



## Agenda Page 1 of 1

### Executive Committee Meeting Friday, December 7, 2018 12:00 P.M.

**Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901**  
**Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920**

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1 Approval of 10.5.18 Meeting Minutes
  - C.2 Third Agreement with The Energy Alliance Association (TEAA)
  - C.3 Second Amendment to Ninth Agreement with Richards, Watson & Gershon
  - C.4 First Amended and Restated Agreement with ZGlobal, Inc.
6. Establishing 2019 Ad Hoc Ratesetting Committee (Discussion/Action)
7. Charles F. McGlashan Advocacy Award Nominations (Discussion/Action)
8. Proposed Amendment to MCE Policy 014: Investment Policy (Discussion/Action)
9. Committee Member & Staff Matters (Discussion)
10. **CLOSED SESSION: Conference with Legal Counsel – Anticipated Litigation**  
*Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2).  
One case.*
11. Adjourn



**DRAFT**  
**MCE**  
**EXECUTIVE COMMITTEE MEETING**  
**Friday, October 5, 2018**  
**12:00 P.M.**

**Charles F. McGlashan Room**, 1125 Tamalpais Avenue, San Rafael, CA 94901  
**Mt. Diablo Room**, 2300 Clayton Road, Suite 1150, Concord, CA 94520

**Roll Call**

**Present:** Denise Athas, City of Novato (*San Rafael*)  
Lisa Blackwell, Town of Danville (*Concord*)  
Tom Butt, City of Richmond (*San Rafael*)  
Barbara Coler, Town of Fairfax (*San Rafael*)  
Ford Greene, Town of San Anselmo (*San Rafael*)  
Kevin Haroff, City of Larkspur (*San Rafael*)  
David Kunhardt, Town of Corte Madera (*San Rafael*)  
Bob McCaskill, City of Belvedere (*San Rafael*)  
Tim McGallian, City of Concord (*Concord*)  
Kate Sears, County of Marin (*San Rafael*)  
Dave Trotter, Town of Moraga (*Concord*)

**Absent:** Federal Glover, Contra Costa County

**Staff:** Jesica Brooks, Board Assistant (*San Rafael*)  
Sarah Estes-Smith, Director of Internal Operations (*San Rafael*)  
Katie Gaier, Manager of Human Resources (*San Rafael*)  
Darlene Jackson, Board Clerk/Executive Assistant to CEO (*Concord*)  
Vicken Kasarjian, Chief Operating Officer (*San Rafael*)  
Beth Kelly, General Counsel (*San Rafael*)  
Enyo Senyo-Mensah, Internal Operations Assistant (*Concord*)  
Dawn Weisz, CEO (*Concord*)

Quorum was established and the regular Executive Committee meeting was called to order at 12:03 P.M. by Chair Tom Butt.

**Agenda Item #04 – Report from Chief Executive Officer (Discussion)**

CEO Dawn Weisz shared with the Committee information regarding the following:

- Extended a thank you to Director Butt for representing MCE at the Supplier Diversity En Banc. Alexandra McGee, Community Power Organizer for MCE provided a “CalCCA Beyond Supplier Diversity Report” at the event and it was well-received.

- The CPUC decision on the PCIA has not been made, but we expect the decision to be made on October 11th.
- Extended a thank you to all that were able to attend MCE's Annual Board Retreat.

**Agenda Item #05 – Consent Calendar (Discussion/Action)**

- C.1 Approval of 7.6.18 Meeting Minutes
- C.2 Monthly Budget Update
- C.3 Withdrawal of MCE Policy No. 005

Chair Butt asked for public comment and there was none.

Action: It was M/S/C (Sears/Greene) to **approve Consent Calendar Items C.1 and C.3 and that Item C.3 be moved to the Board of Directors with the recommendation that the Board withdraw MCE Policy No. 005.** Motion passed by unanimous vote. (Absent: Director Glover)

**Agenda #06 – Resolution No. 2018-08 Authorizing Delegation of Authority by CEO (Discussion/Action)**

Elizabeth Kelly, General Counsel, presented this item and addressed questions from the Committee.

Chair Butt asked for public comment and there was none.

Action: It was M/S/C (Sears/Haroff) to **recommend that the Board of Directors adopt Proposed Resolution No. 2018-08.** Motion carried by unanimous vote. (Absent: Director Glover)

**Agenda #07 – Establishing an Alternative Claims Procedure (Discussion/Action)**

Elizabeth Kelly, General Counsel, presented this item and addressed questions from the Committee.

Chair Butt asked for public comment and there was none.

Action: It was M/S/C (Trotter/Haroff) to **recommend that the Board of Directors waive full reading, read by title only, and introduce for first reading Ordinance No. 2018-02 of the Board of Directors of Marin Clean Energy Establishing an Alternative Claims Procedure pursuant to Government Code 935.** Motion carried by unanimous roll call vote. (Absent: Director Glover)

**Agenda #08 – Employee Retention and Streamlining Human Resources Functions (Discussion/Action)**

Vicken Kasarjian, Chief Operating Officer, presented this item and addressed questions from the Committee.

Chair Butt asked for public comment and there was none.

Action: It was M/S/C (Haroff/Sears) to **recommend that the Board of Directors approve Resolution 2018-09**. Motion carried by unanimous vote. (Absent: Directors Glover and Greene)

**Agenda #09 – MCE Joint Powers Agreement and Land Use (Discussion)**

Elizabeth Kelly, General Counsel, presented this item and addressed questions from the Committee.

Chair Butt asked for public comment and there was none.

Action: No action required.

**Agenda #10 – Review Draft 10.18.18 Board Agenda (Discussion)**

Chair Butt asked for public comment and there was none.

Action: No action required.

**The meeting was adjourned at 1:44 P.M. to the next scheduled Executive Committee Meeting on November 2, 2018.**

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**Tom Butt, Executive Committee Chair**

**ATTEST:**

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**Dawn Weisz, Chief Executive Officer**





December 7, 2018

TO: MCE Executive Committee

FROM: Joey Lande, Customer Programs Manager

RE: Proposed Third Agreement with The Energy Alliance Association (TEAA) (Agenda Item #05 – C.2)

ATTACHMENT: Proposed Third Agreement with TEAA

Dear Executive Committee Members:

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**SUMMARY:**

The proposed Third Agreement with The Energy Alliance Association (TEAA) would provide a continuation of services to MCE for implementation of the small commercial energy efficiency program in 2019.

Background

MCE has contracted with TEAA for support of its small commercial energy efficiency program since March 2017. In August 2018, the Executive Committee approved the Second Agreement with TEAA after TEAA was selected as the winning contractor from MCE's non-residential request for proposals. TEAA is currently the top-performing contractor in MCE's commercial energy efficiency program, and a key driver in achieving program impacts.

TEAA is compensated on a pay-for-performance basis, at \$0.22 per net kWh saved, and \$0.80 per net therm saved. The proposed Third Agreement includes savings goals of 800,000 net kWh and 25,000 net therms. At the performance rates noted above, the maximum contract value is \$196,000.

**Fiscal Impacts:** Expenditures related to the proposed Third Agreement would be funded completely from the energy efficiency program funds allocated by the CPUC.

**Recommendation:** Approve the Third Agreement with TEAA.

**MARIN CLEAN ENERGY  
ENERGY EFFICIENCY PROGRAMS STANDARD SHORT FORM CONTRACT**

**THIRD AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND THE ENERGY ALLIANCE ASSOCIATION (TEAA)**

**THIS THIRD AGREEMENT** ("Agreement") is made and entered into this day **December 7, 2018** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and THE ENERGY ALLIANCE ASSOCIATION (TEAA), hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: program implementation services to support MCE's nonresidential energy efficiency program;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** ("Services") attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement. MCE will process payment for undisputed invoiced amounts within 30 days.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$196,000**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **January 1, 2019**, and shall terminate on **June 30, 2019**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 17 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

#### **6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

#### **6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

#### **6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

#### **6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

**6.5 PRIVACY AND CYBERSECURITY LIABILITY.** Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$1,000,000 US per occurrence.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

#### **7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

#### **8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

#### **9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

**11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

**12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source and/or termination/modification by California Public Utilities Commission (CPUC) Order.
- F. Upon MCE's termination of this Agreement for any reason, Contractor shall, and shall cause each subcontractor to, bring the Services to an orderly conclusion as directed by MCE. MCE, at its option, may take possession of any portion of the Services paid for by MCE.

**13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

**14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

**15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

**16. DISPUTES:**

Either Party may give the other Party written notice of any dispute which has not been resolved at a working level. Any dispute that cannot be resolved between Contractor's contract representative and MCE's contract representative by good faith negotiation efforts shall be referred to Legal Counsel of MCE and an officer of Contractor for resolution. Within 20 calendar days after delivery of such notice, such persons shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary to exchange information and to attempt to resolve the dispute. If MCE and Contractor cannot reach an agreement within a reasonable period of time (but in no event more than 30 calendar days), MCE and Contractor shall have the right to pursue all rights and remedies that may be available at law or in equity. In particular, Contractor shall have right to request arbitration or mediation to resolve the dispute and MCE shall be required to participate in arbitration or mediation in good faith. All negotiations and any mediation agreed to by the Parties are confidential and shall be treated as compromise and settlement negotiations, to which Section 1119 of the California Evidence Code shall apply, and Section 1119 is incorporated herein by reference.

**17. REPRESENTATIONS; WARRANTIES; INDEMNIFICATION:**

**17.1 LICENSING.** At all times during the performance of the Services, Contractor represents, warrants and covenants that it has and shall, and shall cause each of its employees, agents, representatives, and subcontractors and all other persons performing the Services on behalf of Contractor, to obtain and maintain, at its sole cost and expense, all required licenses and registrations required for the operation of its business and the performance of the Services. Contractor shall promptly provide copies of such licenses and registrations to MCE at the request of MCE.

**17.2 PERFORMANCE ASSURANCE; BONDING.** At all times during the performance of the Services, Contractor providing any direct installation services represents, warrants and covenants that it has and shall, and shall cause each subcontractor to, obtain and maintain, at its sole cost and expense, all bonding requirements of the California State License Board, as may be applicable. Contractor shall also maintain any payment and/or performance assurances as may be requested by MCE during the performance of the Services.

**17.3 GOOD STANDING.** Contractor represents and warrants that (a) it is a company duly organized, validly existing and in good standing under the laws of the State of California and (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of the State of California and each other jurisdiction wherein the nature of its business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

**17.4 SAFETY.** During the term of this Agreement, Contractor continuously represents, warrants and covenants that it shall, and shall cause each subcontractor to:

- (a) abide by all applicable federal and state Occupational Safety and Health Administration requirements and other applicable federal, state, and local rules, regulations, codes and ordinances to safeguard persons and property from injury or damage;
- (b) abide by all applicable MCE security procedures, rules and regulations and cooperate with MCE security personnel whenever on MCE's property;
- (c) abide by MCE's standard safety program contract requirements as may be provided by MCE to Contractor from time to time;
- (d) provide all necessary training to its employees, and require subcontractors to provide training to their employees, about the safety and health rules and standards required under this Agreement; and
- (e) have in place an effective Injury and Illness Prevention Program that meets the requirements all applicable laws and regulations, including but not limited to Section 6401.7 of the California Labor Code. Additional safety requirements (including MCE's standard safety program contract requirements) are set forth elsewhere in the Agreement, as applicable, and in MCE's safety handbooks as may be provided by MCE to Contractor from time to time.

**17.5 BACKGROUND CHECKS.**

(a) Contractor hereby represents, warrants and certifies that any personnel of Contractor or subcontractor, and their representatives and agents, having or requiring access to MCE's assets, premises, customer property, data or systems ("Covered Personnel") shall have successfully passed background screening on each such individual, prior to receiving access, which screening may include, among other things to the extent applicable to the Services, a screening of the individual's educational background, employment history, valid driver's license, and court record for the seven (7) year period immediately preceding the individual's date of assignment to the project.

(b) Notwithstanding the foregoing and to the extent permitted by applicable law, in no event shall Contractor permit any Covered Personnel to have one or more convictions during the seven (7) year period immediately preceding the individual's date of assignment to the project, or at any time after the individual's date of, assignment to the project, for any of the following ("Serious Offense"): (i) a "serious felony," similar to those defined in California Penal Code Sections 1192.7(c) and 1192.8(a), or a successor statute, or (ii) any crime involving fraud (such as, but not limited to, crimes covered by California Penal Code Sections 476, 530.5, 550, and 2945, California Corporations Code 25540), embezzlement (such as, but not limited to, crimes covered by California Penal Code Sections 484 and 503 et seq.), or racketeering (such as, but not limited to, crimes covered by California Penal Code Section 186 or the Racketeer Influenced and Corrupt Organizations(RICO) Statute (18 U.S.C. Sections 1961-1968)).

(c) To the maximum extent permitted by applicable law, Contractor shall maintain documentation related to such background and drug screening for all Covered Personnel and make it available to MCE for audit if required pursuant to the audit provisions of this Agreement.

(d) To the extent permitted by applicable law, Contractor shall notify MCE if any of its Covered Personnel is charged with or convicted of a Serious Offense during the term of this Agreement. Contractor will also immediately prevent that employee, representative, or agent from performing any Services.

**17.6 FITNESS FOR DUTY.** Contractor shall ensure that all Covered Personnel report to work fit for their job. Covered Personnel may not consume alcohol while on duty and/or be under the influence of drugs or controlled substances that impair their ability to perform their work properly and safely. Contractor shall, and shall cause its subcontractors to, have policies in

place that require their employees report to work in a condition that allows them to perform the work safely. For example, employees should not be operating equipment under medication that creates drowsiness.

**17.7 INDEMNIFICATION.** Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

**18. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

**19. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**20. INVOICES; NOTICES:**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

\_\_\_\_\_  
Email Address:        invoices@mcecleanenergy.org  
\_\_\_\_\_

All other notices shall be given to MCE at the following location:

Contract Manager:    Troy Nordquist  
\_\_\_\_\_  
MCE Address:        1125 Tamalpais Avenue  
\_\_\_\_\_  
                              San Rafael, CA 94901  
\_\_\_\_\_  
Email Address:        contracts@mcecleanenergy.org  
\_\_\_\_\_  
Telephone No.:        (415) 464-6027  
\_\_\_\_\_

Notices shall be given to Contractor at the following address:

Contractor:            Katie Moore  
\_\_\_\_\_  
Address:                1400 N. Dutton Ave, Ste 17  
\_\_\_\_\_  
                              Santa Rosa, CA 95401  
\_\_\_\_\_  
Email Address:        katie@teaa.net  
\_\_\_\_\_  
Telephone No.:        (707) 542-3171  
\_\_\_\_\_

**21. ACKNOWLEDGEMENT OF EXHIBITS:**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.



**Check applicable Exhibits**

**CONTRACTOR'S INITIALS**

**EXHIBIT A.**

**Scope of Services**

**EXHIBIT B.**

**Fees and Payment**

**22. SEVERABILITY:**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**23. COMPLETE AGREEMENT:**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**24. COUNTERPARTS:**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**25. CONFIDENTIAL AND PERSONAL INFORMATION:**

Promptly after this Agreement or a Statement of Work terminates or expires, and for each completed Statement of Work (i) Contractor will securely destroy all MCE content and data in its possession with respect to each terminated or expired Statement of Work and certify the secure destruction in writing to MCE, and (ii) each party will return (or if requested by the disclosing party, destroy) all other Confidential Information and property of the other (if any) with respect to each terminated or expired Statement of Work. "Confidential Information" under this Agreement shall have the same meaning as defined in the Marin Clean Energy Non-Disclosure Agreement between the parties dated March 9, 2017. Additionally, Contractor shall, at its own expense, adopt and continuously implement, maintain and enforce reasonable technical and organizational measures, consistent with the sensitivity of Personal Information and Confidential Information including, but not limited to, measures designed to (1) prevent unauthorized access to, and otherwise physically and electronically protect, the Personal Information and Confidential Information, and (2) protect MCE content and data against unauthorized or unlawful access, disclosure, alteration, loss, or destruction. "Personal Information" includes but is not limited to the following: personal and entity names, e-mail addresses, addresses, phone numbers, any other public or privately-issued identification numbers, IP addresses, MAC addresses, and any other digital identifiers associated with entities, geographic locations, users, persons, machines or networks. Contractor shall comply with all applicable laws, rules, and regulations related to the use, collection, storage, and transmission of Personal Information

**26. WORKFORCE STANDARDS:**

**26.1 HVAC STANDARDS.** If Contractor has any non-residential project installing a Heating Ventilation and Air Conditioning (HVAC) system or component with incentives valued at \$3,000 or more, Contractor shall, and its subcontractors shall have met one of the following workforce criteria:

- a) Completed an accredited HVAC apprenticeship;
- b) Be enrolled in an accredited HVAC apprenticeship;
- c) Completed at least five years of work experience at the journey level as defined by the California Department of Industrial Relations, passed a practical and written HVAC system installation competency test, and received credentialed training specific to the installation of the technology being installed; or
- d) Have a C-20 HVAC contractor license from the California Contractor's State Licensing Board.

**26.2 LIGHTING CONTROLS STANDARDS.** If Contractor has any non-residential project involving installation, modification, or maintenance of lighting controls with incentives valued at \$2,000 or more, Contractor shall, and its subcontractors shall utilize a lighting contractor certified by the California Advanced Lighting Controls Training Program (CALTP).

**27. FINANCIAL STATEMENTS.** Contractor shall deliver financial statements on an annual basis or as may be reasonably requested by MCE from time to time. Such financial statements or documents shall be for the most recently available audited or reviewed period and prepared in accordance with generally-accepted accounting principles. MCE shall keep such information confidential if requested by Contractor, except as provided by law and to provision to the Commission may be required from time to time under confidentiality procedures, where applicable.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

By: \_\_\_\_\_  
CEO

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_



**MODIFICATIONS TO STANDARD SHORT FORM**

**Standard Short Form Content Has Been Modified**

*List sections affected:* \_\_\_\_\_

\_\_\_\_\_

**Approved by MCE Counsel:** \_\_\_\_\_

**Date:** \_\_\_\_\_



**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide the following program implementation services as requested and directed by MCE staff for MCE's nonresidential energy efficiency program, up to the maximum time/fees allowed under this Agreement.

**Program overview**

**Timeline: January 1, 2019 through June 30, 2019**

Contractor will implement (the "Program"), as outlined in Appendix A. This scope of work summarizes requirements and expectations of Contractor as an implementer of MCE's commercial energy efficiency program, covering administration, project development, evaluation, promotion of commercial energy efficiency programs, and coordination with other program implementers who work alongside Contractor.

**Task 1: Maintenance of a pre-qualified products catalog**

**Timeline for completion: Initial version on January 18<sup>th</sup>, updates as needed**

Contractor will maintain in coordination with MCE, a pre-qualified products catalog that will include approved products and/or measures for inclusion in the Program. This catalog will be revised and/or updated as required by CPUC rules, MCE direction, and/or input from Contractor. Vendors who participate in the Program will utilize approved equipment, and Contractor will conduct regular review of vendor pricing. Contractor will provide a comprehensive product portfolio which includes lighting, HVAC, refrigeration, water heating, and controls measures such as occupancy sensors and PTAC controls.

**Task 2: Management Plan of Customer Incentives, Rebates and Project Pricing**

**Timeline for completion: Ongoing**

Contractor will develop a management plan of its project portfolio to deliver projects using both Deemed and Customized, and meter-based (normalized metered energy consumption or "NMEC") savings strategies to achieve the targeted average customer incentive payment rate.

The average customer incentive payments at the portfolio level for Contractor are to be at \$.19/kWh (net first year energy savings), and \$1.50/therm (net first year energy savings).

All projects with anticipated customer incentive payments of over \$10,000 are to be sent to MCE staff for review prior to installation. If these projects are not approved in writing by MCE before installation MCE cannot guarantee the payment of the Contractor's quoted customer incentive or Contractor's performance fees.

Contractor shall conduct a due diligence review of all quoted and invoiced pricing from participating contractors who install projects at customer facilities. Contractor's review and project verification shall include vetting: (i) the project specifications, (ii) the products used, (iii) equipment pricing, which may include requesting wholesale price sheets for comparisons, and (iv) the net first year energy savings calculated for the project. Projects where price equipment is beyond 140% of distributor/wholesale pricing shall be questioned by Contractor, and may not be covered by MCE incentives. Contractor is expected to act as an advocate for the customer, advocating for lower costs wherever possible.

For all project leads that are generated by MCE or TEAA and have an anticipated incentive of over \$2,000, a minimum of two (2) competitive bids must be received for the project.

The savings methodology for individual projects is subject to change at MCE's direction at any time. Acceptable claims types may include deemed calculations, custom calculations and/or meter-based calculations. The savings claims methodology may be used as the basis for both customer incentives and the performance payment to Contractor. Meter-based savings calculations may require more than a year of meter data before being considered final.

**Task 3: Qualify and Manage Vendors**

**Timeline for completion: Ongoing**

Contractor must perform vendor qualification, training and management, using existing processes. Contractor's screening of vendors includes an application, verification of California contractor's license, and verification of insurance (general liability, auto, workers' compensation) coverage. Enrolled vendors receive support and training, including an initial one-on-one training with Contractor as well as ongoing support. Program vendors may be assigned individual projects, and/or they may bring in their own project leads.

Contractor will also provide support to customers or facilities managers who opt to self-install a project or otherwise complete a project without a vendor's involvement.

Quality Assurance: Contractor will inspect a minimum of 50 percent of completed projects. Vendors with a demonstrated track record of quality performance will have a lower percentage of their projects inspected, while newly enrolled vendors will receive inspections on three of their first ten projects. If any contractor receives a poor customer satisfaction review or unsatisfactory inspection results from a project, they may be suspended from Program participation so that Contractor (in coordination with MCE) can contact the customer, learn about the issues, and address and resolve them in the appropriate manner.

**Task 4: Coordinate with other Programs and/or Contractors**

**Timeline for completion: Ongoing**

At the direction of MCE, Contractor will coordinate and cooperate with other energy efficiency programs and/or other Program contractors to streamline Program delivery, reduce customer confusion, and align measures and customer incentives as directed by MCE. This may result in a request by MCE to limit scope of services (by geographic area served, or targeted measures), or to focus services in specific areas.

**Task 5: Program Operations**

**Timeline for completion: Ongoing**

Contractor will employ a customer engagement program strategy which leverages direct customer outreach, contractor-sourced customer enrollment, and referrals. The key elements are listed below in chronological order:

- Lead Generated
- Customer Contact Sequence
  - Introductions
  - Discuss efficiency program details
  - Schedule a site visit
  - Complete Access Agreement form (TBD)
- Site Visit
  - Perform detailed audit/survey
  - Obtain copy of utility bill
  - Determine building type and usage data
  - Obtain customer objectives, areas of concern/importance
  - Discuss Program details and respond to questions
- Generate Proposal
  - Data entry
  - Obtain pricing
  - Generate written proposal
- Presentation of Proposal to Customer
- Installation
- Verification
- Monthly reporting

**Task 6: MCE & CPUC Reporting**

**Timeline for completion: Ongoing**

Contractor will submit application paperwork to MCE in accordance with MCE's current reporting practices. Such Monthly Reporting documentation will include:

- Monthly Invoice
- Monthly Reporting (MCE's mandatory sections), Running totals of projects and a Monthly Report
- Scanned project paperwork as required by MCE program managers.

Reporting practices will change as MCE launches a project management platform, for which TEAA will use a tailored portal to enter in new project details, which will be updated through various project stages through to the final invoicing and payment. The platform will capture key project details based on TEAA's input, which MCE staff will then use for reporting needs. In addition, Contractor will report the quarterly data to external reviewers, which covers:

- Claims
- Contract Claim
- Contact Info
- Custom Measures
- Deemed Measures
- Program Cost
- Site claims
- Site-PII Claims
- Water Measures

**EXHIBIT B  
FEES AND PAYMENT SCHEDULE**

For program implementation services provided under this Agreement, MCE shall pay Contractor a performance fee for gross kWh savings claimed with the CPUC, in accordance with the following payment schedule:

<b>2019 Implementation Budget for services delivered between January 1 and June 30, 2019</b>				
<i>Cost Item</i>	<i>Unit Cost</i>	<i>Unit</i>	<i>Quantity</i>	<i>Total Cost (NTE)</i>
Program Performance Fees* per net kWh saved	\$0.22	kWh	800,000	176,000
Program Performance Fees* per net therm saved	\$0.80	therm	25,000	20,000
Total Contract (NTE)				\$196,000
*Performance fees will be invoiced and paid on a monthly basis, with an annual true-up to account for revisions to final savings claims, based on MCE, EM&V and/or CPUC review. This payment is predicated upon substantial progress or completion, as applicable, of the Tasks set forth in Exhibit A. Customer rebates and incentives will be paid at average rates of \$0.19/kWh and \$1.50/therm saved				

Contractor shall bill MCE monthly. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$196,000** for the term of the Agreement.



December 7, 2018

TO: MCE Executive Committee

FROM: Catalina Murphy, Legal Counsel

RE: Second Amendment to Ninth Agreement with Richards, Watson & Gershon (Agenda Item #05 – C.3)

ATTACHMENT: Proposed Second Amendment to Ninth Agreement with Richards, Watson & Gershon

Dear Executive Committee Members:

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**SUMMARY:**

Richards, Watson & Gershon provides various municipal and general legal services to MCE. These services have included providing advice on a wide range of municipal and joint powers authority issues, employment issues, recommendations regarding the Brown Act, the Public Records Act, the California Environmental Quality Act, and conflict of interest laws. MCE currently has an agreement with Richards, Watson & Gershon with a maximum sum of \$100,000. Due to an increasing need for legal services, staff recommends increasing the current agreement by \$50,000 for a total amount not to exceed \$150,000 for continuation of these services through Fiscal Year (FY) 2018/19.

**Fiscal Impacts:** Costs related to the contract are included in the FY 2018/19 Operating Fund Budget.

**Recommendation:** Approve the proposed Second Amendment to the Ninth Agreement with Richards, Watson & Gershon.

**SECOND AMENDMENT TO NINTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND RICHARDS, WATSON & GERSHON**

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This SECOND AMENDMENT is made and entered into on December 7, 2018, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and RICHARDS, WATSON & GERSHON (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide legal services as directed by MCE staff dated March 28, 2018 and amended on October 3, 2018 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the Agreement, as amended, provided for Contractor to be compensated in an amount not to exceed \$100,000 for the legal services described within the scope therein; and

WHEREAS the parties desire to further amend the Agreement to increase the contract amount by \$50,000 for total consideration not to exceed \$150,000.

NOW, THEREFORE, the parties agree to modify Section 4 and Exhibit B as set forth below.

AGREEMENT

1. Section 4 is hereby amended to read as follows:

**MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$150,000**.

2. The last sentence of Exhibit B is hereby amended to read as follows:

**In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of \$150,000 for the term of the Agreement.**

3. Except as otherwise provided herein all terms and conditions of the Agreement shall remain in full force and effect.

**SECOND AMENDMENT TO NINTH AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND RICHARDS, WATSON & GERSHON**

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IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment on the day first written above.

CONTRACTOR:

By: \_\_\_\_\_

Date: \_\_\_\_\_

MARIN CLEAN ENERGY:

By: \_\_\_\_\_

Date: \_\_\_\_\_

MARIN CLEAN ENERGY:

By: \_\_\_\_\_

Date: \_\_\_\_\_



December 7, 2018

TO: MCE Executive Committee

FROM: Lindsay Saxby, Interim Deputy Director of Power Supply Contracts

RE: Proposed First Amended and Restated Agreement with  
ZGlobal, Inc. (Agenda Item #05 – C.4)

ATTACHMENTS: A. Scheduling Services Agreement with ZGlobal  
B. Proposed First Amended and Restated Agreement with ZGlobal

Dear Executive Committee Members:

**SUMMARY:**

On June 16, 2016, your Board approved the Scheduling Services Agreement with ZGlobal, Inc., included herein as attachment A, for Scheduling Coordinator (SC) services. ZGlobal has been providing the following scheduling services to MCE:

- **Generation SC Services:** this includes scheduling for power generation resources on a day-ahead, hour-ahead, real-time basis as required and providing monthly reporting and access to California Independent System Operator (CAISO) settlements statements, database hosting, shadow settlement and invoice validation.
- **Load SC Services:** this includes scheduling of MCE forecast load on a day-ahead, hour-ahead and real-time basis as required.
- **Load Forecasting Services:** this includes scheduling of MCE forecast load on a day-ahead, hour-ahead and real-time basis as required.
- **Portfolio Management Services:** this includes recommending strategies for short term portfolio optimization and risk mitigation, within parameters of MCE's Energy Risk Management Policy; managing Congestion Revenue Rights (CRR) bids and CRR portfolio to mitigate congestion costs.

The proposed First Amended and Restated Agreement with ZGlobal restates the SC services listed above and amends the agreement to include the new functions of MCE interacting directly with CAISO as a Scheduling Coordinator in relation to MCE's Estimated Aggregate Liability (EAL). The proposed agreement sets forth the roles and responsibilities of MCE and ZGlobal, with ZGlobal still providing the day-to-day services of SC on MCE's behalf, and identifies how MCE will be responsible directly for payments of the EAL to CAISO.

**Fiscal Impacts:** There is no change to the fees for service in the amended and restated agreement. Costs that are incurred in FY 2018/19 are included in the Operating Fund Budget and costs that will be incurred in a later FY will be incorporated into the budget of that year.

**Recommendation:** Approve the proposed First Amended and Restated Agreement with ZGlobal, Inc.



## **SCHEDULING SERVICES AGREEMENT**

This Scheduling Services Agreement (“Agreement”), dated as of June 17, 2016 (“Effective Date”), is entered into between ZGlobal Inc. (“ZGlobal”) and Marin Clean Energy, a California joint powers authority (“MCE” or “Client”). ZGlobal and Client are referred to individually as a “Party” and collectively as the “Parties.”

### **RECITALS**

WHEREAS, Client desires to have ZGlobal perform the Services (as defined below);

WHEREAS, ZGlobal is in the business of providing energy scheduling/settlement and related services as an agent, including the Services; and

WHEREAS, except as otherwise defined in the body of this Agreement, terms and expressions used in this Agreement shall have the meanings contained in Exhibit A.

NOW THEREFORE, in consideration of the promises, covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ZGlobal and Client, intending to be legally bound, hereby agree as follows:

### **ARTICLE 1** **TERM AND TERMINATION**

1.1 Term. The “Primary Term” of this Agreement shall be five (5) years, beginning on the Commencement Date, unless terminated earlier as provided in this Agreement. At the conclusion of the Primary Term, this Agreement shall automatically continue for successive one (1) year terms (each such term an “Additional Term”), unless either Party has given the other Party at least ninety (90) days’ written notice prior to the end of the Primary Term or the Additional Term that it does not wish to renew the Agreement or unless terminated earlier as provided in this Agreement (the period during which the Agreement remains in effect, the “Term”).

1.2 Termination for Convenience. During the Term, either Party may terminate this Agreement at any time for any reason or no reason upon one hundred eighty (180) days’ prior written notice for ZGlobal and ninety (90) days’ prior written notice for Client. For the avoidance of doubt, Client may request the cancellation of a Service on prior written notice to ZGlobal without terminating the Agreement.

1.3 Termination for Cause. During the Term, if one of the following events (each, an “Event of Default”) occurs with respect to a Party (the “Defaulting Party”), the other Party (the “Non-Defaulting Party”) shall have the right to terminate this Agreement upon delivery of written notice to the Defaulting Party:

(a) A Party fails to make when due any undisputed payment due under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Party failing to make payment;

(b) A Party breaches a material covenant or agreement in this Agreement (other than a default in a payment obligation), if such breach is not remedied within ten (10) Business Days after written notice is given to the Party in breach of its covenants or agreements under this Agreement;

(c) A Party makes an assignment or any general arrangement for the benefit of creditors; or files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it; or otherwise becomes bankrupt or insolvent (however evidenced); or becomes unable to pay its debts as they fall due;

(d) ZGlobal fails to maintain Performance Assurance in accordance with Article VII, and does not remedy such breach within three (3) Business Days after written notice from Client; or

(e) One or more of a Party's representations or warranties set forth in Section 5.1 or 5.2 (as applicable) are no longer true or correct, and such representation or warranty is not corrected within thirty (30) days after written notice is given to the Party whose representation or warranty is no longer true or correct.

1.4 Effect of Termination. Notwithstanding anything else set forth herein, the terms and conditions of this Agreement shall remain in effect until the Parties have fulfilled all outstanding obligations, including payment in full of amounts due and transfer of information to Client or Client's designee, and the termination of this Agreement shall not relieve either Party of (i) any unfulfilled obligation or undischarged liability of such Party existing as of the termination date, including without limitation the transition of the Services to Client or its designee (ii) the consequences of any breach or default under this Agreement to the extent not excused by this Agreement, or (iii) any obligations or liabilities arising from provisions of this Agreement that either expressly or by their nature survive the termination of this Agreement. Within 90 days after the termination of this Agreement, any amounts due from either Party shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds made. No termination by ZGlobal shall be effective until the later of (x) the termination date specified in ZGlobal's written notice of termination or (y) the date upon which ZGlobal has transitioned the Services to Client or its designee in accordance with Section 2.3; provided that such transition period shall not exceed forty-five (45) days. The Client's cancellation of a Service shall not act as a termination of the Agreement.

1.5 Exclusive Remedy. For the avoidance of doubt, except for and subject to its right to indemnification under Article 8, if Client is not satisfied with ZGlobal's performance of Services hereunder, Client's sole and exclusive remedy shall be to terminate this Agreement pursuant to Section 1.2 or Section 1.3 above, as applicable.

1.6 Cooperation. In connection with the termination of this Agreement, ZGlobal shall take such actions as Client may reasonably request and ZGlobal agrees to work cooperatively with Client to facilitate the transition of Services from ZGlobal to Client or Client's designee.



**ARTICLE 2**  
**DESCRIPTION OF CLIENT ASSETS; SERVICES**

2.1 Description of Client Assets. As requested by Client, ZGlobal will provide Services for the loads and generation assets set forth in Exhibit B attached hereto (“Client Assets”), as amended in writing by the Parties from time to time.

2.2 Services. ZGlobal, as agent for Client pursuant to this Agreement, shall provide the following Services for the Client Assets, commencing on the date identified for each Service (Client to check all that apply, and provide a start date for any checked Service):

<i>Check All that Apply</i>	<i>Services Description</i>	<i>Start Date</i>
	<b>Generation Scheduling Services</b>	
<u>  X  </u>	Scheduling and Outage Coordination (Exhibit C)	7/1/2016
<u>  X  </u>	Financial Settlement Services (Exhibit D)	7/1/2016
	<b>Load Scheduling Services</b>	
<u>  X  </u>	Scheduling and Outage Coordination (Exhibit C)	9/1/2017
	<b>Load Forecasting Services</b>	
<u>  X  </u>	Forecasting Services (Exhibit E)	9/1/2017
	<b>Portfolio Management Services</b>	
<u>  X  </u>	Portfolio Management Services (Exhibit G)	1/1/2017
	<b>Risk Management Services</b>	
N/A	Risk Management Program Development and Support Services (Exhibit H)	_____
	<b>Information Resources</b>	
	Information Resources (Exhibit K)	_____

Each Exhibit checked above is attached hereto and incorporated herein by reference, and collectively comprise the “Services” to be performed by ZGlobal under this Agreement.

2.3 Continuity of Service. In the event Client cancels a Service, this Agreement terminates, or ZGlobal fails, ceases or is unable to provide the Services under this Agreement for any reason, then, to the extent necessary, the Parties shall take all steps necessary to terminate the designation of ZGlobal as agent for Client for the Service or Services, and ZGlobal shall take such actions as Client may reasonably request in order to transition responsibility for the performance of the Service or Services to Client or a replacement provider. Additionally, as part of the transfer of a Service or Services under this Section 2.3, ZGlobal agrees to assign to Client, at Client’s request, any underlying agreements with third-party software or service providers necessary for continued performance of the Service or Services, including the Information Resources (as defined below).

2.4 Information Access. ZGlobal shall provide Client and Client's designated representatives and consultants with access to the software, databases, data, and information portal(s) identified in Exhibit K (collectively, the "Information Resources").

2.5 Designation of ZGlobal as Agent. Client hereby designates ZGlobal as its agent and representative in connection with and to the extent reasonably required to perform the Services. Client agrees to promptly:

- (a) Notify CAISO and any other relevant entities of this arrangement; and
- (b) Provide ZGlobal with all necessary and appropriate information and data for ZGlobal to begin performing the Services.

2.6 Standard of Performance. ZGlobal shall perform the Services consistent with Good Industry Practice and Applicable Laws, and in accordance with written direction from Client (if any).

### **ARTICLE 3** **COMPENSATION; BILLING AND PAYMENT**

3.1 Compensation. As consideration for the Services performed by ZGlobal hereunder, Client shall pay ZGlobal all undisputed applicable Services Fees in accordance with Exhibit I. In the event Client, in good faith, disputes ZGlobal's computation of amounts due and owing, Client will provide ZGlobal with written documentation explaining the disputed amount and describing in detail the factual and legal basis of the dispute. Client must pay all charges which are not in dispute in accordance with the payment terms outlined above. Client will cooperate with ZGlobal to resolve any payment dispute expeditiously.

3.2 Billing Statements. ZGlobal shall deliver to Client on or before the tenth (10th) Business Day of the month following that month for which Services were provided a monthly Scheduling Coordinator Services statement (each a "Statement") setting forth the Services Fees applicable to the Services performed during that period. Payments shall be made to ZGlobal on or before thirtieth (30<sup>th</sup>) Business Day after receipt of each Statement.

3.3 Failure to Pay. Client's failure to make timely payments hereunder shall be considered a breach. In the event such breach is not cured within fifteen (15) days following written notice by ZGlobal, then Client shall be in default and ZGlobal may:

- (a) Apply any revenues or payments received by ZGlobal for the benefit of Client from Balancing Authorities, Transmission Owners/Operators the CAISO, or any other third party towards the outstanding amount owed to ZGlobal;
- (b) Apply any monies from the Services Payment Security posted by Client pursuant to Exhibit C towards the outstanding amount owed to ZGlobal; and/or
- (c) Terminate this Agreement and all Services provided for herein pursuant to Section 1.3(a) above.



3.4 Late Payments. Any payment that is not received by ZGlobal on or before the date required shall incur a monthly late fee, which shall be the total undisputed outstanding balance due multiplied by the Interest Rate ("Late Fee").

3.5 Audit Rights. Client (or its designee) shall have the right, with prior written notice, at its sole expense and during normal working hours, to examine the records of ZGlobal to the extent reasonably necessary to verify the accuracy of any Statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any Statement or Late Fee, the necessary adjustments in such Statement or Late Fee and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate.

3.6 Independent Contractor. ZGlobal shall provide the Services to Client as an independent contractor, not as an employee of Client. ZGlobal shall not have or claim any right arising from employee status.

#### **ARTICLE 4** **CONFIDENTIALITY; PROPRIETARY RIGHTS**

##### 4.1 Confidentiality.

(a) Each Party shall hold in confidence all information disclosed to it by the other Party or its representatives that pertains to Client's or ZGlobal's business, as the case may be, and that is not publicly available, including this Agreement, proprietary practices, technical information and relevant data ("Confidential Information"). The Parties hereto acknowledge that MCE is a local agency and subject to provisions of the California Public Records Act (Cal. Government Codes section 6250 and following). The Parties are expressly authorized to disclose the existence of this Agreement and the Term. Unless otherwise provided by this Agreement or Applicable Laws, all other terms of this Agreement are confidential and neither Party may disclose such confidential information to anyone, other than (i) as may be agreed to in writing by the Parties in advance of such disclosure; (ii) to any of such Parties' directors, officers and employees and directors, officers and employees of affiliated companies and representatives thereof or their advisors who need to know such information and agree, for the benefit of the other Party, to treat such information confidentially to the same extent required by this Agreement; (iii) to the extent required to be disclosed by Applicable Laws or legal process or other mandatory or voluntary standard, and then only to the extent of such requirement; or (iv) to any actual or potential lender or lenders providing financing to a Party or any of its affiliates, to any actual or potential investor in a Party or any of its affiliates or to any other potential acquirer of any direct or indirect ownership interest in Party or any of its affiliates or to any advisor providing professional advice to Party or any of its affiliates or to any such actual or potential lender, investor or acquirer who needs to know such information and agree to treat such information confidentially to the same extent required by this Agreement. The Parties are entitled to all remedies available at law or in equity, including specific performance, to enforce this provision; however, neither Party will be liable for any damage suffered as a result of the use or disclosure of confidential information made in accordance with the express terms and conditions of this Agreement. This provision will survive for a period of five (5) years following the expiration of this Agreement.

(b) Confidential Information shall not include (i) information that is publicly available or that enters the public domain pursuant to Applicable Laws, or (ii) information obtained by a Party from a third party not known to be under an obligation of non-disclosure to Client or ZGlobal, as the case may be.

(c) Notwithstanding the foregoing, each Party may disclose Confidential Information to the extent necessary to perform this Agreement, and to any Governmental Authority, but only to the extent legally required to do so. If a Party is requested or required by any Governmental Authority to disclose any of the other Party's Confidential Information, such Party shall provide the other Party with prompt notice of such request(s) so that the other Party may seek, at its sole expense, a protective order or other appropriate remedy with respect to such disclosure.

4.2 Proprietary Rights. Client shall retain all rights, title and interest in and to all models, tools, systems or processes owned by and used or developed by ZGlobal in the course of providing Services pursuant to this Agreement including, but not limited to, patent rights, trade secrets, mask works and copyrights; provided, however, that ZGlobal shall have a non-exclusive right to use said models, tools, systems or processes to serve Client or other agencies approved by Client without further consideration.

## **ARTICLE 5** **REPRESENTATIONS AND WARRANTIES**

5.1 ZGlobal's Representations and Warranties. ZGlobal represents and warrants to Client as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and in each jurisdiction where it is required to be qualified as a foreign corporation;

(b) It has obtained all regulatory approvals and Permits necessary for it to legally perform its obligations under this Agreement;

(c) It possesses the requisite expertise to perform its obligations hereunder, and it is not restricted in any manner, through an agreement not to compete or similar agreement, from performing the Services for Client;

(d) The execution and delivery of this Agreement and the performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Applicable Laws; and

(e) This Agreement constitutes ZGlobal's legally valid and binding obligation enforceable against it in accordance with the terms thereof; and

(f) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.



5.2 Client's Representations and Warranties. Client represents and warrants to ZGlobal as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of California;

(b) The execution and delivery of this Agreement and the performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Applicable Laws; and

(c) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with the terms thereof; and

(d) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

5.3 Annual Updates. Upon the request of the other party on or prior to the anniversary of the Effective Date and no later than thirty (30) days after each anniversary of the Effective Date, ZGlobal and Client shall each confirm in writing to the other that their respective representations and warranties set forth above remain true and correct.

## **ARTICLE 6** **RELATIONSHIP OF THE PARTIES; DISCLAIMERS**

6.1 Relationship of the Parties. ZGlobal shall act as Client's agent while performing the Services hereunder. Except when and to the extent that ZGlobal is performing the Services, neither Party has the right, power or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of or on behalf of the other Party, or to enter into any agreement or undertaking for, or act as or be an agent or legal representative of, or otherwise bind, the other Party. Further, this Agreement shall not be interpreted or construed as creating any association, joint venture or partnership between the Parties, or any other arrangement other than the contractual arrangement expressly set forth in this Agreement.

6.2 Other Business. Subject to Section 4.1 above, nothing in this Agreement shall preclude ZGlobal from performing Services similar to those hereunder for other clients.

6.3 Warranty Disclaimers. Client acknowledges that it has entered into this Agreement and is contracting to receive the Services based solely upon the expressed representations and warranties in this Agreement. As a result, Client accepts all Services provided under this Agreement "as is" and "with all faults." The Parties expressly negate and disclaim any other representation or warranty with respect to the Services provided under this Agreement, whether written or oral, expressed or implied, including any representation or warranty with respect to merchantability or fitness for any particular purpose.

**ARTICLE 7**  
**PERFORMANCE ASSURANCE**

7.1 Performance Assurance. As a condition of Client's obligations hereunder, ZGlobal shall provide to Client no later than September 1, 2016 and thereafter maintain throughout the Term cash or a letter of credit (the "Performance Assurance") in the amount of ONE MILLION DOLLARS (\$1,000,000). The Performance Assurance shall be held by Client as security for ZGlobal's performance hereunder. If ZGlobal establishes the Performance Assurance by means of a letter of credit, the letter of credit must be provided in a form reasonably acceptable to Client. The Performance Assurance will be returned to ZGlobal at the end of the Term upon the satisfaction of ZGlobal's obligations under this Agreement (net of any amounts applied to ZGlobal's obligations). After September 1, 2017, at ZGlobal's written request, Client agrees to consider in good faith ZGlobal's request to reduce the amount of the Performance Assurance; provided, however, that any reduction will be made at Client's sole discretion and Client is under no obligation to grant such request.

7.2 Security Interest in Performance Assurance. To secure its obligations under this Agreement, and until released as provided herein, ZGlobal hereby grants to Client a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance Assurance and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Client, and ZGlobal agrees to take all action as Client reasonably requires in order to perfect Client's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

7.3 Event of Default. Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by ZGlobal, Client may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to the Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding letter of credit issued for its benefit; and
- (c) Liquidate all Performance Assurance then held by or for the benefit of Client free from any claim or right of any nature whatsoever of ZGlobal, including any equity or right of purchase or redemption by ZGlobal.

Client shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce ZGlobal's obligations under this Agreement (ZGlobal remains liable for any amounts owing to Client after such application), subject to Client's obligation to return any surplus proceeds remaining after these obligations are satisfied.

**ARTICLE 8**  
**LIMITATION OF LIABILITY; INDEMNITY**



8.1 Limitation of Liability.

(a) To the extent permitted by Applicable Laws, ZGlobal hereby agrees to indemnify, defend and hold harmless Client, its partners, officers, directors, representatives and employees (collectively, the "Client Indemnitees"), from and against any and all losses, claims, damages and liabilities (including third-party claims, reasonable attorney, consultant, accounting and other professional fees, and reasonable fees and costs actually incurred in enforcing this Agreement, and any penalties or fines imposed by Governmental Authority) (collectively, "Losses") relating to ZGlobal's performance of the Services and any breach by ZGlobal of the provisions of this Agreement, except to the extent caused by the fraud, negligence or the willful misconduct or breach of this Agreement by the Client Indemnitees. The foregoing notwithstanding, to the extent a Loss is due to a communications failure between ZGlobal and the CAISO, ZGlobal's liability hereunder, unless excused by Force Majeure, shall be limited to reimbursing Client for only those fees or charges imposed by CAISO or any other third party caused by the failure of ZGlobal to communicate the necessary information received from Client in a timely manner.

ZGlobal shall be promptly notified in writing of any such claim or suit brought against any Client Indemnitee and shall be permitted to manage at its cost and expense a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such Client Indemnitee) of such claim or suit through counsel reasonably acceptable to Client. The Client Indemnitees shall provide, at ZGlobal expense, such cooperation as ZGlobal may reasonably request in connection with its defense or settlement of the claim or suit against such Client Indemnitee.

(b) To the extent permitted by Applicable Laws, Client hereby agrees to indemnify, defend and hold harmless ZGlobal, its partners, officers, directors, and employees (collectively, the "ZGlobal Indemnitees"), from and against any and all Losses arising from the breach by Client of the provisions of this Agreement including, without limitation, the loss or claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of this Agreement by the ZGlobal Indemnitees.

Client shall be promptly notified in writing of any such claim or suit brought against a ZGlobal Indemnitee and shall be permitted to manage at its cost and expense a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such ZGlobal Indemnitee) of such claim or suit through counsel reasonably acceptable to ZGlobal. The ZGlobal Indemnitees shall provide, at Client expense, such cooperation as Client may reasonably request in connection with its defense or settlement of the claim or suit against such ZGlobal Indemnitee.

(c) For the avoidance of doubt, consistent with the provisions set forth in Section 8.1 above, neither Party shall have any responsibility or liability for any third party agreements not incorporated by reference by this Agreement or transactions not contemplated by this Agreement entered into by the other Party, including but not limited to such Party or any third party failing to perform, inadequately performing, and/or incorrectly performing under or breaching any such third party agreements or transactions.



(d) Except as expressly provided herein, nothing in this Agreement shall be construed to create a duty to, any standard of care with reference to, or any liability in connection with any person not a party to this Agreement.

(e) In no event shall either Party be liable to the other Party for any consequential, incidental or indirect damages for any cause of action, whether in contract or tort or otherwise. Incidental, consequential or indirect damages include, but are not limited to, lost profits or revenues and loss of business opportunity, whether or not the Party was aware or should have been aware of the possibility of such damages.

8.2 Limitation on Damages. FOR BREACH OF ANY PROVISION, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT DAMAGES AND EACH PARTY AGREES TO WAIVE ALL OTHER TYPES OF DAMAGES OR REMEDIES TO WHICH IT MIGHT BE ENTITLED UNDER THIS AGREEMENT, INCLUDING CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST OPPORTUNITY COSTS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED HEREIN ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

8.3 Indemnification. Notwithstanding the foregoing Sections 8.1 and 8.2, each Party shall hold the other Party harmless as follows: the indemnitor shall defend, indemnify and hold harmless the indemnitee, its officers, agents and employees from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the public), or damage to property, resulting from or arising out of indemnitor's willful misconduct or gross negligence while engaged in the performance of obligations or exercise of rights created by this Agreement, except to the extent of those matters arising from indemnitee's negligence.

## **ARTICLE 9** **MISCELLANEOUS**

9.1 Entire Agreement. This Agreement is the Parties' complete and final expression of agreement on the subject matter of this Agreement and supersedes all prior agreements, representations, understandings, negotiations, offers and communications, whether oral or written, regarding the subject matter of this Agreement.

9.2 No Assignment. Neither Party may assign this Agreement or any right or obligation under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Section 9.2 shall be void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

9.3 Modification and Amendment. This Agreement can be modified or amended only by a written agreement executed by an authorized representative of each Party.

9.4 Severability. If any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall not be affected. With respect to a provision held invalid or unenforceable, the Parties shall amend this Agreement as necessary to effect the Parties' original intent as closely as possible.

9.5 No Waiver. If on any occasion a Party does not insist upon the performance of any term, condition or provision of this Agreement, such forbearance shall not operate or be construed as an acceptance of any variation in any term, condition or provision of this Agreement or relinquishment of any right under this Agreement. No waiver by either Party of any right or of any default by the other Party under this Agreement shall be effective unless the waiver is in writing and signed by the waiving Party, and no waiver shall operate or be construed as a waiver of any other or further right or as a waiver of any future default, whether of like or different character or nature.

9.6 Governing Law. This Agreement is governed by and shall be construed according to the laws of the State of California, without regard to principles of conflicts of law.

9.7 Preparation of Agreement. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

9.8 No Third-Party Rights. This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any rights in favor of, any duty to or standard of care with reference to, or any liability to any person not a party to this Agreement.

9.9 Notices. Except as otherwise expressly provided in this Agreement, all notices and other communications to be given or made under this Agreement shall be in writing, shall be addressed as specified below, and shall either be personally delivered or sent by courier, by registered or certified mail, or by facsimile. Initially, the respective Parties' addresses and facsimile numbers are:

If to ZGlobal:	ZGlobal Inc. 750 Main St. El Centro, CA 92243
With a copy to:	604 Sutter Street, Ste. 250 Folsom, CA 95630
If to Client	Director of Power Resources/ Procurement Marin Clean Energy (MCE) 1125 Tamalpais Ave. San Rafael, CA 94901 [Phone: 415-464-6037]



With a copy to:            procurement@mcecleanenergy.org

All notices shall be deemed delivered (a) when delivered in person, (b) if received on a Business Day for the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified above and, if received on a day that is not a Business Day for the receiving Party, on the first Business Day following the date transmitted by facsimile to the receiving Party's facsimile number specified above, (c) one day after being delivered to a courier for overnight delivery, addressed to the receiving Party at the address specified above (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above), or (d) five (5) days after being deposited in a United States Postal Service receptacle, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party at the address specified above (or such other address as such the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above). Any Party may, by written notice, change the address or facsimile number, or both, to which notices and communications are to be sent.

9.10 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute only one legal instrument. The delivery of an executed counterpart of this Agreement by facsimile shall be deemed to be valid delivery of the counterpart.

9.11 Survival. Notwithstanding any provision herein to the contrary, Articles 3, 4, 6, 7, 8 and 9 shall survive the termination or expiration of this Agreement.

9.12 Publicity. Either Party may issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic or interview) relating to the Services or this Agreement; provided, however, the disclosing Party shall, if reasonably possible, provide advance notice of such disclosure to the other Party.

9.13 Interpretation. In this Agreement:

(a) The headings are for convenience of reference only and shall be ignored in construing this Agreement;

(b) Where the context requires, the singular includes the plural and vice versa;

(c) The words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation";

(d) Unless the context otherwise indicates, references in this Agreement to articles, sections or exhibits are references, respectively, to articles, sections or exhibits of or to this Agreement;

(e) All exhibits referenced in this Agreement are incorporated into this Agreement and are an integral part of this Agreement;

(f) If a conflict or inconsistency exists between any exhibit and this Agreement (exclusive of the exhibits), the provisions of this Agreement (exclusive of the exhibits) shall control; and

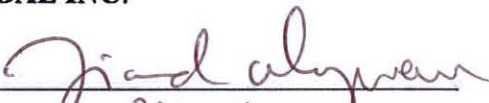
(g) All references in this Agreement to contracts, agreements and other documents shall be deemed to refer to such contracts, agreements and other documents as amended, modified and supplemented from time to time.

9.14 No Recourse Against Constituent Members of MCE.


MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. ZGlobal will have no rights and will not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

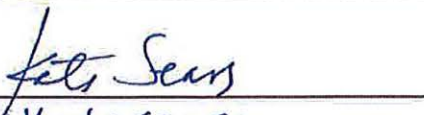
To evidence their acceptance of this Agreement, the Parties have caused their authorized representatives to sign below as of the Effective Date.

**ZGLOBAL INC.**

By:   
Name: ZIAD ALAYWAN  
Title: CEO

**MARIN CLEAN ENERGY, a California joint powers authority**

By:   
Name: Dawn Weisz  
Title: CEO

By:   
Name: Kate Sears  
Title: Chair



## **EXHIBIT A**

### **Definitions**

Each of the following capitalized terms shall, for all purposes of this Agreement, have the respective meanings set forth below.

“Additional Term” has the meaning set forth in Section 1.1.

“Agreement” means this Scheduling Services Agreement, including all exhibits attached to this Agreement, as amended, modified, or supplemented from time to time.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, orders, interpretations, Permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Client Assets, the Services or the terms of this Agreement.

“Balancing Authority” means the entity responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a Balancing Authority Area, and supporting interconnection frequency in real time.

“Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

“Business Day” means any Day other than a Saturday, a Sunday, the day after Thanksgiving, or a Day on which commercial banks in California are authorized or required to close.

“California Independent System Operator” and “CAISO” mean the California Independent System Operator.

“CAISO Tariff” means the CAISO FERC Electric Tariff, as amended from time to time.

“Client Assets” has the meaning set forth in Exhibit B.

“Client Assets Operating Parameters” means the various operating parameters set forth in Exhibit B.

“Commencement Date” means that date declared by Client by written notice to ZGlobal following the Effective Date upon which ZGlobal commences providing any of the Services under this Agreement.

“Confidential Information” has the meaning set forth in Section 4.1.

“Day” means a calendar day beginning at 12:00 midnight, Prevailing Pacific Time.

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Energy” means electricity measured in MWh.

“Event of Default” has the meaning set forth in Section 1.3.

“Financial Settlement Services” has the meaning set forth in Exhibit D.

“Forecasting Services” has the meaning set forth in Exhibit E.

“Force Majeure” means, in respect of a non-performing Party, an event beyond the reasonable control of the non-performing Party that the non-performing Party is unable to prevent, avoid or overcome through the exercise of diligent efforts, and that is not the result of the non-performing Party’s fault or negligence or failure to comply with any provision of this Agreement. The following events, among others, shall, to the extent they meet the requirements set forth in the immediately preceding sentence, constitute Force Majeure: acts of God, landslide, lightning, earthquake, fire, explosion, flood, storm, hurricane, tornado, storm, insurrection, war, blockade, riot, civil disturbance, sabotage, terrorism and embargo.

“Forced Outage” an Outage for which sufficient notice cannot be given to allow the Outage to be factored into CAISO’s day-ahead market or real time market bidding processes.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent operators in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with applicable standards and the requirements of Governmental Authorities, WECC standards, WREGIS Standards, the CAISO and Applicable Laws. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

“Governmental Authority” means any federal, state, local, municipal, tribal or other governmental, administrative, judicial or regulatory entity having or asserting jurisdiction over a Party, the Client Assets, the Services or this Agreement.

“Interest Rate” means the means the rate of interest per annum publicly announced from time to time by Bank of America as its ‘Prime Rate’, plus three percent (3%), or the maximum rate permitted by Applicable Laws, whichever is less.

“Late Fee” has the meaning set forth in Section 3.4.

“Losses” has the meaning set forth in Section 8.1(a).

“Month” means a calendar month

“Parties” means ZGlobal and Client.



“Party” means either ZGlobal or Client.

“Performance Assurance” has the meaning set forth in Section 7.1.

“Permit” means any license, permit, approval, consent, authorization, waiver, exemption, variance, franchise or similar order of or from any Governmental Authority.

“Primary Term” has the meaning set forth in Section 1.1.

“Outage” means disconnection, separation or reduction in capacity, planned or forced, of one or more elements of an electric system.

“Participating Generator Agreement” means an agreement between CAISO and the owner of a generator that participates in the CAISO markets, a pro forma version of which is set forth in Appendix B.2 to the CAISO Tariff.

“Portfolio Management Services” has the meaning set forth in Exhibit G.

“Risk Management Program Development and Support Services” has the meaning set forth in Exhibit H.

“RECs” means renewable energy certificates, which represent the environmental attributes of the power produced from renewable energy projects and which are sold separately from the electricity commodity from such renewable energy projects.

“Scheduling Coordinator” or “SC” means any entity certified by the CAISO for the purposes of undertaking the functions identified in the CAISO Tariff for Scheduling Coordinators.

“Scheduling Coordinator Services” has the meaning set forth in Exhibit C.

“Security Interest” has the meaning in Section 7.2.

“Service” means any of the Services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services” means all of the services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services Fees” means the various fees for Services performed under this Agreement as set forth in Exhibit I.

“Statement” means a billing statement delivered according to Section 3.2.

“Transmission Owner/Operator” means an entity owning or operating transmission facilities or having firm contractual rights to use such transmission facilities.

“WECC” means the Western Electricity Coordinating Council and its successors.



“WREGIS” means the Western Renewable Energy Generation Information System and its successors.

**[End of Exhibit A]**

## **EXHIBIT B**

### **Client Assets**

#### **1. Client Assets.**

- The following is a list of assets subject to this Agreement (e.g., generators) and, if applicable, load and types of transactions to be scheduled (i.e., CAISO ISTs, imports/exports and WECC bilateral transactions) (collectively, the “Client Assets”).
  - Load
    - Load scheduled at PG&E DLAP = Approximately 500 MW annual peak
  - Current Supply Contracts
    - G2 Hay Road Landfill Gas = 1.6 MW
    - Dominion - City of Corcoran Solar = 11 MW
    - Dominion – Goose Lake Solar = 12 MW
    - Dominion - Kansas Solar = 20 MW
    - WAPA Hydro Preschedule Allocation = Percentage of Base Resource 0.62094%
    - EDP Wind (Rising Tree) = 99 MW
    - San Rafael Airport Solar = 0.97 MW
  - Anticipated
    - Cooley Quarry Solar = 1.45 MW
    - Richmond Parkway Feed-In Tariff = 1 MW
    - NWC Goodrick Feed-In Tariff = 1 MW
    - Larkspur Feed-In Tariff = 0.29 MW
    - Binford Feed-In Tariff = 0.99 MW
    - Mustang Solar = 30 MW
    - MCE Solar One = 10.5 MW
    - Redwood Landfill = 4 MW

#### **2. Operating Parameters.**

- The various operating parameters for the Client Assets are set forth in the agreements below, as may be supplemented from time to time by Client upon prior written notice to ZGlobal (“Client Assets Operating Parameters”).
  - Power Purchase Agreements
  - Meter Service Agreements
  - Participating Generator Agreements
  - Transmission Service Agreements
  - Qualified Reporting Entity Agreements

**[End of Exhibit B]**

## **EXHIBIT C**

### **Scheduling and Outage Coordination Services**

If applicable, this Exhibit C details the scheduling and outage coordinator services (“Scheduling Coordinator Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Scheduling Coordinator Services**

Scheduling Coordinator Services functions vary depending upon location (inside the CAISO vs. outside the CAISO) and need for real-time support. At Client’s written request, ZGlobal shall perform the Scheduling Coordinator Services for the following categories:

- CAISO
  - 7-day per week day-ahead pre-scheduling Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services
- WECC (non-CAISO)
  - Business Day day-ahead Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services

#### **2. Description of Scheduling Coordinating Services**

Scheduling Coordinator Services may include scheduling and/or bidding of Client’s generation, load, transactions and contractual resources with the appropriate Balancing Authorities, Transmission Owners/Operators, purchasing/selling entities and others as necessary.

In order to effectively provide Scheduling Coordinator Services, ZGlobal shall perform activities and tasks and Client shall provide information and support as described in the following paragraphs.

#### **3. Client’s Responsibilities**

3.1 Client shall select and specify in writing the categories of Scheduling Coordinator Services listed in this Exhibit C that ZGlobal shall provide.

3.2 Designation of ZGlobal as Client’s Scheduling Coordinator. At least ten (10) Business Days before the Commencement Date for ZGlobal to provide Scheduling Coordinator Services on behalf of Client, Client shall have performed all tasks necessary to allow ZGlobal to provide Scheduling Coordinator Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal’s access to systems on behalf of Client such as OASIS, OATI (and/or other applicable transmission scheduling applications), the CAISO’s SIBR and CMRI systems, meter data and meteorological data. Prior



to the Commencement Date, ZGlobal will identify all tasks necessary for Client to complete so that ZGlobal can commence the Scheduling Coordinator Services on the Commencement Date.

3.3 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively bid and/or schedule Client's resources, load and transactions ("Portfolio") into the applicable market/Balancing Authority Area. This includes data such as Client's load information, transactions with counterparties, facilities' capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information required by the CAISO or Balancing Authorities. Prior to the Commencement Date, ZGlobal will identify the information required from Client under this paragraph.

Information required for day-ahead pre-scheduling shall be provided no later than 7:30 AM Pacific Prevailing Time on the trading/pre-scheduling day in accordance with the Western Electricity Coordinating Council's (WECC's) pre-scheduling timelines and CAISO Tariff. For example, the current WECC pre-scheduling timeline requires that on schedules for flow days Friday and Saturday be submitted on Thursday. Similarly, schedules for flow days Sunday and Monday are required to be submitted on Friday. The CAISO pre-schedules one day prior to flow day every day.

Information required for day-of scheduling shall be provided no later than 30 minutes prior to the applicable scheduling deadline. For WECC Balancing Authorities other than the CAISO, the hour-ahead scheduling deadline is currently 20 minutes prior to the flow hour. For the CAISO, the real-time scheduling deadline is currently 75 minutes prior to the flow hour.

3.4 Fees and Costs Imposed as a Result of Scheduling and/or Bidding. Client shall be entitled to and responsible for all costs and revenues charged or paid to ZGlobal and/or Client from Balancing Authorities, Transmission Owners/Operators, and the CAISO, or other third parties as a result of ZGlobal scheduling and/or bidding Client's Portfolio. This includes items such as the CAISO's Grid Management Charge ("GMC"), ancillary services and energy imbalance, among others. The intent is that ZGlobal acts as a conduit for dollar flows between Client and the CAISO, Balancing Authorities, Transmission Owners/Operators, and other third parties.

Client payments for all costs and fees shall be remitted to ZGlobal no less than two (2) Business Days prior to the CAISO, Balancing Authorities and/or Transmission Owners/Operators timelines required per the appropriate tariff or contract. Client understands and agrees that failure to timely remit any such costs and fees to ZGlobal could result in Client's security being drawn upon, as further described in paragraph 3.5 below.

3.5 Client Security. To ensure ZGlobal's performance of the Services, and to secure Client's payment obligations hereunder, Client agrees to post the following forms of security:

- CAISO Registration Security. ZGlobal is required to post \$500,000 with CAISO to demonstrate ZGlobal's ability to act as a SC on an on-going basis (the "Registration Security Deposit"). ZGlobal shall post and maintain the

Registration Security Deposit as required by the CAISO at no cost or expense to Client.

- **Estimated Aggregate Liability Security.** ZGlobal is also required to post with CAISO an amount greater than 111.11% of ZGlobal's Estimated Aggregate Liability ("EAL")/.9 as SC for Client. ZGlobal's EAL is determined by the CAISO for SC obligations based on outstanding, estimated and extrapolated financial amounts. Within five (5) Business Days of ZGlobal's written request, Client agrees to deposit security with ZGlobal in an amount equal to the lesser of (a) \$75,000 or (b) the actual EAL obligation (as determined using the CAISO EAL calculation), which will be utilized to satisfy ZGlobal's EAL security requirements ("EAL Security Deposit"). If ZGlobal's EAL increases during the Term, ZGlobal shall promptly notify Client and Client shall promptly deposit additional security with ZGlobal such that the EAL Security Deposit is never less than 111.11% of ZGlobal's EAL (as determined using the CAISO EAL calculation) up to \$75,000. If Client ever fails to timely remit any costs and fees to ZGlobal as required under paragraph 3.4 above, then Client understands that CAISO may draw upon the EAL Security Deposit to satisfy any outstanding ZGlobal obligations as SC for Client. If the EAL Security Deposit is ever drawn upon by CAISO, then Client shall promptly replenish the amount that was drawn. ZGlobal shall return the EAL Security Deposit to Client within five (5) Business Days of the termination of this Agreement.

#### **4. ZGlobal's Responsibilities**

4.1 Professional Services. ZGlobal shall perform the following Scheduling Coordinator Services in a professional manner consistent with the requirements of this Agreement and Good Industry Practices and Applicable Laws.

4.2 Scheduling. ZGlobal shall submit to the CAISO and/or Balancing Authorities schedules and/or bids consistent with the CAISO's and/or Balancing Authorities' timelines as prescribed by their tariffs and Client's CAISO Participating Generator Agreements (if required).

4.2.1 Final Schedules. ZGlobal shall provide Client with final confirmed day-ahead pre-schedules no later than 5:00 PM Pacific Prevailing Time the day prior to the day that electricity flows. Any changes to the pre-schedules shall be provided to Client as soon as practicable, but no later than 8:00 AM Pacific Prevailing Time the next day.

4.2.2 OASIS and Other Pertinent Applications. If Client uses applications such as OASIS, OATI and ICE, and ZGlobal's access to such applications is necessary for its performance of the Services under this Agreement, upon ZGlobal's written request Client shall provide reasonable access to such applications to the extent required by ZGlobal to perform the Services under this Agreement.

4.2.3 Outage Reporting and Notification. ZGlobal shall provide the CAISO, Balancing Authorities and/or Transmission Owners/Operators with all required notices



and updates regarding Client's generation facilities as required by applicable procedures, requirements and standards. This includes information such as SLIC outage requests, SLIC Forced Outages, CAISO Forced Outage reports, among other requirements.

4.2.4 NERC Tagging and Checkout. ZGlobal shall be responsible for all tagging and checkout of schedules consistent with pertinent timelines.

**[End of Exhibit C]**

## **EXHIBIT D**

### **Financial Settlement Services**

If applicable, this Exhibit D details financial settlement services (“Financial Settlement Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Financial Settlement Services**

Financial Settlement Services functions vary depending on the specific Scheduling Coordinator Services provided to Client (e.g., CAISO, bilateral transactions, Open Access Transmission Tariff (OATT), and power purchase agreements (PPA)). In coordination with the Scheduling Coordinator Services set forth in Exhibit C, ZGlobal shall perform Financial Settlement Services for the following categories:

- CAISO Settlement statement verification and invoice processing
- CAISO Shadow settlement
- OATT statement verification
- PPA statement verification
- Bilateral transactions verification by counterparty

#### **2. Description of Services**

ZGlobal will provide Financial Settlement Services on behalf of Client to allow for settlement of Client’s transactions with the appropriate Balancing Authorities, Transmission Owners/Operators, counterparties and others as necessary. Such Financial Settlement Services shall coincide with the Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement.

2.1 CAISO Settlement Verification. ZGlobal will download the CAISO daily settlement statements and review the settlement statements to ensure that they are consistent with Client’s scheduled and metered volumes. ZGlobal will verify that the CAISO’s charges/revenues are accurate. ZGlobal will also provide Client with a summary description of the CAISO charge types and how they are applied to Client’s schedules and metered volumes.

On a weekly basis or pursuant to the CAISO Payment Calendar (as defined below), ZGlobal will receive or remit payments on behalf of Client for all CAISO Invoices and Payment Advices related to their CAISO transactions. Pursuant to Exhibit C, paragraph 3.4, all CAISO costs and revenues related to Clients’ transactions shall be the responsibility of Client.

In the case of net Payment due to CAISO, Client shall remit funds to ZGlobal no less than two (2) Business Days prior to the CAISO due date published on the CAISO payment calendar available on its website (“Payment Calendar”). In the case of net payments due to ZGlobal for the Client transactions, ZGlobal will remit funds to Client no less than two (2) Business Days after the CAISO posts funds to ZGlobal. In both cases, ZGlobal will provide an invoice or payment advice to Client for remittance.



2.2 CAISO Shadow Settlement. ZGlobal will independently perform parallel CAISO settlement calculations prior to the CAISO's publication of settlement statements to provide Client with preview of expected CAISO charges for agreed CAISO charge types related to the Scheduling Coordinator Services that ZGlobal is providing to Client under this Agreement (the "Shadow Settlement"). The CAISO Shadow Settlement results will be compared to CAISO charge types and differences between dollar values will be highlighted and investigated when deemed necessary. . ZGlobal shall publish regular exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices and on an annual basis. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per month in addition to an annual report summarizing monthly content."

2.3 OATT Statement Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client's scheduled and metered volumes. ZGlobal will verify that the charges are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client's schedules and metered volumes.

2.4 PPA Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client's scheduled and metered volumes. ZGlobal will verify that the charges/revenues are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client's schedules and metered volumes.

2.5 Bilateral Transactions Verification by Counterparty. ZGlobal shall review settlement statements for accuracy and coordinate with third parties as necessary to resolve discrepancies. Upon confirming accuracy of such statements, ZGlobal will provide a final invoice to Client for remittance to the appropriate parties.

2.6 Dispute Submittal. ZGlobal shall act as Client's representative with regard to disputes associated with Client's facilities and transactions for which ZGlobal is providing Scheduling Coordinator Services. This includes informally querying the CAISO with respect to the dispute or questionable charge, formally submitting disputes per the CAISO's dispute process and providing Client with progress status and eventual results of the dispute. To the extent there are other types of disputes, ZGlobal shall assist Client by providing information and data as necessary to resolve such disputes.

### **3. Client's Responsibilities**

3.1 Client shall select and specify in writing the categories of Financial Settlement Services listed in this Exhibit D that ZGlobal shall provide.

3.2 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively settle Client's Portfolio into the applicable market/Balancing Authority Area. This includes data such as Client's load information, transactions with counterparties, facilities' capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, Settlement Quality Meter Data (as that term is defined in the CAISO Tariff),



access to relevant meteorological data and all other pertinent information required by counterparties, the CAISO, or Balancing Authorities.

3.3 Payments. Payments shall be remitted no less than two (2) Business days prior to the CAISO, Balancing Authorities and Transmission Owners/Operators timelines required per the appropriate tariff or contract.

**4. ZGlobal's Responsibilities**

4.1 Professional Services. ZGlobal shall perform the Financial Settlement Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

**[End of Exhibit D]**

## **EXHIBIT E**

### **Forecasting Services**

If applicable, this Exhibit E details forecasting services (“Forecasting Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Forecasting Services**

Forecasting Services functions vary depending upon resource type, number of resources and location of resources. At Client’s written request, ZGlobal shall perform the Forecasting Services for the following categories:

- Total Load
  - Annual energy demand (MWh/month)
  - Quarterly energy demand (MWh/month)
  - Monthly energy demand (MWh/month)
  - Day-Ahead preschedule demand by hour (MWh/hour)
  - Intra-day (Hour-Ahead) schedule volumes (MWh/hour)

#### **2. Description of Services**

ZGlobal proposes to provide Forecasting Services on behalf of Client to allow for scheduling of Client’s demand with the CAISO and other appropriate Balancing Authorities and others as necessary. Such Forecasting Services shall coincide with then Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement.

2.1 Day-Ahead Forecasting. ZGlobal will use a computerized algorithm to convert input data to a 24-hour energy forecast of Client’s demand. The forecast will be used for Day-Ahead prescheduling purposes, and will be produced at a time sufficient to meet relevant markets’ and counterparties’ processing timelines. The input data will include, but not be limited to, relevant meteorological data, historical data, and time of day and year.

2.2 Intra-Day (Hour-Ahead) Forecasting. ZGlobal will utilize relevant meteorological historical data, and time of day and year to determine an hourly energy forecast for the upcoming hours of the day necessary for Hour-Ahead scheduling purposes.

2.3 Longer Term (Monthly, Quarterly, Annual) Energy Production Forecast. ZGlobal will utilize relevant historical data, expected change in customer base and external factors such as economic growth to determine an hourly forecast for the period (up to one year) as directed by Client.

#### **3. Client’s Responsibilities**

3.1 Client shall select and specify in writing the categories of Forecasting Services listed in this Exhibit E that ZGlobal shall provide.

3.2 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively forecast Client's demand to allow for scheduling into the CAISO and as applicable, other market/Balancing Authority Areas. This includes data such as historical energy demand, meteorological data, and expected changes in customer base. Information shall be provided by Client to ZGlobal in time sufficient to perform Forecasting Services, as determined and specified in writing by ZGlobal. Information shall be provided by Client in electronic format to ZGlobal's Oracle database or other automation-ready format to be specified by ZGlobal, without errors. If ZGlobal is required to subscribe to additional data services, described below in Paragraph 4, Client shall also remain current on pass-through costs of paid data services. As a forecast necessarily requires input data, any failure by Client to provide data will result in the inability of ZGlobal to provide a forecast.

#### **4. ZGlobal's Responsibilities**

4.1 Professional Services. ZGlobal shall perform the Forecasting Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws. ZGlobal will endeavor to provide Client's forecast in a timely manner, and in accordance with appropriate trading timeframes. ZGlobal will subscribe to paid data services, if ZGlobal deems necessary for use as input data as noted in above in Paragraph 2, and will invoice Client for the cost of such service(s), including any costs shared among multiple other clients, if applicable.

ZGlobal will endeavor to produce forecasts as accurate as possible. As demand forecasting is an inexact art, ZGlobal makes no warranty of accuracy of its forecasts. Client indemnifies and holds harmless ZGlobal for any direct or indirect financial loss or other damages due to inaccuracy of forecasts or failure to produce forecasts.

#### **5. Intellectual Property**

The forecast results and its methodologies are the proprietary intellectual property of ZGlobal. ZGlobal grants Client royalty-free use of forecasts for the purposes stated above in Paragraph 2. ZGlobal reserves the right to update, improve, or otherwise alter its forecast methodologies without notice. ZGlobal may use forecasts and related information created on behalf of Client in a non-identifiable manner for purposes unrelated to the client, such as in publication in trade journals, presentation at conferences or industry forums, or in advertising. In such cases, ZGlobal will notify Client of such use.

**[End of Exhibit E]**

**EXHIBIT F**

**Facilities Management Services**

Not Applicable

**[End of Exhibit F]**



## **EXHIBIT G**

### **Portfolio Management Services**

If applicable, this Exhibit G details specific services (“Portfolio Management Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Portfolio Management Services**

Portfolio Management Services functions vary depending upon level of responsibility the Client desires ZGlobal to undertake (real-time, day-ahead, forward). At Client’s option, Client shall expressly direct ZGlobal in writing to perform Portfolio Management Services for the following categories:

- Assess and manage Client’s net open position by performing analysis to develop strategies for:
  - Short term Energy positions (Operating Month through Real Time)
  - Capacity positions
  - Transmission positions (including CAISO markets)
  - Financial positions
  - Energy Storage and Demand Response bidding
- Utilize applications and data for assessment of Client’s portfolio. Examples of applications and data are shown below:
  - Production forecast for renewable energy resources
  - Production meter data for renewable energy resources
  - Imbalance energy costs for specific resources
  - Other costs that affect resource revenue
  - Execute financial transactions:
    - Forward (including the CAISO’s Congestion Revenue Rights (CRRs))
    - Day-Ahead
    - Hour-Ahead
- Assist Client with developing in-house expertise as directed by Client. This includes training, information, data and analysis.

#### **2. Description of Services**

ZGlobal proposes to provide Portfolio Management Services on behalf of Client to allow for managing Client’s net open position.

#### **3. Client’s Responsibilities**

3.1 Client shall select and specify in writing the categories of Portfolio Management Services listed in this Exhibit G that ZGlobal shall provide.

3.2 Authorization for ZGlobal to Transact on Behalf of Client. To the extent reasonably required by ZGlobal to perform the Portfolio Management Services requested by Client, Client will provide authorization for ZGlobal to transact on Client's behalf consistent with parameters established by Client and agreed upon by ZGlobal in writing prior to engaging in such transactions. As a condition of performance of the Portfolio Management Services, ZGlobal will identify and Client shall have performed all tasks necessary to allow ZGlobal to provide Portfolio Management Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal's access to systems on behalf of Client.

3.3 Information to Be Provided by Client to ZGlobal. ZGlobal shall identify and Client shall provide ZGlobal with all relevant information to allow ZGlobal to determine Client's net open position, effectively bid, schedule and execute transactions in order to close Client's net open position. This includes data such as Client's load information, transactions with counterparties, facilities' and contractual economic data, capabilities and limitations, planned and Forced Outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information.

Parameters required for Day-Ahead and Hour-Ahead Portfolio Management Services shall be agreed to between ZGlobal and Client at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than 48 hours prior to day that electricity is to be scheduled onto the electrical grid.

Parameters required for forward Portfolio Management Services shall be agreed to between ZGlobal and Client at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than one calendar week prior to day that electricity is to be scheduled onto the electrical grid.

3.4 Fees and Costs Imposed as a Result of Portfolio Management Services. For transactions that ZGlobal transacts on behalf of Client, Client shall be responsible for all costs and revenues Client incurs as a result of such transactions. Costs and revenues may emanate from Balancing Authorities, Transmission Owners/Operators, the CAISO or third parties. This includes items such as the CAISO's Grid Management Charge (GMC), ancillary services, among others. The intent is that ZGlobal acts as a conduit for dollar flow between Client and the CAISO, Balancing Authorities, Transmission Owners/Operators and third parties.

#### **4. ZGlobal's Responsibilities**

4.1 Transactions. At Client's written direction, ZGlobal shall execute transactions on behalf of Client designed to implement Client's portfolio management strategy. Prior to executing any transactions, ZGlobal and Client shall document portfolio management strategy, roles, responsibilities, allowable transactions (for example, product, term, and counterparty), and process for performing Portfolio Management Services pursuant to this Agreement.

4.2 Strategy Review. Client and ZGlobal shall meet on a regular basis to review Client's portfolio management strategy, but no less than twice per year.

4.3 Transaction Data. All transaction data shall be recorded and stored by ZGlobal and provided to Client as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.

4.4 Reports. ZGlobal shall publish regular Portfolio Management Services reports. Reports shall include exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per month. ZGlobal shall provide standardized monthly reports including, but not limited to, the following, upon Client's request: net short and long positions, day ahead energy charges, imbalance charges, portfolio changes, and potential areas for improvement and CRR effectiveness reports. Upon Client's request, ZGlobal shall also provide ad hoc settlement and contract analysis and settlement charge code and billing determinant data.

4.5 Professional Services. ZGlobal shall perform Portfolio Management Services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

**[End of Exhibit G]**



## **EXHIBIT H**

### **Risk Management Program Development and Support Services**

If applicable, this Exhibit H details specific services (“Risk Management Program Development and Support Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Risk Management Program Development and Support Services**

Risk Management Program Development and Support Services functions vary depending upon level of responsibility the Client desires ZGlobal to undertake (policies, processes, and procedures). At Client’s written request, ZGlobal shall perform Risk Management Program Development and Support Services for the following categories:

Initial assessment of Risk Policy Review Current Risk Management Documents and Tools

- Confirmation of Organizational Objectives,
- Confirmation of Client’s Risk Management Organizational Structure and Responsibilities,
- Understanding of procurement strategy, including methods for measurement and management of net open positions for the short, mid and long-term,
- Perform comprehensive review of information and documentation provided by Client
- Assess and document Client’s risk tolerance
- Develop for discussion purposes approaches for monitoring and managing Net Open Position on an intermediate and long-term basis and associated risk
- Compare and contrast existing practices and information with those that are needed to reflect Client’s risk tolerance

Develop Comprehensive Risk Policy Consistent with Client’s Risk Tolerance, includes provisions for the following:

- Measuring and closing Net Open Position in the short-term (less than one year); Concepts and approaches for intermediate and long term management
- Procurement to satisfy load obligations
- Submitting load and resource bids and offers into markets
- Executing bilateral physical transactions including exposure to credit risk
- Executing financial transactions
- Submitting offers to markets
- Hedging instruments consistent with Client’s risk tolerance
- Approved products

Develop Operating Procedures for Risk Management Activities

- Measuring and closing Net Open Position in the short term (less than one year)
- Procurement to satisfy load obligations
- Executing bilateral physical transactions including exposure to credit risk



- Executing financial transactions
- Submitting offers into markets
- Hedging instruments consistent with Client's risk tolerance
- Approved products

Develop documented material suitable for presentation to management and/ or Board of Directors and will include:

- Confirmation of Organizational Objectives,
- Confirmation of the Risk Management Organizational Structure and Responsibilities,
- Identification and prioritization of Risks given its portfolio definition,
- Analysis of current Risk Tolerance including assessment of limit structures and approved products and recommendations for improvement,
- Understanding of procurement strategy, including methods for measurement and management of net open positions for the short, mid and long-term,
- Recommendations for changes to credit procedure and counterparty transaction limits,
- Updated Risk Management Policy, and
- Updated reporting and metrics as needed.
- Develop and present material to Client's management team for approval
- Modify material based on feedback from Client as necessary
- Discussion of intermediate and long term Net Open Position management

On-going Support Services. Once the updated policy and procedures including approved risk tolerances have been adopted, ZGlobal will be available for on-going support upon request to provide the following services as outlined in approved risk procedures:

- Provide on a monthly basis counterparty credit risk exposure report,
- Perform annual counterparty credit strength evaluation and provide credit assessment based on the clients approved counterparty credit limits, including evaluating new counterparties on an as needed basis,
- Assist in establishing the proper security requirements for purchase power agreements based on client's desired level of risk exposure,
- Assist in the review of letters of credit and parental guarantees received as security deposits from counterparties,
- Monitor counterparty business risk and provide reporting on news pertaining to their business and could have impact, including providing updates from credit rating agencies when applicable,
- Evaluate periodically the energy risk management policy and procedures, and provide recommendations to improve overall effectiveness including comparison with other municipal utilities and best practices for similar entities,
- Review the hedging strategy and compare with other municipal utilities and best practices for similar entities. Provide recommendations if needed,
- Assess risks of term transactions and long-term agreements,

- Perform evaluation of the current value-at-risk calculation and provide recommendations to improve overall effectiveness. Provide recommendations on risk metrics appropriate for a municipal entity to measure risk exposure, and
- Assist with transaction review for Dodd-Frank Act compliance obligations.

ZGlobal will provide on-demand support through the duration of this contract. Lead times to complete requested services will vary depending on the tasks. Based on the availability of team members High-level schedules will be determined by mutual agreement.

## **2. Description of Services**

ZGlobal proposes to provide Risk Management Program Development and Support Services on behalf of Client to create their Risk Management Program and provide support in managing Client's net open position.

## **3. Client's Responsibilities**

3.1 Client shall select and specify in writing the categories of Portfolio Management Services listed in this Exhibit H that ZGlobal shall provide.

3.2 Information to Be Provided by Client to ZGlobal. ZGlobal will identify and Client shall provide ZGlobal with all relevant information to allow ZGlobal to determine Client's risk including:

- Credit assessment for new counterparty is completed upon review of third-party security documents
- Third party review of security documents assumes that documents are readily available.
- Input data is readily available for assessing hedging strategy and estimating Value at Risk calculation
- All necessary information to allow ZGlobal to determine Client's net open position and other metrics defined by the documented Risk Policy, Process, or Procedure.

## **4. ZGlobal's Responsibilities**

4.1 Strategy Review, Client and ZGlobal shall meet on a regular basis to review Risk Management documentation and review the risk strategy, but no less than once per year.

4.2 Required Data, All transaction data shall be recorded and stored by ZGlobal and provided to Client as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.

4.3 Reports, ZGlobal shall publish regular reports. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per quarter.

4.4 Professional Services, ZGlobal shall perform these services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

**[End of Exhibit H]**

## **EXHIBIT I**

### **Services Fees**

This Exhibit I describes the Services Fees (“Services Fees”) to be remitted to ZGlobal from Client for all Services performed pursuant to this Agreement. It also lists additional contact information for Client and ZGlobal.

### **Service Fees**

- Note Service Fees Shown Below are Waived for the First Six Months after each service Start Date as listed in Section 2.2.
- Set-up and Scheduling Coordinator Transition Fees = \$0
- Scheduling Coordinator Services Fee = \$12,025 per month for 12 months (\$9,875 for Generation Scheduling, \$2,150 for Load Scheduling), then escalated by 1.5% each year thereafter
- Financial Settlement Services Fee = \$0
- Forecasting Services Fee = \$5,125 per month for 12 months, then escalated by 1.5% each year thereafter
- Facility Management Services Fee = \$N/A
- Portfolio Management Services Fee = \$6,425 per month for 12 months, then escalated by 1.5% each year thereafter
- Risk Management Program Development and Support Services Fee = \$N/A

**[End of Exhibit I]**



**EXHIBIT J**

**Contacts**

**Real Time:**

Tel: 760-483-5000

[24hrdesk@zglobal.biz](mailto:24hrdesk@zglobal.biz)

**Additional Contacts:**

**Day Ahead:**

Eric Vaa

Tel: (916)985-9461

E-mail: [eric@zglobal.biz](mailto:eric@zglobal.biz)

**Monthly/Structured:**

Kevin Coffee

Tel: (916)985-9461

E-mail: [kcoffee@zglobal.biz](mailto:kcoffee@zglobal.biz)

**Deal Confirmations:**

Christine Vangelatos

Tel: (916)985-9461

Email: [christine@zglobal.biz](mailto:christine@zglobal.biz)

**CLIENT CONTACTS**

**[End of Exhibit J]**

## **EXHIBIT K**

### **Information Resources**

This Exhibit K describes the software, databases, data, and information portal(s) developed or acquired by ZGlobal on Client's behalf that ZGlobal shall provide Client and Client's designated representatives and consultants access to in connection with the Services:

- **MCG Hosted Data Store (HDS)** - a separate data store for all of Client's energy transactional and settlement data hosted and maintained by MCG via a software services agreement with ZGlobal. MCG HDS shall be provided as part of the Generation Scheduling Services.

Client shall be provided login credentials to access its data in HDS. The HDS database and services is separate from the production data center in MCG's Integrated Asset Manager (IAM) used by ZGlobal to execute Client's daily scheduling and settlement functions. The HDS will be updated in near real-time from the IAM production data store. MCG will be responsible for managing and mapping the relevant data tables. All reports developed by ZGlobal for Client along with the supporting data will be replicated to the HDS. Client will be able to utilize the HDS User Interface as well as HDS' Programmatic Interface via Web Services to directly access its database information.

Access to MCG HDS shall be available through ZGlobal's MCG services agreement provided this Agreement between ZGlobal and Client] is effective. Access to MCG HDS shall be terminated upon termination of this Agreement between ZGlobal and Client Notwithstanding, Client shall retain Rights in Data, Confidentiality and Non-Disclosure pursuant to Section 5 of ZGlobal's Software Services Agreement with MCG Energy Solutions dated March 18, 2015.

- **CAISO Shadow Settlements**

CAISO shadow settlements that are used to validate CAISO daily and monthly settlement statements, invoices and payment notices will be made available to Client via a mutually agreed method through customized reports and bill determinant files. Shadow settlement data and files are to be calculated or prepared using the relevant CAISO shadow settlement system utilized by ZGlobal during the term of this Agreement between ZGlobal and Client including but not limited to: Power Settlements Settlecore, MCG IAM and/or other customized tools developed by ZGlobal staff. CAISO shadow settlements shall be provided as part of Generation Scheduling Services and Load Scheduling Services, as applicable.

- **CRR Analysis**

Results of CRR analysis performed for Client including any inputs (e.g. - prices, constraints and outages) used to prepare such results will be made available to Client via a mutually agreed method through customized reports and data files. CRR analyses are to be performed utilizing various database services and tools acquired by ZGlobal to

perform such analysis, including but not limited to: Yes Energy's PowerSignals, ZGlobal proprietary Oracle databases, CAISO OASIS, Plexos Integrated Energy Model and/or other similar data sources and applications. Direct access by Client staff to one or more of ZGlobal's database sources or software tools shall be governed by any relevant software license or use agreements ZGlobal has with the relevant third party during the term of this Agreement between ZGlobal and Client. In some cases, this may require Client to have its own agreement and fee structure with said third party and ZGlobal will promptly notify Client if a separate agreement is required. Systems related to CRR Analysis shall be provided as part of the Portfolio Management Services.

**[End of Exhibit K]**

**FIRST AMENDED AND RESTATED**  
**SCHEDULING SERVICES AGREEMENT**

This Scheduling Services Agreement (“Agreement”), originally executed June 17, 2016 between ZGlobal Inc. (“ZGlobal”) and Marin Clean Energy, a California joint powers authority (“MCE” or “Client”) is hereby amended and restated as of July 25, 2018 (“Effective Date”). ZGlobal and Client are referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, Client desires to have ZGlobal perform the Services (as defined below);

WHEREAS, ZGlobal is in the business of providing energy scheduling/settlement and related services as an agent, including the Services; and

WHEREAS, except as otherwise defined in the body of this Agreement, terms and expressions used in this Agreement shall have the meanings contained in Exhibit A.

NOW THEREFORE, in consideration of the promises, covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ZGlobal and Client, intending to be legally bound, hereby agree as follows:

**ARTICLE 1**  
**TERM AND TERMINATION**

1.1 Term. The “Primary Term” of this Agreement shall be five (5) years, beginning on the Commencement Date, unless terminated earlier as provided in this Agreement. At the conclusion of the Primary Term, this Agreement shall automatically continue for successive one (1) year terms (each such term an “Additional Term”), unless either Party has given the other Party at least ninety (90) days’ written notice prior to the end of the Primary Term or the Additional Term that it does not wish to renew the Agreement or unless terminated earlier as provided in this Agreement (the period during which the Agreement remains in effect, the “Term”).

1.2 Termination for Convenience. During the Term, either Party may terminate this Agreement at any time for any reason or no reason upon one hundred eighty (180) days’ prior written notice for ZGlobal and ninety (90) days’ prior written notice for Client. For the avoidance of doubt, Client may request the cancellation of a Service on prior written notice to ZGlobal without terminating the Agreement.

1.3 Termination for Cause. During the Term, if one of the following events (each, an “Event of Default”) occurs with respect to a Party (the “Defaulting Party”), the other Party (the “Non-Defaulting Party”) shall have the right to terminate this Agreement upon delivery of written notice to the Defaulting Party:



(a) A Party fails to make when due any undisputed payment due under this Agreement, if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Party failing to make payment;

(b) A Party breaches a material covenant or agreement in this Agreement (other than a default in a payment obligation), if such breach is not remedied within ten (10) Business Days after written notice is given to the Party in breach of its covenants or agreements under this Agreement;

(c) A Party makes an assignment or any general arrangement for the benefit of creditors; or files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it; or otherwise becomes bankrupt or insolvent (however evidenced); or becomes unable to pay its debts as they fall due;

(d) ZGlobal fails to maintain Performance Assurance in accordance with Article VII, and does not remedy such breach within three (3) Business Days after written notice from Client; or

(e) One or more of a Party's representations or warranties set forth in Section 5.1 or 5.2 (as applicable) are no longer true or correct, and such representation or warranty is not corrected within thirty (30) days after written notice is given to the Party whose representation or warranty is no longer true or correct.

1.4 Effect of Termination. Notwithstanding anything else set forth herein, the terms and conditions of this Agreement shall remain in effect until the Parties have fulfilled all outstanding obligations, including payment in full of amounts due and transfer of information to Client or Client's designee, and the termination of this Agreement shall not relieve either Party of (i) any unfulfilled obligation or undischarged liability of such Party existing as of the termination date, including without limitation the transition of the Services to Client or its designee (ii) the consequences of any breach or default under this Agreement to the extent not excused by this Agreement, or (iii) any obligations or liabilities arising from provisions of this Agreement that either expressly or by their nature survive the termination of this Agreement. Within 90 days after the termination of this Agreement, any amounts due from either Party shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds made. No termination by ZGlobal shall be effective until the later of (x) the termination date specified in ZGlobal's written notice of termination or (y) the date upon which ZGlobal has transitioned the Services to Client or its designee in accordance with Section 2.3; provided that such transition period shall not exceed forty-five (45) days. The Client's cancellation of a Service shall not act as a termination of the Agreement.

1.5 Exclusive Remedy. For the avoidance of doubt, except for and subject to its right to indemnification under Article 8, if Client is not satisfied with ZGlobal's performance of Services hereunder, Client's sole and exclusive remedy shall be to terminate this Agreement pursuant to Section 1.2 or Section 1.3 above, as applicable.

1.6 Cooperation. In connection with the termination of this Agreement, ZGlobal shall take such actions as Client may reasonably request and ZGlobal agrees to work cooperatively with Client to facilitate the transition of Services from ZGlobal to Client or Client's designee.

## **ARTICLE 2** **DESCRIPTION OF CLIENT ASSETS; SERVICES**

2.1 Description of Client Assets. As requested by Client, ZGlobal will provide Services for the loads and generation assets set forth in Exhibit B attached hereto ("Client Assets"), as amended in writing by the Parties from time to time.

2.2 Services. ZGlobal, as agent for Client pursuant to this Agreement, shall provide the following Services for the Client Assets, commencing on the date identified for each Service (Client to check all that apply, and provide a start date for any checked Service):

<i>Check All that Apply</i>	<i>Services Description</i>	<i>Start Date</i>
	<b>Generation Scheduling Services</b>	
<u>  X  </u>	Scheduling and Outage Coordination (Exhibit C)	7/1/2016
<u>  X  </u>	Financial Settlement Services (Exhibit D)	7/1/2016
	<b>Load Scheduling Services</b>	
<u>  X  </u>	Scheduling and Outage Coordination (Exhibit C)	9/1/2017
	<b>Load Forecasting Services</b>	
<u>  X  </u>	Forecasting Services (Exhibit E)	9/1/2017
	<b>Portfolio Management Services</b>	
<u>  X  </u>	Portfolio Management Services (Exhibit G)	1/1/2017
	<b>Risk Management Services</b>	
N/A	Risk Management Program Development and Support Services (Exhibit H)	_____
	<b>Information Resources</b>	
	Information Resources (Exhibit K)	_____

Each Exhibit checked above is attached hereto and incorporated herein by reference, and collectively comprise the "Services" to be performed by ZGlobal under this Agreement.

2.3 Continuity of Service. In the event Client cancels a Service, this Agreement terminates, or ZGlobal fails, ceases or is unable to provide the Services under this Agreement for any reason, then, to the extent necessary, the Parties shall take all steps necessary to terminate the designation of ZGlobal as agent for Client for the Service or Services, and ZGlobal shall take such actions as Client may reasonably request in order to transition responsibility for the performance of the Service or Services to Client or a replacement provider. Additionally, as part of the transfer

of a Service or Services under this Section 2.3, ZGlobal agrees to assign to Client, at Client's request, any underlying agreements with third-party software or service providers necessary for continued performance of the Service or Services, including the Information Resources (as defined below).

2.4 Information Access. ZGlobal shall provide Client and Client's designated representatives and consultants with access to the software, databases, data, and information portal(s) identified in Exhibit K (collectively, the "Information Resources").

2.5 Designation of ZGlobal as Agent. Client hereby designates ZGlobal as its agent and representative in connection with and to the extent reasonably required to perform the Services. Client agrees to promptly:

- (a) Notify CAISO and any other relevant entities of this arrangement; and
- (b) Provide ZGlobal with all necessary and appropriate information and data for ZGlobal to begin performing the Services.

2.6 Standard of Performance. ZGlobal shall perform the Services consistent with Good Industry Practice and Applicable Laws, and in accordance with written direction from Client (if any).

### **ARTICLE 3** **COMPENSATION; BILLING AND PAYMENT**

3.1 Compensation. As consideration for the Services performed by ZGlobal hereunder, Client shall pay ZGlobal all undisputed applicable Services Fees in accordance with Exhibit I. In the event Client, in good faith, disputes ZGlobal's computation of amounts due and owing, Client will provide ZGlobal with written documentation explaining the disputed amount and describing in detail the factual and legal basis of the dispute. Client must pay all charges which are not in dispute in accordance with the payment terms outlined above. Client will cooperate with ZGlobal to resolve any payment dispute expeditiously.

3.2 Billing Statements. ZGlobal shall deliver to Client on or before the tenth (10th) Business Day of the month following that month for which Services were provided a monthly Scheduling Coordinator Services statement (each a "Statement") setting forth the Services Fees applicable to the Services performed during that period. Payments shall be made to ZGlobal on or before thirtieth (30<sup>th</sup>) Business Day after receipt of each Statement.

3.3 Failure to Pay. Client's failure to make timely payments hereunder shall be considered a breach. In the event such breach is not cured within fifteen (15) days following written notice by ZGlobal, then Client shall be in default and ZGlobal may:

- (a) Apply any revenues or payments received by ZGlobal for the benefit of Client from Balancing Authorities, Transmission Owners/Operators the CAISO, or any other third party towards the outstanding amount owed to ZGlobal;



(b) Apply any monies from the Services Payment Security posted by Client pursuant to Exhibit C towards the outstanding amount owed to ZGlobal; and/or

(c) Terminate this Agreement and all Services provided for herein pursuant to Section 1.3(a) above.

3.4 Late Payments. Any payment that is not received by ZGlobal on or before the date required shall incur a monthly late fee, which shall be the total undisputed outstanding balance due multiplied by the Interest Rate (“Late Fee”).

3.5 Audit Rights. Client (or its designee) shall have the right, with prior written notice, at its sole expense and during normal working hours, to examine the records of ZGlobal to the extent reasonably necessary to verify the accuracy of any Statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any Statement or Late Fee, the necessary adjustments in such Statement or Late Fee and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate.

3.6 Independent Contractor. ZGlobal shall provide the Services to Client as an independent contractor, not as an employee of Client. ZGlobal shall not have or claim any right arising from employee status.

3.7 Billing and Payment for CAISO Charges. Billing and payment for CAISO charges and credits shall be made through a Client designated bank account. In no case shall ZGlobal instruct the CAISO to direct funds related to Client’s SC ID into or out of another bank account without the prior written consent of Client.

## **ARTICLE 4** **CONFIDENTIALITY; PROPRIETARY RIGHTS**

### 4.1 Confidentiality.

a) Each Party shall hold in confidence all information disclosed to it by the other Party or its representatives that pertains to Client’s or ZGlobal’s business, as the case may be, and that is not publicly available, including proprietary practices, technical information and relevant data (“Confidential Information”). The Parties hereto acknowledge that MCE is a local agency and subject to provisions of the California Public Records Act (Cal. Government Codes section 6250 and following). If MCE is requested or required to disclose any Confidential Information in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, MCE shall immediately notify ZGlobal of the request or requirement in order to allow ZGlobal to (i) seek an appropriate protective order or other remedy at no cost to MCE; (ii) consult with MCE with respect to appropriate steps to resist or narrow the scope of the request; or (iii) to waive compliance, in whole or in part, with the terms of this Agreement. In the event that such protective order or other remedy or waiver is not timely obtained, MCE shall disclose only such portion of Confidential Information which is legally required to be disclosed to the party seeking disclosure, and shall require to the extent possible that any Confidential Information so disclosed will be accorded confidential treatment.

(a) The Parties are entitled to all remedies available at law or in equity, including specific performance, to enforce this provision; however, neither Party will be liable for any damage suffered as a result of the use or disclosure of confidential information made in accordance with the express terms and conditions of this Agreement. This provision will survive for a period of five (5) years following the expiration of this Agreement.

(b) Confidential Information shall not include (i) information that is publicly available or that enters the public domain pursuant to Applicable Laws, or (ii) information obtained by a Party from a third party not known to be under an obligation of non-disclosure to Client or ZGlobal, as the case may be.

(c) Notwithstanding the foregoing, each Party may disclose Confidential Information to the extent necessary to perform this Agreement, and to any Governmental Authority, but only to the extent legally required to do so. If a Party is requested or required by any Governmental Authority to disclose any of the other Party's Confidential Information, such Party shall provide the other Party with prompt notice of such request(s) so that the other Party may seek, at its sole expense, a protective order or other appropriate remedy with respect to such disclosure.

4.2 Proprietary Rights. Client shall retain all rights, title and interest in and to all models, tools, systems or processes owned by and used or developed by ZGlobal in the course of providing Services pursuant to this Agreement including, but not limited to, patent rights, trade secrets, mask works and copyrights; provided, however, that ZGlobal shall have a non-exclusive right to use said models, tools, systems or processes to serve Client or other agencies approved by Client without further consideration.

## **ARTICLE 5** **REPRESENTATIONS AND WARRANTIES**

5.1 ZGlobal's Representations and Warranties. ZGlobal represents and warrants to Client as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and in each jurisdiction where it is required to be qualified as a foreign corporation;

(b) It has obtained all regulatory approvals and Permits necessary for it to legally perform its obligations under this Agreement;

(c) It possesses the requisite expertise to perform its obligations hereunder, and it is not restricted in any manner, through an agreement not to compete or similar agreement, from performing the Services for Client;

(d) The execution and delivery of this Agreement and the performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Applicable Laws; and

(e) This Agreement constitutes ZGlobal's legally valid and binding obligation enforceable against it in accordance with the terms thereof; and

(f) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

5.2 Client's Representations and Warranties. Client represents and warrants to ZGlobal as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of California;

(b) The execution and delivery of this Agreement and the performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Applicable Laws; and

(c) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with the terms thereof; and

(d) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it.

5.3 Annual Updates. Upon the request of the other party on or prior to the anniversary of the Effective Date and no later than thirty (30) days after each anniversary of the Effective Date, ZGlobal and Client shall each confirm in writing to the other that their respective representations and warranties set forth above remain true and correct.

## **ARTICLE 6** **RELATIONSHIP OF THE PARTIES; DISCLAIMERS**

6.1 Relationship of the Parties. ZGlobal shall act as Client's agent while performing the Services hereunder. Except when and to the extent that ZGlobal is performing the Services, neither Party has the right, power or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of or on behalf of the other Party, or to enter into any agreement or undertaking for, or act as or be an agent or legal representative of, or otherwise bind, the other Party. Further, this Agreement shall not be interpreted or construed as creating any association, joint venture or partnership between the Parties, or any other arrangement other than the contractual arrangement expressly set forth in this Agreement.

6.2 Other Business. Subject to Section 4.1 above, nothing in this Agreement shall preclude ZGlobal from performing Services similar to those hereunder for other clients.

6.3 Warranty Disclaimers. Client acknowledges that it has entered into this Agreement and is contracting to receive the Services based solely upon the expressed representations and warranties in this Agreement. As a result, Client accepts all Services provided under this Agreement "as is" and "with all faults." The Parties expressly negate and disclaim any other representation or warranty with respect to the Services provided under this Agreement, whether

written or oral, expressed or implied, including any representation or warranty with respect to merchantability or fitness for any particular purpose.

## **ARTICLE 7** **PERFORMANCE ASSURANCE**

7.1 Performance Assurance. As a condition of Client's obligations hereunder, ZGlobal shall provide to Client no later than September 1, 2016 and thereafter maintain throughout the Term cash or a letter of credit (the "Performance Assurance") in the amount of ONE MILLION DOLLARS (\$1,000,000). The Performance Assurance shall be held by Client as security for ZGlobal's performance hereunder. If ZGlobal establishes the Performance Assurance by means of a letter of credit, the letter of credit must be provided in a form reasonably acceptable to Client. The Performance Assurance will be returned to ZGlobal at the end of the Term upon the satisfaction of ZGlobal's obligations under this Agreement (net of any amounts applied to ZGlobal's obligations). After September 1, 2019, at ZGlobal's written request, Client agrees to consider in good faith ZGlobal's request to reduce the amount of the Performance Assurance; provided, however, that any reduction will be made at Client's sole discretion and Client is under no obligation to grant such request.

7.2 Security Interest in Performance Assurance. To secure its obligations under this Agreement, and until released as provided herein, ZGlobal hereby grants to Client a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Performance Assurance and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Client, and ZGlobal agrees to take all action as Client reasonably requires in order to perfect Client's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

7.3 Event of Default. Upon or any time after the occurrence of, and during the continuation of, an Event of Default caused by ZGlobal, Client may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to the Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Draw on any outstanding letter of credit issued for its benefit; and
- (c) Liquidate all Performance Assurance then held by or for the benefit of Client free from any claim or right of any nature whatsoever of ZGlobal, including any equity or right of purchase or redemption by ZGlobal.

Client shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce ZGlobal's obligations under this Agreement (ZGlobal remains liable for any amounts owing to Client after such application), subject to Client's obligation to return any surplus proceeds remaining after these obligations are satisfied.

## **ARTICLE 8** **LIMITATION OF LIABILITY; INDEMNITY**



## 8.1 Limitation of Liability.

(a) To the extent permitted by Applicable Laws, ZGlobal hereby agrees to indemnify, defend and hold harmless Client, its partners, officers, directors, representatives and employees (collectively, the “Client Indemnitees”), from and against any and all losses, claims, damages and liabilities (including third-party claims, reasonable attorney, consultant, accounting and other professional fees, and reasonable fees and costs actually incurred in enforcing this Agreement, and any penalties or fines imposed by Governmental Authority) (collectively, “Losses”) relating to ZGlobal’s performance of the Services and any breach by ZGlobal of the provisions of this Agreement, except to the extent caused by the fraud, negligence or the willful misconduct or breach of this Agreement by the Client Indemnitees. The foregoing notwithstanding, to the extent a Loss is due to a communications failure between ZGlobal and the CAISO, ZGlobal’s liability hereunder, unless excused by Force Majeure, shall be limited to reimbursing Client for only those fees or charges imposed by CAISO or any other third party caused by the failure of ZGlobal to communicate the necessary information received from Client in a timely manner.

ZGlobal shall be promptly notified in writing of any such claim or suit brought against any Client Indemnitee and shall be permitted to manage at its cost and expense a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such Client Indemnitee) of such claim or suit through counsel reasonably acceptable to Client. The Client Indemnitees shall provide, at ZGlobal expense, such cooperation as ZGlobal may reasonably request in connection with its defense or settlement of the claim or suit against such Client Indemnitee.

(b) Intentionally Left Blank.

Client shall be promptly notified in writing of any such claim or suit brought against a ZGlobal Indemnitee and shall be permitted to manage at its cost and expense a defense against or negotiate a settlement (other than any settlement involving criminal liability or admission of guilt or responsibility by such ZGlobal Indemnitee) of such claim or suit through counsel reasonably acceptable to ZGlobal. The ZGlobal Indemnitees shall provide, at Client expense, such cooperation as Client may reasonably request in connection with its defense or settlement of the claim or suit against such ZGlobal Indemnitee.

(c) For the avoidance of doubt, consistent with the provisions set forth in Section 8.1 above, neither Party shall have any responsibility or liability for any third party agreements not incorporated by reference by this Agreement or transactions not contemplated by this Agreement entered into by the other Party, including but not limited to such Party or any third party failing to perform, inadequately performing, and/or incorrectly performing under or breaching any such third party agreements or transactions.

(d) Except as expressly provided herein, nothing in this Agreement shall be construed to create a duty to, any standard of care with reference to, or any liability in connection with any person not a party to this Agreement.

(e) In no event shall either Party be liable to the other Party for any consequential, incidental or indirect damages for any cause of action, whether in contract or tort or otherwise. Incidental, consequential or indirect damages include, but are not limited to, lost profits or revenues and loss of business opportunity, whether or not the Party was aware or should have been aware of the possibility of such damages.

8.2 Limitation on Damages. FOR BREACH OF ANY PROVISION, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT DAMAGES AND EACH PARTY AGREES TO WAIVE ALL OTHER TYPES OF DAMAGES OR REMEDIES TO WHICH IT MIGHT BE ENTITLED UNDER THIS AGREEMENT, INCLUDING CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST OPPORTUNITY COSTS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED HEREIN ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

8.3 Indemnification. Notwithstanding the foregoing Sections 8.1 and 8.2, each Party shall hold the other Party harmless as follows: the indemnitor shall defend, indemnify and hold harmless the indemnitee, its officers, agents and employees from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the public), or damage to property, resulting from or arising out of indemnitor's willful misconduct or gross negligence while engaged in the performance of obligations or exercise of rights created by this Agreement, except to the extent of those matters arising from indemnitee's negligence.

## **ARTICLE 9** **MISCELLANEOUS**

9.1 Entire Agreement. This Agreement is the Parties' complete and final expression of agreement on the subject matter of this Agreement and supersedes all prior agreements, representations, understandings, negotiations, offers and communications, whether oral or written, regarding the subject matter of this Agreement.

9.2 No Assignment. Neither Party may assign this Agreement or any right or obligation under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Section 9.2 shall be void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

9.3 Modification and Amendment. This Agreement can be modified or amended only by a written agreement executed by an authorized representative of each Party.

9.4 Severability. If any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall not be affected. With respect to a provision held

invalid or unenforceable, the Parties shall amend this Agreement as necessary to effect the Parties' original intent as closely as possible.

9.5 No Waiver. If on any occasion a Party does not insist upon the performance of any term, condition or provision of this Agreement, such forbearance shall not operate or be construed as an acceptance of any variation in any term, condition or provision of this Agreement or relinquishment of any right under this Agreement. No waiver by either Party of any right or of any default by the other Party under this Agreement shall be effective unless the waiver is in writing and signed by the waiving Party, and no waiver shall operate or be construed as a waiver of any other or further right or as a waiver of any future default, whether of like or different character or nature.

9.6 Governing Law. This Agreement is governed by and shall be construed according to the laws of the State of California, without regard to principles of conflicts of law.

9.7 Preparation of Agreement. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

9.8 No Third-Party Rights. This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any rights in favor of, any duty to or standard of care with reference to, or any liability to any person not a party to this Agreement.

9.9 Notices. Except as otherwise expressly provided in this Agreement, all notices and other communications to be given or made under this Agreement shall be in writing, shall be addressed as specified below, and shall either be personally delivered or sent by courier, by registered or certified mail, or by facsimile. Initially, the respective Parties' addresses and facsimile numbers are:

If to ZGlobal:	ZGlobal Inc. 750 Main St. El Centro, CA 92243
With a copy to:	604 Sutter Street, Ste. 250 Folsom, CA 95630
If to Client	Director of Power Resources/ Procurement Marin Clean Energy (MCE) 1125 Tamalpais Ave. San Rafael, CA 94901 Phone: 415-464-6037
With a copy to:	<a href="mailto:procurement@mcecleanenergy.org">procurement@mcecleanenergy.org</a>

All notices shall be deemed delivered (a) when delivered in person, (b) if received on a Business Day for the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified above and, if received on a day that is not a Business Day for the receiving Party,

on the first Business Day following the date transmitted by facsimile to the receiving Party's facsimile number specified above, (c) one day after being delivered to a courier for overnight delivery, addressed to the receiving Party at the address specified above (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above), or (d) five (5) days after being deposited in a United States Postal Service receptacle, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party at the address specified above (or such other address as such the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified above). Any Party may, by written notice, change the address or facsimile number, or both, to which notices and communications are to be sent.

9.10 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute only one legal instrument. The delivery of an executed counterpart of this Agreement by facsimile shall be deemed to be valid delivery of the counterpart.

9.11 Survival. Notwithstanding any provision herein to the contrary, Articles 3, 4, 6, 7, 8 and 9 shall survive the termination or expiration of this Agreement.

9.12 Publicity. Either Party may issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic or interview) relating to the Services or this Agreement; provided, however, the disclosing Party shall, if reasonably possible, provide advance notice of such disclosure to the other Party.

9.13 Interpretation. In this Agreement:

(a) The headings are for convenience of reference only and shall be ignored in construing this Agreement;

(b) Where the context requires, the singular includes the plural and vice versa;

(c) The words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation";

(d) Unless the context otherwise indicates, references in this Agreement to articles, sections or exhibits are references, respectively, to articles, sections or exhibits of or to this Agreement;

(e) All exhibits referenced in this Agreement are incorporated into this Agreement and are an integral part of this Agreement;

(f) If a conflict or inconsistency exists between any exhibit and this Agreement (exclusive of the exhibits), the provisions of this Agreement (exclusive of the exhibits) shall control; and

(g) All references in this Agreement to contracts, agreements and other documents shall be deemed to refer to such contracts, agreements and other documents as amended, modified and supplemented from time to time.



9.14 No Recourse Against Constituent Members of MCE.

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. ZGlobal will have no rights and will not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

To evidence their acceptance of this Agreement, the Parties have caused their authorized representatives to sign below as of the Effective Date.

**ZGLOBAL INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MARIN CLEAN ENERGY, a California joint powers authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **Definitions**

Each of the following capitalized terms shall, for all purposes of this Agreement, have the respective meanings set forth below.

“Additional Term” has the meaning set forth in Section 1.1.

“Agreement” means this Scheduling Services Agreement, including all exhibits attached to this Agreement, as amended, modified, or supplemented from time to time.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, orders, interpretations, Permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Client Assets, the Services or the terms of this Agreement.

“Balancing Authority” means the entity responsible for integrating resource plans ahead of time, maintaining load-interchange-generation balance within a Balancing Authority Area, and supporting interconnection frequency in real time.

“Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

“Business Day” means any Day other than a Saturday, a Sunday, the day after Thanksgiving, or a Day on which commercial banks in California are authorized or required to close.

“California Independent System Operator” and “CAISO” mean the California Independent System Operator.

“CAISO Tariff” means the CAISO FERC approved Tariff, as amended from time to time.

“Client Assets” has the meaning set forth in Exhibit B.

“Client Assets Operating Parameters” means the various operating parameters set forth in Exhibit B.

“Client Designated Bank Account” means the bank account that Client has established to transfer funds from and to the CAISO for settlement of CAISO obligations as a result of activity from Client’s Scheduling Coordinator ID.

“Commencement Date” means that date declared by Client by written notice to ZGlobal following the Effective Date upon which ZGlobal commences providing any of the Services under this Agreement.

“Confidential Information” has the meaning set forth in Section 4.1.

“Day” means a calendar day beginning at 12:00 midnight, Prevailing Pacific Time.

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Energy” means electricity measured in MWh.

“Event of Default” has the meaning set forth in Section 1.3.

“Financial Settlement Services” has the meaning set forth in Exhibit D.

“Forecasting Services” has the meaning set forth in Exhibit E.

“Force Majeure” means, in respect of a non-performing Party, an event beyond the reasonable control of the non-performing Party that the non-performing Party is unable to prevent, avoid or overcome through the exercise of diligent efforts, and that is not the result of the non-performing Party’s fault or negligence or failure to comply with any provision of this Agreement. The following events, among others, shall, to the extent they meet the requirements set forth in the immediately preceding sentence, constitute Force Majeure: acts of God, landslide, lightning, earthquake, fire, explosion, flood, storm, hurricane, tornado, storm, insurrection, war, blockade, riot, civil disturbance, sabotage, terrorism and embargo.

“Forced Outage” an Outage for which sufficient notice cannot be given to allow the Outage to be factored into CAISO’s day-ahead market or real time market bidding processes.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent operators in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with applicable standards and the requirements of Governmental Authorities, WECC standards, WREGIS Standards, the CAISO and Applicable Laws. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

“Governmental Authority” means any federal, state, local, municipal, tribal or other governmental, administrative, judicial or regulatory entity having or asserting jurisdiction over a Party, the Client Assets, the Services or this Agreement.

“Interest Rate” means the means the rate of interest per annum publicly announced from time to time by Bank of America as its ‘Prime Rate’, plus three percent (3%), or the maximum rate permitted by Applicable Laws, whichever is less.

“Late Fee” has the meaning set forth in Section 3.4.

“Losses” has the meaning set forth in Section 8.1(a).

“Month” means a calendar month

“Parties” means ZGlobal and Client.

“Party” means either ZGlobal or Client.

“Performance Assurance” has the meaning set forth in Section 7.1.

“Permit” means any license, permit, approval, consent, authorization, waiver, exemption, variance, franchise or similar order of or from any Governmental Authority.

“Primary Term” has the meaning set forth in Section 1.1.

“Outage” means disconnection, separation or reduction in capacity, planned or forced, of one or more elements of an electric system.

“Participating Generator Agreement” means an agreement between CAISO and the owner of a generator that participates in the CAISO markets, a pro forma version of which is set forth in Appendix B.2 to the CAISO Tariff.

“Portfolio Management Services” has the meaning set forth in Exhibit G.

“Risk Management Program Development and Support Services” has the meaning set forth in Exhibit H.

“RECs” means renewable energy certificates, which represent the environmental attributes of the power produced from renewable energy projects and which are sold separately from the electricity commodity from such renewable energy projects.

“Scheduling Coordinator” or “SC” means any entity certified by the CAISO for the purposes of undertaking the functions identified in the CAISO Tariff for Scheduling Coordinators.

“Scheduling Coordinator Agent” means ZGlobal performing Scheduling Coordinator services described in this agreement on behalf of MCE under MCE’s capacity as a CAISO certified, Scheduling Coordinator. MCE activity as Scheduling Coordinator shall be associated with SCID MCEE and/or other SCIDs as determined by the CAISO and MCE.

“Scheduling Coordinator Services” has the meaning set forth in Exhibit C.

“Security Interest” has the meaning in Section 7.2.

“Service” means any of the Services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services” means all of the services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services Fees” means the various fees for Services performed under this Agreement as set forth in Exhibit I.



“Statement” means a billing statement delivered according to Section 3.2.

“Transmission Owner/Operator” means an entity owning or operating transmission facilities or having firm contractual rights to use such transmission facilities.

“WECC” means the Western Electricity Coordinating Council and its successors.

“WREGIS” means the Western Renewable Energy Generation Information System and its successors.

**[End of Exhibit A]**

## **EXHIBIT B**

### **Client Assets [revised 4/1/2018]**

#### **1. Client Assets.**

- The following is a list of assets subject to this Agreement (e.g., generators) and, if applicable, load and types of transactions to be scheduled (i.e., CAISO ISTs, imports/exports and WECC bilateral transactions) (collectively, the “Client Assets”).
  - Load
    - Load scheduled at PG&E DLAP = Approximately 1,009 MW annual peak
  - Current Supply Contracts
    - G2 Hay Road Landfill Gas = 1.6 MW
    - Dominion - City of Corcoran Solar = 11 MW
    - Dominion – Goose Lake Solar = 12 MW
    - WAPA Hydro Preschedule Allocation = Percentage of Base Resource 0.62094%
    - EDP Wind (Rising Tree) = 99 MW
    - San Rafael Airport Solar = 0.97 MW
    - Cooley Quarry Solar = 1.45 MW
    - Richmond Parkway Feed-In Tariff = 1 MW
    - NWC Goodrick Feed-In Tariff = 1 MW
    - Larkspur Feed-In Tariff = 0.29 MW
    - Mustang Solar = 30 MW
    - MCE Solar One = 10.5 MW
    - Redwood Landfill = 4 MW
    - Great Valley Solar = 100 MW
  - Anticipated
    - Antelope 2 expansion Solar = 105 MW, 2019
    - Terra Gen Voyager II Wind = 42 MW, 2019
    - Strauss Wind = 100 MW, 2020
    - Terra Gen Los Banos Wind = 125 MW, 2021
    - First Solar Little Bear Solar = 40 to 160 MW, 2021
    - Desert Harvest Solar = 80 MW, 2021
    - Pending FITs

#### **2. Operating Parameters.**

- The various operating parameters for the Client Assets are set forth in the agreements below, as may be supplemented from time to time by Client upon prior written notice to ZGlobal (“Client Assets Operating Parameters”).

- Power Purchase Agreements
- Meter Service Agreements
- Participating Generator Agreements
- Transmission Service Agreements
- Qualified Reporting Entity Agreements

**[End of Exhibit B]**

## **EXHIBIT C**

### **Scheduling and Outage Coordination Services**

If applicable, this Exhibit C details the scheduling and outage coordinator services (“Scheduling Coordinator Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Scheduling Coordinator Services**

Scheduling Coordinator Services functions vary depending upon location (inside the CAISO vs. outside the CAISO) and need for real-time support. At Client’s written request, ZGlobal shall perform the Scheduling Coordinator Services for the following categories:

- CAISO
  - 7-day per week day-ahead pre-scheduling Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services
  - Submittal of meter data to the CAISO as required by Client’s Scheduling Coordinator Metered Entity obligations
- WECC (non-CAISO)
  - Business Day day-ahead Services
  - 7 day, 24 hour real-time Services
  - Non-Business Day real-time Services

#### **2. Description of Scheduling Coordinating Services**

Scheduling Coordinator Services may include scheduling and/or bidding of Client’s generation, load, transactions and contractual resources with the appropriate Balancing Authorities, Transmission Owners/Operators, purchasing/selling entities and others as necessary.

In order to effectively provide Scheduling Coordinator Services, ZGlobal shall perform activities and tasks and Client shall provide information and support as described in the following paragraphs.

#### **3. Client’s Responsibilities**

3.1 Client shall select and specify in writing the categories of Scheduling Coordinator Services listed in this Exhibit C that ZGlobal shall provide.

3.2 Designation of ZGlobal as Providing Scheduling Coordinator Services on Behalf of Client. At least ten (10) Business Days before the Commencement Date for ZGlobal to provide Scheduling Coordinator Services on behalf of Client, Client shall have performed all tasks necessary to allow ZGlobal to provide Scheduling Coordinator Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling



ZGlobal's access to systems on behalf of Client such as OASIS, OATI (and/or other applicable transmission scheduling applications), the CAISO's SIBR and CMRI systems, meter data and meteorological data. Prior to the Commencement Date, ZGlobal will identify all tasks necessary for Client to complete so that ZGlobal can commence the Scheduling Coordinator Services on the Commencement Date.

3.3 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively bid and/or schedule Client's resources, load and transactions ("Portfolio") into the applicable market/Balancing Authority Area. This includes data such as Client's load information, transactions with counterparties, facilities' capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information required by the CAISO or Balancing Authorities. Prior to the Commencement Date, ZGlobal will identify the information required from Client under this paragraph.

Information required for day-ahead pre-scheduling shall be provided no later than 7:30 AM Pacific Prevailing Time on the trading/pre-scheduling day in accordance with the Western Electricity Coordinating Council's (WECC's) pre-scheduling timelines and CAISO Tariff. For example, the current WECC pre-scheduling timeline requires that on schedules for flow days Friday and Saturday be submitted on Thursday. Similarly, schedules for flow days Sunday and Monday are required to be submitted on Friday. The CAISO pre-schedules one day prior to flow day every day.

Information required for day-of scheduling shall be provided no later than 30 minutes prior to the applicable scheduling deadline. For WECC Balancing Authorities other than the CAISO, the hour-ahead scheduling deadline is currently 20 minutes prior to the flow hour. For the CAISO, the real-time scheduling deadline is currently 75 minutes prior to the flow hour.

3.4 Fees and Costs Imposed as a Result of Scheduling and/or Bidding. Client shall be entitled to and responsible for all costs and revenues charged or paid to Client's SCID - MCEE and/or Client from Balancing Authorities, Transmission Owners/Operators, and the CAISO, or other third parties as a result of ZGlobal scheduling and/or bidding Client's Portfolio. This includes items such as the CAISO's Grid Management Charge ("GMC"), ancillary services and energy imbalance, among others. The intent is that Client designated bank account acts as a conduit for dollar flows between Client SCID and the CAISO, Balancing Authorities, Transmission Owners/Operators, and other third parties.

3.5 When ZGlobal acts as Client's Scheduling Coordinator Agent for Scheduling Coordinator ID MCEE or other Scheduling Coordinator ID as determined by Client, Client shall be responsible for remitting payments for all costs and fees in accordance with the CAISO, Balancing Authorities and/or Transmission Owners/Operators timelines required per the appropriate tariff or contract. Client understands and agrees that failure to timely remit any such costs and fees could result in Client's security being drawn upon by the CAISO under the CAISO Tariff.

3.6 When ZGlobal acts as Scheduling Coordinator for Scheduling Coordinator ID MCE1, Client shall be responsible for remitting payments for all applicable costs and fees to ZGlobal no less than (2) Business Days prior to the CAISO, Balancing Authorities and/or Transmission Owners/Operators timelines required per the appropriate tariff or contract. Client understands and agrees that failure to timely remit any such costs and fees could result in Client's security being drawn upon, as further described in paragraph 3.7 below.

3.7 Client Security. To ensure ZGlobal's performance of the Services, and to secure Client's payment obligations hereunder, Client agrees to post the following forms of security:

- **CAISO Registration Security**. ZGlobal is required to post \$500,000 with CAISO to demonstrate ZGlobal's ability to act as a SC on an on-going basis (the "Registration Security Deposit"). ZGlobal shall post and maintain the Registration Security Deposit as required by the CAISO for SCID – MCE1 at no cost or expense to Client. Client shall post and maintain the Registration Security Deposit as required by the CAISO for SCID – MCEE at no cost or expense to ZGlobal.
- **Estimated Aggregate Liability Security**. Scheduling Coordinators are required to post with CAISO an amount greater than 111.11% of the SC's Estimated Aggregate Liability ("EAL")/.9 as SC for Client. ZGlobal's EAL is determined by the CAISO for SC obligations based on outstanding, estimated and extrapolated financial amounts. ZGlobal shall maintain the EAL as required by the CAISO for SCID – MCE1 at no cost or expense to Client according to the following steps.

Step 1 - The required MCE EAL Deposit requirement is based on the MCE Business Associate ID (BAID) portion of ZGlobal's EAL collateral requirement and the Threshold Amount. Subject to step 10 below, the Threshold Amount shall be \$1 million. The MCE EAL Deposit will be an amount equal to 100% of the Adjusted EAL associated with the MCE BAID as reported in the CAISO's "Parent Company EAL Historical Report" dated the day prior to calculation less the Threshold Amount less adjusted EAL credits applicable to ZGlobal. If the sum of the above calculation is a negative number, the MCE EAL Deposit shall be zero (\$0.00), and ZGlobal shall return excess funds to MCE in accordance with step 3 below.

Step 2 - To fund the MCE EAL Deposit, ZGlobal will prepare and send MCE an invoice for the current amount of the MCE EAL Deposit as calculated in Step 1 above less the current balance of the MCE EAL Deposit held by ZGlobal. A positive amount represents a shortfall in the MCE EAL Deposit and will result in a transfer of funds by MCE to

ZGlobal within one (1) business day provided that MCE determines that such invoice accurately reflects the amount of money required to fully fund the MCE EAL Deposit.

Step 3 - A negative amount represents excess funds in the MCE EAL Deposit account and will result in ZGlobal returning funds to MCE. Along with this funding request ZGlobal will provide the CAISO “Parent Company EAL Historical Report” from the previous day showing ZGlobal’s Collateral and the EAL and the Adjusted EAL amounts associated with all BAIDs. ZGlobal shall keep and maintain at all times financial records accounting for the respective EAL amounts associated with each BAID. Under no circumstances shall the MCE EAL Deposit be utilized or withdrawn for, or applied to, obligations of any client of ZGlobal other than MCE.

Step 4 - ZGlobal and MCE will adjust the amount of the MCE EAL Deposit on a weekly basis concurrent with the processing of the CAISO Market Invoice. The Tuesday Parent Company EAL Historical Report will be the basis of the weekly MCE EAL Deposit amount calculation. Z-Global will return to MCE excess MCE EAL Deposit amounts (determined in accordance with Step 3 above, or upon recognition by CAISO of MCE as its own Scheduling Coordinator and imposition by CAISO of MCE’s own scheduling security (EAL collateral) requirements as described below under the heading “Implementation Plan for Establishing MCE as Scheduling Coordinator – Other implementation Steps required”) no more than five (5) business days from date of invoice or as otherwise requested in writing by MCE.

Step 5 - MCE EAL Deposit amount will be sent via ACH transfer from Client to ZGlobal. ZGlobal will promptly show Client confirmation of receipt to its account. ZGlobal will return EAL deposit funds to MCE via wire transfer.

Step 6 - ZGlobal will wire funds to CAISO and promptly show confirmation of transfer to Client for same amount received in Step 5 no less than 24 hours following the wire transfer.

Step 7 - ZGlobal will provide Client with the Parent Company EAL Historical Report on a weekly basis or as otherwise requested by MCE for its monitoring.

Once funds are deposited into ZGlobal's EAL Collateral Account, those funds cannot be withdrawn from the account unless:

- a. ZGlobal requests in writing from the CAISO an amount to be withdrawn, and
- b. CAISO approves this amount. Per the CAISO Tariff, ZGlobal must maintain collateral for an amount greater than 111.11% of its EAL. Any approved amount to be withdrawn will never cause ZGlobal's collateral amount to be less than 111.11% of its EAL.

Step 8 - Prior to requesting any withdrawal of funds from ZGlobal's EAL Collateral Account, ZGlobal will:

- a. send Client a request to withdraw funds from the collateral account that specifies the amount and reason for the request, and
- b. obtain written consent from Client to request the withdrawal of said funds from the ZGlobal Collateral account as described in step 7. ZGlobal will copy Client on any written requests made to CAISO for collateral withdrawals. (NOTE: Written requests to CAISO are typically made via email.)

It is expected that the procedure outlined in Steps 1 through 8 above are in place solely to account for an unexpectedly large settlement for Scheduling Coordinator ID MCE1 as there will be no incremental scheduling activity under MCE1 going forward.

Client shall maintain the EAL as required by the CAISO for SCID – MCEE at no cost or expense to ZGlobal.

#### **4. ZGlobal's Responsibilities**

4.1 Professional Services. ZGlobal shall perform the following Scheduling Coordinator Services in a professional manner consistent with the requirements of this Agreement, Good Industry Practices and Applicable Laws, MCE's Energy Risk Management Policy, MCE's Load and Generation Risk Management Guidelines and other written directions provided by MCE to ZGlobal from time to time.

4.2 Reporting of Non-compliance: If ZGlobal observes market conditions or actions that may result or have resulted in non-compliance, ZGlobal shall report to Client of potential or actual incidence of non-compliance with the Professional Services described in the preceding



Paragraph as soon as possible and no later than 24 hours from the time it becomes aware of an event of non-compliance.

4.3 Scheduling. ZGlobal shall submit to the CAISO and/or Balancing Authorities schedules and/or bids consistent with the CAISO's and/or Balancing Authorities' timelines as prescribed by their tariffs and Client's CAISO Participating Generator Agreements (if required).

4.3.1 Final Schedules. ZGlobal shall provide Client with final confirmed day-ahead pre-schedules no later than 5:00 PM Pacific Prevailing Time the day prior to the day that electricity flows. Any changes to the pre-schedules shall be provided to Client as soon as practicable, but no later than 8:00 AM Pacific Prevailing Time the next day.

4.3.2 OASIS and Other Pertinent Applications. If Client uses applications such as OASIS, OATI and ICE, and ZGlobal's access to such applications is necessary for its performance of the Services under this Agreement, upon ZGlobal's written request Client shall provide reasonable access to such applications to the extent required by ZGlobal to perform the Services under this Agreement. The CAISO addresses market participant access to data and CAISO application security through its User Access Administrator (UAA) Process. ZGlobal will facilitate Client's UAA Process as required and Client will authorize a primary and optionally, a secondary User Access Administrator that is responsible for managing access to CAISO applications and data by submitting access, removal and revocation requests to the CAISO. The User Access Administrator(s) is (are) responsible for:

1. Submitting application access requests to the CAISO
2. Warranting that users requesting access to CAISO systems are required for market participants' business practices
3. Warranting that users requesting access to CAISO systems are authorized to for the applications being requested
4. Warranting that that data on the application request form is accurate and valid
5. Notifying the CAISO of any changes of User Access Administrators
6. Notifying the CAISO when user access to CAISO applications is no longer required
7. Notifying the CAISO if a user's certification to access the CAISO application(s) has been compromised.

4.3.3 Outage Reporting and Notification. ZGlobal shall provide the CAISO, Balancing Authorities and/or Transmission Owners/Operators with all required notices and updates regarding Client's generation facilities as required by applicable procedures, requirements and standards. This includes information such as SLIC outage requests, SLIC Forced Outages, CAISO Forced Outage reports, among other requirements.

4.3.4 NERC Tagging and Checkout. ZGlobal shall be responsible for all tagging and checkout of schedules consistent with pertinent timelines.

**[End of Exhibit C]**



## **EXHIBIT D**

### **Financial Settlement Services**

If applicable, this Exhibit D details financial settlement services (“Financial Settlement Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Financial Settlement Services**

Financial Settlement Services functions vary depending on the specific Scheduling Coordinator Services provided to Client (e.g., CAISO, bilateral transactions, Open Access Transmission Tariff (OATT), and power purchase agreements (PPA)). In coordination with the Scheduling Coordinator Services set forth in Exhibit C, ZGlobal shall perform Financial Settlement Services for the following categories:

- CAISO Settlement statement verification and invoice processing
- CAISO Shadow settlement
- OATT statement verification
- PPA statement/ invoice verification, validation and reporting
- Bilateral transactions/ invoice verification by counterparty, validation and reporting

#### **2. Description of Services**

ZGlobal will provide Financial Settlement Services on behalf of Client to allow for settlement of Client’s transactions with the appropriate Balancing Authorities, Transmission Owners/Operators, counterparties and others as necessary. Such Financial Settlement Services shall coincide with the Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement.

2.1 CAISO Settlement Verification. ZGlobal will download the CAISO daily settlement statements and review the settlement statements to ensure that they are consistent with Client’s scheduled and metered volumes. ZGlobal will verify that the CAISO’s charges/revenues are accurate. ZGlobal will also provide Client with a summary description of the CAISO charge types and how they are applied to Client’s schedules and metered volumes.

On a weekly basis or pursuant to the CAISO Payment Calendar (as defined below), Client will receive or remit payments for all CAISO Invoices and Payment Advices related to SCID MCEE. Pursuant to Exhibit C, paragraph 3.4, all CAISO costs and revenues related to Clients’ transactions shall be the responsibility of Client.

When ZGlobal acts as Scheduling Coordinator Client shall remit funds to ZGlobal no less than two (2) Business Days prior to the CAISO due date published on the CAISO payment calendar available on its website (“Payment Calendar”) pursuant to Exhibit C paragraph 3.6. In the case of net payments due to ZGlobal for the Client transactions, ZGlobal will remit funds to Client no less than two (2) Business Days after the CAISO posts funds to ZGlobal. In both cases, ZGlobal will provide an invoice or payment advice to Client for remittance.

2.2 CAISO Shadow Settlement. ZGlobal will independently perform parallel CAISO settlement calculations prior to the CAISO's publication of settlement statements to provide Client with preview of expected CAISO charges for agreed CAISO charge types related to the Scheduling Coordinator Services that ZGlobal is providing to Client under this Agreement (the "Shadow Settlement"). The CAISO Shadow Settlement results will be compared to CAISO charge types and differences between dollar values will be highlighted and investigated when deemed necessary. ZGlobal shall publish regular exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices and on an annual basis. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per month in addition to an annual report summarizing monthly content."

2.3 OATT Statement Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client's scheduled and metered volumes. ZGlobal will verify that the charges are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client's schedules and metered volumes.

2.4 PPA Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client's scheduled and metered volumes. ZGlobal will verify that the charges/revenues are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client's schedules and metered volumes. ZGlobal will provide a monthly invoice validation report for each generation resource that facilitates timely, accurate and simple validation of all data points for each transaction.

2.5 Bilateral Transactions Verification by Counterparty. ZGlobal shall review settlement statements for accuracy and coordinate with third parties as necessary to resolve discrepancies. Upon confirming accuracy of such statements, ZGlobal will provide a monthly invoice validation report for each generation resource that facilitates timely, accurate and simple validation of all data points for each transaction.

2.6 Dispute Submittal. ZGlobal shall act as Client's representative with regard to disputes associated with Client's facilities and transactions for which ZGlobal is providing Scheduling Coordinator Services. This includes informally querying the CAISO with respect to the dispute or questionable charge, formally submitting disputes per the CAISO's dispute process and providing Client with progress status and eventual results of the dispute. To the extent there are other types of disputes, ZGlobal shall assist Client by providing information and data as necessary to resolve such disputes.

### **3. Client's Responsibilities**

3.1 Client shall select and specify in writing the categories of Financial Settlement Services listed in this Exhibit D that ZGlobal shall provide.

3.2 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively settle Client's Portfolio into the applicable market/Balancing Authority Area. This includes data such as Client's load information, transactions with counterparties, facilities' capabilities and limitations, planned and forced outages

or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, Settlement Quality Meter Data (as that term is defined in the CAISO Tariff), access to relevant meteorological data and all other pertinent information required by counterparties, the CAISO, or Balancing Authorities.

3.3 Payments. Payment shall be remitted in accordance with Exhibit C paragraphs 3.4 and 3.6.

#### **4. ZGlobal's Responsibilities**

4.1 Professional Services. ZGlobal shall perform the Financial Settlement Services in a professional manner consistent with this Agreement, Good Industry Practices, Applicable Laws, MCE's Energy Risk Management Policy, and other written directions provided by MCE to ZGlobal from time to time.

4.2 Reporting of Non-compliance: If ZGlobal observes market conditions or actions that may result or have resulted in non-compliance, ZGlobal shall report to Client of potential or actual incidence of non-compliance with the Professional Services described in the preceding Paragraph as soon as possible and no later than 24 hours from the time it becomes aware of an event of non-compliance.

**[End of Exhibit D]**



## **EXHIBIT E**

### **Forecasting Services**

If applicable, this Exhibit E details forecasting services (“Forecasting Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Forecasting Services**

Forecasting Services functions vary depending upon resource type, number of resources and location of resources. At Client’s written request, ZGlobal shall perform the Forecasting Services for the following categories:

- Total Load
  - Annual energy demand (MWh/month)
  - Quarterly energy demand (MWh/month)
  - Monthly energy demand (MWh/month)
  - Day-Ahead preschedule demand by hour (MWh/hour)
  - Intra-day (Hour-Ahead) schedule volumes (MWh/hour)

#### **2. Description of Services**

ZGlobal proposes to provide Forecasting Services on behalf of Client to allow for scheduling of Client’s demand with the CAISO and other appropriate Balancing Authorities and others as necessary. Such Forecasting Services shall coincide with then Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement.

2.1 Day-Ahead Forecasting. ZGlobal will use a computerized algorithm to convert input data to a 24-hour energy forecast of Client’s demand. The forecast will be used for Day-Ahead prescheduling purposes, and will be produced at a time sufficient to meet relevant markets’ and counterparties’ processing timelines. The input data will include, but not be limited to, relevant meteorological data, historical data, and time of day and year. ZGlobal will provide a rolling 30 day forward forecast comparing forecast load to forecast supply (fixed price contracts, ISTs, financial hedges) quantifying hourly open positions and resulting hourly value at risk.

2.2 Intra-Day (Hour-Ahead) Forecasting. ZGlobal will utilize relevant meteorological historical data, and time of day and year to determine an hourly energy forecast for the upcoming hours of the day necessary for Hour-Ahead scheduling purposes.

2.3 Longer Term (Monthly, Quarterly, Annual) Load and Energy Production Forecast. ZGlobal will utilize relevant historical data, expected change in customer base and external factors such as economic growth to determine an hourly forecast for the period (up to one year) as directed by Client. ZGlobal will provide a rolling 90 day hourly forecast of forecast load and forecast supply (fixed price contracts, ISTs, financial hedges) and quantify hourly open positions and resulting hourly value at risk.

#### **3. Client’s Responsibilities**

3.1 Client shall select and specify in writing the categories of Forecasting Services listed in this Exhibit E that ZGlobal shall provide.

3.2 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively forecast Client's demand to allow for scheduling into the CAISO and as applicable, other market/Balancing Authority Areas. This includes data such as historical energy demand, meteorological data, and expected changes in customer base. Information shall be provided by Client to ZGlobal in time sufficient to perform Forecasting Services, as determined and specified in writing by ZGlobal. Information shall be provided by Client in electronic format to ZGlobal's Oracle database or other automation-ready format to be specified by ZGlobal, without errors. If ZGlobal is required to subscribe to additional data services, described below in Paragraph 4, Client shall also remain current on pass-through costs of paid data services. As a forecast necessarily requires input data, any failure by Client to provide data will result in the inability of ZGlobal to provide a forecast.

#### **4. ZGlobal's Responsibilities**

4.1 Professional Services. ZGlobal shall perform the Forecasting Services in a professional manner consistent with this Agreement, Good Industry Practices, Applicable Laws, MCE's Energy Risk Management Policy, and other written directions provided by MCE to ZGlobal from time to time.

ZGlobal will endeavor to provide Client's forecast in a timely manner, and in accordance with appropriate trading timeframes. ZGlobal will subscribe to paid data services, if ZGlobal deems necessary for use as input data as noted in above Section 2, and will invoice Client for the cost of such service(s), including any costs shared among multiple other clients, if applicable. ZGlobal will endeavor to produce forecasts as accurate as possible. As demand forecasting is an inexact art, ZGlobal makes no warranty of accuracy of its forecasts. Client indemnifies and holds harmless ZGlobal for any direct damages due to inaccuracy of forecasts or failure to produce forecasts.

4.1 Reporting of Non-compliance: If ZGlobal observes market conditions or actions that may result or have resulted in non-compliance, ZGlobal shall report to Client of potential or actual incidence of non-compliance with the Professional Services described in the preceding Paragraph as soon as possible and no later than 24 hours from the time it becomes aware of an event of non-compliance.

#### **5. Intellectual Property**

The forecast results and its methodologies are the proprietary intellectual property of ZGlobal. ZGlobal grants Client royalty-free use of forecasts for the purposes stated above in Paragraph 2. ZGlobal reserves the right to update, improve, or otherwise alter its forecast methodologies without notice. ZGlobal may use forecasts and related information created on behalf of Client in a non-identifiable manner for purposes unrelated to the client, such as in publication in trade journals, presentation at conferences or industry forums, or in advertising. In such cases, ZGlobal will notify Client of such use.

**[End of Exhibit E]**

**EXHIBIT F**

**Facilities Management Services**

Not Applicable

**[End of Exhibit F]**

## **EXHIBIT G**

### **Portfolio Management Services**

If applicable, this Exhibit G details specific services (“Portfolio Management Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Portfolio Management Services**

Portfolio Management Services functions vary depending upon level of responsibility the Client desires ZGlobal to undertake (real-time, day-ahead, forward). At Client’s option, Client shall expressly direct ZGlobal in writing to perform Portfolio Management Services for the following categories:

- Assess and manage Client’s net open position by performing analysis to develop strategies for:
  - Short term Energy positions (Operating Month through Real Time)
  - Capacity positions
  - Transmission positions (including CAISO markets)
  - Financial positions
  - Energy Storage and Demand Response bidding
- Utilize applications and data for assessment of Client’s portfolio. Examples of applications and data are shown below:
  - Production forecast for renewable energy resources
  - Production meter data for renewable energy resources
  - Imbalance energy costs for specific resources
  - Other costs that affect resource revenue
  - Execute financial transactions:
    - Forward (including the CAISO’s Congestion Revenue Rights (CRRs))
    - Day-Ahead
    - Hour-Ahead
- Assist Client with developing in-house expertise as directed by Client. This includes training, information, data and analysis.

#### **2. Description of Services**

ZGlobal proposes to provide Portfolio Management Services on behalf of Client to allow for managing Client’s net open position.

#### **3. Client’s Responsibilities**

3.1 Client shall select and specify in writing the categories of Portfolio Management Services listed in this Exhibit G that ZGlobal shall provide.



3.2 Authorization for ZGlobal to Transact on Behalf of Client. To the extent reasonably required by ZGlobal to perform the Portfolio Management Services requested by Client, Client will provide authorization for ZGlobal to transact on Client's behalf consistent with parameters established by Client and agreed upon by ZGlobal in writing prior to engaging in such transactions. As a condition of performance of the Portfolio Management Services, ZGlobal will identify and Client shall have performed all tasks necessary to allow ZGlobal to provide Portfolio Management Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal's access to systems on behalf of Client.

3.3 Information to Be Provided by Client to ZGlobal. ZGlobal shall identify and Client shall provide ZGlobal with all relevant information to allow ZGlobal to determine Client's net open position, effectively bid, schedule and execute transactions in order to close Client's net open position. This includes data such as Client's load information, transactions with counterparties, facilities' and contractual economic data, capabilities and limitations, planned and Forced Outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information.

Parameters required for Day-Ahead and Hour-Ahead Portfolio Management Services shall be agreed to between ZGlobal and Client at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than 48 hours prior to day that electricity is to be scheduled onto the electrical grid.

Parameters required for forward Portfolio Management Services shall be agreed to between ZGlobal and Client at a time to allow ZGlobal to effectively perform Portfolio Management Services, but no later than one calendar week prior to day that electricity is to be scheduled onto the electrical grid.

3.4 Fees and Costs Imposed as a Result of Portfolio Management Services. For transactions that ZGlobal transacts on behalf of Client, Client shall be responsible for all costs and revenues Client incurs as a result of such transactions. Costs and revenues may emanate from Balancing Authorities, Transmission Owners/Operators, the CAISO or third parties. This includes items such as the CAISO's Grid Management Charge (GMC), ancillary services, among others. The intent is that ZGlobal acts as a conduit for dollar flow between Client and the CAISO, Balancing Authorities, Transmission Owners/Operators and third parties.

#### **4. ZGlobal's Responsibilities**

4.1 Transactions. At Client's written direction, ZGlobal shall execute transactions on behalf of Client designed to implement Client's portfolio management strategy.

4.2 Strategy Review. Client and ZGlobal shall meet on a regular basis to review Client's portfolio management strategy, but no less than twice per year.

4.3 Transaction Data. All transaction data shall be recorded and stored by ZGlobal and provided to Client as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.

4.4 Reports. ZGlobal shall publish regular Portfolio Management Services reports. Reports shall include exception reports resulting from shadow settlements within 30 Days of receipt of monthly T+3, T+12, T+55 CAISO invoices. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per month. ZGlobal shall provide standardized monthly reports including, but not limited to, the following, upon Client's request: net short and long positions, day ahead energy charges, imbalance charges, portfolio changes, and potential areas for improvement and CRR effectiveness reports. Upon Client's request, ZGlobal shall also provide ad hoc settlement and contract analysis and settlement charge code and billing determinant data.

4.5 Professional Services. ZGlobal shall perform Portfolio Management Services in a professional manner consistent with this Agreement, Good Industry Practices, Applicable Laws, MCE's Energy Risk Management Policy, MCE's Congestion Revenue Rights Risk Management Guidelines and other written directions provided by MCE to ZGlobal from time to time.

4.6 Reporting of Non-compliance: If ZGlobal observes market conditions or actions that may result or have resulted in non-compliance, ZGlobal shall report to Client of potential or actual incidence of non-compliance with the Professional Services described in the preceding Paragraph as soon as possible and no later than 24 hours from the time it becomes aware of an event of non-compliance.

**[End of Exhibit G]**

## **EXHIBIT H**

### **Risk Management Program Development and Support Services**

If applicable, this Exhibit H details specific services (“Risk Management Program Development and Support Services”) to be performed or provided by ZGlobal at Client’s written request under this Agreement.

#### **1. Categories of Risk Management Program Development and Support Services**

Risk Management Program Development and Support Services functions vary depending upon level of responsibility the Client desires ZGlobal to undertake (policies, processes, and procedures). At Client’s written request, ZGlobal shall perform Risk Management Program Development and Support Services for the following categories:

##### Develop Operating Procedures for Risk Management Activities

- Measuring and closing Net Open Position in the short term (less than one year)
- Procurement to satisfy load obligations
- Executing bilateral physical transactions including exposure to credit risk
- Executing financial transactions
- Submitting offers into markets
- Hedging instruments consistent with Client’s risk tolerance
- Approved products

On-going Support Services. Once the updated policy and procedures including approved risk tolerances have been adopted, ZGlobal will be available for on-going support upon request to provide the following services as outlined in approved risk procedures:

- Review the hedging strategy and compare with other municipal utilities and best practices for similar entities. Provide recommendations if needed,
- Assess risks of term transactions and long-term agreements,
- Perform evaluation of the current value-at-risk calculation and provide recommendations to improve overall effectiveness. Provide recommendations on risk metrics appropriate for a municipal entity to measure risk exposure, and
- Assist with transaction review for Dodd-Frank Act compliance obligations.

ZGlobal will provide on-demand support through the duration of this contract. Lead times to complete requested services will vary depending on the tasks. Based on the availability of team members High-level schedules will be determined by mutual agreement.

#### **2. Description of Services**

ZGlobal proposes to provide Risk Management Program Development and Support Services on behalf of Client to create their Risk Management Program and provide support in managing Client’s net open position.

#### **3. Client’s Responsibilities**

3.1 Client shall select and specify in writing the categories of Portfolio Management Services listed in this Exhibit H that ZGlobal shall provide.

3.2 Information to Be Provided by Client to ZGlobal. ZGlobal will identify and Client shall provide ZGlobal with all relevant information to allow ZGlobal to determine Client's risk including:

- Credit assessment for new counterparty is completed upon review of third-party security documents
- Third party review of security documents assumes that documents are readily available.
- Input data is readily available for assessing hedging strategy and estimating Value at Risk calculation
- All necessary information to allow ZGlobal to determine Client's net open position and other metrics defined by the documented Risk Policy, Process, or Procedure.

#### **4. ZGlobal's Responsibilities**

4.1 Strategy Review, Client and ZGlobal shall meet on a regular basis to review Risk Management documentation and review the risk strategy, but no less than once per year.

4.2 Required Data, All transaction data shall be recorded and stored by ZGlobal and provided to Client as requested. Transaction data shall include information such as counterparty, tenure, price, volume, location, and product.

4.3 Reports, ZGlobal shall publish regular reports. Content and publishing schedule is to be determined by mutual agreement between ZGlobal and Client, but at a frequency no less than once per quarter.

4.4 Professional Services, ZGlobal shall perform these services in a professional manner consistent with this Agreement, Good Industry Practices and Applicable Laws.

**[End of Exhibit H]**

## **EXHIBIT I**

### **Services Fees**

This Exhibit I describes the services fees (“Services Fees”) to be remitted to ZGlobal from Client for all Services performed pursuant to this Agreement. It also lists additional contact information for Client and ZGlobal.

#### **Service Fees**

- Note Service Fees Shown Below are Waived for the First Six Months after each service Start Date as listed in Section 2.2.
- Set-up and Scheduling Coordinator Transition Fees = \$0
- Scheduling Coordinator Services Fee = \$12,025 per month for 12 months (\$9,875 for Generation Scheduling, \$2,150 for Load Scheduling), then escalated by 1.5% each year thereafter
- Financial Settlement Services Fee = \$0
- Forecasting Services Fee = \$5,125 per month for 12 months, then escalated by 1.5% each year thereafter
- Facility Management Services Fee = \$N/A
- Portfolio Management Services Fee = \$6,425 per month for 12 months, then escalated by 1.5% each year thereafter
- Risk Management Program Development and Support Services Fee = \$N/A

**[End of Exhibit I]**



## **EXHIBIT J**

### **Contacts**

#### **Real Time:**

Tel: 760-483-5000

[24hrdesk@zglobal.biz](mailto:24hrdesk@zglobal.biz)

#### **Additional Contacts:**

#### **Day Ahead:**

Eric Vaa

Tel: (916)985-9461

E-mail: [eric@zglobal.biz](mailto:eric@zglobal.biz)

#### **Monthly/Structured:**

Kevin Coffee

Tel: (916)985-9461

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#### **Deal Confirmations:**

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## **CLIENT CONTACTS**

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**[End of Exhibit J]**



## **EXHIBIT K**

### **Information Resources**

This Exhibit K describes the software, databases, data, and information portal(s) developed or acquired by ZGlobal on Client's behalf that ZGlobal shall provide Client and Client's designated representatives and consultants access to in connection with the Services:

- **Access to Transactional and Settlement Data** – Direct access to the data store for all of Client's energy transactional and settlement data hosted and maintained by PowerSettlements via a software services agreement with ZGlobal shall be provided as part of the Generation Scheduling Services.

Client shall be provided login credentials to access its data in PowerSettlements. The data will be updated daily consistent with CAISO posting of data. All reports developed by ZGlobal for Client along with the supporting data will be available to Client via direct access.

Access to PowerSettlements shall be available through ZGlobal's PowerSettlements services agreement provided this Agreement between ZGlobal and Client is effective. Access to PowerSettlements shall be terminated upon termination of this Agreement between ZGlobal and Client. Notwithstanding, Client shall retain rights to its data, and is subject to confidentiality and non-disclosure.

- **CAISO Shadow Settlements**

CAISO shadow settlements that are used to validate CAISO daily and monthly settlement statements, invoices and payment notices will be made available to Client via a mutually agreed method through customized reports and bill determinant files. Shadow settlement data and files are to be calculated or prepared using the relevant CAISO shadow settlement system utilized by ZGlobal during the term of this Agreement between ZGlobal and Client including but not limited to: Power Settlements Settlecore, other customized tools developed by ZGlobal. CAISO shadow settlements shall be provided as part of Generation Scheduling Services and Load Scheduling Services, as applicable.

- **CRR Analysis**

Results of CRR analysis performed for Client including any inputs (e.g. - prices, constraints and outages) used to prepare such results will be made available to Client via a mutually agreed method through customized reports and data files. CRR analyses are to be performed utilizing various database services and tools acquired by ZGlobal to perform such analysis, including but not limited to: Yes Energy's PowerSignals, ZGlobal proprietary Oracle databases, CAISO OASIS, Plexos Integrated Energy Model and/or other similar data sources and applications. Direct access by Client staff to one or more of ZGlobal's database sources or software tools shall be governed by any relevant software license or use agreements ZGlobal has with the relevant third party during the term of this Agreement between ZGlobal and Client. In some cases, this may require Client to have its

own agreement and fee structure with said third party and ZGlobal will promptly notify Client if a separate agreement is required. Systems related to CRR Analysis shall be provided as part of the Portfolio Management Services.

**[End of Exhibit K]**

## MCE Board Offices and Committees

### **Board Offices:**

Kate Sears, Chair

Tom Butt, Vice Chair

Denise Athas, Auditor/Treasurer

Dawn Weisz, Secretary

### **Executive Committee**

1. Tom Butt, Chair
2. Denise Athas
3. Sloan Bailey
4. Edi Birsan
5. Lisa Blackwell
6. Barbara Coler
7. Federal Glover
8. Ford Greene
9. Kevin Haroff
10. Bob McCaskill
11. Kate Sears
12. Dave Trotter

### **Technical Committee**

1. Kate Sears, Chair
2. Kevin Haroff
3. Greg Lyman
4. Scott Perkins
5. Rob Schroder
6. Don Tatzin
7. Ray Withy

### **Ad Hoc Ratesetting Committee 2018**

1. Sloan Bailey
2. Ford Greene
3. Kevin Haroff
4. Greg Lyman
5. Bob McCaskill
6. Sashi McEntee
7. Scott Perkins
8. Alan Schwartzman
9. Dave Trotter
10. Ray Withy

### **Ad Hoc Ratesetting Nominations for 2019**

1. Kevin Haroff (flexible)
2. Greg Lyman (flexible)
3. Bob McCaskill
4. Scott Perkins
- 5.
- 6.

### **Ad Hoc Contract Committee 2018 Open Season**

1. Sloan Bailey
2. Rich Carlston
3. Kevin Haroff
4. Greg Lyman
5. Scott Perkins
6. Don Tatzin
7. Maureen Toms

### **Ad Hoc Audit Committee 2018**

1. Bob McCaskill
2. Andrew McCullough
3. Ray Withy





December 7, 2018

TO: MCE Executive Committee

FROM: Alexandra McGee, Community Power Organizer

RE: Charles F. McGlashan Advocacy Award Nominations (Agenda Item #07)

Dear Executive Committee Members:

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**SUMMARY:**

The Charles F. McGlashan Advocacy Award was established to recognize individuals and organizations who have demonstrated passion, dedication, and leadership on behalf of MCE. The annual award also honors and commemorates the life and legacy of environmental leadership left behind by former founding MCE Chairman Charles F. McGlashan.

Recipients of the award are recognized with a ceremony held at a regular meeting of the MCE Board of Directors. Recipients will also have their names inscribed on a plaque that shares other awardee names and is displayed outside the Charles McGlashan Room at the MCE office in San Rafael. The recipient will be recognized in MCE's e-newsletter, online blog, and social media.

It is the responsibility of the Executive Committee to review nominations and select which advocate will be recognized with the Charles F. McGlashan Advocacy Award. To date, the Charles F. McGlashan Advocacy Award has been awarded to:

- Barbara George of Women's Energy Matters (2011)
- The Mainstreet Moms (2012)
- Lea Dutton of the San Anselmo Quality of Life Commission (2013)
- Doria Robinson of Urban Tilth (2014)
- Constance Beutel of Benicia's Community Sustainability Commission (2015)
- Sustainable Napa County (2016), and
- The El Cerrito Environmental Quality Committee (2017).

This year's Charles F. McGlashan Advocacy Award nominations include Sustainable Lafayette for spearheading the year-long "Gift of Green campaign" to celebrate their city's semi-centennial; Resilient Neighborhoods for their many years of work to reduce the carbon footprint in Marin County; and Verna Causby-Smith with EAH Affordable Housing for her work advocating for MCE's Low-income Families and Tenants (LIFT) Pilot Program.

## **NOMINATIONS:**

### Sustainable Lafayette

In celebration of the City of Lafayette's 50th anniversary of incorporation this year, local nonprofit Sustainable Lafayette has spearheaded a community-wide campaign to encourage residents and businesses to opt up to Deep Green. With a goal to become the #1 Deep Green community among MCE's 33 members, Sustainable Lafayette set a goal to get to 1,000 accounts opted up. To do so, they have coordinated MCE's presence at more than 10 community events, raised public awareness through presentations to neighborhood groups and houses of worship, as well as helped create a video spotlighting Director Tatzin's endorsement of Deep Green. As of November there have been 189 Lafayette Deep Green customer engagements facilitated through this campaign.

In January, Lafayette had 3.16% of all MCE accounts in Deep Green (308 accounts), putting them in 10th place behind San Rafael (3.68%). With Sustainable Lafayette's enormous Gift of Green efforts, Lafayette is now in 6th place, with 5.1% of accounts in Deep Green (500 accounts). Their efforts are proof of the real impact that dedicated community members can have on shifting the electric profile and emissions of an entire community.

### Resilient Neighborhoods

Marin nonprofit Resilient Neighborhoods has been encouraging carbon footprint reduction and emergency preparedness since 2012. As part of an integrated, holistic community strategy facilitated by Climate Action Teams, they have encouraged residents and businesses to be wise about their electricity and energy options. Through their actions in 2018 thus far, 51 households opted for 100% renewable energy, 63 invested in energy efficiency, and 5 installed solar systems. Additionally, since their inception, they've prompted 203 community members to go Deep Green, and 62 to purchase electric vehicles. Their Board members include community leaders who have been fighting for MCE since the beginning. Their diligent efforts encouraging small individual changes to reduce personal emissions has led to the cumulative reduction 5,422,612 pounds of CO2 emissions (2012-2018).

### Verna Causby-Smith with EAH Affordable Housing

Verna Causby-Smith has been a longtime advocate of MCE's Multifamily Energy Savings and Low Income Families and Tenants (LIFT) Pilot Program. In her role as Development Asset Manager at EAH Affordable Housing, Verna has worked with properties across MCE's service territory to advocate for and encourage her colleagues at EAH to participate in MCE's energy savings programs. Recently, Verna was responsible for recruiting the 378-unit Crescent Park Homes, located in Richmond, and she has done the same for affordable housing properties including Hamilton Meadows in Novato and Farley Place in Belvedere. As a trusted nonprofit housing partner, her promotion of MCE's programs has been invaluable in continuing to serve multifamily affordable housing properties in our communities.

**FISCAL IMPACT:** None

**RECOMMENDATION:** Select the 2018 recipient of the Charles F. McGlashan Advocacy Award to be presented at the next meeting of the MCE Board of Directors.



December 7, 2018

TO: MCE Executive Committee

FROM: Maira Strauss, Finance Analyst  
James Tracy, Finance Consultant

RE: Proposed Amendment to MCE Policy 014: Investment Policy  
(Agenda Item #08)

ATTACHMENT: Proposed Amended MCE Policy 014: Investment Policy in  
Strikeout/Underline Format

Dear Executive Committee Members:

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**SUMMARY:**

In April 2018, your Board approved MCE Policy 014: Investment Policy to guide the investment of MCE's cash and investments. The objectives of the Investment Policy are to ensure the safety and liquidity of MCE funds while earning a market rate of return. MCE's current Investment Policy limits for the investment of funds in commercial bank checking and savings accounts, certificates of deposit, in the California State Treasury's Local Agency Investment Fund (LAIF), and U.S. Treasury obligations and Federal Deposit Insurance Corporation insured certificates of deposit with terms to maturity not exceeding five years.

The proposed amendments to MCE's Investment Policy expand eligible investments to include Federal Agency Securities, Money Market Funds and Commercial Paper. It is also proposed to prohibit investment in any security that, if held to maturity, could result in a zero-interest accrual or less. The purpose of expanding eligible investments is to provide higher return options with little incremental risk. An annual report with information on all investment transactions will be provided to the Board.

The proposed amendments to MCE's Investment Policy also confirm that the Treasurer of MCE has the authority to invest or reinvest funds and to sell or exchange securities so purchased, as provided in California Government Code Section 53607, for the period of one year. Subject to review at the close of each fiscal year, the investment authority delegated to the Treasurer of MCE could be renewed. The MCE Treasurer would be authorized to appoint Deputy Treasurers as the Treasurer deems necessary and convenient for the prompt and faithful discharge of its duties to invest and reinvest the funds of MCE pursuant to Section 53607. The Investment Policy would be reviewed

annually by the Treasurer. Any Policy changes would be submitted to the Board for approval. The amended Policy would require monthly and annual reports of investments.

**Fiscal Impacts:** Interest rates vary on a daily basis, and the incremental return on investments arising from amendments to the Investment Policy cannot be determined with certainty.

**Recommendation:** Recommend to your Board for approval at its next meeting the proposed amended MCE Policy 014: Investment Policy.



## **POLICY 014: Investment Policy**

This Investment Policy establishes guidelines for the management of cash, deposits and investments (together, “funds”) at MCE. When managing funds, MCE’s primary objectives, in order of importance, shall be to safeguard the principal of the funds, meet the liquidity needs of MCE, and achieve a return on investment on funds in MCE’s control.

Safety: Safety of principal is the foremost objective of cash and investment management activities. The investment of funds shall be undertaken in a manner that seeks to ensure the preservation of principal.

Liquidity: The funds of the agency shall remain sufficiently liquid to meet all operating needs that may be reasonably anticipated. Since all possible cash demands cannot be anticipated, the investment of funds in deposits or instruments available on demand is recommended.

Return on Investment: The deposit and investment portfolio shall be designed with the objective of attaining a market rate of return throughout the economic cycle ~~taking into account~~ while considering risk and liquidity constraints. The return on deposits and investments is of secondary importance compared to the safety and liquidity objectives described above.

### **Standard of Care**

MCE will manage funds in accordance with the Prudent Investor Standard pursuant to California Government Code ~~Section 53600.3.1-1:~~ “Governing bodies of local agencies or persons authorized to make investment decisions on behalf of those local agencies investing public funds are trustees and therefore fiduciaries subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling or managing public funds, a trustee shall act with care, skill, prudence and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency. Within the limitations of this section and considering individual investments as part of an overall strategy, investments may be acquired as authorized by law.”

Pursuant to Section 53607, the responsibility to manage funds is delegated to the ~~Manager/Treasurer of Finance or in lieu thereof the Chief Executive Officer~~ MCE. The Treasurer may appoint Deputy Treasurers as the Treasurer deems necessary and convenient for the prompt and faithful discharge of its duties to invest and reinvest the funds of MCE, pursuant to Section 53607.

### **Authorized Investments**

The following types of investments are permitted:

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<sup>1</sup> All further statutory references are to the California Government Code unless otherwise stated.

Deposits at Bank(s): Funds may be invested in non-interest bearing depository accounts to meet MCE's operating and collateral needs and grant requirements. Funds not needed for these purposes may be invested in interest bearing depository accounts or Federal Deposit Insurance Corporation (FDIC) insured certificates of deposit with maturities not to exceed five years.

Banks eligible to receive deposits will be federally or state chartered and will conform to ~~Government Code~~Section 53635.2 which requires that banks "have received an overall rating of not less than "satisfactory" in its most recent evaluation by the appropriate federal financial supervisory agency of its record of meeting the credit needs of California's communities, including low- and moderate-income neighborhoods, pursuant to Section 2906 of Title 12 of the United States Code."."

FDIC insurance coverage in the United States is \$250,000 per Tax ID Number. As per ~~California Government Code~~Section 53652, banks must collateralize the deposits of public agencies in an amount equal to no less than ~~140% of as currently stated in the value of the deposits statute.~~ The ~~Manager of Finance~~Treasurer, or a duly appointed Deputy Treasurer, will monitor the credit quality of eligible banks to ensure the safety of MCE deposits.

Local Agency Investment Fund (LAIF): Funds may be invested in the Local Agency Investment Fund. The LAIF was established by the California State Treasurer for the benefit of local agencies. Statutory requirements of the Local Agency Investment Fund include:

~~California Government Code~~Section 16429.1

- a. There is in trust in the custody of the Treasurer the Local Agency Investment Fund, which fund is hereby created. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.
- e. The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.
- j. Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.
- i. Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees.... An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of 5 percent of the earnings of this fund and not to exceed the amount appropriated in the annual Budget Act for this function, shall be deducted from the earnings prior to distribution.

~~California Government Code~~Section 16429.4

The right of a city, county, city and county, special district, nonprofit corporation, or qualified quasi-governmental agency to withdraw its deposited moneys from the Local Agency Investment Fund, upon demand, may not be altered, impaired, or denied, in any way, by any state official or state agency based upon the state's failure to adopt a State Budget by July 1 of each new fiscal year.

US Treasury Obligations: Funds may be invested in United States Treasury obligations with a term to maturity not exceeding 5 years subject to the limitations set forth in Sections 53601 et seq. and 53635 et seq. ~~of the California Government Code.~~



Federal Agency Securities: Funds may be invested in Federal Agency Securities with a term to maturity not exceeding 5 years subject to the limitations set forth in Sections 53601 et seq. and 53635 et seq.

Commercial Paper: Funds may be invested in commercial paper in accordance with the requirements of Section 53601 and subject to the following limitations:

- i. No more than 25% of the total portfolio shall be invested in commercial paper;
- ii. The term to maturity shall not exceed 270 days; and
- iii. No more than 10% of outstanding commercial paper shall be from any single issuer.

The issuer of commercial paper must have the following:

- i. Assets in excess of \$500 million;
- ii. A credit rating of A-1 or better; and
- iii. A senior debt rated at A or better.

Negotiable Certificates of Deposit: Funds may be invested in negotiable certificates of deposit in accordance with the requirements of Section 53601 and 53601.8, and subject to the following limitations:

- i. Issued by an entity as defined in Section 53601(i); and
- ii. No more than 30% of funds invested pursuant to this Investment Policy may be invested in certificates of deposit.

Money Market Funds: Funds may be invested in money market funds pursuant to Section 53601(l)(2) and subject to Section 53601(l)(4).

### **Prohibited Investments**

Pursuant to Section 53601.6, MCE shall not invest funds in any security that could result in a zero interest accrual, or less, if held to maturity. These prohibited investments include inverse floaters, range notes, or mortgage-derived, interest-only strips.

### **Investment Portfolio Management**

The ~~average~~ term to maturity of any funds invested shall not exceed ~~36 months~~ 5 years and pursuant to Section 53601. The ~~Manager of Finance~~ Treasurer, or a duly appointed Deputy Treasurer, will allocate funds among authorized investments consistent with the objectives and standards of care outlined in this Policy.

### **Bids and Purchase of Securities**

Prior to the purchase of an investment pursuant to this Policy the persons authorized to make investments shall assess the market and market prices using information obtained from available sources including investment services, broker/dealers, and the media. A competitive bid process, when practical, will be used to place all investment purchases and sales transactions.

### **Brokers**

Broker/dealers shall be selected by the Chief Executive Officer upon recommendation by the ~~Manager of Finance~~ Treasurer, or a duly appointed Deputy Treasurer. Selection of broker/dealers shall be based upon the following criteria: the reputation and financial strength of the company or financial institution ~~and~~, the reputation and expertise of the individuals employed, and pursuant to the requirements of Section 53601.5. The Chief Executive Officer shall be prohibited

from selecting any broker, brokerage firm, dealer, or securities firm that has, within any 48-consecutive month period following January 1, 1996, made a political contribution in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board to any member of the MCE Board, or any candidate for those offices. The broker/dealers shall be provided with and acknowledge receipt of the Investment Policy.

### **Losses**

Losses are acceptable on a sale before maturity and may be taken if required to meet the liquidity needs of the agency or if the reinvestment proceeds will earn an income flow with a present value higher than the present value of the income flow that would have been generated by the original investment, considering any investment loss or foregoing interest on the original investment.

### **Delivery and Safekeeping**

The delivery and safekeeping of all securities shall be made through a third party custodian when practical and cost effective as determined by the ~~Manager of Finance, Treasurer, or a duly appointed Deputy Treasurer, and in accordance with Section 53608.~~ The Director of ~~Operations~~Finance or their designee shall review all transaction confirmations for conformity with the original transaction.

### **Conflict of Interest**

In accordance with state law, staff shall not accept honoraria, gifts, and gratuities from advisors, brokers, dealers, bankers, or other person with whom the MCE conducts business.

### **Audits**

MCE's funds shall be subject to a process of independent review by its external auditors. MCE's external auditors shall review the investment portfolio in connection with the annual audit for compliance with the statement of investment policy pursuant to ~~Government Code~~ Section 27134. The results of the audit shall be reported Manager of Finance and the Ad Hoc Audit Committee.

### **Reports**

~~The Manager~~Monthly: So long as the Board of Finance and designated staff~~Directors' annual delegation of investment authority pursuant to Section 53607 to the Treasurer is effective, the Treasurer or a duly appointed Deputy Treasurer, will perform a monthly review of the investment function. The Manager of Finance and shall prepare periodic reports listing submit a monthly report of all funds, the average investment transactions to the Board of Directors.~~

Annually: The Treasurer, or a duly appointed Deputy Treasurer, will submit an annual report to the Board of Directors and Chief Executive Officer within 30 days to of the end of a fiscal year providing the following:

- i. A list identifying the type of investment, issuer, date of maturity and yield of investments, par and provide such reports to the Executive Committee. dollar amount invested on all securities, the market value and source of the market value information;
- ii. A statement that the portfolio is in compliance with the Investment Policy and in accordance with Section 53646 or the manner in which the portfolio is not in compliance; and
- iii. A statement of MCE's ability to meet expenditure requirements for the upcoming 12 months.

## **Annual Review**

The Investment Policy will be reviewed annually by the ~~Manager of Finance.~~Treasurer, or a duly appointed Deputy Treasurer. Any changes to the Investment Policy will be submitted to the Board for approval.