your Credentials by another person or entity.

11. OPEN SOURCE SOFTWARE

Various components of the System may contain open source software, as described in the documentation provided therewith and/or at our [Open Source Software page](#) which includes:

- Ubuntu
- Apache HTTP Server
- Apache Tomcat
- Java
- Apache Maven
- Spring Framework
- Python
- Nginx
- MySQL
- MongoDB
- Redis
- RabbitMQ
- StatsD
- Apache Airflow
- PostgreSQL
- Javascript .

12. CLAIMS OF INFRINGEMENT

EnergyHub respects the intellectual property of others. EnergyHub does not, however, independently confirm that all Content made available through the System is provided by a valid rights holder. In the event that EnergyHub becomes aware that Content published on or through the System has been provided by a person who is not a valid rights holder, EnergyHub may, in appropriate circumstances and at its discretion, disable and/or terminate the publication of such Content.

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13. CHILDREN

The System can be used only by persons over 18 years of age. The System is not designed or intended to attract children under the age of 13. We do not collect personally identifiable information from any person we actually know is under the age of 13.

14. TERMINATION

Your use of the System is subject to and expressly conditioned on your compliance with these Terms. If you fail to comply with the Terms or any other guidelines and rules published by EnergyHub or our strategic partners, your permission to use the System may be subject to Termination for Cause in accordance with Section 8.2 of the Contract between EnergyHub and you

EnergyHub further reserves the right to terminate or suspend any User's access to the System or to any portion of the System for any conduct that EnergyHub, in its sole discretion, believes is or may be directly or indirectly harmful to other Users, to EnergyHub or its subsidiaries, affiliates, or business contractors, or to other third parties, or for any conduct that violates any local, state, federal, or foreign laws or regulations. EnergyHub further reserves the right to terminate or suspend any User's access to the System, or to terminate the System and/or Services in their entirety, for any reason or for no reason at all, in EnergyHub's sole discretion, without prior notice, and with no liability to you. In the event of a termination or suspension of a User's access for the reasons described in this paragraph, EnergyHub agrees to provide you with notice in writing within 24 hours of the termination or suspension of access. EnergyHub also agrees to provide any information available to EnergyHub regarding the basis for the termination or suspension for your own internal purposes.

Upon termination, and except as otherwise provided in the contract between EnergyHub and you, you shall immediately destroy any Content in your possession, if any, and cease use of the System. Further, the terms, conditions and warranties contained in these Terms that by their sense and context are intended to survive the completion of the performance, cancellation or termination of these Terms shall so survive. In addition, the terms of Sections 3, 9, 10, 11 and 15 through 22 shall survive termination.

15. INDEMNIFICATION

To the fullest extent permitted by law, you agree to defend, indemnify and hold EnergyHub, its parents, subsidiaries, affiliates, suppliers, licensors, utility customers, thermostat, connected device and other strategic partners and their respective members, directors, officers, employees, stockholders and agents harmless against any losses, expenses, costs or damages (including EnergyHub's, its affiliates', its suppliers', licensors', utility customers', thermostat, connected device and other strategic partners'

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reasonable attorneys' fees, expert fees' and other reasonable costs of litigation) arising from, incurred as a result of, or in any manner related to (1) your breach of these Terms, and (2) your unauthorized or unlawful use of the System, Services, or Content, and (3) the unauthorized or unlawful use of the System by any other person using your Credentials, and (4) any third-party actions related to or arising from your receipt or use of the System or any portion thereof, whether authorized or unauthorized under these Terms.

16. Reserved.

17. Reserved.

18. LICENSED CONTENT

Certain Content is licensed from third parties. The licenses for some of this Content may contain additional terms. These additional terms, if any, will be identified with such Content.

19. Reserved.

20. CHANGES TO THESE TERMS

These Terms shall not be modified without the mutual consent of each party in writing in advance.

21. GENERAL LEGAL TERMS

Third-Party Beneficiaries: Our licensors, utility customers, Device providers and/or other strategic partners may be third-party beneficiaries to these Terms pursuant to our agreements with them. To the extent our licensors and/or strategic partners are third-party beneficiaries to these Terms, the rights and protections provided to us hereunder inure to their benefit. There are no other third-party beneficiaries to this Agreement.

No Agency Relationship: Neither the Terms, the Privacy Policy, or any other policies EnergyHub may post on the System create any partnership, joint venture, employment, or other agency relationship between EnergyHub and you. You may not enter into any contract on our behalf or bind us in any way.

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Nothing in this Agreement limits either party's ability to seek equitable relief. Furthermore, you agree that any violation, or threatened violation, by you of these Terms will cause EnergyHub irreparable and unquantifiable harm and agree that monetary damages would be inadequate for such harm. As such, you consent to EnergyHub obtaining injunctive or equitable relief as EnergyHub deems necessary and appropriate. Such remedy is in addition to any other remedies available to EnergyHub at law or in equity.

