

ANNEX D

IEEE ON-DEMAND LICENSE AGREEMENT

The Institute of Electrical and Electronics Engineers, Incorporated (“IEEE”) (“LICENSEE”)

Address

445 Hoes Lane
Piscataway, NJ 08854
Attn: Customer Licensing

E-Mail

onlinesupport@ieee.org

Facsimile

+1 732 810 0266

This Agreement is an amendment to “IEEE ONLINE PRODUCTS AND READ & PUBLISH AGREEMENT” attached hereto as “Attachment A”. This Agreement is entered into between IEEE and individual participating Member Institutions of the Department of Energy Integrated Contract Purchasing Team (hereinafter “DOE ICPT”). Alliance for Sustainable Energy, LLC (the “DOE ICPT Agreement Administrator”), Manager and Operator of the National Renewable Energy Laboratory on behalf of the DOE ICPT represents and warrants that they have the power and authority to act on behalf of the DOE ICPT’s respective Member Institutions (the Licensee as defined below) and identified in SCHEDULE B only to negotiate and administer this Agreement with IEEE. The individual DOE ICPT Member Institutions are deemed to be participating parties to this Agreement as an individual instance of Licensee when they agree in writing to the terms of their participation in this Agreement. The DOE ICPT Agreement Administrator is not a party to the Agreement entered into as between IEEE and other participating DOE ICPT Member Institutions as individual Licensees.

The parties agree that Licensee(s) must opt-in under this Agreement to receive the discounted price. Each participating DOE ICPT Member shall place its own orders under this Agreement and shall be direct billed accordingly.

In consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

(a) “APC” means the article processing charge assessed by IEEE and paid by or on behalf of an Authorized Author for, among other things, the publishing and hosting of an article submitted and accepted for publication in a Journal.

(b) “Authorized Authors” means persons affiliated with Organization as faculty, students or employees at Authorized Sites who submit articles accepted for publication in Journals.

(c) “Authorized Sites” means the locations identified in Schedule A.

(d) “APC Discount” means a discount of **15%** on APCs in **Gold&Hybrid** open access journals.

(e) “Invoice” means an invoice issued by IEEE or its authorized representative to Organization setting forth the amount that Organization has elected to deposit in the Deposit Account.

(f) “Discounts” means the APC Discount.

(g) “Journals” means the IEEE open access and hybrid journals listed at <<http://open.ieee.org/publishing-options/ieee-title-list/>>

(h) (“RLSC”) “RightsLink for Scientific Communications” means the Copyright Clearance Center’s (“CCC”) product. CCC will act on behalf of IEEE to invoice on an agreed upon duration.

2. Administrator. Organization shall designate an account administrator (“Administrator”) and provide such Administrator’s email address to IEEE. Prior to issuing an invoice for an APC from the Account or applying a Discount pursuant to the request of an author under this Agreement, IEEE shall contact Administrator, and Administrator shall confirm whether the author meets the eligibility requirements for the APC Discount.

(1) Reliance on Administrator. IEEE shall be entitled to rely on the determination of the Administrator with respect to authorization to invoice from the Account. IEEE shall not be responsible for any losses incurred by Organization due to any error or omission of Administrator or Organization, or any actions taken as directed by Administrator.

(2) Assignment of Interest. Organization acknowledges and agrees that it shall not receive interest or other earnings and hereby transfers and assigns to IEEE any ownership right that Organization may have in any interest that may accrue.

(3) APCs. The OA OnDemand model does not include any pre-paid APCs. Payment will be made on an individual per manuscript basis by invoice. Payment of an APC shall not include color and over-length page charges on any articles published under this Agreement.

(4) Publication. During the Term of the Agreement, Authorized Authors may submit articles for potential publication in the Journals. Nothing in this Agreement shall be deemed to guarantee publication of a submitted article in any Journal or IEEE publication.

3. Discounts.

(a) Grant. During the term of this Agreement and subject to Organization’s compliance in all material respects with the terms and conditions of this Agreement, Authorized Authors shall receive the following Discounts:

(1) APC Discount. Organization shall have a valid, active, fully paid subscription to the IEEE Electronic Library (IEL) or IEEE All-Society Periodicals Package (ASPP) at the time the Discount shall be applied to such APCs. For the avoidance of doubt, if the Organization or its Institutions do not maintain an active subscription this Agreement shall automatically terminate.

(b) Conditions.

(1) Funding of Account. The APC Discount shall be contingent upon payment via Institutional account. There is no prepayment for this agreement in the RLSC account and no funds to draw from within the RLSC profile.

(2) Apportionment. Discounts shall only be applied to the portion of APCs paid by or on behalf of Authorized Authors.

(3) Reservation of Rights. IEEE reserves the right to withhold or contest Discounts and request evidence from Organization to confirm that all eligibility criteria have been met. IEEE further reserves the right to revoke Discounts obtained through fraud or any other means resulting from failure to meet eligibility criteria.

(4) Organization agrees to support IEEE efforts to hold at least one authorship symposium per year, either virtual or in-person, with authors and potential authors affiliated with the Organization institutes.

4. Term and Termination.

(a) Term. Unless terminated sooner in accordance with Section 4(b), this Agreement shall continue in effect for an initial term of twelve (12) months from the date IEEE signs this Agreement. Upon Organization’s renewal of the IEL subscription, the term may be extended for an additional twelve (12) months from the date IEEE receives the subsequent amount. **For the avoidance of doubt, this offer is valid for the period synchronizing with a current subscription.**

(b) Termination. Notwithstanding Section 4(a), this Agreement may be terminated as follows:

(1) Material Breach. Either party may terminate this Agreement in the event of a material breach by the other party that remains uncured thirty (30) days after the non-breaching party gives the breaching party written notice of such breach.

(2) Insolvency. Either party may terminate this Agreement in the event that the other party becomes insolvent or bankrupt; becomes the subject of any proceedings under bankruptcy, insolvency or debtor’s

relief law; has a receiver or manager appointed; makes an assignment for the benefit of creditors; or takes the benefit of any applicable law or statute in force for the winding up or liquidation of such party's business.

5. Representations and Warranties. IEEE and Licensee each represents and warrants to the other that: (a) it has the necessary power and authority to enter into this Agreement; (b) the execution and performance of this Agreement has been authorized by all necessary corporate or institutional action; (c) entry into and performance of this Agreement will not conflict with any provision of law or the certificate of incorporation, by-laws or comparable organizational documents of the party or conflict with any condition of any contract to which it is a party; (d) no action by any governmental organization is necessary to make this Agreement valid and binding upon the party; and (e) it possesses all licenses and other governmental approvals necessary to perform its obligations under this Agreement.

6. DISCLAIMER. IEEE, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS (EXCEPT AS SET FORTH IN SECTION 5), EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. LIMITATION OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS OCCASIONED BY OR RESULTING FROM ORGANIZATION'S PARTICIPATION IN THE PROGRAM CONTEMPLATED BY THIS AGREEMENT, EVEN IF SUCH PARTY HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL EITHER PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE SUM OF APC AMOUNTS RECEIVED BY IEEE DURING THE IMMEDIATE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH SUCH LIABILITY AROSE.

8. General.

(a) **Accessibility.** IEEE shall use commercially reasonable efforts to provide an accessible web presence in accordance with the IEEE Accessibility Statement (<https://www.ieee.org/accessibility-statement.html>), which may be amended from time to time. IEEE will make reasonable efforts to promptly respond to and resolve any complaint regarding accessibility of the Licensed Products.

(b) **Data Protection.** In the event that IEEE's performance of its obligations under this Agreement requires that IEEE receive or otherwise process any personal data of Licensee or its Authorized Users, IEEE shall process such personal data in accordance with the IEEE Privacy Policy (<https://www.ieee.org/security-privacy.html>), which may be amended from time to time, and the applicable data protection laws.

(c) **Notice.** Notices given under this Agreement shall be in writing and may be delivered by hand or sent by internationally recognized courier service, e-mail or fax to the physical address, e-mail address or facsimile number for each party set forth on the first page of this Agreement with a courtesy copy to the IEEE General Counsel, Three Park Avenue, 17th floor, NY, NY 10016. Any such notice shall be deemed successfully given: (1) if delivered personally, at the time of delivery; (2) in the case of an internationally recognized courier service, on the date of delivery confirmation; or (3) in the case of e-mail or facsimile, at the time of successful transmission.

(d) **Assignment.** Organization may not assign this Agreement, or sublicense, assign or delegate any right or obligation hereunder, by operation of law or otherwise, without the prior written consent of IEEE.

(e) **Entire Agreement.** This Agreement, including all annexes, exhibits and schedules, contains the final and entire agreement of the parties on the subject matter herein and supersedes all previous and contemporaneous oral or written negotiations or agreements on the subject matter herein.

(f) **Amendment.** This Agreement may not be amended except in a writing executed by an authorized representative of each party.

(g) **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its unenforceability. Such provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts of this Agreement.

(h) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of New York, without regard to conflict of laws principles.

(i) Forum for Disputes. The parties agree that any action, proceeding, controversy or claim between them arising out of or relating to this Agreement (collectively, "Action") shall be brought in the United States District Court for the Southern District of New York or, if federal jurisdiction is not available, in the Supreme Court of New York County. Each party hereby submits to the personal jurisdiction of such courts with respect to any Action.

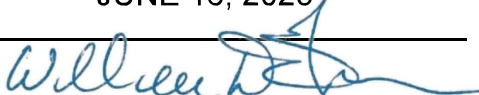
(j) Non-Waiver. The failure of either party to require strict performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

(k) Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument.


{Signature Page to follow}

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the later of the dates set forth below.

THE INSTITUTE OF ELECTRICAL AND ELECTRONICS ENGINEERS, INCORPORATED

Signature: EXECUTED BY
William D. O'Connor
Name: IEEE Director of Customer Operations
JUNE 16, 2023
Title: _____
Date: 

**Alliance for Sustainable Energy, LLC (the "DOE ICPT Agreement Administrator"),
Manager and Operator of the National
Renewable Energy Laboratory on behalf of
the US Department of Energy Integrated
Contractor Purchasing Team**

Maurice A. Nelson
Signature:  Digitally signed by Maurice A. Nelson
Date: 2023.06.26 17:12:09 -06'00'
Name: Maurice Nelson
Title: Team Manager
Date: June 26, 2023