

PROFESSIONAL SERVICES AGREEMENT
For
Software Services to Support the Low to Moderate-Income Solar Pilot Program
and
Green Energy Program
Contract No. NAT22001-LMISOLAR_SOFTWARE

This Professional Services Agreement (“Agreement”) is entered into as of April 1, 2022, (Effective Date) and will end on April 1, 2025, by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Climate, Coastal and Energy, 100 W. Water Street, Suite 10B, Dover, DE 19904 (“Delaware”), and InClime, Inc. (the “Vendor”), with offices at 326 First Street, Suite #27, Annapolis, MD 21403.

WHEREAS, Delaware desires to obtain certain services to provide administrative oversight for renewable energy grant application submissions via an on-line portal, software to support a renewable energy application grant on-line portal, and administration and software to manage solar renewable energy credit (SREC) transfers to support the Low to Moderate-Income Solar Pilot Program and the Green Energy Program.

WHEREAS, Vendor desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and Vendor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and Vendor agree as follows:

1. Services.

- 1.1. Vendor shall perform for Delaware the services specified in the Appendices to this Agreement, attached hereto and made a part hereof.
- 1.2. Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); (b) the Scope of Services, attached hereto as Appendix A; and (c) approved budget for the services hereto as Appendix B. The aforementioned documents are specifically incorporated into this Agreement and made a part hereof.
- 1.3. Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Vendor shall be furnished, without the written

authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Vendor, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Vendor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

- 1.4. Vendor will not be required to make changes to its scope of work that result in Vendor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

2. Payment for Services and Expenses.

- 2.1. The term of the initial contract shall be from **April 1, 2022 through April 1, 2025. If the state finds the services desirous to continue, the Contract may be renewed for two (2) one (1) year periods through negotiation between the Vendor and Delaware.**
- 2.2. As a Service subscription license costs shall be incurred at the individual license level only as the individual license is utilized within a fully functioning solution. Subscription costs will not be applicable during periods of implementation and solution development prior to the State's full acceptance of a working solution. Additional subscription license requests above actual utilization may not exceed 5% of the total and are subject to Delaware budget and technical review.
- 2.3. Delaware will pay Vendor for the performance of services described in Appendix A, Statement of Work. The fee will be paid in accordance with the payment schedule attached hereto as part of Appendix B.
- 2.4. **Delaware's obligation to pay Vendor for the performance of services described in Appendix A, Statement of Work will not exceed the fixed fee amount of \$64,000 for contract years one through three. In contract years four and five, the Vendor has the option to negotiate an increase in price for the services rendered based on the Consumer Price Index.** It is expressly understood that the work defined in the appendices to this Agreement must be completed by Vendor and it shall be Vendor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to Vendor.
- 2.5. The State reserves the right to pay by Automated Clearing House (ACH), Purchase Card (P-Card), or check. Agencies that are part of the First State Financial (FSF) system are required to identify the contract number **NAT22001-LMISOLAR_SOFTWARE** on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state's financial reporting system.
- 2.6. The State of Delaware intends to maximize the use of the Purchase Card (P-Card) for payment for goods and services provided under contract. Vendors shall not charge additional fees for acceptance of this payment method and shall incorporate any costs

into their proposals. Additionally there shall be no minimum or maximum limits on any P-Card transaction under the contract.

- 2.7. Vendor shall submit monthly invoices to Delaware in sufficient detail to support the services provided during the previous month. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide Vendor a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle Vendor to charge interest on the overdue portion at the lower of 1.0% per month. All payments should be sent to the Vendor's identified address on record with the State of Delaware's Division of Accounting as identified in the completion of the electronic W-9.
- 2.8. Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Vendor. If an Appendix specifically provides for expense reimbursement, Vendor shall be reimbursed only for reasonable expenses incurred by Vendor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.
- 2.9. In accordance with the Internal Revenue Service regulations, the State of Delaware is generally exempt from federal excise tax for communications, certain fuels, sales by manufacturers and the tax on heavy trucks, trailers and tractors. More detail is included in IRS Publication 510 Excise Taxes located at <https://www.irs.gov/publications/p510> . Per IRS regulations, all exemption certificates must be specific to the vendor and the type of excise tax. If an exemption certificate is requested by a vendor, the Division of Accounting will work with the agency and vendor to complete the appropriate certificate. Such taxes shall not be included in prices quoted.
- 2.10. Delaware shall subtract from any payment made to Vendor all damages, costs and expenses caused by Vendor's negligence, resulting from or arising out of errors or omissions in Vendor's work products, which have not been previously paid to Vendor.
- 2.11. Invoices shall be submitted to:

3. Responsibilities of Vendor.

- 3.1. Vendor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Vendor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Vendor shall follow practices consistent with generally accepted professional and technical standards. Vendor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform to DTI standards, Vendor shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform to DTI standards. Vendor shall be and remain liable in accordance with the

terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's failure to ensure compliance with DTI standards.

- 3.2. It shall be the duty of the Vendor to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Vendor will not produce a work product that violates or infringes on any copyright or patent rights. Vendor shall, without additional compensation, correct or revise any errors or omissions in its work products.
- 3.3. Permitted or required approval by Delaware of any products or services furnished by Vendor shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of Vendor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Vendor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by Vendor's performance or failure to perform under this Agreement.
- 3.4. Vendor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Vendor's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

Project	Lead	Title	% of Project Involvement
LMI Solar Pilot Program,	Rachel Land,	InClimate, Inc. Project Manager	100%

- 3.5. Designation of persons for each position is subject to review and approval by Delaware. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Vendor will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by Delaware. If Vendor fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of Vendor is unsuitable to Delaware for good cause, Vendor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.
- 3.6. Vendor shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.
- 3.7. Vendor agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.
- 3.8. Vendor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.
- 3.9. Vendor will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10. The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1. A project schedule is included in Appendix B.

4.2. Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3. In the event that Vendor fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix A.

5. State Responsibilities.

5.1. In connection with Vendor's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2. Delaware agrees that its officers and employees will cooperate with Vendor in the performance of services under this Agreement and will be available for consultation with Vendor at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3. The services performed by Vendor under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members and shall so inform Vendor by written notice before the effective date of each such delegation.

5.4. The review comments of Delaware's designated representatives may be reported in writing as needed to Vendor. It is understood that Delaware's representatives' review comments do not relieve Vendor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5. Delaware shall, without charge, furnish to or make available for examination or use by Vendor as it may request, any data which Delaware has available, including as examples only and not as a limitation:

a. Copies of reports, surveys, records, and other pertinent documents;

b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other documents, and information related to the services specified by this Agreement.

Vendor shall return any original data provided by Delaware.

- 5.6. Delaware shall assist Vendor in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.
- 5.7. Vendor will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.
- 5.8. Delaware agrees not to use Vendor's name, either express or implied, in any of its advertising or sales materials. Vendor reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

- 6.1. All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Vendor for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. Vendor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.
- 6.2. Vendor retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy, modify and prepare derivative works of all materials in which Vendor retains title, whether individually by Vendor or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.
- 6.3. In no event shall Vendor be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, Vendor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.
- 6.4. Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by Vendor prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of Vendor even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled, or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1. Vendor warrants that its services will be performed in a good and workmanlike manner. Vendor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2. Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Vendor for Delaware in connection with the provision of the Services, Vendor shall pass through or assign to Delaware the rights Vendor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1. Vendor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:

- a. the negligence or other wrongful conduct of the Vendor, its agents or employees, or
- b. Vendor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided Vendor shall have been notified promptly in writing by Delaware of any notice of such claim.

9.2. The State shall indemnify and hold harmless the Vendor, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of:

- c. the negligence or other wrongful conduct of the State, its agents or employees, or
- d. The State's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided Vendor shall have been notified promptly in writing by Delaware of any notice of such claim.

9.3. If Delaware promptly notifies Vendor in writing of a third-party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, Vendor will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. Vendor will not indemnify Delaware, however, if the claim of infringement is caused by:

- a. Delaware's misuse or modification of the Deliverable;

- b. Delaware's failure to use corrections or enhancements made available by Vendor;
- c. Delaware's use of the Deliverable in combination with any product or information not owned or developed by Vendor;
- d. Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or
- e. Information, direction, specification, or materials provided by Client or any third party. If any Deliverable is, or in Vendor's opinion is likely to be, held to be infringing, Vendor shall at its expense and option either
 - i. Procure the right for Delaware to continue using it,
 - ii. Replace it with a non-infringing equivalent,
 - iii. Modify it to make it non-infringing.

The foregoing remedies constitute Delaware's sole and exclusive remedies and Vendor's entire liability with respect to infringement.

10. Employees.

10.1. Vendor has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons employed by Vendor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2. Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section, Personnel includes any individual or company a party employs as a partner, employee, or independent contractor and with which a party comes into direct contact in the course of the services.

10.3. Possession of a Security Clearance, as issued by the Delaware Department of Safety and Homeland Security, may be required of any employee of Vendor who will be assigned to this project.

11. Independent Contractor.

11.1. It is understood that in the performance of the services herein provided for, Vendor shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. Vendor shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2. Vendor acknowledges that Vendor and any subcontractors, agents or employees employed by Vendor shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3. Vendor shall be responsible for providing liability insurance for its personnel.

11.4. As an independent contractor, Vendor has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Dispute Resolution.

12.1. At the option of the parties, they shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided evidence that is otherwise admissible or discoverable shall not be rendered inadmissible.

12.2. If the matter is not resolved by negotiation, as outlined above, or, alternatively, the parties elect to proceed directly to mediation, then the matter will proceed to mediation as set forth below. Any disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to a mediator selected by the parties. If the matter is not resolved through mediation, it may be submitted for arbitration or litigation. The Agency and Vendor reserves the right to proceed directly to arbitration or litigation without negotiation or mediation. Any such proceedings held pursuant to this provision shall be governed by State of Delaware law, and jurisdiction and venue shall be in the State of Delaware. Each party shall bear its own costs of mediation, arbitration, or litigation, including attorneys' fees.

13. Remedies

13.1. Except as otherwise provided in this Agreement, including but not limited to Section 12 above, all claims, counterclaims, disputes, and other matters in question between the State of Delaware and the Contractor arising out of, or relating to, this Agreement, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

14. Suspension

14.1. Delaware may suspend performance by Vendor under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to Vendor at least 30 working days prior to the date on which Delaware wishes to suspend.

Upon such suspension, Delaware shall pay Vendor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Vendor shall not perform further work under this Agreement after the effective date of suspension. Vendor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

14.2. In the event Delaware suspends performance by Vendor for any cause other than the error or omission of the Vendor, for an aggregate period in excess of 30 days, Vendor shall be entitled to an equitable adjustment of the compensation payable to Vendor under this Agreement to reimburse Vendor for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

15. Termination.

15.1. This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 20 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

15.2. This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after Vendor is given:

- a. Not less than 20 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

15.3. If termination for default is affected by Delaware, Delaware will pay Vendor that portion of the compensation which has been earned as of the effective date of termination, but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Vendor at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of Vendor's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Vendor shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of Vendor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

15.4. If after termination for failure of Vendor to fulfill contractual obligations it is determined that Vendor has not so failed, the termination shall be deemed to have been affected for the convenience of Delaware.

15.5. The rights and remedies of Delaware and Vendor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

15.6. Gratuities.

- a. Delaware may, by written notice to Vendor, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Vendor or any agent or representative of Vendor to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.
- b. In the event this Agreement is terminated as provided in 14.6.a hereof, Delaware shall be entitled to pursue the same remedies against Vendor it could pursue in the event of a breach of this Agreement by Vendor.
- c. The rights and remedies of Delaware provided in Section 14.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

16. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

17. Assignment; Subcontracts.

17.1. Any attempt by Vendor to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

17.2. Services specified by this Agreement shall not be subcontracted by Vendor, without prior written approval of Delaware.

17.3. Approval by Delaware of Vendor's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

17.4. Vendor shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by Vendor, its subcontractor or its sub-subcontractor.

17.5. The compensation due shall not be affected by Delaware's approval of the Vendor's request to subcontract.

18. Force Majeure; Applicability.

Neither the Recipient nor the Government shall be held liable for non-performance under the terms and conditions of this Agreement due, but not limited to:

- a. Acts of God; labor disturbances; accidents; failure of a governmental entity to issue a permit or approval required for performance when the Contractor has filed proper and timely application with the appropriate government entity; civil disorders; acts of aggression; changes in any law or regulation adopted or issued by a governmental entity after the date of this Agreement; a court order; explosions; failure of utilities; material shortages;
- b. Diseases, plagues, quarantine, epidemics or pandemics;
- c. Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics; or
- d. The State's need to occupy, utilize, or repurpose an active or prospective work area due to diseases, plagues, quarantine, epidemics, pandemics, work or travel restrictions, and the need to control, mitigate, or reduce transmission of diseases, plagues, epidemics, or pandemics.

Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract within 2 business days of the party's knowledge of significant non-performance risk.

Notwithstanding the content of subparagraphs (a) through (d) of this paragraph, Recipient agrees that any event giving rise to *Force Majeure* as defined herein shall not relieve the Recipient of the obligation to perform and carry out any of the Mandatory Terms and Conditions set forth in this document.

19. Non-Appropriation of Funds.

19.1. Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

19.2. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

20. State of Delaware Business License.

Vendor and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2502.

21. Complete Agreement.

- 21.1. This agreement and its Appendices shall constitute the entire agreement between Delaware and Vendor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.
- 21.2. If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.
- 21.3. Vendor may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

22. Miscellaneous Provisions.

- 22.1. In performance of this Agreement, Vendor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Vendor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.
- 22.2. Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.
- 22.3. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 22.4. Vendor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Vendor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.
- 22.5. Vendor acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. Vendor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may

declare Vendor in breach of the Agreement, terminate the Agreement, and designate Vendor as non-responsible.

22.6. Vendor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

22.7. This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

22.8. Vendor shall maintain all public records, as defined by 29 *Del. C.* § 502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit Vendor' performance and records pertaining to this Agreement at the Vendor business office during normal business hours.

22.9. The State reserves the right to advertise a supplemental solicitation during the term of the Agreement if deemed in the best interest of the State.

22.10. Awarded Vendor(s) who have any employees carrying out any work related to the awarded contract at a State facility shall have those employees comply with any health mandate or policy issued by the State related to a pandemic or other State of Emergency issued by any State authority during the term of the awarded contract, including those that apply directly to State employees. At the present time these include, but not limited to, wearing a mask in all State buildings and the policy for State employees regarding vaccination. The vaccination policy is located at <https://dhr.delaware.gov/policies/documents/covid19-vaccination-and-test-policy.pdf> . For clarity, State buildings are those owned or leased by the State.

23. Insurance.

As a part of the contract requirements, the contractor must obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors must carry the following coverage depending on the type of service or product being delivered.

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate.
- c. Automotive Liability Insurance covering all automotive units used in the work (including all units leased from and/or provided by the State to Vendor pursuant to this Agreement as well as all units used by Vendor, regardless of the identity of the registered owner, used by Vendor for completing the Work required by this Agreement

to include but not limited to transporting Delaware clients or staff), providing coverage on a primary non-contributory basis with limits of not less than:

1. \$1,000,000 combined single limit each accident, for bodily injury;
2. \$250,000 for property damage to others;
3. \$25,000 per person per accident Uninsured/Underinsured Motorists coverage;
4. \$25,000 per person, \$300,000 per accident Personal Injury Protection (PIP) benefits as provided for in 21 *Del. C.* § 2118; and
5. Comprehensive coverage for all leased vehicles, which shall cover the replacement cost of the vehicle in the event of collision, damage or other loss.

The successful vendor must carry at least one of the following depending on the scope of work being performed.

- a. Medical/Professional Liability - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- b. Miscellaneous Errors and Omissions - \$1,000,000 per occurrence/\$3,000,000 per aggregate
- c. Product Liability - \$1,000,000 per occurrence/\$3,000,000 aggregate

Should any of the above-described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Department of Natural Resources and Environmental Control
Contract No: NAT22001-LMISOLAR_SOFTWARE
State of Delaware
100 W. Water Street, Suite 10B
Dover, DE 19904

Nothing contained herein shall restrict or limit the Vendor's right to procure insurance coverage in amounts higher than those required by this Agreement. To the extent that the Vendor procures insurance coverage in amounts higher than the amounts required by this Agreement, all said additionally procured coverages will be applicable to any loss or claim and shall replace the insurance obligations contained herein.

To the extent that Vendor has complied with the terms of this Agreement and has procured insurance coverage for all vehicles Leased and/or operated by Vendor as part of this Agreement, the State of Delaware's self-insured insurance program shall not provide any coverage whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

In no event shall the State of Delaware be named as an additional insured on any policy required under this agreement.

24. Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

25. Performance Bond

There is no Performance Bond requirement.

26. Assignment of Antitrust Claims.

As consideration for the award and execution of this contract by the State, the Vendor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, regarding the specific goods or services purchased or acquired for the State pursuant to this contract. Upon either the State's or the Vendor notice of the filing of or reasonable likelihood of filing of an action under the antitrust laws of the United States or the State of Delaware, the State and Vendor shall meet and confer about coordination of representation in such action.

27. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. Vendor consents to jurisdiction venue in the State of Delaware.

28. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

DELAWARE:

Department of Natural Resources and Environmental Control, Division of Climate, Coastal and Energy
100 W. Water Street, Suite 10B
Dover, DE 19904

VENDOR:

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

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF Natural Resources
and Environmental Control**

Eric D. Dawson

Shawn M. Garvin
Name

Department Secretary

Title

4/22/2022

Date

Witness

J. T. Sapp

VENDOR

InClimate, Incorporated

Kevin Quilliam

Kevin Quilliam
Name

Chief Executive Officer

Title

18 April 2022

Date

Witness

Risa C. Washworth

Appendix A

Scope of Services

Software Changes & Deliverables

- Changes to the InClima landing webpage to include an information area about LMI Solar.
- Changes to the Green Energy application (minor)
- Updating the site to account for program or incentive changes
- LMI
 - Establishing a restricted grant application site for LMI applications that is only available to the approved select contractors and staff
 - Assign a role to approved contractors to control access to application submission
 - Modify the GEP solar grant application for LMI Solar specifics
 - Copy the GEP application and add some tracking fields on the LMI Solar application, as identified by DNREC staff
 - Moderate-income verification by using the area median income for each county
 - Administer the process of verifying moderate-income applications using the IRS 4506T process
 - DNREC staff will provide the links to the area median income for each county
- Provide DNREC with access to historic Green Energy files/client documents
- Make changes to the current Green Energy reporting software
- Develop the software and processes for managing the Solar Renewable Energy Credits (SREC) transfers
 - Assist DNREC with reducing the lengthy SREC agreement paperwork
- Remove current access for non-DNREC entities (DESEU, Franklin Energy, etc.)

Services

- Provide program support services to DNREC by maintaining the existing online grant application website using proprietary software that will serve both the Green Energy and LMI Programs
 - All software developed to operate and maintain the webpage will remain the sole property of InClima
 - Green Energy Program
 - Solar, Geothermal, Wind, Solar Hot Water applications
 - ❖ Residential, commercial, and nonprofit incentives
 - Data collection
 - For all solar applications including LMI
 - ❖ Online website changes, as identified by DNREC staff, to support the SREC buy program
 - ❖ Incorporate minor changes to the online website as program may incur changes
- Delivery of reports to DNREC will include:
 - GEP monthly reporting
 - LMI Solar monthly reports
- InClima will provide customer service via email and phone to clients
 - Provide an initial review of newly submitted applications before sending to DNREC staff for review
 - Provide outreach services to assist clients with application issues

- Provide manual corrections to applications per client or DNREC staff request
- Transfer detailed clients' questions about the LMI Solar Pilot Program to DNREC
- Compile client concerns/complaints into a database that has the date of complaint, client name, address of the solar installation, and the concern description
- InClime must remain in compliance with the Delaware Department of Technology and Information requirements.

APPENDIX B



326 First Street, Suite 27
Annapolis, MD 21403
www.inclimesolutions.com | (410) 231-3996

Original: 04/05/2022

Revised: 04/11/2022

**Proposal for Delaware Department of Natural Resources and Environmental Control
(DNREC) Green Energy & LMI Program**

Firm Information

Name of Firm: InClime, Inc.

Mailing address: 326 First Street, Suite 27, Annapolis, MD 21403

Federal Identification Number: 46-4444244

Website: InClime – Innovative Climate Solutions (inclimesolutions.com)

Authorized Negotiator: Michael MacMillan

E-mail address: mike.macmillan@inclimesolutions.com

Telephone number: 410-231-3996 ext 525 or 252 202 9128 (m)

Mike MacMillan

Michael MacMillan

Chief of Staff



326 First Street, Suite 27
Annapolis, MD 21403
www.inclimesolutions.com | (+1) 231-3996

Section 1:

InClime, Inc. Project Manager: Rachel Land, Rachel.land@inclimesolution.com

Section 2: Cost Proposal **Accepted**

InClime, Inc is submitting this cost proposal in response to the Scope of Services for Software Services to Support the Low to Moderate-Income Solar Pilot Program for **Contract No. NAT22001-LMISOLAR_SOFTWARE**.

One Time Up-Front Costs

Startup costs for software and web development - \$2,500 at the time of contract execution (Invoice to be supplied by InClime).

Annual Application Servicing and Maintenance Fees

\$64K annual fee for contract years 1-3.

This fee is paid quarterly (\$16,000 each quarter) prior to services rendered (prepaid).

Moderate Income Verification Review via 4506T:

\$40 per 4506T

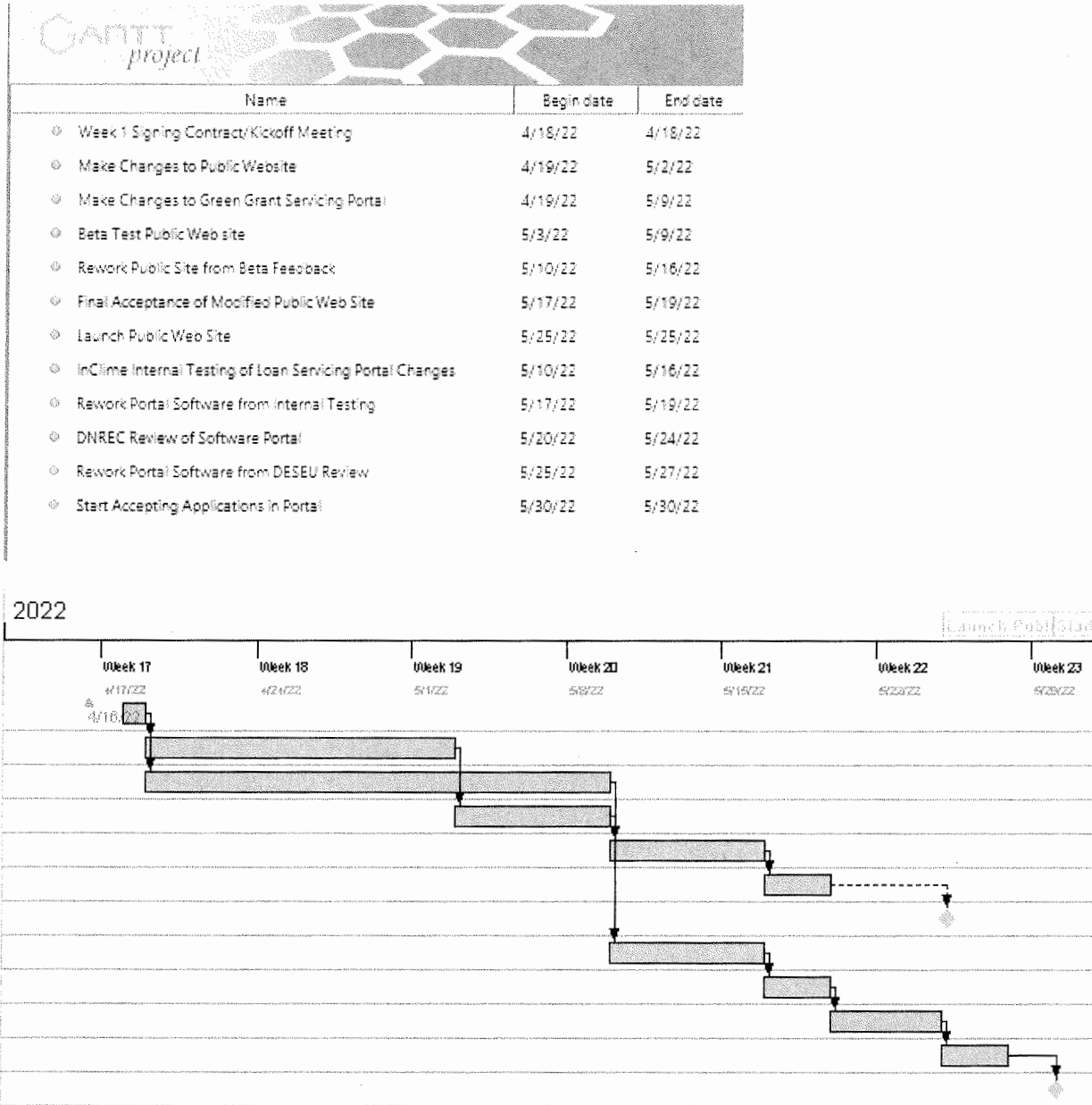
Income Verification Reviews completed each quarter will be invoiced with the prepaid Annual Fees invoiced for the following quarter.



326 First Street, Suite 27
 Annapolis, MD 21403
 www.inclimesolutions.com | (410) 231-3996

Section 3: Project Plan & Schedule

InClime’s project plan and schedule are below representing a June 1st, 2022 launch of the program.





DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU1	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Data Ownership	The State of Delaware shall own all right, title and interest in its data that is related to the services provided by this contract. The PROVIDER shall not access State of Delaware user accounts, or State of Delaware data, except (i) in the course of data center operations, (ii) response to service or technical issues, (iii) as required by the express terms of this contract, or (iv) at State of Delaware’s written request. All information obtained or generated by the PROVIDER under this contract shall become and remain property of the State of Delaware.
DU2	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Data Usage	<p>PROVIDER shall comply with the following conditions. At no time will any information, belonging to or intended for the State of Delaware, be copied, disclosed, or retained by PROVIDER or any party related to PROVIDER for subsequent use in any transaction. The PROVIDER will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum necessary to accomplish the intended purpose under this agreement. PROVIDER may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service. Protection of Personally Identifiable Information (PII, as defined in the State’s <i>Terms & Conditions Governing Cloud Services</i> policy), privacy, and sensitive data shall be an integral part of the business activities of the PROVIDER to ensure that there is no inappropriate or unauthorized use of State of Delaware information at any time. The PROVIDER shall safeguard the confidentiality, integrity, and availability of State information.</p> <p>Only duly authorized PROVIDER staff will have access to the State of Delaware data and may be required to obtain security clearance from the State. No party related to the PROVIDER may retain any data for subsequent use in any transaction that has not been expressly authorized by the State of Delaware.</p>



DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU3	✓	✓	Termination and Suspension of Service	<p>In the event of termination of the contract, the PROVIDER shall implement an orderly return (in CSV or XML or another mutually agreeable format), or shall guarantee secure disposal of State of Delaware data.</p> <p><i>Suspension of services:</i> During any period of suspension or contract negotiation or disputes, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data.</p> <p><i>Termination of any services or agreement in entirety:</i> In the event of termination of any services or agreement in entirety, the PROVIDER shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State of Delaware data for a period of 90 days after the effective date of the termination. Within this 90-day timeframe, vendor will continue to secure and back up State of Delaware data covered under the contract. After such 90-day period, the PROVIDER shall have no obligation to maintain or provide any State of Delaware data. Thereafter, unless legally prohibited, the PROVIDER shall dispose securely of all State of Delaware data in its systems or otherwise in its possession or control, as specified herein.</p> <p>Post-Termination Assistance: The State of Delaware shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval arrangement has been established as part of the Service Level Agreement.</p>
DU4		✓	Data Disposition	<p>At the end of this engagement, PROVIDER will account for and return all State data in all of its forms, disk, CD / DVD, tape, paper, for example. At no time shall any data or processes that either belong to or are intended for the use of State of Delaware or its officers, agents, or employees, be copied, disclosed, or retained by the PROVIDER.</p> <p>When required by the State of Delaware, the PROVIDER shall destroy all requested data in all of its forms (e.g., disk, CD/DVD, backup tape, paper). Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) approved methods. The PROVIDER shall provide written certificates of destruction to the State of Delaware.</p>



DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU5		✓	Data Location	The PROVIDER shall not store, process, or transfer any non-public State of Delaware data outside of the United States, including for back-up and disaster recovery purposes. The PROVIDER will permit its personnel and subcontractors to access State of Delaware data remotely only as required to provide technical or call center support.
DU6		✓	Breach Notification and Recovery	The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (<i>see DU7, below</i>), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's <i>Terms and Conditions Governing Cloud Services</i> policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless.



DELAWARE DATA USAGE TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

Contract/Agreement #/name _____, Appendix _____

between State of Delaware and _____ dated _____

	Public Data	Non Public Data		DATA USAGE (DU) TERMS
DU7		<input checked="" type="checkbox"/>	Data Encryption	The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The PROVIDER's encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware's standard in accordance with the <i>Terms and Conditions Governing Cloud Services</i> policy.

The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions [check one]:

FOR OFFICIAL USE ONLY **DU 1 - DU 3 (Public Data Only)** OR **DU 1 - DU 7 (Non-public Data)**

PROVIDER Name/Address (print): InClime, Inc.

326 First Street, STE 27

Annapolis, MD 21403

PROVIDER Authorizing Official Name (print): Kevin Quilliam

PROVIDER Authorizing Official Signature:  Date: 16 Feb 2022



DELAWARE CLOUD SERVICES TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

XaaS Contract # _____, Appendix _____
 between State of Delaware and _____ dated _____

	Public Data	Non Public Data	Cloud Services (CS) Terms
			<p>PROVIDER must satisfy Clause CS1-A OR Clauses CS1-B and CS1-C, AND Clause CS4 for all engagements involving non-public data.</p> <p>Clause CS2 is mandatory for all engagements involving non-public data.</p> <p>Clause CS3 is only mandatory for SaaS or PaaS engagements involving non-public data.</p>
CS1-A		✓	<p>Security Standard Compliance Certifications: The PROVIDER shall meet, and provide proof of, one or more of the following Security Certifications.</p> <ul style="list-style-type: none"> • CSA STAR – Cloud Security Alliance – Security, Trust & Assurance Registry (Level Two or higher) • FedRAMP - Federal Risk and Authorization Management Program
CS1-B		✓	<p>Background Checks: The PROVIDER must warrant that they will only assign employees and subcontractors who have passed a state-approved criminal background checks. The background checks must demonstrate that staff, including subcontractors, utilized to fulfill the obligations of the contract, have no convictions, pending criminal charges, or civil suits related to any crime of dishonesty. This includes but is not limited to criminal fraud, or any conviction for any felony or misdemeanor offense for which incarceration for a minimum of 1 year is an authorized penalty. The PROVIDER shall promote and maintain an awareness of the importance of securing the State's information among the Service Provider's employees and agents. Failure to obtain and maintain all required criminal history may be deemed a material breach of the contract and grounds for immediate termination and denial of further work with the State of Delaware.</p>
CS1-C		✓	<p>Sub-contractor Flowdown: The PROVIDER shall be responsible for ensuring its subcontractors' compliance with the security requirements stated herein.</p>
CS2		✓	<p>Breach Notification and Recovery: The PROVIDER must notify the State of Delaware immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Delaware data. If data is not encrypted (see CS3, below), Delaware Code (6 Del. C. §12B-100 et seq.) requires public breach notification of any incident resulting in the loss or unauthorized disclosure of Delawareans' Personally Identifiable Information (PII, as defined in Delaware's <i>Terms and Conditions Governing Cloud Services</i> policy) by PROVIDER or its subcontractors. The PROVIDER will provide notification to persons whose information was breached without unreasonable delay but not later than 60 days after determination of the breach, except 1) when a shorter time is required under federal law; 2) when law enforcement requests a delay; 3) reasonable diligence did not identify certain residents, in which case notice will be delivered as soon as practicable. All such communication shall be coordinated with the State of Delaware. Should the PROVIDER or its contractors be liable for the breach, the PROVIDER shall bear all costs associated with investigation, response, and recovery from the breach. This includes, but is not limited to, credit monitoring services with a term of at least three (3) years, mailing costs, website, and toll-free telephone call center services. The State of Delaware shall not agree to any limitation on liability that relieves the PROVIDER or its subcontractors from its own negligence, or to the extent that it creates an obligation on the part of the State to hold a PROVIDER harmless.</p>



DELAWARE CLOUD SERVICES TERMS AND CONDITIONS AGREEMENT

PUBLIC AND NON-PUBLIC DATA OWNED BY THE STATE OF DELAWARE

XaaS Contract # _____, Appendix _____
 between State of Delaware and _____ dated _____

	Public Data	Non Public Data	Cloud Services (CS) Terms
			PROVIDER must satisfy Clause CS1-A OR Clauses CS1-B and CS1-C, AND Clause CS4 for all engagements involving non-public data. Clause CS2 is mandatory for all engagements involving non-public data. Clause CS3 is only mandatory for SaaS or PaaS engagements involving non-public data.
CS3		✓	Data Encryption: The PROVIDER shall encrypt all non-public data in transit, regardless of transit mechanism. For engagements where the PROVIDER stores Personally Identifiable Information (PII) or other sensitive, confidential information, it shall encrypt this non-public data at rest. The PROVIDER’s encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS140-2 and subsequent security requirements guidelines. The PROVIDER and State of Delaware will negotiate mutually acceptable key location and key management details. Should the PROVIDER not be able to provide encryption at rest, it must maintain cyber security liability insurance coverage for the duration of the contract. Coverage must meet the State of Delaware’s standard in accordance with the <i>Terms and Conditions Governing Cloud Services</i> policy.
CS4	✓	✓	Notification of Legal Requests: The PROVIDER shall contact the State of Delaware upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of the State. With regard to State of Delaware data and processes, the PROVIDER shall not respond to subpoenas, service of process, and other legal requests without first notifying the State unless prohibited by law from providing such notice.

The terms of this Agreement shall be incorporated into the aforementioned contract. Any conflict between this Agreement and the aforementioned contract shall be resolved by giving priority to this Agreement. By signing this Agreement, the PROVIDER agrees to abide by the following applicable Terms and Conditions :

FOR OFFICIAL **CS4 (Public Data)**
 USE ONLY **CS1-A and CS4 (Non-Public Data) OR** **CS1-B and CS1-C and CS4 (Non-Public Data)**
 CS2 (Non-public Data) **CS3 (SaaS, PaaS – Non-public Data)**

PROVIDER Name/Address (print): InClime, Inc.
326 First Street, STE 27
Annapolis, MD 21403

PROVIDER Authorizing Official Name (print): Kevin Quilliam

PROVIDER Authorizing Official Signature: Date: 16 Feb 2022

From: [State of Delaware IT Support Center](#)
To: [Kanich, Paul \(DTI\)](#); [Dirksen, Christina \(DTI\)](#); [DTI_BCDR_Team](#); [Gause, Colleen F \(DTI\)](#); [Wingert, Stephanie \(DTI\)](#); [Gmuer, Cheryl L. \(DNREC\)](#); [McConnell, Michael \(OMB\)](#); [Veenema, Ray \(DTI\)](#); [Cassell-Carter, Carla M. \(OMB\)](#)
Subject: Business Case BC0002142 has been approved.
Date: Monday, February 28, 2022 7:38:26 AM

Date:02/28/2022

Hello,

Business Case BC0002142 DNREC Solar Grant and Credits Program submitted by Colleen Gause for DNREC-Office of Environmental Protection-Climate, Coastal, and Energy on 02/17/2022 08:41:35 EST has been approved by the DTI Governance Review Board.

Governance Board Comments:

Approved.

To be considered to use state Identity and access management to integrate with the cloud solution.

Ensure vendor is presented with the Cloud Terms and Conditions and Data Usage Agreement prior to contracting. Authentication should be through my.delaware.gov

A project will be created within the State's Project Portfolio System (PPS). Additional approval requests within the project lifecycle may be required as the project progresses.

You may directly access the Business Case by clicking on the button below.

If you have any issues accessing the site please reach out to the [DTI Service Desk](#)

[Unsubscribe](#) | [Notification Preferences](#)

Ref:MSG12838664



STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF CLIMATE, COASTAL AND ENERGY

STATE STREET COMMONS

100 W. WATER STREET, SUITE 10B

DOVER, DELAWARE 19904

ENERGY POLICY &
PROGRAMS

PHONE
(302) 735-3480

MEMORANDUM

TO: Shawn M. Garvin, Secretary

THROUGH: Dayna Cobb, Director

FROM: Robert Underwood, Energy Administrator

DATE: February 21, 2022

SUBJECT: Request for a Sole Source Contract for the Low- to Moderate-Income Solar Program Software Provider

DNREC is launching a two-year pilot for a Low- to Moderate-Income Solar (LMI) Program in the spring of 2022 that will bring renewable energy to a segment of the Delaware population that has historically been underserved by existing state programs and incentives. The goal of this program is to reduce electricity bills for income-eligible households by using Green Energy Program funds to improve equitable access to solar energy in Delaware.

In addition to this new program, the Renewable Energy Taskforce recently approved a new Solar Renewable Energy Credit (SREC) handling and payment process that requires a software solution to implement. The new process will impact solar installations that receive state grant funding. InClime is a software provider that currently manages solar energy application portals in five states and has 10 years of experience in managing the Delmarva Power SREC auctions in Delaware. This vendor has a unique combination of the exact capabilities that DNREC needs to launch the LMI Program and manage the SREC transfers to Delmarva Power.

InClime's grant and SREC management portal software and administrative support is currently used in five states. The software has been developed to process solar applications that are customized to each state's needs, including Delaware. The administrative services they provide includes an administrative review of each application and direct interaction with clients to complete applications and obtain missing or corrected documentation, as requested by program technical staff. Their software is "off-the-shelf" ready and user-tested in Delaware and the other states they service. The use of this unique software will significantly reduce the time and cost



326 First Street, Suite 27
 Annapolis, MD 21403
 www.inclimesolutions.com | (410) 231-3996

Section 4: Current Liability Insurance Certificate

		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 04/01/2022			
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.							
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).							
PRODUCER Captol Benefits, LLC 354 Main Street 2nd Floor Gaithersburg MD 20878			CONTACT NAME: Monica Venor PHONE (A/C, H, EXT): (301) 431-0000 FAX (A/C, EXT): (240) 465-0553 E-MAIL ADDRESS: mvenor@captolbenefits.com				
INSURED InClime, Inc. 326 First St Ste 34 Annapolis MD 21403			INSURER(S) AFFORDING COVERAGE		NAIC #		
			INSURER A: HARTFORD - SENTINEL INS		11000		
			INSURER B: HARTFORD		914		
			INSURER C: Evanston Insurance Company		35378		
			INSURER D: Hiscox Insurance Company		10200		
			INSURER E:				
			INSURER F:				
COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR. CLS.	TYPE OF INSURANCE	ADD. INSD.	SUBR. INSD.	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL. AGGREGATE LIMIT APPLIES PER POLICY <input checked="" type="checkbox"/> PRO. RED. <input type="checkbox"/> LOC. OTHER	Y	Y	42SBMRV0129	05/01/2021	05/01/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED. EXP. (Any one person) \$ 10,000 PERSONAL & ADV. INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMMOD. PROD. \$ 4,000,000
A	AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRE AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/>	Y	Y	42SBMRV0129	05/01/2021	05/01/2023	COMBINED SINGLE LIMIT (Per person) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB. EXCESS LIAB. <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DED. <input type="checkbox"/> RETENTIONS 10,000	Y	Y	42SBMRV0129	05/01/2021	05/01/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under PERSONAL USE OF OPERATIONS below	N/A	Y	42WECCQ6994	05/01/2021	05/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liability		Y	MKLV7ENV102698	05/18/2021	05/18/2022	Each Claim \$5,000,000 Aggregate \$5,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Contract No: NAT22001-LMISOLAR_SOFTWARE Department of Natural Resources and Environmental Control and the State of Delaware are listed as Additional Insured and certificate holder. Policies contain 30-day advance notice of cancellation.							
CERTIFICATE HOLDER Department of Natural Resources and Environmental Control Contract No: NAT22001-LMISOLAR_SOFTWARE State of Delaware 100 W. Water Street, Suite 10B Dover DE 19204			CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 				

ACORD 25 (2016/03)

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