

City of La Mesa

LICENSING AGREEMENT

Solar Energy Compliance Software for the City of La Mesa



SYMBIUM MASTER LICENSING AGREEMENT

This Master Licensing Agreement (the “Agreement”) is by and between Symbium Corp., with business offices located at 912 Cole St., #375 San Francisco, CA 94117, (“Symbium”), and City of La Mesa with business offices located at 8130 Allison Avenue, La Mesa, CA 91942 (the “Licensee”). This Agreement shall be effective on the last signature date on the signature block hereto (“Effective Date”). Each of Symbium and Licensee is a “Party” and together they are the “Parties”.

WHEREAS, Symbium has developed and maintains a range of cloud-based software-as-a-service (“SaaS”) solutions to streamline certain planning, zoning, building, permitting, or other government-facing and constituent-facing processes. Symbium provides Services under the trade names identified in an applicable Order and as described on Symbium’s Site.

WHEREAS, Symbium agrees to provide Services to Licensee pursuant to the terms and conditions of this Agreement.

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

1. DEFINITIONS

In addition to the capitalized terms defined throughout this Agreement, the following terms when used herein shall have the respective meanings assigned to them below:

1.1. “**Affiliate**”, with respect to either Party, shall mean any entity, including and without limitation, any individual, corporation, company, partnership, limited liability company, or group, that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Party. Any references to Licensee herein shall also include reference to Licensee Affiliates.

1.2. “**End-User**” shall mean any individual who is authorized to use the Services.

1.3. “**Licensee Data**” shall mean any data, excluding Symbium Data, that is collected, used, maintained, processed, stored, or generated exclusively by or on behalf of Licensee.

1.4. “**Licensee Services**” shall mean Licensee’s open data services, GIS services, and APIs with which the Solutions communicate in order to correctly perform the intended functionality.

1.5. “**Order**” shall mean either: (i) any specific sales quotations or orders as agreed to in writing and signed by the Parties from time to time; or (ii) as set forth in the applicable Symbium payment summary screen. Each Order is hereby incorporated by reference into this Agreement as Exhibit “A” and shall be numbered sequentially as Exhibit A-1; A-2; A-3 and so on. If there are any inconsistencies or conflicts between this Agreement and an Order, the inconsistent or conflicting terms of the Order shall govern.

1.6. “**Professional Services**” shall mean any live support, consulting, training, or development services or other services as specifically described and priced in the applicable Order.

1.7. “**Service Description**” shall mean any description of Symbium’s Services that are advertised on Symbium’s Site or in the applicable Order, Symbium’s knowledge base, applicable operator and user manuals or guides, designs, technical reference manuals, flow diagrams, file descriptions, Service descriptions found on the Symbium site, and any other written materials pertaining to the use of the Solutions.

1.8. “**Services**” shall mean the Solutions and the Site, which are provided to Licensee by Symbium pursuant to the terms of this Agreement.

1.9. “**Site**” shall mean the Symbium website, located at www.symbium.com.

1.10. “**Solutions**” shall mean the cloud-based SaaS web applications, which are identified in the applicable Order, along with all associated updates.

1.11. **“Solution Updates”** shall mean any Solution-specific version updates that are deployed to ensure the functionality of the Solutions in accordance with the Services Descriptions. Solution Updates shall exclude additional or new Solutions, even if such additional or new Solutions contain similar functionality as other Solutions.

1.12. **“Support”** shall mean the email support services provided by Symbium to Licensee during the Term.

1.13. **“Symbium Data”** shall mean any electronic data and publicly accessible or available data and shall include all computable laws and regulations that are embedded in the Solutions but shall exclude Licensee Data.

1.14. **“Symbium Integrations”** shall mean any additional SaaS solutions that Symbium develops and deploys, which may be integrated into or linked from the Solutions.

1.15. **“Third-Party Services”** shall mean any third-party products or services, including but not limited to, software or materials incorporated into or provided as part of the Solutions.

1.16. **“Transaction Services”** shall mean the public-facing permitting and incentives Services offered by Symbium.

2. SERVICES

2.1. Orders. Symbium shall provide the Services in accordance with the applicable Order.

2.2. Changes. No change to the Order shall be implemented unless it has been approved in writing signed by an authorized representative of each Party (each, a “Change Order Amendment”). Upon Licensee’s and Symbium’s execution of the Change Order Amendment, the Change Order Amendment shall be incorporated into and become part of the applicable Order.

3. LICENSE

3.1. License Grant. Subject to the terms and conditions of this Agreement, Symbium hereby grants Licensee a nonexclusive, nontransferable, worldwide license (“License”) during the Term to access and use the Solutions. Symbium reserves all rights not expressly granted to Licensee. The License granted to Licensee pursuant to this Agreement will permit use of the Solutions that are set forth in the Order. Any Licensee Affiliate may also add additional Services under this Agreement via a new Order. LICENSEE SHALL BE RESPONSIBLE FOR THE FAILURE OF ANY LICENSEE AFFILIATE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT.

3.2. Usage Restrictions. Except as permitted by this Agreement, the Solutions may not be decompiled, reverse engineered, disassembled, transferred, distributed in an unauthorized manner, resold, sublicensed, or used to create any derivative works. Licensees may not use any software (including network monitoring or discovery software) to determine the Site’s or Service’s architecture, or extract information about usage or individual identities of users. Licensee may not use any robot, spider, other automatic software or device, or manual process to monitor or copy the Services or any parts thereof. Except as expressly permitted in this Agreement, Licensee may not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit the Services in any way; (ii) modify or make derivative works based upon the Services; (iii) “frame” or “mirror” any Solutions on any other server or wireless or Internet-based device. Licensee may use the Solutions only for its intended purposes and shall not: (i) send spam or otherwise excessive, duplicative, or unsolicited messages; (ii) send, store, or transmit any infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or material in violation of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (v) attempt to gain unauthorized access to the Services or its related systems or networks; or (vi) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit.

3.3. Third-Party Services. In the event that Symbium agrees to certain integrations to Third-Party Services, Licensee shall secure the necessary permissions, when applicable, for Symbium to perform its mutually agreed-upon tasks. Symbium is not responsible for any modification, loss, usage, disclosure, transmission, or deletion of any Licensee Data resulting from its access to a Third-Party Service or any outputs generated by the Solutions for uploading into Third-Party Services. Licensee shall be responsible for all third-party costs resulting from its requested integrations with any Third-Party Service.

4. PROFESSIONAL SERVICES

4.1. Professional Services. As mutually agreed by the Parties, and in conjunction with the Services, Symbium may perform certain Professional Services, which may include certain implementation, training, or other expert services. Such Professional Services shall be provided for a separate fee, which will be specified in an applicable Order in accordance with the terms and conditions of this Agreement. Such Professional Services shall be provided in a manner that is consistent with applicable industry standards, and if such standards are not met (with a reasonable opportunity to cure following written notice from Licensee), Licensee's sole remedy shall be the re-performance of such Professional Services.

5. SUPPORT

5.1. Support. Symbium will provide Support during the Term of this Agreement as set forth in the Order. Any Support requests should be directed to the following: support@symbium.com.

6. LICENSEE OBLIGATIONS FOR CONFIGURED OR IMPLEMENTED SERVICES

Where Symbium is configuring or implementing Services for Licensee, the following shall apply:

6.1. Designation of Licensee Project Manager. Licensee shall designate a project manager who shall be accessible by email throughout the Term of the Agreement and shall provide reasonably prompt responses to Symbium's requests and communications.

6.2. Testing Period and Feedback. Licensee will be provided with an opportunity to provide feedback and request functional changes to the Solutions prior to public launch. Symbium shall also perform any requested bug fixes during this period and on an ongoing basis.

6.3. Hosting Link to Solutions. Upon the public launch of any public-facing Solutions that are configured or implemented for Licensee, Licensee shall place a prominent link to such Solutions on its public-facing website at the location where End-Users would normally visit for information on related services. This link shall be maintained by Licensee during the Term of the Agreement.

6.4. Notification of Changes. Where Solutions are configured using laws or regulations provided by Licensee, Licensee shall cooperate with Symbium to help identify the publicly accessible online publications of those regulations and Symbium shall then establish a protocol to ensure timely notifications of changes to the regulations underlying the applicable Solutions and the data provided by the applicable Third-Party Services. In the absence of publicly accessible regulations that are published online, Licensee shall notify Symbium in writing (email is sufficient) of such changes.

7. PROPRIETARY RIGHTS

7.1. Symbium Properties. The Services and any underlying platform technology ("Symbium IP") are owned or licensed by Symbium and protected by U.S. and international copyright, trademark, service mark, trade secret, patent and/or other proprietary rights and laws. All Solutions shall be hosted on Symbium's designated servers at all times and Symbium will retain control over all user experience or user interface design of Solutions. Except as expressly provided in this Agreement, nothing contained herein shall be construed as conferring to Licensee any license or right under copyright or other intellectual property right law. No part of the Symbium IP may be altered, copied, photocopied, reproduced, translated or reduced to any electronic medium or machine-readable form, in whole or in part, except as specifically provided in this Agreement. Licensee shall not take any action that shall interfere with or diminish Symbium's right in any of the Symbium IP. Symbium shall retain ownership and title of any Solutions that it creates, even if created on a custom basis for Licensee.

7.2. Licensee Data and Symbium Data. As between Symbium and Licensee, Licensee shall, at all times, own or obtain the appropriate permissions to use the Licensee Data and shall be responsible for the accuracy and adequacy of any and all Licensee Data as well as establishing any required legal terms and conditions prior to the use of any Licensee Data. Licensee shall obtain all prior consents, internally or from relevant third parties, prior to uploading and using any Licensee Data to the Solutions. Licensee grants to Symbium a non-exclusive, royalty-free, worldwide license during the Term to access and use the Licensee Data for the purpose of delivering the Services, which may include the aggregation of such data in an anonymized manner for benchmarking and other purposes. Symbium's right to use Symbium Data shall be governed by its own policies, including its Privacy Policy, available at <https://symbium.com/privacy> ("Privacy Policy").

7.3. Symbium Integrations. Nothing shall prevent Symbium from developing and deploying Symbium Integrations, which Symbium may do at any time in its sole discretion. Symbium Integrations shall not diminish or degrade the functionality of the Solutions in the applicable Order at any time.

7.4. License to Use Feedback. Licensee grants to Symbium an irrevocable, royalty-free, worldwide license of unlimited duration to use, modify, and incorporate into the Services any feedback, suggestions, requests, or recommendations relating to the Services.

7.5. Usage Data. Licensee grants to Symbium an irrevocable, royalty-free, worldwide license of unlimited duration to use, modify, and incorporate into its own support offering, product development, operational plans, and sales or marketing materials, any anonymous usage data acquired from Licensee's account and use of the Solutions.

7.6. References to Licensee / Press Release. Upon execution of this Agreement, Symbium may make references to Licensee and Licensee's URL and may use Licensee's designated trademark and logo for the limited purpose of publishing it on Symbium's current list of Licensees located on the Symbium Site. Symbium may also respond to any inquiry regarding whether Licensee is a licensee and user of the Services. Additionally, upon execution of this Agreement, each Party may issue a press release announcing the Parties' relationship under this Agreement.

8. FEES AND PAYMENTS

8.1. Fees. Licensee shall pay Symbium for the Services provided by Symbium hereunder as specified in the applicable Order.

8.2. Payment Methods. Symbium accepts payments for its Services via check or electronic funds transfer and will cooperate, in good faith, to accommodate Licensee's preference in either case.

8.3. Payment Terms. All pricing and payments are and shall be in U.S. dollars. Licensee shall pay each invoice as stated in the Order or, if no due date is stated, within 30 days of receipt unless it has a bona fide dispute with respect to payment of such invoice or portion thereof. If there is a bona fide dispute regarding any invoice rendered or amount paid, the disputing Party shall notify the other by written notice thereof, and the Parties shall use their best efforts to resolve such dispute expeditiously. If an aggrieved Party notifies the other in writing of a disputed invoice or payment, and there is a good faith basis for such dispute, the time for paying the portion of the invoice in dispute shall be extended by a period of time equal to the time between receipt of such notice and the resolution of such dispute. Undisputed portions of any invoice shall be paid as stated above. Fees charged to End-Users for Symbium's Transaction Services are non-refundable. Symbium shall assume any credit card fees charged by third-party payment processors for Transaction Services that are processed on Symbium.

8.4. Taxes. Licensee shall be financially responsible for all sales or services taxes that are assessed on the provision of the Services to Licensee, excluding any withholding or export taxes or taxes based upon Symbium's income. To the extent Symbium is required to collect such taxes under applicable Law, Symbium, to the extent legally or otherwise required, shall separately state the amount of tax due on its invoices to Licensee. Licensee and Symbium shall cooperate to segregate the fees into: (i) those for taxable Services and (ii) those for nontaxable Services. The Parties shall reasonably cooperate with each other to more accurately determine each Party's tax liability and to minimize such liability, to the extent legally permissible. In addition, Symbium shall provide and make available to Licensee any information regarding the computation of any such taxes as reasonably requested by Licensee. Symbium shall not pay any taxes based on the Services that Licensee and Symbium disagree on as to whether a tax is due without affording Licensee a reasonable amount of time after being called upon by the taxing authority to pay such tax to dispute the payment of such tax, at Licensee's expense, in the appropriate legal forum.

9. CONFIDENTIALITY

9.1. Confidentiality. Except as set forth in Sections 9.2 and 9.3, as applicable, Each Party agrees to maintain the confidentiality of the other Party's Confidential Information as defined herein. "Confidential Information" means all information concerning a Party's business not generally known to the public, whether or not marked as confidential. By way of illustration only, Confidential Information may include Licensee Data, trade secrets, know-how, inventions, contractual disclosures, techniques, processes, algorithms, software programs, schematics, software source documents, contracts, customer lists, financial information, sales and marketing plans, information and business plans and other proprietary information, whether or not such information is marked as confidential. Confidential Information shall not include, even if it is marked as such, information that: (i) is already known to the receiving Party at the time of disclosure, which knowledge the receiving Party shall have the burden of proving; (ii) is, or, through no act or failure to act of the

receiving Party, becomes publicly known; (iii) is readily observable and / or duplicable by the public; (iv) is legally received by receiving Party from a third party without restriction on disclosure; (v) is independently developed by receiving Party without reference to the Confidential Information of the disclosing Party; or (vi) is approved for release by written authorization of the disclosing Party. In maintaining the confidentiality of the other Party's Confidential Information, each Party shall use at least the same standard that Party uses for its own confidential information of similar type, and shall take necessary precautions not to disclose such information to any person except its officers, employees or subcontractors, who have a need to know in order to comply with the obligations of this Agreement. Each Party's officers, employees, and subcontractors shall be bound by the terms of this Section or a similar written agreement with terms no less protective of either Party's Confidential Information than this Agreement. Each Party acknowledges that any actual or threatened violation of this Section may cause irreparable, non-monetary injury to the disclosing Party, the extent of which may be difficult to ascertain, and therefore agrees that the disclosing Party shall be entitled to seek injunctive relief in addition to all other remedies available at law and/or in equity. Nothing in this Section shall prohibit Symbium from disseminating aggregated information that contains no Confidential Information of Licensee. Further, notwithstanding anything contained herein to the contrary, Licensee may disclose any information of any nature whatsoever, if required to do so pursuant to applicable law or court process.

9.2. Public Agency Exceptions and CPRA. This Section 9.2 shall apply to any Licensee that is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA") or substantially similar requirements (the "Public Agency Exceptions"). Notwithstanding any other obligations set forth in Section 9, Licensee is not obligated to act in any way that is contrary to any requirements under the CPRA or Public Agency Exceptions. Symbium shall identify information that is protected under the CPRA or Public Agency Exceptions and shall clearly mark such information as "CONFIDENTIAL AND PROPRIETARY", including identification of the specific lines containing such confidential and proprietary information subject to nondisclosure. In the event of a request for such information, Licensee will provide written notice to Symbium prior to such disclosure. For information that Symbium wishes to protect from public disclosure, Symbium must obtain a protective order, injunctive relief or other appropriate remedy from a court of law in San Diego County before the Licensee is required to respond to the CPRA request. If Symbium fails to obtain such remedy within the time the Licensee is required to respond to the CPRA or Public Agency Exceptions request, Licensee may disclose the requested information.

9.3. Cooperation. In the event of any unauthorized use or disclosure or loss of any Confidential Information of the disclosing Party, the receiving Party shall promptly, at its own expense: (i) notify the disclosing Party in writing; (ii) take such actions as may be necessary or reasonably requested by the disclosing Party to minimize the violation or the damage resulting therefrom; and (iii) cooperate in all reasonable respects with the disclosing Party to minimize the violation and any damage resulting therefrom.

9.4. Limitation. Notwithstanding the provisions of this Section, Symbium may disclose Licensee's Confidential Information, which includes personally identifying information and End-user activity: (i) in accordance with a judicial or other governmental subpoena, warrant or order; provided that Symbium shall comply with any applicable protective order or equivalent and, unless prohibited by law, Symbium will employ commercially reasonable efforts to provide Licensee with prior written notice, so that Licensee has an opportunity to intervene at its own expense and to protect the confidentiality of its information; (ii) to law enforcement officials and regulators if it reasonably suspects unlawful activity; and (iii) to other Parties that are identified by Licensee for that purpose.

10. REPRESENTATIONS AND WARRANTIES

10.1. Power and Authorization. Each Party hereby represents, warrants, and covenants to the other Party that (i) it is duly organized, validly existing and in good standing under the Laws of the state of its domicile and is in good standing in each other jurisdiction in which such qualification is required by Law; (ii) it has power and authority to transact the business it transacts and proposes to transact and to execute and deliver this Agreement and to perform the obligations under this Agreement, and (iii) its entry into this Agreement does not violate or constitute a breach of any agreement to which it is a Party or otherwise bound.

10.2. Compliance with Law. Each Party hereby represents, warrants, and covenants to the other Party that in performing its obligations and exercising its rights under this Agreement, it will comply (and shall require all of its personnel providing Services hereunder to comply) with all applicable Laws.

10.3. By Licensee. Licensee hereby represents, warrants, and covenants to Symbium that: (i) it has obtained all the appropriate consents required by law to ensure that Licensee and Symbium have the right to use the Licensee Data in association with the Services and, if applicable, as described in Symbium's Privacy Policy; and (ii) it will not use the

Service to collect, upload, retrieve, transmit, send, and/or store any sensitive personally identifiable information in violation of any applicable laws. Symbium reserves the right to delete any Licensee Data that is in violation of any terms in this Agreement or of any applicable laws.

10.4. Disclaimer of Additional Warranties. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND, UNLESS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, SYMBIUM EXPRESSLY DISCLAIMS, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SYMBIUM MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT FUTURE PRODUCT FEATURES OR FUNCTIONALITY.

11. INDEMNITIES

11.1. General Indemnities. Each Party (“Indemnifying Party”) shall defend, indemnify and hold the other Party (“Indemnified Party”) and its Affiliates and their respective officers, directors, employees, agents, contractors, successors, and assigns harmless from and against any and all damages, losses, fines, penalties, costs, and other amounts (including reasonable attorney’s fees and expenses) (collectively, “Losses”) arising from or in connection with any actual judicial causes of actions by third parties (each a “Claim”) to the extent such Claim is based on or arises from or relates to (i) any breach or default of any provision of this Agreement by the Indemnifying Party; or (ii) negligent or intentional acts or omissions caused by the Indemnifying Party or its Affiliates and their respective officers, directors, employees, agents, contractors, successors and assigns. Further, Licensee shall defend, indemnify, and hold Symbium harmless from any Losses arising from or in connection with any Claims to the extent that such Claim is based on or arises from or relates to Licensee’s misappropriation or misuse of any Licensee Data or any of Licensee’s obligations to third parties relating to such Licensee Data. Notwithstanding any Symbium obligations to indemnify Licensee in this Agreement, any indemnification by Symbium shall be limited to the actual amount covered by Symbium’s insurance for that particular Claim.

11.2. Indemnification Procedure. Each Indemnified Party shall provide the Indemnifying Party with prompt written Notice of any Claim for which the Indemnified Party is seeking or may seek indemnification hereunder (provided that the failure of the Indemnified Party to promptly notify the indemnifying Party hereunder shall not relieve the Indemnifying Party of any liability with respect to the Claim, except to the extent the Indemnifying Party demonstrates that the defense of the Claim is prejudiced by such failure). The Indemnified Party shall provide reasonable cooperation (at the Indemnifying Party’s expense) and retain full authority to defend or settle the Claim. The Indemnifying Party shall keep the Indemnified Party fully informed concerning the status of any litigation, negotiations or settlements of any such Claim. The Indemnified Party shall be entitled, at its own expense, to participate in any such litigation, negotiations and settlements with counsel of its own choosing. The Indemnifying Party shall not have the right to settle any Claim if such settlement arises from or is part of any criminal action or proceeding, or contains a stipulation to, or an admission or acknowledgement of, any wrongdoing (whether in tort or otherwise) on the part of the Indemnified Party without the prior written consent of such Indemnified Party.

12. LIMITATION OF LIABILITY

12.1. THE LIABILITY OF SYMBIUM AND LICENSEE TO EACH OTHER FOR ANY AND ALL CAUSE(S) OF ACTION, REGARDLESS OF THE FORM OF ACTION (INCLUDING CONTRACT, TORT, NEGLIGENCE OR ANY OTHER), ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OR BREACH OF THIS AGREEMENT WILL IN NO EVENT EXCEED THE AVERAGE MONTHLY FEES CONVERTED TO AN ANNUALIZED BASIS. LICENSEE ACKNOWLEDGES THAT THE ESSENTIAL PURPOSE OF THIS SECTION 12.1 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF SYMBIUM WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. SYMBIUM HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE LICENSEE WITH THE RIGHTS TO ACCESS AND USE THE SERVICES PURSUANT TO THIS AGREEMENT.

12.2. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL DAMAGES, OR DAMAGES FROM LOST PROFITS, LOST USE, OR ANY OTHER DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) IN ANY WAY DUE TO, RESULTING FROM, OR ARISING IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3. NOTWITHSTANDING THE FOREGOING, SECTION 12.1 AND SECTION 12.2 WILL NOT APPLY TO: (I) CLAIMS FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD, OR CRIMINAL ACTS OR OMISSIONS; (II) BREACH OF CONFIDENTIALITY OR INTELLECTUAL PROPERTY; (III) ANY THIRD PARTY CLAIMS SUBJECT TO THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT; OR (IV) THE BREACH BY EITHER PARTY OF THEIR REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 10.

12.4. Notwithstanding the foregoing, no limitation of liability shall apply to personal injury or death resulting from the negligent acts, omissions, or intentional misconduct of Symbium.

13. COOPERATION

13.1. Cooperation. Each Party shall inform the other Party of any legal claims, demands or complaints brought: (i) by a third party relating to the Services or products provided by Symbium to Licensee under this Agreement; or (ii) to any regulatory body relating to this Agreement or anything acquired hereunder. The Parties shall cooperate with each other with respect to the resolution of such complaints. For the avoidance of doubt, the Party against whom the complaint was made shall control the response to any regulatory body, if any, with respect to any such complaint.

14. TERM AND TERMINATION

14.1. Term. The initial term of this Agreement shall be as set forth in the applicable Order (“Initial Term”) and shall thereafter be renewed by the Parties for recurring one (1) year periods for a total of three one-year periods (“Subsequent Term”) unless either Party provides the other Party with at least thirty (30) days prior written notice of termination or intention not to renew prior to the commencement of the next annual period. The Initial Term and Subsequent Term may collectively be referred to as the “Term”.

14.2. Termination for Breach. Either Party may terminate this Agreement upon written notice to the other Party if such other Party commits a breach of this Agreement and does not cure such breach within fifteen (15) days following its receipt of notice thereof from the terminating Party. No refunds shall be issued to Licensee in the event of termination under this Section 14.2 by Symbium for an uncured breach by Licensee. Symbium shall issue a prorated refund of prepaid but unused fees to Licensee in the event that Licensee terminates this Agreement under this Section 14.2 for an uncured material breach by Symbium. “Breaches” include: (i) failure by Symbium to deliver the Services as agreed under this Agreement; (ii) any breach of Section 7 (Proprietary Information); (iii) any failure by Licensee to pay fees when due; (iii) or any breaches by either Party of Sections 3 (License), 9 (Confidentiality), 10 (Representations and Warranties), 11 (Indemnities), or 13 (Cooperation). Any termination of this Agreement will automatically terminate any incorporated Orders.

14.3. Termination for Convenience. Either Party may terminate this Agreement for convenience at any time upon providing sixty (60) days prior written notice to the other Party of such effective termination date. In the event of a termination under this Section 14.3 by Licensee, Licensee shall compensate Symbium for all work performed through to the date of termination at the non-discounted rate set forth in the applicable Order. Such payment shall be made no later than thirty (30) days subsequent to termination.

14.4. Suspension of Services. Any unauthorized access, use of passwords or Services, or other abuse or impermissible activity on Symbium’s Site or in connection with Symbium’s Services may result in immediate suspension of access to certain Solutions or termination of this Agreement with no refund and without limitation of any other available legal remedies. Symbium may suspend Licensee’s access to any Services until all overdue payments are paid in full. Delinquent invoices are subject to interest of one percent (1.0%) per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. Licensee will continue to be charged for the remainder of the term for any delinquent accounts. Licensee acknowledges and agrees that, unless otherwise required in this Agreement, Symbium has no obligation to retain any data on behalf of Licensee and that such data, if any, may be irretrievably deleted upon termination of this Agreement.

14.5. Remedies Not Limiting. The remedies provided in this Section 14 are in no way limiting of one another or of any other rights and remedies granted to either Party under this Agreement. Symbium may choose to, but is not required to, place Licensee’s account on suspension in lieu of termination where termination is permitted under the terms of this Agreement or take other appropriate action.

15. MISCELLANEOUS

15.1. Notices. Any demand, notice, or other communication required or permitted hereunder shall be effective if in writing and either sent by trackable courier or email to the recipients listed in the Order. Notices by courier shall be

effective upon proof of delivery by either Party. Email notices shall be effective upon confirmation of receipt by the receiving Party. Either Party may change its notice address by providing the other Party with notice of the change in the same manner required in this Section 15.1.

15.2. Assignment; Binding Effect. Neither Party shall assign or transfer this Agreement nor delegate any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, upon written notice to Licensee, Symbium may assign this Agreement to the surviving entity in a merger or consolidation in which it participates or to a purchaser of all or substantially all of its assets. Any assignment, transfer or delegation of rights or obligations hereunder in contravention of this Section shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties to this Agreement and their respective successors and permitted assigns.

15.3. Dispute Resolution; Equitable Relief. The Parties agree that, in the event of a dispute or alleged breach, they shall first work together in good faith to resolve the matter internally through negotiations and, if necessary, by escalating it to higher levels of management. The foregoing shall not apply to, and shall not prevent a Party from seeking immediate relief in the event of, disputes involving the confidentiality or data protection provisions of this Agreement or infringement of intellectual property rights (in which case either Party shall be free to seek available remedies in a court of competent jurisdiction in accordance with the Governing Law Section of this Agreement).

15.4. Entire Agreement; Amendment. This Agreement sets forth the entire understanding between the Parties with respect to the subject matter hereof. This Agreement supersedes all prior or contemporaneous representations, discussion, negotiations, letters, proposals agreements and understandings between the Parties hereto with respect to the subject matter hereof, whether written or oral. This Agreement may be amended, modified or supplemented only in a writing duly executed by an authorized representative of each of Licensee and Symbium.

15.5. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without giving effect to its conflict of laws provisions. For any disputes that are not resolved by way of good faith negotiations and settlement, the Parties hereby consent to the exclusive venue and jurisdiction for actions concerning or relating to this Agreement in the federal or state courts of San Diego County of San Diego, California.

15.6. Headings. The section headings in this Agreement are for reference and convenience only and do not explain, modify, interpret, or expand the provisions of this Agreement.

15.7. Independent Contractors. In making and performing under this Agreement, the Parties are acting and shall act as independent contractors and not that of master and servant or partnership. Neither Party is, nor will be deemed to be, an agent, legal representative, joint venture, or partner of the other Party for any purpose. Neither Party shall have any authority to act for or to bind the other Party in any respect, nor shall either Party hold itself out as having such authority. Each Party agrees to assume complete responsibility for its own employees with regard to federal or state employer's liability, worker's compensation, social security, unemployment insurance, and Occupational Safety and Health Administration requirements, and other laws.

15.8. Severability. If any of the provisions of this Agreement are declared to be invalid or unenforceable by a court of competent jurisdiction, such provisions shall be ineffective to the extent of such invalidity or unenforceability while the other provisions hereof shall remain in full force and effect.

15.9. Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed on behalf of the Party against whom it is asserted. Any consent by any Party to, or waiver of, a breach of the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any continuing, different, or subsequent breach of this Agreement by such Party.

15.10. Survival. The provisions of this Agreement, which by their nature survive expiration or termination of this Agreement, shall survive, including, but not limited to the following Sections: 7 (Proprietary Rights), 9 (Confidentiality), 10 (Representations and Warranties), 11 (Indemnities), and 12 (Limitation of Liability).

15.11. Controlling Document. Notwithstanding any inconsistent or additional terms and conditions which may be contained in a purchase order, invoice, voucher or other similar document issued by either Party, such document shall be for issuing Party's internal purposes only and the terms and conditions of this Agreement shall prevail. Therefore, even if such document is acknowledged or accepted by the receiving Party and regardless of any statement to the contrary which may be contained therein, the inconsistent or additional terms and conditions of such purchase order, invoice, voucher or other similar document shall have no force or effect on this Agreement.

15.12. Interpretation; Construction. Unless the context of this Agreement clearly requires otherwise, (i) references to the plural include the singular, the singular the plural, the part the whole, (ii) references to any gender include all genders, (iii) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (iv) “including” has the inclusive meaning frequently identified with the phrase “but not limited to,” and (v) references to “hereunder” or “herein” relate to this Agreement. The Parties agree that this Agreement is the result of careful negotiations between sophisticated Parties and thus any principle of construction or rule of law that provides that an agreement shall be construed against the drafter of the agreement in the event of any inconsistency or ambiguity in such agreement shall not apply to the terms and conditions of this Agreement.

15.13. Signature/Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and both of which, taken together, shall constitute one agreement binding on both Parties. A facsimile signature or electronic signature (or e-signature) shall have the force and effect of an original signature, and in the absence of an original signature, shall constitute the original signature.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THE AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS, AND THE PERSON SIGNING ON BEHALF OF EACH HAS BEEN AUTHORIZED TO DO SO. THE PARTIES FURTHER AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES.

SYMBIUM CORP.

CITY OF LA MESA

By:	By:
Name:	Name:
Title:	Title:
Email:	Email:
Date:	Date:

EXHIBIT A-1 – ORDER

This Order, once executed, is governed by the Symbium Master Licensing Agreement between Symbium Corp. (“Symbium”) and City of La Mesa (“Licensee”) (the “Agreement”). All fees set forth herein are due pursuant to the terms of the Agreement. All capitalized terms used but not defined herein will have the meaning assigned to them in the Agreement. This Order shall control in the event of any conflict between this Order and the Agreement.

Prepared For: City of La Mesa	Order No.: LAMESA-001	Make Payment to: Symbium Corp.
City of La Mesa Stacey Sapp Building Inspection Supervisor 8130 Allison Avenue La Mesa, CA 91942 ssapp@cityoflamesa.us	Initial Term: 2 years	Symbium Corp. 912 Cole St., #375 San Francisco, CA 94117 support@symbium.com
	Payment Frequency: N/A	

SaaS Solution / Service	Description	Billing
Symbium’s Citizen’s Dashboard for SB379 Compliance	<ul style="list-style-type: none"> Web-based public-facing automated plan review for solar energy systems as required by SB379 \$25 Symbium service fee per permit, charged to applicants at point of sale. 	\$60,000 for initial configuration, discounted to \$0 as part of Symbium SB379 Pilot Program.
Symbium Express Permits	<ul style="list-style-type: none"> Web-based public-facing automated plan review for additional electrification and no-plan permits, as requested by Licensee. \$25 Symbium service fee per permit, charged to applicants at point of sale. 	\$60,000 for initial configuration, discounted to \$0 as part of Symbium Express Pilot Program.
Included Integrations	Read-write integrations into existing permit tracking system (PTS), given available APIs.	\$0
Ongoing Support and Maintenance	Quarterly updates	\$0
Total		\$0

Additional Terms and Conditions:

1. Unless noted otherwise, the pricing above includes initial implementation and training to ensure proper use.
2. Symbium shall be the exclusive provider of the Services for Licensee during the Term.
3. Any additional Solutions or Services requested by Licensee that exceed the scope of this Order shall be subject to a separate signed Order between the Parties.
4. Support is available by email: support@symbium.com.

ACCEPTED AND AGREED BY:

Symbium Corp.		City of La Mesa	
BY:	DATE:	BY:	DATE:
NAME: Leila Banijamali		NAME:	
TITLE: CEO		TITLE:	
EMAIL: leila@symbium.com		EMAIL:	