

CONSTRUCTION CROSS-CUTTER QUESTIONNAIRE

Construction Cross-Cutter Questionnaire

Describe any environmental review (local, state, or federal), such as CEQA, that has already been completed for this site? Attach if necessary.	Once the schematic design is established to a level required and approved by the County as part of Phase 1, the environmental approval processes will commence. If required, the County will be responsible for contracting with a consulting firm who specializes in the California Environmental Quality Act (CEQA) process. The environmental processes will run concurrently with the design phases of the Project, and shall be completed prior to and/or concurrently with the completion of Phase 1. The Contractor shall provide to the County the necessary drawings and project information required for the environmental consultant's use during Phase 1.	Indicate if site is on developed or undeveloped land.	Developed
Describe current and past site use.	The site at 210 N. Lena Road, San Bernardino, California is currently owned and operated by the County of San Bernardino. It functions as part of the County's government facilities complex and supports the Fleet Management Department, Fire Department Garage, and Public Works. The project area property includes the Motor Pool parking lot adjacent to the administrative offices. Its ongoing use is consistent with public service and infrastructure activities. Historically, the site has been utilized for County government operations dating back several decades. Records indicate long-term use under County ownership, including facilities associated with the San Bernardino Public Safety Authority and related infrastructure agreements established in the 1960s and 1970s. There is no record of industrial, commercial, or other private development on the site prior to County acquisition.	Is the site a former brownfield?	No
Is site currently being used for farming or ranching activities?	No	Are any properties on the project site listed, or potentially eligible to be listed, in the National Register of Historic Places (NRHP)? (https://www.nps.gov/subjects/nationalregister/index.htm)	No
Will any effects to threatened or endangered species, or critical habitat, be caused by proposed site activity?	No	Will the project cause on- or off-site hydrologic impacts during and after construction (for low elevation sites, include potential impacts of hydrologic changes over life of installed infrastructure)?	No
Does the project require any removal of trees or vegetation?	No	Will the project cause a significant increase to pre-project light or noise conditions in the site or immediate surrounding area?	No

Is project located within a Coastal Zone
boundary regulated under the Coastal
Zone Management Act (CZMA)?

(<https://coast.noaa.gov/czm/mystate/#california>)

No

PROPOSAL TO PREPARE CEQA DOCUMENTATION

October 22, 2025

Ernesto Gonzalez, CCM
Project Manager
Project & Facilities Management Department
San Bernardino County

Subject: *Proposal to Prepare CEQA Documentation for an EV Installation Project Accompanied by Solar PV and Battery Storage at a San Bernardino County Fleet Facility, 210 N. Lena Road, San Bernardino, CA, 92415*

Mr. Gonzalez:

EFI Global presents this proposal to prepare the necessary California Environmental Quality Act (CEQA) documentation for in support of a grant application for installation of electric vehicle (EV) charging, solar PV, battery storage, and potential associated structures at an existing San Bernardino County fleet facility (the Project) located at 210 N. Lena Road in San Bernardino, California. Outlined below is our proposal to prepare a Justification Report in support of a Categorical Exemption (CE).

Project Understanding

The Project proposes completion of a grant application for the installation of EV charging, solar PV and battery storage for EV charging purposes at an existing County fleet facility located at 210 N. Lena Road in San Bernardino, California. The County has requested the preparation of applicable CEQA documentation, including a Notice of Exemption (NOE), which requires a Justification Report for Categorical Exemption. Based on preliminary findings, the Project would likely not have potential significant impacts to the environment. It would potentially be eligible for the following Classes of Exemption:

- Class 1 CE per Section 15301 of the State CEQA Guidelines (Class 1 – Existing Facilities).
- Class 32 CE per Section 15332 of the State CEQA Guidelines (Class 32 – Infill Development Projects).
Note that this Exemption requires that the project area is less than 5-acres. According to the information available to EFI at the time of this proposal, we understand that the project area will be less than 5-acres. If the Project Scope changes to exceed this, the Class 32 Exemption may no longer apply.

Scope of Work

Categorical Exemption Justification Report and NOE

A Justification Report will be prepared to include the technical documentation necessary to substantiate the findings for the CE. The required documentation will consist of the description of the Project, as outlined above, and a summary analysis with the substantial evidence to support that the Project does not have the potential to create any significant environmental impacts, and the Project meets all the criteria associated with the appropriate

CE. Required necessary findings for the exceptions to a CEQA Exemption will be confirmed and documented. Specifically, EFI will confirm:

- Site Development Status:
 - Developed (confirmed)
 - Brownfield Status
 - Onsite Historic Resources
 - Presence of Habitat for Endangered Species
 - Coastal Zone

This Scope of Work does not include the preparation of any technical reports, such as biological resource assessments or other resource-specific studies, and we do not believe that any technical reports will be required to support the exemption. This proposal assumes we will be able to utilize existing documentation provided by the County and additional details, plan sets, or design documents yet to be provided as of the time of this proposal. If technical reports or additional research to support determinations of Project Exceptions become required to support the exemption, this scope and cost estimate may need to be revised accordingly. See Schedule & Cost below for information on contingency fees for potential additional research.

The Justification Report will be provided to the County for one (1) round of review and revisions. Following final approval of the Justification Report, a draft Notice of Exemption (NOE) will be prepared for review and approval by the County. The signed NOE will be filed with the San Bernardino County Clerk's office and/or the State through Clearinghouse, if requested. Additional noticing and/or mailing are not included in this Scope of Work.

Project Coordination/Meetings

Our cost proposal provides for active project management and coordination by the principal and project manager responsible for day-to-day management. This proposal assumes EFI's attendance at one (1) public (virtual) hearing, if necessary. If needed, the Team will attend additional meetings or hearings on a time-and-materials basis based on our standard fee schedule.

Schedule & Cost

We estimate the **expedited** Justification Report and NOE will be submitted for Client review **within ten (10) business days** of receiving authorization to proceed. Further, we estimate that the process of review and comment with staff will require up to one (1) week. At this time, the final Justification report and supporting documents will be delivered. All direct costs, such as mileage, printing, and delivery charges, will be billed according to pricing outlined in EFI's Master Services Agreement (MSA) with the Client. However, we do not expect direct costs at this time.

For the CEQA documentation, the scope will be completed for a not-to-exceed lump-sum based on the task(s) below:

Task No.	Task Description	Fee
1	CE Justification Report and NOE: <i>(Includes associated research, justification report preparation, NOE preparation, project management tasks, internal meetings, and attendance of (1) virtual public hearing/meeting, if needed).</i>	\$6,200
2*	Additional Research Hours: <i>*For additional research hours if needed depending on final Project Scope/Scope Changes, only if authorized by San Bernardino County Project Manager. Includes</i>	

	<i>additional hours spent on justification reporting for exceptions and ensuring all exemptions are covered per State CEQA Guidelines.</i>	<i>\$2,600</i>
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This proposal is valid for 120 days.

This proposed scope of services will be performed under the Terms and Conditions outlined in the Master Services Agreement agreed upon by EFI Global and the Client.

ACCEPTANCE

The individual executing this Proposal on behalf of Client represents and warrants that it has the right, power, legal capacity and authority to execute this Proposal and to bind the party for whom it is signing.

Respectfully submitted by:

Approved and accepted by:



Jaymee Gaterman
Senior Environmental Advisor
Environmental Planning and NEPA Services
Program Manager

Signature

Printed Name

Title

Date

Client and billing information (if different than listed on first page):

Name

Company

Address

Telephone

Email

Fax

Relationship to Property

Site contact to coordinate fieldwork:

Name

Relationship to Property

Telephone

Email

ANNUAL USAGE PROJECTION SECTION

Annual Usage Projection

To estimate annual kWh usage for Class 4–8 vehicles in SB County, purchase year and total mileage for each vehicle were collected. Vehicle age was calculated from the purchase year, and average annual mileage was determined by dividing total mileage by age. Conversion factors for kWh per mile—based on U.S. Department of Energy AFDC efficiency ranges—were applied using the average efficiency for each class. Annual kWh consumption was then calculated for each vehicle, and the totals were summed to yield an overall annual consumption of 3,173,760 kWh.

What is the Annual Usage Projection (kwh) for the project?

3,173,760

Describe in detail how the Annual Usage Projection was determined.

Estimated number of vehicles that will use the infrastructure in a day.

133

Estimated Average connection time.

33

Class 4 (14,001 – 16,000 lbs)

true

Class 5 (16,001 – 19,500 lbs)

true

Class 6 (19,501 – 26,000 lbs)

true

Class 7 (26,001 – 33,000 lbs)

true

Class 8 (>= 33,001 lbs)

true

Are you applying for equipment funded by a different INVEST CLEAN Measure?

No

INVEST CLEAN Measure #

Measure 3 (Battery Electric Cargo Handling Equipment)

Is there a fleet committed to using installed infrastructure (own/partnership)

Yes

Name of Fleet/Business

County of San Bernardino, Fleet Management Department

Does this Fleet/Business use vehicles for "Goods Movement"

Yes

FLEET/BUSINESS SUPPORT LETTER



Fleet Management Department

Mark McCullough
Director

James Nguyen
Melanie Eustice
Deputy Directors

Yvette Santana
Executive Admin Asst III

November 1, 2025

Dear Grant Committee:

The San Bernardino County Fleet Management Department is pleased to express its support for the proposed *Invest Clean* grant project, San Bernardino County Fleet Management EV Charging Project, to install thirty (30) electric vehicle (EV) chargers located at the County of San Bernardino's Fleet Facility at, 210 N. Lena Road, San Bernardino, CA 92415.

Fleet Management is committed to advancing sustainable transportation and clean energy initiatives that reduce emissions, improve operational efficiency, and support the County's Advance Clean Fleets compliance goals. The addition of solar infrastructure and EV charging capacity at our Lena Road Yard facility directly aligns with our department's long-term strategy to transition our fleet toward zero-emission vehicles and to expand renewable energy utilization at County facilities.

This project will enhance our ability to support electric vehicle operations across County departments and represents a meaningful step forward in modernizing our infrastructure to meet future energy and environmental demands.

The Fleet Management Department fully supports this initiative and looks forward to collaborating with our project partners and the South Coast Air Quality Management District to ensure its successful implementation.

Sincerely,

A handwritten signature in black ink that reads "Mark McCullough".

Mark McCullough
Fleet Management Department, Director
County of San Bernardino

BOARD OF SUPERVISORS

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Fourth District

JOE BACA, JR.
Vice Chair, Fifth District

Luther Snoke
Chief Executive Officer

CHARGING STATION/EQUIPMENT COST

Charging Station/Equipment Cost			
Switchgear	\$68,422	Electric cabinets	0
Electrical panels	0	Metering system	0
Data Logger	0	Networking equipment	\$23,040
Transformer	0	Solar panels	0
Energy storage system	0	Cables, conduits and other electrical parts	\$148,751

WARRANTY OF CHARGING STATION



Accenture
Q-16202-10/17/2025, 5:58 PM
NA Quote Non-Partner
Version: 1

Jordan Crollly
jordan.crollly@accenture.com
210 N Lena Rd
San Bernardino, California, 92408
United States

San Bernardino County- Fleet Depot- Phase 1

Dear Jordan Crollly,

Thank you for your inquiry concerning our charging solutions. Please find enclosed our quote addressing your current charging needs. If you have any further questions or comments, please feel free to contact me directly. We look forward to the opportunity to work with you.

Offer Contact Person:

John Gutierrez
Sales Manager
Kempower

Direct:

Mobile:

Email: john.gutierrez@kempower.com

Quotation lines

(1) Power Unit 400KW + (6) Single Port
Satellite 400a/5m

Product Code	Product Name	Qty	Unit Price Total	Total
STU5HSL	Kempower Satellite CCS1 400A/5m	6.00	USD 10,524	USD 63,144
	Kempower Power Unit 400kW (as specified in two rows underneath)	1.00	USD 152,558	USD 152,558
PM550BLV2	Kempower Power Module 550 V2/Buy America compliant	8.00		
C502D6BLV4	Kempower Power Cabinet 500V/Ds6 V4 /Buy America compliant	1.00		
9990030	Remote commissioning support	1.00	USD 1,000	USD 1,000
W020906	STEEL BASE 200MM C-SERIES KIT (BABA)	2.00	USD 855	USD 1,710
9990090	Freight Cost Estimated (SUBJECT TO CHANGE)	1.00	USD 5,500	USD 5,500
(1) Power Unit 400KW + (6) Single Port Satellite 400a/5m TOTAL:				USD 223,912.00

Optional Add-Ons

Product Code	Product Name	Qty	Unit Price Total	Total
9990094	Three (3) Years Extended Warranty. (5 years total) Applies to all hardware on the same purchase order. Applicable United States/Canada.	1.00	USD 19,413	USD 19,413
999050FEE	Kempower Mobile Data Connectivity Subscription (Annual fee per charging point)	6.00	USD 72	USD 432
999071FEE	ChargEye Basic Subscription DC (Annual fee per charging point)	6.00	USD 108	USD 648
999073FEE	ChargEye Pro Subscription DC (Annual fee per charging point)	6.00	USD 588	USD 3,528
S001	Upgrade Station Cable Length to 7m (Per charging cable)	1.00	USD 300	USD 300
Optional Add-Ons TOTAL:				USD 24,321.00



Accenture
Q-16202-10/17/2025, 5:58 PM
NA Quote Non-Partner
Version: 1

Please note optional products are not included in the total price of this offer.

SUMMARY:

TOTAL PRICE TAX 0%	USD 248,233.00
TAX (0.00)%	USD 0.00
TOTAL	USD 248,233.00

Taxes will be included on final invoice.

Additional Information

Terms and Conditions

Estimated Leadtime ~14 Weeks

Standard 2-Year Limited Warranty per the Kempower NA Standard Limited Warranty Terms and Conditions (attached).

Price Information

Offer prices apply only if the Offer Number is mentioned in the purchase order

orders.us@kempower.com

Terms of Payment

Advance payment

Terms of Delivery

FCA, Incoterms 2020

Time of Delivery

Will be included with Order Confirmation

Delivery Address

SAN BERNARDINO COUNTY
210 N Lena Rd
San Bernardino, California, 92408
United States

Delivery Requirements

Appointment Needed

Certification Requirements

ETL;BABA

Shipping via

WILL BE PICKED UP

Installation

Only authorized and trained personnel are allowed to install and maintain Kempower equipment

Quote Expiration

12/31/2025

SALES AGREEMENT

GENERAL TERMS AND CONDITIONS

Kempower Inc. ("**Kempower**") and the entity named in the quote or purchase order ("**Customer**", together with Kempower, the "**Parties**", and separately, a "**Party**") hereby enter into these General Terms and Conditions as of the date on the Purchase Order (the "**Effective Date**"). This agreement consists of the "**Sales Agreement General Terms and Conditions**", any and all POs and SOWs entered into hereunder (including all appendices, schedules and exhibits thereto), and the following appendices (each, an "**Appendix**", and together, the "**Appendices**") attached hereto and incorporated by this reference (collectively, the "**Agreement**");

- Appendix 1 – Support Services

Kempower is in the business of designing, manufacturing, and selling certain electric vehicle charging solutions and related products and services, and licensing related firmware and software. Customer desires to purchase certain of such products and services, and license related firmware or system software from Kempower. As a condition to purchasing, or receiving a license for, those products and services, Customer must agree to abide by the terms set forth herein.

1. Definitions.

Capitalized terms not otherwise defined in this Agreement shall have the meaning given in this Section 1.

"**Applicable Laws**" means all applicable federal, state, and local laws, ordinances, regulations and orders.

"**Delivery Date**" means the delivery date identified in a PO, which is consistent with the Product lead time specified in the applicable Quote.

"**Documentation**" means user manuals and other instructional documentation, in any form or medium, provided by Kempower for use with the Products.

"**Intellectual Property Rights**" means all industrial and other intellectual property rights comprising or relating to: (a) patents; (b) trademarks, service marks, trade and service names; (c) internet domain names; (d) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software, and firmware, data, data files, and databases and other specifications and documentation; (e) know-how, moral rights, trade secrets; and (f) all industrial and other intellectual property rights, and all rights, interests and forms of protection of a similar nature or having similar or equivalent effect to any of the foregoing, including all derivative works related thereto, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights or forms of protection under the

Applicable Laws of any jurisdiction throughout in any part of the world.

"**Kempower Hardware**" means Kempower DC – fast charging solutions that are from time to time manufactured by or for Kempower.

"**Kempower System Software**" means the Kempower Hardware's system software licensed by Kempower to Customer under this Agreement, in object code form only, and any Maintenance Releases provided to Customer pursuant to this Agreement. The system software controls Kempower Hardware and provides an operating environment for applications to support basic computer functions.

"**Maintenance Release**" means any update, upgrade, release, or other adaptation or modification of the Kempower System Software, including any updated Documentation, that Kempower may provide to Customer from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Kempower System Software, but does not include any New Software Offerings.

"**New Software Offering**" means any new software product that Kempower may from time to time introduce and market generally as a distinct licensed software product, and which Kempower may make available to customers at an additional cost under a separate written agreement.

"**Products**" means Kempower Hardware and Kempower System Software.

"**Professional Services**" means those services defined in a mutually agreed upon Statement of Work, and which may include installation, commissioning and maintenance services, training, or other services.

"**PO**" means an order by Customer for Products that references the applicable Quote.

"**Quote**" means a commercial proposal provided by Kempower to Customer describing the Products, prices, number of units offered, and expected lead times.

"**Specifications**" means the technical description and specifications for the Products as published on Kempower's website.

"**Statement of Work**" or "**SOW**" means an addendum to the Agreement, entered into by both Parties, that specifies the Professional Services that Kempower will provide to Customer under this Agreement.

"**Support Services**" means the support services described on Appendix 1 (Support Services) with respect to the Products, as

may be performed by a Kempower authorized service partner or the Customer, subject to the terms of this Agreement.

2. Quotes, Products and Professional Services.

2.1 Upon Customer's request, Kempower may provide a written Quote to Customer for Products and/or Professional Services. Based on a Quote, Customer may then submit a PO for the purchase of Products to Kempower by email to Orders.US@Kempower.com. Each PO must reference, and be consistent with, the applicable Quote. Each PO must describe the Products, prices, quantity ordered, and proposed Delivery Date, and delivery address. All POs are subject to Kempower's acceptance, and Kempower may reject a PO for any reason. Customer has no obligation to purchase Products, and Kempower has no obligation to supply Products to Customer, until and unless Kempower has accepted a PO.

2.2 To the extent the Customer elects to purchase Professional Services from Kempower, and subject to the terms of the Agreement and in consideration for the payment from Customer to Kempower of the fees set forth in the applicable SOW, Kempower will provide the Professional Services. No SOW will be effective unless and until signed by authorized representatives of both Parties.

2.3 Kempower's obligations to Customer are expressly limited to, and conditioned on, Customer's acceptance of this Agreement. This Agreement shall govern any transaction referenced in any Quote, all POs received and accepted by Kempower, and all SOWs entered into between the Parties. Each Quote, PO, and SOW constitutes a part of this Agreement and is deemed incorporated into this Agreement by reference. In the event of a conflict between any PO or Quote and these General Terms and Conditions, the Quote will govern with respect to prices, and lead times, and the PO will govern only with respect to identifying the Products ordered, quantities, scope, Delivery Date (to the extent consistent with the lead time specified in the Quote), and delivery locations. In the event of a conflict between any SOW and these General Terms and Conditions, the applicable SOW shall govern. These General Terms and Conditions will control in all other respects.

3. Support Services.

3.1 The Customer may elect to purchase Support Services from a Kempower authorized service partner or, subject to the conditions and obligations set forth on [Appendix 1](#) (Support Services), perform certain of such Support Services via Customer's own personnel (i.e., self-service). Customer acknowledges and agrees that Kempower shall have no responsibility for performing the Support Services except as set forth on [Appendix 1](#), and Customer hereby releases Kempower from any and all Losses (as defined below) arising from or relating to the provision of the Support Services by Customer's personnel or any third-party.

4. Shipment; Title and Risk of Loss.

4.1 All Delivery Dates, whether scheduled or otherwise, are best estimates only. Kempower shall endeavor to meet the lead times identified in a Quote and the Delivery Date requested in a PO, however Kempower will not be liable for failing to do so.

Customer is responsible for all freight and duty charges from Kempower's shipping location.

4.2 Title (but not title to any Intellectual Property Rights) for Kempower Hardware provided by Kempower under this Agreement will be transferred to Customer upon Kempower's receipt of payment in full for such Products. Risk of loss for Kempower Hardware provided by Kempower under this Agreement will pass to Customer upon delivery to the first transportation carrier. The license to the Kempower System Software described in [Section 6.1](#) will take effect upon Kempower's receipt of payment in full for such Products.

5. Payment and Pricing.

5.1 Customer shall pay to Kempower the fees, charges, and expenses (collectively, the "**Charges**") applicable to each PO or SOW. Unless otherwise expressly stated, Quotes remain valid for 30 calendar days from the date of issuance. Customer shall pay to Kempower the amounts owing, as specified for each PO and SOW, without deduction (including for any applicable withholding taxes), or set off, by ACH to such account or accounts as shall be designated by Kempower. Customer shall bear full responsibility for determining and remitting the applicable withholding tax, on a grossed-up basis, to the appropriate tax authorities and shall provide Kempower with contemporaneous evidence of such payment.

5.2 All Charges are in U.S. dollars. Kempower will invoice Customer for the Charges applicable to each PO or SOW, as applicable. Invoices shall include, (a) with respect to SOWs, the relevant SOW identifier, and total Charges, and (b) with respect to POs, the Product names or code, relevant PO identifier, quantity of Products ordered, unit price in U.S. dollars, and total Charges. Customer shall pay each invoice in full within 30 days following the date of invoice. Kempower is entitled to withhold shipment of the Products unless and until Kempower is paid in full for the Products, and any delay to the Delivery Date caused by Customer's failure to timely pay is Customer's sole responsibility.

5.3 Kempower reserves the right to charge a late fee equal to 1.5% per month for undisputed amounts paid beyond their respective due dates.

5.4 Customer is responsible for all sales, VAT, GST, WHT, excise, personal property or other taxes or duties on the amounts paid or products or services provided under this Agreement. If Customer is exempt from such taxes or duties, Customer shall provide Kempower with a tax exemption certificate.

6. License; Ownership; Restrictions.

6.1 Subject to and conditioned on Customer's payment of Charges and compliance with all other terms and conditions of this Agreement, Kempower grants Customer a non-exclusive, non-sublicensable, and non-transferable license to use the Kempower System Software. Customer agrees not to distribute or otherwise use the Kempower System Software as a stand-alone product. Customer shall not copy, reproduce, modify, reverse engineer, disassemble, decompile, or otherwise attempt to derive source codes from object codes of the Kempower System Software, or damage or make the Kempower System

Software available to any third parties. Kempower agrees that Customer has full rights to use and exploit all data generated by the Kempower System Software.

6.2 All Intellectual Property Rights in or to the Products, services provided under the Agreement, Specifications, Kempower's Confidential Information and the drawings, descriptions and written information provided by Kempower (collectively, "**Kempower IP**") are and will remain the exclusive property of Kempower or its licensors, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Kempower IP is used or licensed. Customer will not take any action that jeopardizes Kempower's or its licensors' Intellectual Property Rights, or attempt to acquire any right, in the Kempower IP. All rights not expressly granted to Customer with respect to Kempower IP are reserved by Kempower and its third-party licensors.

6.3 Customer shall not, and shall not permit any third party to: (a) sell, lease, license, distribute, sublicense or otherwise transfer the Kempower IP in whole or in part to any third party; (b) decompile, disassemble, reverse engineer or otherwise attempt to derive source code from the Products, in whole or in part; (c) copy the Kempower IP; (d) create, develop, license, install, use or deploy any products or services to circumvent, enable, modify or provide access, permissions or rights that violate the technical restrictions of the Products described in the Documentation; (e) translate, modify or create derivative works based on the Products; or (f) remove any product identification, proprietary, copyright, trademark, patent or other notices contained in or on the Products.

6.4 Customer may license any New Software Offering, including Kempower ChargeEye, at Kempower's then-current list price and subject to a separate license agreement.

7. Third-Party Component Vendors.

Kempower's delivery commitments and performance may be dependent upon timely delivery by third-party component vendors and representations they have made regarding their products. If a third-party component vendor or its products fail to deliver as promised, Kempower will not be responsible for any resulting impact on the delivery or performance of the Products and Custom Services provided under this Agreement.

8. Custom Services.

Customer may elect to have Kempower customize the Kempower Hardware by printing Customer's logo or other Customer-provided images and text onto the Kempower Hardware ("**Custom Services**"). Upon Customer's request, Kempower will describe the available Custom Services and related prices in the Quote. Customer may elect whether to purchase the Custom Services in a PO. Customer hereby grants Kempower a worldwide, non-exclusive, non-transferable, right and license to use Customer's logo or other Customer-provided images and text as reasonably necessary to perform the Custom Services. As between Customer and Kempower, any copyrights and trademarks in the logos or images supplied by Customer are and will remain the property of Customer.

9. Changes to Products.

Kempower reserves the right to change or discontinue offering any Product at any time during the Term but will honor all POs previously accepted by Kempower in writing and outstanding at the time Kempower changes or discontinues any Product.

10. Term; Termination.

10.1 The initial term of this Agreement commences on the Effective Date and continues for one year ("**Initial Term**"). Either Party may terminate this Agreement by providing 90 days' written notice of its intention. This Agreement may be renewed upon Parties' mutual consent for successive one-year periods (each, a "**Renewal Term**" and together with the Initial Term, the "**Term**").

10.2 Either Party may terminate this Agreement on 30 days' prior written notice if the other Party commits a material breach of this Agreement, and such breach cannot be cured or, if such breach can be cured, such breach is not cured within thirty (30) days following receipt of notice of such breach by such other Party. If Kempower terminates this Agreement pursuant to this Section 10.2, Customer shall immediately return or irretrievably destroy all Confidential Information, and any other Products if requested by Kempower.

10.3 Termination or expiration of this Agreement for any reason will not affect any obligation arising prior to the effective date of termination, or any obligation that, from its context, is intended to survive the termination or expiration of this Agreement, including Sections 1, 6.2, 6.3 and 10 through 17. Unless Kempower terminates this Agreement for Customer's material breach, the termination or expiration of this Agreement will not affect any PO issued prior to the date of expiration or termination, and Kempower will continue to supply the ordered Products to Customer and Customer shall pay for the ordered Products in accordance with the terms of this Agreement.

11. Limited Product Warranty.

11.1 All Products covered by this Agreement will be warranted per the warranty terms set forth in the Kempower NA Standard Limited Warranty Terms and Conditions (the "**Warranty Terms**") found here: <https://mediabank.kempower.com/l/swkzmjckvpl7>, as they may be updated from time to time. Notwithstanding any other provision of this Agreement, this section contains Customer's exclusive remedy for Products not conforming to the Warranty Terms ("**Defective Products**"). THE WARRANTY TERMS SET FORTH CUSTOMER'S SOLE REMEDY AND KEMPOWER'S ENTIRE LIABILITY FOR ANY BREACH OF THIS LIMITED PRODUCT WARRANTY.

11.2 EXCEPT AS EXPRESSLY SET FORTH IN SECTION 11.1, ALL PRODUCTS ARE PROVIDED "AS IS", AND KEMPOWER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. KEMPOWER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. KEMPOWER MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCTS, OR RESULTS OF THE USE THEREOF, OR ANY SERVICES

PROVIDED HEREUNDER, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE. ANY KEMPOWER WARRANTIES OF OR RELATING TO THE PRODUCTS AND SERVICES ARE MADE SOLELY UNDER THE WARRANTY TERMS.

11.3 If Kempower determines that any Products sold to Customer may be Defective Products, at Kempower's request, Customer shall withdraw all similar Products from use and return such Products to Kempower (pursuant to the Warranty Terms). Notwithstanding the limitations of the Warranty Terms, if Customer returns all withdrawn Products within 20 days following Kempower's withdrawal request, consistent with Kempower's instructions, unless any such defect has been caused or contributed to by any of the factors described in the Warranty Terms, Kempower shall repair or replace all such returned Products, pursuant to the terms of Section 11.1. THIS SECTION 11.1 SETS FORTH CUSTOMER'S SOLE REMEDY AND KEMPOWER'S ENTIRE LIABILITY FOR ANY PRODUCTS THAT ARE WITHDRAWN PURSUANT TO THIS SECTION 11.1.

12. Indemnification.

12.1 Except to the extent caused by any event giving rise to Customer's indemnity obligations in Section 12.3, Kempower will defend and indemnify Customer from and against any and all losses, costs, damages, liabilities or expenses (including reasonable attorneys' fees and costs) ("**Losses**") awarded against Customer in a final, non-appealable judgment incurred from a third-party claim alleging that the Products, when used by Customer in accordance with this Agreement, infringe such third-party's U.S. patent, copyright or trademark or misappropriates such third-party's trade secret.

12.2 Section 12.1 does not apply to claims arising from (a) use of the Products outside the scope of the license granted to Customer or otherwise in violation of this Agreement; (b) any combination, operation or use of the Products with products or materials of third-parties (other than those approved in writing by Kempower or set forth in the Specifications); (c) modification of the Products not performed or provided by Kempower; or (d) anything provided by Customer or performed at Customer's request (e.g., in the performance of Custom Services). If a third-party claim results in an injunction against Customer's use of any component of the Products, or if Kempower reasonably anticipates such an injunction, Kempower will use commercially reasonable efforts to, at Kempower's sole option, procure for Customer the right to continue using the component, replace the component, or modify the component to avoid the claim while retaining substantially the same functionality. If Kempower determines that none of these alternatives is reasonably available, Kempower may terminate this Agreement, in its entirety or with respect to the affected Product, component or part, effective immediately on written notice to Customer.

12.3 Customer will defend and indemnify Kempower and its licensors, officers, agents and employees from and against any and all Losses incurred from any claim or allegation by a third-party relating to (a) Customer's failure to comply with

Applicable Laws; (b) Customer's action or omission; (c) the Custom Services; or (d) any of the items listed in Sections 12.2(a) through 12.2(d).

12.4 The indemnifying Party's indemnification obligations under this Section 12 as to third-party claims are conditioned upon the indemnified Party: (a) giving prompt notice of any such claim to the indemnifying Party; (b) granting sole control of the investigation, defense and settlement of each claim or action to the indemnifying Party (except that the indemnified Party's prior written approval is required for any settlement that requires any payment by, imposes any material obligation on, or results in any ongoing material liability to, the indemnified Party); and (c) providing reasonable cooperation to the indemnifying Party and, at the indemnifying Party's request and expense, assistance in the defense or settlement of the claim.

13. Limitation of Liability.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, LOSS OF DATA, LOSS OF ANTICIPATED PROFIT, AND LOSS OF GOODWILL, FOR ANY CLAIM UNDER THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KEMPOWER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT OR OTHERWISE, FOR ANY EVENT, ACT OR OMISSION, SHALL NOT EXCEED THE AMOUNT PAID BY THE CUSTOMER FOR THE PRODUCTS UNDER THE RESPECTIVE ORDER FROM WHICH THE CLAIM AROSE. THE FOREGOING LIMITATIONS AND EXCLUSIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PERMITTED UNDER THIS AGREEMENT.

14. Confidential Information.

Neither Party ("**Recipient**") will use or disclose the other Party's ("**Disclosing Party**") Confidential Information without the Disclosing Party's prior written consent. "**Confidential Information**" means any information, whether disclosed orally, in writing, electronically, visually or otherwise by Disclosing Party to Recipient in the course of this Agreement, including, in the case of Kempower, Kempower System Software, the terms of this Agreement and the terms of all Quotes and, in the case of either Party, all other information relating to its financial condition, operations, business or customers. Recipient will use the same degree of care as it exercises toward its own Confidential Information in protecting Disclosing Party's Confidential Information, but no less than a reasonable degree of care. Recipient shall only disclose Disclosing Party's Confidential Information on a need-to-know basis to Recipient's employees and contractors bound by non-disclosure obligations at least as protective as the obligations in this Section 14. This Section 14 does not apply to information (a) after it becomes publicly known through no fault of Recipient, (b) already rightfully in Recipient's possession when received, or (c) developed by the Recipient without the use of Disclosing Party's Confidential Information. Recipient acknowledges that its breach of this Section 14 may cause Disclosing Party substantial and

irreparable harm for which Disclosing Party would be entitled to equitable relief in addition to any available legal remedies. Each Party hereby waives any requirement to post bond or provide other security as a condition to receiving such equitable relief. If Recipient is required by law, governmental order or request to disclose Disclosing Party's Confidential Information, Recipient shall, to the extent permitted by law, give Disclosing Party immediate notice of the request or order that the information be disclosed and the fullest opportunity under law to prevent or limit the disclosure.

This provision and the obligations under this Section 14 will survive termination of the Agreement and continue in full force and effect for five (5) years after the termination of this Agreement. All tangible information furnished hereunder by the Disclosing Party to Receiving Party shall remain the property of the Disclosing Party. Upon termination of the Agreement, or upon written request of the Disclosing Party, Receiving Party will (i) cease any use of the Disclosing Party's Confidential Information; and (ii) promptly destroy, or return to the Disclosing Party all documents and other tangible materials containing any portion of, or summarizing, the Disclosing Party's Confidential Information and all copies thereof. At the Disclosing Party's request, an officer of Receiving Party will provide a certificate attesting to compliance with the foregoing.

15. Force Majeure.

Kempower's obligations hereunder will be suspended so long as its performance is impeded or prevented by causes beyond Kempower's reasonable control, which may include acts of God, embargoes, acts of war (including terrorist attacks), labor disturbances, supply shortages, acts of third parties, pandemics, and acts or regulations of governmental entities.

16. Compliance with Export and Import Laws.

Export laws and regulations of the United States and other relevant local export laws and regulations may apply to the Products. Customer agrees that export control laws govern Customer's use and distribution of the Products (including technical data), and Customer agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, program, or materials resulting from use of the Products (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws. Customer shall be solely responsible for payment of all import and export duties not included in the Quote, PO, SOW, or invoice, if any, in connection with purchase, shipment, installation and use of the Products provided. Kempower may deem Customer's failure to comply with the requirements of this [Section 16](#) a material breach of this Agreement.

17. Miscellaneous.

17.1 [Assignment](#). Customer may not assign any rights or delegate any obligations under this Agreement without the prior written consent of Kempower. Any attempted assignment or delegation by Customer in violation of this [Section 17.1](#) will be null and void.

17.2 [Severability; Beneficiaries](#). If any term of this Agreement is held to be unenforceable, the other terms of this Agreement will be enforced to the fullest extent permitted by law. No person or entity other than Kempower and Customer shall have any rights under this Agreement.

17.3 [Counterparts](#). This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

17.4 [Governing Law](#). This Agreement shall be governed by and construed in accordance with the laws of the state of Delaware, without giving effect to its principles or rules of conflict of laws to the extent such principles or rules are not mandatorily applicable by statute and would require or permit the application of the laws of another jurisdiction, as to all matters, including matters of validity, construction, effect, performance, and remedies. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods (UCITA). The Parties further agree that UCITA, whether enacted in whole or in part by any state or applicable jurisdiction, regardless of how codified shall not apply to this Agreement and is hereby disclaimed.

17.5 [Arbitration](#). Any and all controversies or claims arising out of or relating to this Agreement, or the breach thereof, shall be determined by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules and Mediation Procedures ("**Commercial Rules**"). Any award rendered by the arbitrators shall be final and binding on the Parties and may be entered and enforced in any court having jurisdiction, and any court where a Party or its assets are located. Judgment on such awards shall be final and non-appealable. There shall be one arbitrator, which shall be appointed by the AAA in accordance with its Commercial Rules. If more than one arbitration is commenced under the Agreement and any Party contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator selected in the first-filed proceeding shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before such arbitrator. The seat or place of arbitration shall be Durham, North Carolina. The arbitration shall be conducted, and the award shall be rendered, in the English language. Except as may be required by law, neither a Party nor any arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both Parties, unless to protect or pursue a legal right.

17.6 [Waiver](#). No waiver or failure of a Party to assert any right under this Agreement on any one occasion will operate as a waiver of the same or any other right on any other occasion.

17.7 [Notices](#). All notices under this Agreement will be delivered personally, sent by nationally recognized express courier or sent by certified or registered U.S. mail, return receipt requested, to the address shown on the Signature Page or such other address as may be specified by either Party to the other Party in compliance with this [Section 17.7](#). Notices will be deemed effective on personal receipt, two days after delivery by courier and four days after deposit in the U.S. mail.