This **Data-sharing Agreement (DSA)** is by and between the [NAME OF GRANT RECIPIENT] (the Tribe), California Energy Commission (CEC), and Governor’s Office of Planning and Research (OPR), effective upon signature by all parties and continuing thereafter until terminated by one or all of the parties. This DSA may be amended if agreed upon by all parties in writing.

1. **PUBLICLY AVAILABLE PRODUCTS**

The Tribe agrees to share the Products and information submitted in Products as described in the Scope of Work (Attachment 4). Products are any tangible items specified for delivery to the CEC in the Scope of Work, such as reports, data, summaries, etc. Products do not include any item that is not specifically specified for delivery in the Scope of Work. Ownership of Products will vest in CEC pursuant to section 5.a of the Terms and Conditions (Attachment 11).

If a Public Records Act (Gov. Code, § 7920.00 et seq.) request is submitted to CEC or OPR for Products or information in Products, CEC and OPR are only able to keep the requested Product or information confidential if there is a legal basis for confidentiality. Because of this, it is strongly recommended that applicants only include confidential information as part of a Product if it is imperative for the project. For purposes of this agreement, “imperative for the project” means information that, if not included, would frustrate the purposes of the program or the proposed awardee’s ability to comply with requirements of the award agreement. Applicants are instead encouraged to find solutions so that Products can be delivered without confidential information. Solutions include, but are not limited to, aggregating data, allowing CEC or OPR staff to view information but not retain it, redacting sensitive information, or summarizing sensitive information so that it is no longer sensitive.

The following Product(s) in the Scope of Work do not contain confidential information and are subject to disclosure if the CEC or OPR receives a Public Records Act request for the Product(s):

* [TO BE ADDED LATER IF APPLICANT IS AWARDED A GRANT]
1. **PROCESS FOR TREATING PRODUCTS SUBMITTED TO THE CEC AS CONFIDENTIAL**

Grant applications shall not contain any confidential or sensitive information, and a grant application may be rejected if any confidential information is included in the application.

Grant applicants shall not include confidential information as part of a Product unless it is imperative for the project. If a grant application is proposed for award, CEC staff will contact the proposed awardee to ensure any Products that contain confidential information are imperative for the project.

If a proposed awardee and CEC staff agree that confidential information is imperative for a project, CEC staff shall consult with the CEC Chief Counsel and Executive Director to verify the information has a legal basis for confidentiality, which shall also be confirmed with the OPR Chief Counsel. If there is a legal basis for confidentiality, CEC staff shall list all confidential Products in Section III below, and confirm the list with the proposed awardee.

1. **CONFIDENTIAL PRODUCTS**

The following Product(s) in the Scope of Work contain confidential information deemed imperative to the project and are not subject to disclosure if the CEC or OPR receives a Public Records Act request for the Product(s):

* [TO BE ADDED LATER BY CEC STAFF IF APPLICANT IS AWARDED A GRANT, CONFIDENTIAL INFORMATION IS DEEMED IMPERATIVE TO THE PROJECT, AND CONFIDENTIAL INFORMATION IS SUBMITTED THROUGH THE CONFIDENTIAL DESIGNATION PROCESS IN SECTION II]

Product(s) that contain confidential information under this Section III shall be labeled by the Tribe as described in Section V.9 below, and the CEC and OPR shall protect the confidential information as described in Section V.6 below.

Any information not listed in this Section III or labeled as confidential as described in Section V.9 below, that otherwise has a legal basis for confidentiality, shall be treated as confidential as though it were properly listed and labeled upon prompt notice to the CEC and confirmation by the CEC Chief Counsel and Executive Director, and the OPR Chief Counsel.

1. **INADVERTENT DISCLOSURE**

The CEC and OPR shall use best efforts to ensure that no disclosure of or unauthorized access to confidential information under Section III occurs to the extent permitted by law, including through an appeal to the highest court. If the CEC or OPR discovers that it made an inadvertent disclosure of confidential information under Section III, the disclosing party shall inform the [TRIBE CONTACT] by [preferred means of contact] within 24 hours of discovery to meet its notice obligations under this paragraph.

If the Tribe discovers that it inadvertently submitted confidential information that is not confidential information under Section III, the Tribe shall contact the assigned Commission Agreement Manager for [GRANT AGREEMENT]. The CEC and OPR shall immediately destroy the confidential information that was inadvertently submitted.

1. **THE PARTIES FURTHER AGREE AS FOLLOWS:**
2. This DSA is limited to the information submitted in Products as described in the Scope of Work. This DSA does not prohibit sharing additional information that falls outside the scope of this DSA.
3. The CEC may share all Products with OPR and CEC and OPR may use them to inform the regional and topical reports of California’s Fifth Climate Assessment (“Fifth Assessment”). Any confidential information under Section III above may be shared between CEC and OPR but shall otherwise be kept confidential, subject to applicable law.
4. The CEC and OPR make no claim of ownership, license, or any other interest to underlying data, intellectual property, indigenous knowledge (including any religious, spiritual, medicinal, and cultural practices that are linked to a specific geographical location or Sacred Site), or other information not specified for delivery to the CEC in the Scope of Work.
5. Confidential information under Section III shall be viewed only by authorized CEC and OPR employees, representatives, or consultants requiring the information to inform the applicable regional and topical reports of the Fifth Assessment.
6. Confidential information under Section III shall be shared in a manner consistent with Government Code, § 7921.505, subdivision (c)(5), and, to the extent permitted by law, is confidential and indefinitely exempt from public disclosure pursuant to one or more of the following non-exhaustive list of California state statutes: Government Code, §§ 7927.705, 7927.005, 7927.000, 7927.605, 7930.205, 5097.9, 5097.993, Public Resources Code, § 21082.3, subd. (c), Evid. Code, §§ 1040 and 1060, Civil Code, §§ 3426.7, 1798 et seq. Similar Federal legal authorities for keeping cultural resources data confidential include: the National Historic Preservation Act Section 304 (as amended); the Archaeological Resources Protection Act, Section 9, and the Sacred Sites Executive Order 13007, Section 1(a)(2). Various state and federal tribal consultation policies, including the CEC and OPR tribal consultation policies, affirm the requirements to keep cultural resources information confidential.
7. The CEC and OPR shall take all reasonable security precautions to protect the confidential information under Section III from disclosure and unauthorized access and shall inform all authorized persons who have access to the information that they are subject to the requirements of this DSA. Any CEC employees, representatives, and consultants who are granted access to confidential information under Section III must have previously agreed to the CEC’s “General Employee Non-Disclosure Agreement,” consistent with Public Resources Code § 25322(d).
8. The CEC and OPR shall destroy confidential information under Section III in their possession upon completion of the task the information is supporting. The obligations of the CEC and OPR to protect the confidential information under Section III in compliance with applicable law, and with the security and privacy provisions set forth herein, shall survive the DSA and remain in full force and effect.
9. To ensure the secure transmittal of confidential information under Section III, the Tribe shall contact the assigned Commission Agreement Manager for [GRANT AGREEMENT} for instructions prior to sending the information.
10. The Tribe agrees to conspicuously label or mark any confidential information under Section III as “Confidential” under Evid. Code, § 1040 and 1060 and to work with CEC and OPR to identify and list the legal basis for confidentiality from the legal authorities set forth in Section V.5 above or other legal authority as appropriate.
11. This DSA shall not be modified except by a written agreement signed by authorized representatives of the Tribe, CEC, and OPR. None of the provisions of this DSA shall be deemed to have been waived by any act or acquiescence by any party, but only by an instrument in writing signed by an authorized representative of the party. No waiver of any provisions of this DSA shall constitute a waiver of any other provision(s) or of the same provision on another occasion.
12. The Tribe shall provide the CEC with a document authorizing a tribal representative to execute this DSA or any subsequent modification. If anyone other than the CEC’s Executive Director executes this DSA or a subsequent modification, the CEC shall provide the Tribe with a record of the authorization of that individual. If anyone other than the OPR Director executes this DSA or a subsequent modification, OPR shall provide the Tribe with a record of the authorization of that individual.
13. This DSA may be executed in counterparts and shall continue unless or until one or more of the parties to the DSA determines that the DSA should be terminated. Unless otherwise provided for by written agreement of the CEC, OPR, and the Tribe, unilateral termination of the DSA shall be effected no sooner than 14 days from the date a party provides written notice of its intent to terminate the DSA. If this DSA is terminated, the obligations of the CEC, and OPR to protect any confidential information under Section III in compliance with applicable law, and with the security and privacy provisions set forth herein, shall survive the DSA and remain in full force and effect.
14. If any provision of this DSA is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

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[NAME] DREW BOHAN

[TITLE] Executive Director

[GRANT RECIPIENT NAME] California Energy Commission

Date: Date:

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SAM ASSEFA

Director

Governor’s Office of Planning and Research

Date: