

REQUEST FOR PROPOSALS

New Mexico Community Solar Low-Income Customer Outreach Provider (Reissued)

ISSUED BY: InClime, Inc
326 First Street
Suite 27
Annapolis, MD 21403
[InClime – Innovative Climate Solutions \(inclimesolutions.com\)](http://inclimesolutions.com)

RELEASE DATE: **Sept 29th, 2022**

QUESTIONS DUE: **Oct 7th, 2022 @ 4:00 p.m. EST**

SUBMITTAL DUE DATE: **Oct 21st, 2022 @ 4:00 p.m EST**

ANTICIPATED AWARD DATE: **Nov 11th, 2022**

DIRECT INQUIRIES TO: Mike MacMillan, InClime Chief of Staff
326 First Street
Suite 27
Annapolis, MD 21403
Mike.macmillan@inclimesolutions.com
(410) 231-3996 ext. 525

Vendors are cautioned not to make changes to any of the terms and conditions in this solicitation. Doing so may render a Vendor's Qualifications Submittal unacceptable and subject to rejection. Questions and inquiries may be addressed as outlined in Section 1.5 of this solicitation. Any exceptions to terms and conditions are not binding unless they are negotiated and affirmatively deemed mutually agreeable by the Vendor and InClime in an executed contract.



customerservice@inclimesolutions.com



410-231-3995



SECTION I. PROCUREMENT OBJECTIVE

1.1 Introduction

InClime, Inc was recently selected as the Program Administrator for the New Mexico PRC's Community Solar Program.

The Program Administrator seeks a Vendor with a substantial New Mexico presence and experience to assist with special subscriber provisions of section 17.9.573.15 of the order adopting the rules (Docket No. 21-00112-UT) to perform low-income customer outreach. Vendors submitting proposals must submit references from customers who have successfully engaged their services for similar purposes.

The Vendor selected will provide low-income customer outreach services to include:

- Outreach to low-income communities providing community solar benefits, opportunities, and promotion;
- Create partnerships with community organizations supporting low-income populations;
- Develop working groups to gain feedback and develop strategies for reaching low-income communities with New Mexico community solar information.

1.2 Procurement Officer

Mike MacMillan, InClime Chief of Staff
326 First Street
Suite 27
Annapolis, MD 21403
Mike.macmillan@inclimesolutions.com
(410) 231-3996 ext. 525

The sole point of contact for purposes of this procurement is the Procurement Officer. The Procurement Officer may designate others to act on his behalf. The InClime CEO may change the Procurement Officer or change the limits of his authority at the CEO's discretion.

1.3 Schedule of Events

<u>Event</u>	<u>Date</u>
RELEASE DATE:	Sept 29th, 2022
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1.4 Pre-proposal Conference

A pre-proposal conference will not be held.

1.5 Questions and Inquiries

All questions and inquiries should be directed to the Procurement Officer identified in Section 1.2 above. Questions must be submitted in writing by mail or email and received by the Procurement Officer before the Questions Due date listed in Section 1.3. Oral questions will not be accepted. If a question or inquiry pertains to a specific section of the RFP, the page and section number(s) must be referenced.

1.6 Submission Deadline

In order to be eligible for consideration, responses must be received by no later than the Submittal Due Date in Section 1.3. Vendors must email responses and confirm receipt. Any response received after the submission deadline, no matter what the reason, will be deemed unacceptable. Proposals or unsolicited amendments to proposals arriving after the closing date and time will not be considered.

1.7 Duration of Offer

Proposals submitted in response to this solicitation are irrevocable for 60 days following the closing date. This period may be extended at the Procurement Officer's request only by an Offeror's written agreement.

1.8 Electronic Distribution

This RFP is available for distribution by email. Potential Offerors wishing to receive copies of the written document should contact the Procurement Officer.

SECTION II. GENERAL INFORMATION

2.1 Purpose

The overall purpose of this RFP is to provide information to Offerors interested in preparing and submitting proposals to meet InClimate's requirements for New Mexico's low-income community outreach and support for the PRC's Community Solar program.

2.2 Revisions to the RFP

InClimate reserves the right to amend this RFP at any time prior to the proposal due date and time. If it becomes necessary to revise this RFP, amendments will be provided to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. Acknowledgment of the receipt of all amendments will be required.

2.3 Cancellation of the RFP; Rejection of All Proposals

InClimate may cancel this RFP, in whole or in part, or may reject all proposals submitted in response,



whenever this action is determined to be in InClime's best interests.

2.4 Proposal Acceptance; Discussions

InClime reserves the right to accept or reject any proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions with all qualified Offerors in any manner necessary to serve the best interests of InClime. InClime also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without prior discussions or negotiations.

2.5 Interviews/Oral Presentation

InClime may conduct interviews with qualifying Offerors. In addition, in support of their proposals, Offerors may be required to make an oral presentation. Failure to meet with InClime for an interview or to make an oral presentation within this time period may prevent the Offeror's proposal from receiving further consideration. The main point of contact proposed in the Offeror's proposal must be present during these interviews.

2.6 Incurred Expenses

InClime will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal in response to this RFP.

2.7 Proposal Form

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's proposal for meeting the requirements. Only electronically transmitted proposals will be accepted and shall be submitted to the Procurement Officer via email to the following address: mike.macmillan@inclimesolutions.com.

2.8 Multiple Proposals

Multiple and Alternate proposals will not be acceptable.

2.9 Confidential, Proprietary Information

An Offeror should give specific attention to the identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by InClime. Careful consideration should be given before confidential information is submitted to InClime as part of your proposal. Review should include whether it is critical for evaluating a proposal, and whether general, non-confidential information, may be adequate for review purposes.

2.10 Compliance with Law

By submitting an offer in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State of New Mexico, and local laws, regulations, and rules applicable to its activities and obligations under the Contract.



2.11 Arrearages

By submitting an offer in response to this RFP, the Offeror shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of New Mexico or any department or unit thereof, including the payment of taxes and employee benefits, and if selected for award, that it shall not become in arrears during the term of the Contract.

2.12 Acceptance of Terms and Conditions

By submitting an offer in response to this RFP, an Offeror shall be deemed to have accepted all the terms, conditions, and requirements set forth in this RFP unless otherwise clearly noted and explained in its proposal. A copy of the proposed contract is attached in Appendix 1.

2.13 Order of Precedence

The contract between the parties will be embodied in the contract documents which will consist of the following, listed in their order of precedence:

1. The contract and contract modifications executed by both parties;
2. This RFP; and
3. Vendor's proposal.

Modifications of the order of precedence provision of this solicitation will not be accepted. If any terms and conditions inconsistent with requirements of the solicitation are proposed, those terms and conditions must be stated in the proposal.

2.14 Contract Award

InClime anticipates making one award under this solicitation but is not precluded from selecting a second firm if it is in the best interest of InClime to do so. It may award a contract based on initial applications without discussion, or following limited discussion, negotiations, or interviews. Each offer should be submitted using the most favorable cost and technical terms. InClime may request additional data or material to support applications. InClime expects to notify proposers by the Anticipated Award Date listed in Section 1.3 whether your proposal has been selected to receive an award.

2.15 RFP Modifications

InClime also reserves the right to correct any arithmetic errors, to change the final due date and time for the proposals, to accept or reject any of the firm's employees assigned to provide services on this project, and to require their replacement at any time, and to reject any proposal containing false or misleading statements or that provides references that do not support an attribute or a condition claimed by the proposer.

2.16 Limitation

This solicitation does not commit InClime to award a contract, pay any costs incurred in preparing



a proposal, or to procure or contract for services or supplies. InClime reserves the right to accept or reject any or all proposals received, to negotiate with all qualified sources, or to cancel in part or in its entirety the solicitation when it is in InClime's best interest.

2.17 Term

A contract to be awarded pursuant to the RFP shall begin on the date that the contract for this RFP is signed by both parties and continue for the duration of **one year**. ~~InClime's term as the Program Administrator for the New Mexico Community Solar Program subject to annual renewals by InClime.~~

SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

The Community Solar Program Administrator for the State of New Mexico is issuing this RFP to secure a Low-Income Facilitator.

The Community Solar Program enacted July 12, 2022 stipulates that 30% of each project capacity will be reserved for low-income customers and low-income service organizations. A low-income customer is defined as a customer with an annual household income at or below 80% of the area median income (AMI), as published by the U.S. Housing and Urban Development (HUD).

A low-income subscriber may be pre-qualified based on participation in any of the following programs:

- Medicaid; Supplemental Nutrition Assistance Program (SNAP)
- Low-Income Home Energy Assistance Program (LIHEAP)
- First-time homeowner programs and housing rehabilitation programs
- Living in a low-income/affordable housing facility; or state and federal income tax credit programs.
- Further, a low-income customer can also provide self-attestation regarding their income and family size with appropriate confirming documentation provided within a period of 90 days.

InClime is seeking a partner organization to help fulfill grassroots education needs with local qualifying organization that allow for the pre-qualification of community solar subscribers in New Mexico.

3.1 Required Services

InClime is requesting proposals from responsible firms to provide the following:

3.1.1 Provide community outreach to low-income communities.

1. Task: Conduct outreach to low-income communities across New Mexico to share information about the benefits of participating in the New Mexico Community Solar program. Maintain an awareness of current community solar offers.
2. Requested Information:
 - a. Describe your organization's experience with community outreach, specifically in low-income communities.



- b. Describe how your organization plans to engage with low-income residents across New Mexico, including a description of any potential in person or virtual programming. Some examples include in-person events, speaking engagements, tabling, virtual events, partnering with other groups, etc.
- c. Estimate the ramp up time that your organization would need before starting outreach efforts.
- d. Provide an estimate of the number of people that your organization would be able to reach monthly.
- e. Describe your organization's proficiency with local languages and how your organization would conduct outreach to Spanish speakers.
- f. Describe any experience your organization has developing public facing educational materials (optional, please include if your organization has this experience).

3.1.2 Provide outreach to community-based organizations

1. Task: Develop a network of partner organizations that are trusted by low-income communities and share information with the organizations about New Mexico's community solar program, and how it may benefit the individual organization's constituents. This includes providing copies of the program's educational materials. Maintain an awareness of qualifying Community-Based Organizations.
2. Requested Information:
 - a. Describe how your organization would work with Community-Based Organizations to share information about how their constituents may be able to benefit from the New Mexico Community Solar Program.

3.1.3 Develop a Low-Income Working Group

1. Task: Organize a working group composed of representatives from Community Based Organizations working with low-income households to discuss market issues and provide feedback. InClima will assist in the planning of these working group sessions. **Provide feedback on the usefulness and usability of the online portal and web platforms.**
2. Requested Information:
 - a. Describe any experience working with a network of diverse organizations.
 - b. Describe your organization's ability to engage with and invite a network of partner organizations that are trusted by low-income communities to participate in a working group.

3.1.4 Reporting Metrics

1. Task: Vendor must track outreach metrics and maintain a monthly report



detailing outreach efforts and outcomes. The report will include metrics such as the number of potential subscribers reached, events attended, organizations partnered with, etc.

2. Requested Information:

- a. Describe any experience tracking outreach metrics.

SECTION IV. PROPOSAL REQUIREMENTS

A proposal should not be excessively long or submitted in an elaborate format that includes expensive binders or graphics. The Technical Proposal (See Section 5.3 below) should be limited to not more than ten (10) pages, plus attachments. Unnecessary attachments beyond those sufficient to present a complete, comprehensive, and effective response will not influence the evaluation of the proposal.

4.1 Management and Qualifications

- 4.1.1. Describe your organizational structure.
- 4.1.2. Briefly discuss your firm's overall experience. Describe any services you have performed for programs of a similar nature to effective low-income outreach and communication.
- 4.1.3. Describe any technical knowledge or related expertise which may be of benefit to Program Administrators. Provide a project organization and management description that describes the unique capabilities of your firm and the individuals assigned as consultants related to the proposed Scope of Work.
- 4.1.4. Provide the names of personnel in the firm who will be assigned to InClime's account and their experience in performing services similar to those requested in this RFP. Include resumes for key employees proposed to be involved on InClime's account (resumes may be included as an appendix).
- 4.1.5. Describe your firm's experience and expertise working with public entities and local municipalities, particularly agencies, authorities, and instrumentalities of the State of New Mexico.
- 4.1.6. Discuss the approach your firm would take to meet the requirements of Section 3 of this RFP, including: timeline of milestones for measurable outcomes; expectations for InClime staff, and stakeholder engagement.
- 4.1.7. Identify any litigation or administrative proceedings to which you are a party and which would either materially impair your ability to perform the services enumerated herein and for which this RFP was issued or, if decided in an adverse manner, materially adversely affect the financial condition of your firm.
- 4.1.8. Identify if your firm or any employee has ever been disbarred or suspended by any agency of the U.S. Government or the State of New Mexico.
- 4.1.9. InClime values diversity and prefers diversity in its partners. Indicate if your firm is a veteran, minority and/or woman-owned business enterprise and provide the appropriate certification/s. If the offeror is non-profit, indicate if the composition of the Board of the organization is at least 50% veterans, minorities and/or women.
- 4.1.10. Indicate the address of the office through which InClime's account will be primarily serviced.



- 4.1.11. Provide two client references. The list must include references related to projects:
- (i) On which the proposed principal consultant played a lead role; and
 - (ii) For which the services provided were similar to the services expected to be provided under this RFP. InClime reserves the right to contact any previous client whether or not provided as a reference.

4.2 Cost/Budget

- 4.2.1. This is a fixed-price RFP. InClime has budgeted **\$40,000 (forty thousand dollars)** ~~13,333 (thirteen thousand three hundred thirty-three dollars)~~ annually for the services requested in this RFP. Please provide the level and quality of service that can be delivered for this cost.

SECTION V. PROPOSAL FORMAT

5.1 Transmittal Letter

A brief transmittal letter prepared on the Offeror's business stationery should accompany the proposal. The letter must be signed by an individual authorized to bind the Offeror to all statements, including services and prices, contained in the proposal. The transmittal letter should also indicate that, if selected, the Offeror will execute a contract with InClime.

5.2 Part I - Technical Proposal

This part should be prepared in a clear and concise manner, be no more than 10 pages in length (excluding appendices), and should address all of the subsections of Sections 3.2 and 4.1 above. In addition, this part should contain:

- (a) Name of firm.
- (b) Mailing address of the office from which the proposal is being submitted.
- (c) Name of individual who will represent firm as primary contact person on matters relating to the proposal
- (d) Telephone number, fax number, and E-mail address, if applicable.

5.3 Part II –Proposed Schedule and Deliverables

As part of a pricing proposal, Offeror shall define a timeline for deliverables and a schedule of payments associated with the completion of deliverables described in the timeline.

SECTION VI. PROPOSAL EVALUATION

Proposals meeting the RFP requirements will be evaluated as follows:

A selection committee consisting of InClime staff, will review the Proposals to determine if they each meet the requirements of this RFP. Following this review, InClime may develop a short list of Offerors who will be eligible for further consideration and will be asked to interview with and/or make oral presentations to the selection committee as set forth in Section 2.5 above. The selection committee's recommendation, and any final CEO approval, will be based upon the determination of the selection committee and the CEO, in their sole judgment, as to which Proposal would provide InClime with the



most advantageous and comprehensive combination of technical expertise, reputation, and value. When InClima selects a winner, the subcontractor arrangement will be reviewed and approved by the State of New Mexico and award of this contract is contingent on State of New Mexico approval of the subcontractor.

SECTION VII. APPENDICES

Appendix 1: Terms and Conditions/Form of Contract



Appendix 1: Draft Subcontractor Support Agreement and Non-Disclosure Agreement

SUBCONTRACTOR SUPPORT CONTRACT for the

NEW MEXICO COMMUNITY SOLAR PROGRAM ADMINISTRATOR

THIS SUBCONTRACTOR SUPPORT AGREEMENT (this “**Agreement**”) is entered into as of the ___ day of _____, 20__ (the “**Effective Date**”), by and between InClime Inc., a Delaware Corporation (“**Prime**”) and _____, a _____ company (“**Sub**”). Prime and Sub are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, Prime has signed a contract with the State of New Mexico Public Regulation Commission and is responsible for implementing and managing the New Mexico Community Solar Program thru June 30th 2025; and

WHEREAS, Prime desires to retain Sub, and Sub has agreed, to:

- (a) _____
- (b) _____
- (c) _____

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Prime and Sub, and, intending to be legally bound, the Parties hereto agree as follows:

I. Definitions

Commission: The New Mexico Public Regulation Commission (PRC).

Project: Program Administrator for The New Mexico Community Solar Program.

II. Contacts and Payment

A. Contacts

1. The primary point of contact at Prime will be Michael MacMillan, telephone number 410-231-3996 ext 525, email mike.macmillan@inclimesolutions.com. All communication with the New Mexico PRC shall go through Prime unless both Parties agree otherwise.
2. The Sub has designated _____ as primary point of contact, with telephone number _____ and email email@email.
3. The parties agree to communicate fully with each other through the designated representatives and to keep each other informed of all pertinent matters and developments relating to the NM Community Solar Program.

B. Statement of Work and Payment

1. The tasks performed by the Sub shall be in accordance with the RFP Response submitted by the Sub to InClime, attached as Appendix 1. The Sub shall not be responsible for any work outside that listed in the RFP Response unless agreed to by both the Prime and the Sub. Sub may allocate and be paid for more hours than allotted in Appendix 1 to



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410-231-3995



complete a task if both the Prime and Sub agree to do so. If not, the Prime will complete the task. The Sub may also, with the consent of the Prime, reallocate work between employees in a particular task.

2. The Sub shall produce monthly invoices containing the following information:
 - a. The specific dates when services were rendered (i.e. 01– 30 November, 2022).
 - b. Monthly invoices will be invoiced at a fixed rate of _____\$/month.
 3. The Prime will not be liable for any invoice items that were not specifically authorized by the Prime or the excess over the maximum amount specified. The maximum amounts will be those listed in the Proposal unless otherwise agreed upon by both the Prime and the Sub.
 4. The Prime will process payment to the Sub within 15 business days of receiving a proper invoice.
 5. No expenditures will be reimbursed if they were incurred before the effective date of this contract.
 6. The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of the Administrator for the NM Community Solar Program contract. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Prime to the Sub. The Prime's decision as to whether sufficient appropriations are available shall be accepted by the Sub and shall be final. If Prime proposes an amendment to the Agreement to unilaterally reduce funding, the Sub shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.
- C. Performance Standards
1. Performance will be measured by review of monthly reports and _____.

III. **Other Rights of Parties.**

A. Prime's Right to Disapprove Expenditures

The Prime shall have the right to approve or disapprove invoice expenditures and may adjust payment to the Sub for the amount of any disapproved expenditure if those expenditures do not meet the terms of this contract. The Sub will not be paid for any cost incurred for services not in compliance with the terms of this contract.

B. Prime's Right to Make Amendments and Changes to Contract

Subject to the terms and conditions of this Contract and to the statutory and common law of the State of New Mexico, the Prime shall have the right to make changes in the Statement of Work in the Proposal, provided that any such changes are within the general scope of the Statement of Work, that payment for work performed under such changes shall be made pursuant to the Proposal, and that the total cost of this contract is not exceeded.

C. Nondisclosure Agreements/Confidentiality



- a. If the Sub obtains proprietary information from the Prime or Commission then Non-Disclosure agreements with the Prime will be executed. Any Non-Disclosure agreements required by the Commission will also be executed. The Non-Disclosure agreement of the Prime is substantially similar to the Nondisclosure Agreement attached herein as Exhibit 1. The executed Nondisclosure Agreement is hereby incorporated into this Contract by reference.
- b. The Sub may not release any information concerning the Administrator for the New Mexico Community Solar Program other than the existence and nature of the Sub without the prior written approval of the Prime.

D. Termination

The Prime reserves the right to terminate this Contract with thirty (30) days' notice to the Sub if the Sub's performance is, in the sole view of the Prime, unsatisfactory and not in keeping with the Proposal and the RFP, and/or for any material breach of the terms contained herein. In the event of a material breach of the Contract terms, the Prime shall inform the Sub's Representative of the breach. The Sub shall have ten days in which to cure the breach to the satisfaction of the Prime. This provision shall not be construed as a limitation on remedies by the Prime for breach of this Contract by the Sub.

IV. Other Agreements by the Parties.

A. Status of Sub

The parties hereto agree that the Sub and any agents and employees of the Sub shall act, in the performance of this Contract, in an independent capacity and not as officers, employees or agents of the Prime or the Commission.

B. Interest of Sub

The Sub warrants that it **and its affiliates presently have** no interest and promises that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder **to include acting as a Community Solar developer, Subscriber Organization/Service, or intends to be a party to the submission of a Proposal to the New Mexico Community Solar program**. The Sub agrees that in the performance of this Contract, it shall not knowingly employ any person having such interest. The Sub further certifies that no member of the board of the Sub or any of its officers or directors have such an adverse interest. Sub personnel who perform the services are employees of the Sub (or its subcontractors) and the Sub will be solely responsible for payment of compensation to such persons. The Sub agrees to indemnify, defend, and hold harmless the Prime and the Commission for any claim asserted against the Prime or the Commission alleging that the Prime or the Commission are an employer, co-employer or joint employer of any Sub or subcontractor personnel. The Sub will assume full responsibility for payment of all federal, state, provincial and local taxes,



withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons. Should the Prime or the Commission be required to pay any amount to a governmental agency for failure to withhold any amount as may be required by law, the Sub agrees to indemnify, defend and hold harmless the Prime and/or the Commission for any amount so paid, including interest, penalties and fines. The Sub is not an agent of the Prime or the Commission and has no authority to represent the Prime or the Commission as to any matters, except as expressly authorized in this Contract.

C. Disputes

All questions arising respecting any matter pertaining to the specifics of this Contract between the Prime and the Sub or any part thereof or any breach of contract arising thereunder shall be referred to the Prime.

D. Conflicts between the Contract, the RFP, and the Proposal

Whenever a provision of the Proposal conflicts with the Contract or the RFP, the provisions of the Contract and the RFP prevail over the Proposal.

E. Integration Clause

This Contract, and all exhibits, appendices, addenda, and other attachments thereto, constitutes the entire agreement between the parties, subject to the provisions of paragraph G "Amendments" below. No other agreements, whether oral or written, or outside conditions, warranties, or understandings regarding the subject matter of this Contract shall be deemed to exist for purposes of interpreting this Contract, nor shall any such agreements be enforceable against the Prime or the Sub.

F. Amendments

No amendment or modification changing the scope or terms of this Contract shall have any force or effect unless it is in writing and signed by all parties except as provided in this Contract.

G. Applicable Law

This Contract shall be interpreted, construed, and governed by federal law and the laws of the State of New Mexico.

H. Assignment and Delegation

Neither this Contract nor any of its benefits or duties may be assigned or delegated by subcontract or otherwise, except for those subcontracts specifically identified by this Proposal, without prior written approval by the Prime. Any subcontract shall contain all of the provisions of this Contract.



I. Severability

If any provision of this Contract is invalid, the remainder of the Contract shall not be affected thereby if the essential terms and conditions of the Contract remain valid, legal and enforceable.

J. Non-Waiver

No provision of this Contract can be waived by any party unless made in writing and signed by the party against whom waiver is sought; nor shall the failure by any party to, at any time or on multiple occasions, require performance of any provision hereof be construed as a waiver of future enforcement thereof; nor shall waiver by any party of any breach hereof be construed as a waiver of any future breach.

K. Time of the Essence

Time is of the essence in this Contract and any failure to perform any of the terms hereof in the time and manner specified shall be deemed a material breach of this contract.

L. Effective Dates

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE NEW MEXICO PRC. This Agreement shall commence on _____ given New Mexico PRC approval by this date, or as soon thereafter the date NM PRC approval is obtained. This Agreement shall terminate on ~~JUNE 30, 2025~~ _____, 2023 unless terminated pursuant to paragraph II.D (Termination).

M. Insurance

During the performance of the work covered by this Contract, the Sub shall maintain the following minimum insurance coverage at no additional cost to the Prime:

1. Workers' Compensation Insurance as required by law.
2. Employer's Liability Insurance (bodily injury) of \$1,000,000 per accident, and Employer's Liability Insurance (occupational diseases) of \$1,000,000 per person and \$2,000,000 in the general aggregate.
3. Comprehensive General Liability Insurance of \$1,000,000 each person; \$1,000,000 each occurrence for bodily injuries; and \$1,000,000 for property damage.
4. Comprehensive Automobile Liability Insurance covering all owned and hired vehicles of \$1,000,000 each person, \$1,000,000 each accident for bodily injuries, and \$1,000,000 each accident for property damage.

The insurance called for above is subject to the normal limitations and exclusions applying to



each type of insurance; provided, however, that first dollar coverage shall be provided for each type. The Prime and the Commission will be named as an additional insured on the policies referred to in 2, 3, and 4 above and such insurance shall be endorsed to require the insurer to furnish the Prime and the Commission with ten (10) days written notice prior to the effective date of any cancellation of insurance.

Upon request, the Sub shall furnish the Prime and/or the Commission with certificates or other documentary evidence showing that the insurance to be carried by the Sub in accordance with this paragraph has been arranged.

N. Intellectual Property, Security, Cybersecurity

1. New Mexico State Intellectual Property - Data and Background Information. The State owns all State Intellectual Property and State data and background information provided to Prime and Sub. The State's data and background information shall include, without limitation, all data, technical information, and materials provided to Prime by the State to facilitate performance of the contract, including but not limited to all reports, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents. The items described in the preceding sentence shall be delivered or returned to the State of New Mexico upon thirty (30) days' notice by the State or thirty (30) days after the expiration or termination of this contract. No part of the State's data will be disclosed, sold, assigned, leased or otherwise disposed of to any person or entity other than the State unless directed to do so by the Prime or State.
2. InClima Intellectual Property - Except for rights expressly granted under this agreement, nothing in this agreement will function to transfer any of either party's Intellectual Property rights to the other party, and each party will retain exclusive interest in and ownership of its Intellectual Property developed before this agreement or developed outside the scope of this agreement.
3. Information Security – Not Applicable to this Agreement
 - a. The Sub must have written policies, procedures, practices, and controls that protect information from unauthorized disclosure, use, access, loss, alteration or destruction, and must agree that it will protect information in accordance with commercially recognized industry standards and practices.
 - b. Prime has the right to review Sub's procedures, practices, and controls related to the protection of data and information assets. Upon request, Sub will make available for review policies, procedures, practices and documentation related to the protection of Prime and program data and information assets, including but not limited to related to information security governance, network security, risk and compliance management



policies and procedures, personnel security background screening/checks, secure systems/software development protocols, change/release management, vulnerability management, secure disposal/sanitization and documentation.

- c. Any data provided shall be used solely for the purposes set forth in the contract. No data transmitted, exchanged, or otherwise provided to others, except as expressly agreed to in writing by the Prime.

4. Cybersecurity Security and Reporting – Not Applicable to this Agreement

- a. In the event of a security incident, the Sub shall notify Prime within 4 hours of becoming aware of the breach. Sub shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches, as well as immediately preserve any potential forensic evidence relating to the incident.

5. Business Continuity and Disaster Recovery Planning – Not Applicable to this Agreement

- a. The supplier has a responsibility for backup and record protection, including equipment, program and data files, and maintenance of disaster recovery and contingency plans.

O. Records Retention

Sub shall retain in its files copies of all documents, reports and invoices described in this contract for a period of 3 years following contract termination. The Sub has a responsibility for backup and record protection, including equipment, program and data files, and maintenance of disaster recovery and contingency plans.

P. Indemnity

Both Parties agree and undertakes to indemnify, defend, and hold harmless the other Party and the Commission and its agents, employees and subcontractors against any and all liabilities, claims, damages, causes of action, judgments, costs and expenses, including reasonable attorneys' fees, in any way relating to or arising out of any action or operation of the other Party and its agents, employees and subcontractors, including but not limited to personal injury or property damage, including but not limited to injury or damage to the person or property of the Prime, the Commission or the Sub, or their respective agents, employees, or subcontractors, and shall, at the request of the other Party and/or the Commission, defend any and all actions brought against the other Party and/or the Commission and its respective agents, employees, and subcontractors based upon any and all such claims or demands. Both Parties expressly waives use of the "statutory employer" defenses provided in the New Mexico Workers' Compensation Act at NM Stat § 52-1-22 (2018) with regard to this indemnity.

P. LIMITATION OF LIABILITY



IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL EITHER PARTY, THE COMMISSION OR ITS RESPECTIVE AGENTS, EMPLOYEES AND SUBCONTRACTORS, BE LIABLE TO THE OTHER PARTY FOR SPECIAL INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE OR COST OF CAPITAL.

R. Jurisdiction

It is understood and agreed that actions undertaken by the Sub pursuant to this Contract shall be limited to matters within the jurisdiction of the Prime and/or the Commission.

S. Employees, Background Checks, Substance Abuse

1. Sub shall employ for the work only persons known to it to be experienced, qualified, reliable, and trustworthy. At the request of the Prime, the credentials of any of the Sub's employees assigned to perform the work shall be submitted in advance of such assignment. During the performance of the work, the Prime and/or Commission staff may object to any Sub employee, who, in their opinion, does not meet these criteria. In such case, Sub shall at its expense and risk, immediately replace and remove such employee and promptly advise the Prime.
 - a. Background checks. Sub shall make best efforts to ensure that Sub's employees assigned to work on this Project do not have criminal records and are not involved in criminal activity which could create a risk of fraud/embezzlement and/or a risk to the Prime or Commission's property and employees.

Sub will obtain criminal background checks for all employees, including but not limited to employees of all subcontractors, for this Project who will visit or otherwise have physical contact with the public, or with the public's premises or property, prior to such employee performing work on the Project. Sub will maintain up-to-date records evidencing such criminal background checks.

Upon actual knowledge of a criminal record or involvement in a potentially criminal activity, including but not limited to threats, harassment, or other abuse, Sub shall immediately remove any such employee or employees from the work and immediately contact the Prime to inform them of the circumstances. The Prime may, at any time, request that the Sub verify that an employee of the Sub or its subcontractors does not possess a criminal record.

2. Sub shall provide certification for each of the Sub's employees who are authorized as part of the work to have electronic or unescorted physical access to critical cyber assets (as the same are identified from time to time), that such employee (i) has submitted to a



Background Check within the past seven years whereby no evidence of a criminal record or criminal activity was discovered; (ii) is subject to a seven-year cycle re-check of the Background Check; and (iii) has received the Sub-sponsored security awareness training or will receive such training prior to accessing critical cyber assets. These requirements are subject to audit by Prime.

3. Substance Abuse. Sub agrees to comply with all applicable state and federal laws regarding a drug-free workplace. Sub shall make a good faith effort to ensure that all Sub’s employees undertaking work will not be under the influence, purchase, transfer, use or possess illegal drugs or abuse alcohol or prescription drugs in any way. Upon actual knowledge of such activity or any such potential activity, Sub shall immediately remove any such employee or employees from the work and immediately contact the Prime to inform them of the circumstances.

IN WITNESS THEREOF, intending to be legally bound, the Prime and the Sub hereby execute this Alternative Energy Credits Administrator Subcontractor Support Contract.

Sub-contractor	Title	Date
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Kevin Quilliam, CEO, InClimate Inc		Date
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INDEPENDENT CONTRACTOR NON-DISCLOSURE AGREEMENT

BETWEEN

InClime, Inc
326 First Street, Suite 27
Annapolis, MD 21403

AND

(“Independent Contractor”)

(Mailing Address)

Effective Date of Agreement: _____

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is made and entered into as of the Effective Date of Agreement set forth above by and between Client and Independent Contractor.

WITNESSETH:

WHEREAS, the parties hereto desire to have discussions related to, and may enter into, one or more business transactions (the “Subject Matter”);

WHEREAS, it is contemplated that such discussions and any business transactions entered into in connection therewith will require the disclosure by Client to Independent Contractor of Confidential Information (as hereinafter defined);

WHEREAS, both parties recognize the value of the Confidential Information and that it is in their mutual best interests to maintain the confidential, proprietary and secret nature of the Confidential Information.

NOW, THEREFORE, for and in consideration of the above premises, and in further consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **CONFIDENTIAL INFORMATION.** Confidential Information shall include, but not be limited to, documents, records, information and data (whether verbal, electronic or written), drawings, models,



apparatus, sketches, designs, schedules, product plans, marketing plans, technical procedures, manufacturing processes, analyses, compilations, studies, software, prototypes, samples, formulas, algorithms, methodologies, formulations, patent applications, know-how, experimental work and results, specifications, unpublished financial statements, licenses, prices, costs, suppliers, customers, business relationships between the Client and its vendors, and other business information, relating to Client's business, assets, operations or contracts, furnished to Independent Contractor and/or Independent Contractor's affiliates, employees, officers, owners, agents, consultants or representatives, in the course of their work contemplated in this Agreement, regardless of whether such Confidential Information has been expressly designated as confidential or proprietary. Confidential Information also includes any and all analyses, compilations, work product, studies and other materials prepared by or in the possession or control of the Independent Contractor, which contain, include, refer to or otherwise reflect or are generated from any Confidential Information. Confidential Information may be provided in written, oral, electronic or other form.

2. FORM OF DISCLOSURE. Confidential Information may be oral, visual, or by demonstration, or in some other form not permanently recorded, and shall be considered Confidential Information regardless of whether such Confidential Information has been expressly designated as confidential or proprietary.

3. PERIOD OF CONFIDENTIALITY AND NON-USE. Independent Contractor (including its affiliates, employees, agents and consultants) shall maintain in strict confidence and not disclose any Confidential Information it receives from Client to any third party or use the Confidential Information for its own or any other party's benefit, except in furtherance of its obligations to Client pursuant to any business transaction it may enter into with Client. Independent Contractor shall use, as a minimum, the same degree of care to avoid disclosure or use of the Confidential Information as it employs with respect to its own confidential, proprietary and secret information of like importance, but in any case, using no less than a reasonable degree of care. Independent Contractor shall limit access to all Confidential Information to only those of Independent Contractor's personnel, agents and representatives who "need to know" such information for carrying out Independent Contractor's obligations to Client pursuant to any business transaction it may enter into with Client and the Confidential Information will be used only for carrying out Independent Contractor's obligations to Client pursuant to any business transaction it may enter into with Client. Independent Contractor shall ensure that its affiliates, employees, officers, directors, owners, agents, consultants, and representatives who are given access to the Confidential Information by or on behalf of Independent Contractor shall be bound by and shall comply with the terms of this Agreement.

4. EXCLUSIONS. Information shall not be deemed Confidential Information, and Independent Contractor shall have no obligation of confidentiality or restriction against use with respect to any information which:

4.1. was known, in the possession of and documented by Independent Contractor through no wrongful act of the Independent Contractor prior to Client's disclosure of such information; or

4.2. is or becomes publicly known through no wrongful act of Independent Contractor and/or through no breach of any obligation to Client; or

4.3. is rightfully received from a third party who is not subject to restrictions on the use and disclosure of such information in favor of Client; or

4.4. is approved for release by written authorization from Client; provided that, unless notice of said



customerservice@inclimesolutions.com



410-231-3995



prior knowledge and possession or receipt from a third party is given to Client within thirty (30) days of receipt of the information from Client or from a third party, respectively, it shall be conclusively presumed that the said information was not previously in the Independent Contractor 's knowledge and possession or received from a third party.

5. **DISCLOSURES REQUIRED BY LAW.** In the event Independent Contractor is requested or required by a government or court order, or similar process, to disclose any Confidential Information supplied to it by Client, Independent Contractor shall provide Client with prompt notice of such request so that Client may seek an appropriate protective order and/or waive Independent Contractor's compliance with the provisions of this Agreement.

6. **INDEMNIFICATION.** Independent Contractor shall reimburse, indemnify and hold harmless Client and its affiliates, owners, employees, officers, directors, agents and representatives from any damage, loss, penalty, cost or expense incurred by Client as a result of or in connection with the use or disclosure of the Confidential Information contrary to the terms of this Agreement by Independent Contractor or its affiliates, employees, directors, officers, owners, consultants, agents or representatives or any others to whom such Confidential Information has been disclosed by any such persons or entities. The term "affiliates" as used in this Agreement shall mean any persons, corporations, partnerships, limited liability companies, or other business entities, which directly or indirectly control, are controlled by, or are in common control with such party to this Agreement. As used herein, the term "control" shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise).

7. **NO PUBLIC COMMENT.** Independent Contractor shall not directly or indirectly make any public comment, statement, or communication with respect to, or otherwise disclose or permit the disclosure to any third party of any Confidential Information or of any matter relating to the Subject Matter or purpose or any transactions contemplated by the parties in connection therewith, without the prior written consent of Client.

8. **NOTICE OF UNAUTHORIZED USE OR DISCLOSURE.** Independent Contractor shall notify Client immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Independent Contractor or any third party and will cooperate with Client in every reasonable way to help regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

9. **OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION.** All Confidential Information disclosed to Independent Contractor shall be and remain the property of Client. Upon Client's written request, Independent Contractor shall promptly return all Confidential Information (including all originals, copies, reproductions and summaries of such Confidential Information), or certify its destruction in writing, and keep the same confidential and secret in accordance with this Agreement.

10. **NO LICENSE.** Nothing contained in this Agreement shall be construed as granting or conferring to Independent Contractor any rights or license or otherwise, either expressly or by implication, in or to any Confidential Information disclosed by Client to Independent Contractor as a result of this Agreement, including, without limitation, rights or license under any present or future patent, patent application, copyright, trademark, service mark, trade secret or other proprietary information owned, licensed or controlled by Client.



11. **SURVIVAL.** Independent Contractor's obligations of non-disclosure pursuant to the terms of this Agreement shall survive until all Confidential Information has been returned to Client or the destruction thereof has been certified to Client in writing.

12. **RELATIONSHIP.** This Agreement shall not be construed as a joint venture, pooling arrangement, partnership, teaming effort or agency arrangement but each party hereto shall be considered as an independent contractor, in accordance with Title 17, United States Code, Sections 101 and 201(b), and shall be responsible for its own expenses and financial obligations incurred in the performance of this Agreement. Furthermore, this Agreement does not express any ownership by the Independent Contractor in the Confidential Information or the final service or product that is created after the use of said information. All ownership interests, if any, are to be stated in a separate agreement.

13. **NO WAIVER.** Neither party waives any rights in invention or development lawfully possessed by it at the time of signing this Agreement. In addition, this Agreement does not imply any waiver of any rights or action under the patent, trademark, copyright, trade secret, unfair competition, fair trade or related laws. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

14. **BINDING AGREEMENT.** This Agreement shall be binding upon Independent Contractor and its subsidiaries, successors, assigns, legal representatives, and all corporations controlling Independent Contractor or controlled by Independent Contractor and shall inure to the benefit of Client and its subsidiaries, successors, assigns, legal representatives, and all corporations controlling Client or controlled by Client.

15. **INJUNCTIVE RELIEF.** Independent Contractor understands and agrees that any use or dissemination of Confidential Information in violation of this Agreement will cause Client irreparable harm, and that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information, and that Client may be left with no adequate remedy at law; therefore, Client shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Such remedies shall not be deemed to be the exclusive remedy for any breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

16. **PREVAILING PARTY.** If either party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses.

17. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico without regard to principles of conflict or choice of laws, and Independent Contractor consents to venue and jurisdiction in and by the state and federal courts in the jurisdiction of the Client.

18. **ASSIGNMENT.** This Agreement may not be assigned by Independent Contractor without the prior written consent of Client.

19. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relative to the protection of Confidential Information and supersedes all prior and collateral communications, reports, and understanding between the parties in respect thereto. No change,



modification, alteration or addition to any provision shall be binding unless it is in writing and signed by an authorized representative of both parties.

20. **SEVERABILITY.** If a court of competent jurisdiction makes a final determination that any provision of this Agreement (or any portion thereof) is invalid, illegal or unenforceable for any reason whatsoever, and all rights to appeal the determination have been exhausted or the period of time during which any appeal of the determination may be perfected has been exhausted, (i) the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Agreement shall be construed so as to give effect to the intent manifested by the provisions held invalid, illegal or unenforceable.

21. **HEADINGS.** The headings in this Agreement are for reference purposes only and shall not limit or otherwise affect the meaning of the provisions.

22. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts including signing a facsimile copy. Each counterpart shall be deemed an original and all counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the date first written above.

INDEPENDENT CONTRACTOR:

Independent Contractor's Signature _____ **Date:** _____

Print Name: _____

Company: _____

Title: _____

CLIENT:

Client's Signature _____ **Date:** _____

Print Name: _____

Company: InClime, Inc

Title: _____

