

**DOCKETED**

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<b>Project Title:</b>	Energy Data Analysis Program
<b>TN #:</b>	261652
<b>Document Title:</b>	Agency Agreement Template
<b>Description:</b>	This document describes the process for a governmental entity to become an agent to the California Energy Commission.
<b>Filer:</b>	Christina C. Ubaldo
<b>Organization:</b>	California Energy Commission
<b>Submitter Role:</b>	Commission Staff
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## **AGENCY AGREEMENT**

This Agency Agreement (the "**Agreement**") is entered into as of [Date], by and between the California Energy Commission, with its principal place of business located at 715 P Street, Sacramento, CA 95814 (the "**CEC**"), and [Agent Name], a [corporation/limited liability company/partnership/individual] organized under the laws of [State], with its principal place of business located at [Address] (the "**Agent**").

### **1. APPOINTMENT**

The CEC hereby appoints the Agent, and the Agent accepts such appointment, as its non-exclusive agent for the purpose of accessing interval meter data.

### **2. CONFIDENTIALITY**

The Agent shall comply with (a) the CEC's Special Terms and Conditions for Confidential and Personal Information; and (b) Nondisclosure Agreement, incorporated by reference as **Exhibit A** and **Exhibit B**, respectively.

The Agent is not permitted to share or disclose such confidential information whatsoever, unless mandated by law, without written permission from the CEC. The Agent's obligation of confidentiality will survive the termination of this Agreement.

### **3. SCOPE OF AGENCY**

The scope of this Agency is limited to access to interval meter data as permitted by CEC. The Agent may only use interval meter data or other specified personally identifiable or confidential information in connection with analysis for local public agencies. Only analytical results without personally identifiable or confidential information, as determined by the CEC in writing, may be shared with local public agencies. Data and analytical results may also be shared with a local agency if the CEC determines in writing that the local agency is the originator of specific data provided to the CEC by law, including under Cal. Code Regs. Tit. 20, § 1353 or by agreement. The Agent is not authorized to bind the CEC in any way whatsoever to its use of interval meter data in connection with analysis for local public agencies and may not use interval meter data beyond the scope defined herein.

### **4. RELATIONSHIP OF THE PARTIES**

Nothing in this Agreement shall constitute to create an employer-employee relationship between the CEC and the Agent.

### **5. INDEMNIFICATION**

The Agent agrees to take all necessary precautions to prevent injury to any persons or damage to property during the term of this Agreement, and shall indemnify, defend, and hold harmless the CEC, its officers, directors, shareholders, employees, representatives, and/or agents from any claim, liability, loss, cost, damage, judgment, settlement, or expense (including attorney's fees) resulting from or arising in any way out of injury (including death) to any person or damage to property arising in any way out of any act, error, omission, or negligence on the Agent and the Agent's employees in the performance or failure to fulfill any services or obligations under this Agreement. This obligation survives the termination of this Agreement.

## **6. DATA PRIVACY**

a. Compliance with Laws: The Agent shall comply with all applicable data protection and privacy laws and regulations, including but not limited to the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA), as amended by the California Privacy Rights Act (CPRA).

b. Data Protection: The Agent shall ensure that any personal data obtained during the course of its duties under this Agreement is kept secure and not disclosed without the CEC's prior written consent. The Agent shall comply with the CEC's Special Terms and Conditions for Confidential and Personal Information, incorporated by reference as **Exhibit A** to this Agreement.

c. Data Breach: In the event of a data breach, the Agent shall promptly notify the CEC and take all necessary steps to mitigate the effects of such breach.

## **7. TERM AND TERMINATION**

This Agreement shall be effective on the date hereof and shall continue for a period of [specific period] unless terminated earlier by CEC with [specific notice period] business days written notice.

## **8. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws principles. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the federal courts of the United States or the courts of the State of California, in each case located in the City of Sacramento, although the CEC retains the right to bring any suit, action, or proceeding against the Agent for breach of this Agreement in the Agent's county of residence or any other relevant country. The Agent waives any and all objections to the exercise of jurisdiction over the Agent by such courts and to venue in such courts.

## **9. ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties and supersedes all prior negotiations, understandings, and agreements between the parties.

## **10. AMENDMENTS**

Any changes to this Agreement must be in writing and signed by both parties.

## **11. NOTICES**

All notices related to this Agreement must be in writing and will be effective upon the day of sending by electronic mail. Notices will be delivered to the addresses on record which, if to the CEC is [CEC EMAIL], and if to the Agent is [AGENT EMAIL].

## **12. SEVERABILITY**

In the event any part or provision of this Agency Agreement is deemed unenforceable or invalid, in part or in whole, that part shall be severed from the remainder of the Agreement, and all other parts or provisions shall continue in full force and effect as valid and enforceable.

## **13. WAIVER**

The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by such party.

**14. NO ASSIGNMENT**

This Agreement shall be binding upon the undersigned and their respective heirs, representatives, successors, and permitted assigns. This Agreement may not be assigned by either party without the prior written consent of the other party.

**15. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**CALIFORNIA ENERGY COMMISSION**

**AGENT**

\_\_\_\_\_

\_\_\_\_\_

[Name]

[Name]

[Title]

[Title]

## EXHIBIT A

### SPECIAL TERMS AND CONDITIONS FOR CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

These special terms and conditions set forth information privacy and security requirements Agent must follow when Confidential Information or Personal Information as defined herein is disclosed to Agent, or is collected, created, maintained, stored, transmitted, or otherwise used by Agent in the performance of this Agreement. Agent must ensure that all individuals and entities participating in any way with this Agreement, including but not limited to its officers, employees, agents, subcontractors, subawardees, vendors, and other project partners, comply with these special terms and conditions.

#### 1. *Order of Precedence*

These special terms and conditions take precedence over any conflicting terms or conditions in any other part of this Agreement.

#### 2. *Definitions*

- A. "Confidential Information" means information CEC has designated as confidential pursuant to Title 20 of the California Code of Regulations, Section 2505 et seq., information CEC has otherwise deemed or stated to be confidential, and other information exempt from Disclosure under the Public Records Act or any other applicable state or federal laws. Agent may obtain confidential information from CEC or third parties on behalf of the CEC for the performance of this Agreement.
- B. "Disclose" or Disclosure" refers to the release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.
- C. "Personal Information" means information that meets the definition of "personal information" in California Civil Code Section 1798.3(a) or one of the data elements set forth in California Civil Code Section 1798.29(g)(1) or (g)(2). **Personal information is a type of confidential information and is therefore subject to all requirements for Confidential Information provided in this Agreement and applicable law.** However, there are additional requirements specific to personal information.
- D. "Security Incident" means the theft, loss, damage, unauthorized destruction, unauthorized modification, or any intentional, unintentional, negligent, inappropriate or unauthorized release of any Confidential Information, data classified as confidential, sensitive, or personal, including critical infrastructure information.

#### 3. *Labeling*

Confidential Information and Personal Information shared by CEC will be provided as follows:

- A. List Describing Confidential Information and Personal Information. A description of Confidential Information and Personal Information that CEC anticipates it will provide to

Recipient is included in Section 19 below. If CEC needs to add items after execution of this Agreement, CEC will update the list and provide a copy to Agent; and

- B. Identification of Confidential Information. Each individual item of Confidential Information and Personal Information will be visibly identifiable, regardless of file type, before CEC provides access to Agent. The Confidential Information and Personal Information could be identified as a separate folder, workbook, document, field, electronic tag, etc.

#### **4. Use and Disclosure Restrictions**

Agent and all individuals and entities participating in any way with this Agreement must:

- A. Protect all Confidential Information and Personal Information from unauthorized Disclosure. This includes but is not limited to implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of Confidential Information, including electronic or computerized Confidential Information.
- B. Promptly transmit to CEC's CAM all requests for Disclosure of any Confidential Information or Personal Information unless prohibited from doing so by applicable state or federal law.
- C. Not use any Confidential Information or Personal Information for any purpose other than performing Agent work under this Agreement.
- D. Not Disclose, except as otherwise specifically permitted by this Agreement, any Confidential Information or Personal Information to anyone other than CEC without prior written authorization from CEC's CAM, except when Disclosure is required by State or Federal law.

#### **5. Information Security Program Plan.**

- A. Attestation and Review. Before Agent is provided access to Confidential Information or Personal Information, Agent must attest, using a form provided by CEC, it has in place an Information Security Program Plan (ISPP) that meets or exceeds the minimum requirements as stated in the California State Administrative Manual Chapter 5300, Information Security (<https://www.dgs.ca.gov/Resources/SAM>), and any other applicable law. Further, CEC may, at its discretion, also request a copy of Agent's ISPP for review. After CEC's review, CEC may choose whether to direct Agent to perform work that involves Confidential Information or Personal Information.
- B. Content. Agent's ISPP can be represented in a single document or a compilation of documents.
- C. Implementation. Agent must implement and maintain appropriate procedural safeguards to secure Confidential Information and Personal Information from Security Incidents and unauthorized use for the term of this Agreement. Agent is responsible for the security and confidentiality of the Confidential Information and Personal Information under its control and

the control of its employees, agents, subcontractors, and other project partners and follow the requirements of its ISPP.

## **6. Encryption**

All Confidential information and Personal Information accessed by Agent must be encrypted in transit and at rest.

## **7. Computer Security Updates**

Agent must use computer, software and network systems that are updated with the latest security patches, upgrades, and virus software at all times Agent has access to Confidential Information or Personal Information.

## **8. Nondisclosure Agreements**

- A. Need to Access Confidential Information or Personal Information. Agent agrees to release Confidential Information and Personal Information only to the individuals who need to access such information to complete work under the Agreement. Agent must ensure individuals properly handle and secure Confidential Information and Personal Information from unauthorized use or Disclosure, including signed nondisclosure agreements and security awareness training as described in this Section and Section 9, Security Awareness Training, below.
- B. Maintain Current List of Individual Employees. Agent must maintain a current list, and keep past versions of it, of all individuals who have access to Confidential Information or Personal Information and the dates each individual has access. Agent must remove individuals who are no longer employed or no longer have access to Confidential Information or Personal Information and add individuals who are subsequently granted access.
- C. Nondisclosure Agreement. Agent must ensure all individuals who will have access to Confidential Information or Personal Information are provided a copy of, and comply with, these special terms and conditions. Agent must ensure that individuals sign a nondisclosure agreement provided by CEC before being provided access to Confidential Information or Personal Information. The nondisclosure agreement includes maintaining the security of Confidential Information and Personal Information; not disclosing Confidential Information or Personal Information to others; using Confidential Information and Personal Information only for the scope of work in support of the Agreement; providing written notification of any unauthorized release of Confidential Information or Personal Information; destruction of Confidential Information and Personal Information; etc.
- D. Copy of Nondisclosure Agreement. Agent must provide a copy of each signed nondisclosure agreement to CEC's CAM.

## **9. Security Awareness Training**

Agent must ensure that all individuals who will have access to Confidential Information or Personal Information take security awareness training before being given access to Confidential Information or Personal Information and then annually thereafter until this Agreement ends for any reason, including termination, or the individual no longer has access, possession, use, or control of Confidential Information or Personal Information. The training must include, at a minimum, the following topics: password protection; malware, social engineering, phishing, social media, privacy awareness, acceptable use, and data protection (data collection, storage, transmission, use, disclosure and destruction). Before Agent allows any individual access to Confidential Information or Personal Information, Agent must provide to the CAM a copy of that individual's training certificate.

## **10. Security Incident**

- A. Reporting of Security Incident. If Agent becomes aware of a potential Security Incident that might affect Confidential Information in this Agreement, Agent must notify CAM in writing immediately, but no later than 48 hours, after the Agent first learns of the potential Security Incident. Agent must promptly provide communications to CAM in writing as new information becomes available during the Security Incident response process.
- B. Prompt Action. Agent must take prompt corrective action to mitigate any risks or damages involved with the Security Incident and to protect the operating environment, and any action pertaining to a Security Incident required by applicable federal and state laws.
- C. Investigation. Agent must immediately investigate a Security Incident and provide a written report to CEC as soon as practicable. The report must describe the extent of the Security Incident and Agent's corrective action to contain the Security Incident and prevent any recurrence. CEC has the right to participate in any investigation of a Security Incident. In addition, CEC has the right to conduct its own independent investigation. Agent must fully cooperate in all investigations related to the Security Incident. Agent is responsible for its expenses for conducting its own investigation or participating in the investigation by CEC or other entity selected by CEC.
- D. Notification. If there is a Security Incident that results in the loss of Confidential Information in Agent's possession, Agent must comply with any notice requirement under applicable state or federal law. Agent must, at its sole expense, provide required notices and any other mitigation efforts, with CEC written approval. CEC reserves the right to provide the required notices and any other mitigation efforts.
- E. Costs. In addition to any other rights and remedies available to CEC, Agent is responsible for, and must promptly pay to CEC, all costs, fees, and any other type of expense incurred by CEC due to a Security Incident resulting from the failure of Agent to perform, or the intentional, unintentional, negligent, inappropriate or unauthorized acts of Agent's personnel, that results in an unauthorized Disclosure, release, access, review, or destruction; or loss, theft or misuse of Confidential Information provided to Agent. These costs include, but are not limited to, staff time, material costs, postage, media



announcements, and other identifiable costs associated with the Security Incident causing loss of Confidential Information. Agent is also responsible for all costs incurred by CEC due to a Security Incident resulting from the same failure of a subcontractor, lower tier of subcontractor, project partner, match funder or any other entity or person who received Confidential Information under this Agreement.

- F. Subcontracts and Others with Access to Confidential Information. In order that all subcontractors, subawardees, vendors, project partners, and others with access to Confidential information are liable to CEC for costs as detailed in subsection 10.E above, Agent must include a provision indicating CEC is a third-party beneficiary to all such agreements.

### **11. Additional Requirements for Personal Information**

- A. Possession, Handling, or Use of Personal Information. If Agent possesses, handles or uses Personal Information during the course of this Agreement, Agent agrees to comply with the provisions of the Information Practices Act in Civil Code Section 1798 et seq., the California State Administrative Manual chapter 5300 as if Agent were an “agency” for its work under the Agreement, and any other applicable law. This includes but is not limited to complying with the following:
1. Maintaining only Personal Information relevant and necessary for the purposes of this Agreement in accordance with Civil Code Section 1798.14.
  2. Maintaining the source or sources of Personal Information in accordance with Civil Code Section 1798.16.
  3. Providing notice on or with any form used to collect personal information from individuals in accordance with Civil Code Section 1798.17.
  4. Establishing appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the Information Practices Act, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury in accordance with Civil Code Section 1798.21.
- B. Notification. If there is a Security Incident that results in the loss of Personal Information in Agent’s possession, Agent must comply with the notice requirements in Civil Code Section 1798.29 and California State Administrative Manual chapter 5300. Agent must, at its sole expense, provide required notices and any other mitigation efforts, with CEC written approval. CEC reserves the right to provide the required notices and any other mitigation efforts.
- C. Rights. Agent has no ownership, license, or other rights in Personal Information or in any form in which it is used (e.g., Products). In this regard, the Personal Information is not

treated like Data, Products, Intellectual Property, or other provisions in the Agreement that may indicate Agent has ownership, license, or other rights.

- D. Costs. In addition to any other rights and remedies available to CEC, Agent is responsible for, and must promptly pay to CEC, all costs, fees, and any other type of expense incurred by CEC due to a Security Incident resulting from the failure of Agent to perform, or the intentional, unintentional, negligent, inappropriate or unauthorized acts of Agent's personnel, that results in an unauthorized Disclosure, release, access, review, or destruction; or loss, theft or misuse of Personal Information provided to Agent. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the Security Incident causing loss of Personal Information. Agent is also responsible for all costs incurred by CEC due to a Security Incident resulting from the same failure of a subcontractor, lower tier of subcontractor, project partner, match funder or any other entity or person who received Personal Information under this Agreement.
  
- E. Subcontracts and Others with Access to Personal Information. In order that subcontractors, subawardees, vendors, project partners, and others with access to Personal information are liable to CEC for costs as detailed in subsection 11.D above, Agent must include a provision indicating CEC is a third-party beneficiary to all such agreements.

## **12. End of the Agreement**

When this Agreement ends for any reason, including termination, or sooner if Agent's work with the Confidential Information or Personal Information has concluded, Agent must securely destroy all Confidential Information and Personal Information and ensure that each entity with individuals that received Confidential Information or Personal Information does the same. Agent must not attempt to reuse or distribute Confidential Information or Personal Information after destruction. Agent must provide written verification to CEC that all Confidential Information and Personal Information has been properly destroyed, including the date and method of destruction.

## **13. Audit**

Agent must maintain books, records, documents, and other evidence, sufficient to reflect that Agent properly followed all requirements related to these special terms and conditions for a minimum of three years after final payment, unless a longer period of records retention is stipulated. CEC, other state agencies, and agents designated by CEC have the right to review, copy and audit Agent's records related to Confidential Information and Personal Information at all reasonable times, with prior notice by CEC. Agent agrees to provide auditors access to such records during normal business hours and to allow interviews of any individual employees who might reasonably have information related to such records.

## **14. Public Records Act Request**

Agent must work cooperatively with CEC to respond timely and accurately to Public Records Act requests CEC receives about Agent's activities and related Confidential Information or Personal Information under this Agreement.

**15. Termination**

Agent understands and agrees that in addition to any other rights and remedies available to CEC, any unauthorized release of Confidential Information or Personal Information, or disregard for appropriate security protocols that could result in Confidential Information or Personal Information being released may result in CEC's termination of this Agreement.

**16. Survival**

These special terms and conditions will remain in full force and effect in perpetuity.

**17. Amendment**

Agent and CEC acknowledge that federal and state laws regarding information security and privacy rapidly evolves and that amendment of these special terms and conditions may be required to provide for procedures to ensure compliance with such laws. Agent and CEC specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of Confidential Information and Personal Information.

**18. Flow-down**

Agent must flow-down these special terms and conditions to all subcontractors, subawardees, vendors, project partners, and other individual or entity participating in any way with this Agreement, including match funding, that will have access to Confidential Information or Personal Information before the individual or entity has access to any such information. Agent must also require all individuals and entities to flow down all terms in this Exhibit to any lower tier subcontractors, subawardees, vendors, project partners, and other individual or entity participating in any way with this Agreement that will have access to Confidential Information or Personal Information before the individual or entity has access to any such information.

**19. List of Confidential Information and Personal Information**

The following is a description of Confidential Information and Personal Information that CEC anticipates it will provide to Agent:

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## EXHIBIT B

### NONDISCLOSURE AGREEMENT

#### 1. General Provisions

“Confidential Information” means information CEC has designated as confidential pursuant to Title 20 CCR Section 2505 et seq., information CEC has otherwise deemed or stated to be confidential, and other information exempt from public disclosure under the provisions of the California Public Records Act or other applicable state or federal laws.

“Personal Information” means information that meets the definition of “personal information” in California Civil Code section 1798.3(a) or one of the data elements set forth in California Civil Code section 1798.29(g)(1) or (g)(2). Personal information is a type of confidential information and is therefore subject to all requirements for Confidential Information. However, there are also additional requirements specific to personal information.

Confidential Information and Personal Information may be provided by the Energy Commission to the Agent or obtained by the Agent from a third party for purposes of completing the work pursuant to Agreement No. \_\_\_\_\_ (the Agreement).

I, \_\_\_\_\_, agree to the following:

1. During the scope of my work and as part of my job duties under the Agreement, I may need to review or receive Confidential Information and Personal Information including but not limited to detailed energy consumption and rates; billing amounts and characteristics; service addresses; and account numbers or other internal identifiers. I agree to use Confidential Information and Personal Information only for purposes of the scope of my work and job duties under the Agreement.
2. I understand that it is important to maintain the security of Confidential Information and Personal Information. It is my responsibility to ensure that Confidential Information and Personal Information, whether in hard copy or electronic form, that is in my possession is protected from disclosure. I have received a copy of the Agreement Special Terms and Conditions relating to Confidential Information and Personal Information and agree to follow all CEC requirements in the Special Terms and Conditions.
3. I am not authorized to and will not disclose Confidential Information or Personal Information to any other individual.
4. In the event that I become aware of an unauthorized release of Confidential Information or Personal Information I will immediately notify:
  - My employer’s Chief Information Security Officer (or equivalent), \_\_\_\_\_ [Add Name].
  - Energy Commission Agreement Manager \_\_\_\_\_ [Add Name of CAM].
  - Energy Commission Supervisor \_\_\_\_\_ [Add Name of CAM’s supervisor].
  - Energy Commission email for reporting security incidents: [datasecurity@energy.ca.gov](mailto:datasecurity@energy.ca.gov).

I agree to assist in efforts to recover the Confidential Information and Personal Information.

5. I understand that deliberate unauthorized release of Confidential Information or Personal Information or disregard for appropriate security protocols that could result in Confidential Information or Personal Information being released may result, in addition to any other rights and remedies available to the CEC, in the CEC termination of the Agreement.

6. I agree that at the end of the Agreement, I will destroy all confidential information and Personal Information under my control that has been provided to me pursuant to the Agreement, unless directed otherwise in writing by the CEC.

7. I will be bound by the terms and conditions of this nondisclosure agreement even after my work under the Agreement ends.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINTED NAME \_\_\_\_\_